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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

MAIN AND PROSPECT CAPITAL,  
LLC,

Defendant.

Case No. 2:19-cv-09736-FLA (AFMx)

**ORDER GRANTING PLAINTIFF’S  
MOTION FOR DEFAULT  
JUDGMENT AGAINST  
DEFENDANTS DANIEL ADAM  
HEWKO AND MAIN AND  
PROSPECT CAPITAL, LLC  
[DKT. 154]**

**RULING**

Before the court is Plaintiff Commodity Futures Trading Commission’s (“Plaintiff” or “CFTC”) Amended Motion for Default Judgment (“Motion”) against Defendants Main and Prospect Capital, LLC (“MPC”) and Daniel Adam Hewko (“Adam Hewko”) (collectively, the “Defaulting Defendants”). Dkt. 154 (Am. Mot.). On June 11, 2021, the court found this matter, originally filed as Dkts. 126-128, appropriate for resolution without oral argument and vacated the hearing set for June 18, 2021. Dkt. 130.

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1 For the reasons stated herein, the court GRANTS Plaintiff’s Motion in its  
2 entirety.

3 **BACKGROUND**

4 **I. Procedural History**

5 On November 13, 2019, Plaintiff filed a Complaint for Injunctive and Other  
6 Equitable Relief and for Civil Monetary Penalties Under the Commodity Exchange  
7 Act and Commission Regulations (“Complaint”) against Defendants MPC, Adam  
8 Hewko, and Daniel Hewko for violations of the Commodity Exchange Act (“Act”), 7  
9 U.S.C. §§ 1-27f, and its implementing regulations, 17 C.F.R. pts. 1-190. Dkt. 1  
10 (“Compl.”)

11 On January 11, 2020, pursuant to Fed. R. Civ. P. 4(h)(1)(B), a process server  
12 served MPC by delivering a copy of the Summons and Complaint, and all associated  
13 papers, to Adam Hewko, MPC’s President and sole officer.<sup>1</sup> Dkt. 25. MPC has failed  
14 to appear in the action. The court entered default against MPC on May 10, 2021.  
15 Dkts. 124-125.

16 Adam Hewko filed an Answer to the Complaint on March 4, 2020. Dkt. 40.  
17 On February 22, 2021, Plaintiff filed a motion requesting, inter alia, an order of  
18 contempt and sanctions against Adam Hewko. Dkts. 100, 101. On March 12, 2021,  
19 the court ordered Adam Hewko to appear on April 9, 2021, and to show cause why he  
20 should not be adjudged in contempt. Dkt. 109. Adam Hewko failed to appear at the  
21 hearing. Dkt. 114. On April 16, 2021, the court found Adam Hewko in contempt,  
22 struck his Answer, and instructed the court clerk to enter default against him. Dkt.  
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24 <sup>1</sup> Fed. R. Civ. P. 4(h)(1)(A) permits service on a corporation by following state law for  
25 service where the district court is located or where service is made. Service on MPC  
26 was proper under California Code of Civil Procedure § 416.20(b) (permitting service  
27 on a dissolved corporation by delivering a copy of the Summons and Complaint to, as  
28 provided by Section 2011(b) of the California Corporations Code, “an officer,  
director, or person having charge of its assets or, if no such person can be found, to  
any agent upon whom process might be served at the time of dissolution”).

1 115. Default was entered against Adam Hewko the same day. Dkt. 116. On May 17,  
2 2021, Plaintiff filed an Application for Default Judgment against the Defaulting  
3 Defendants. Dkt. 126.

4 On June 7, 2022, a Consent Order was ordered as to Adam Hewko’s father and  
5 codefendant, Daniel Hewko, resolving all of Plaintiff’s claims against Daniel Hewko.  
6 Dkt. 152. Consequently, on June 15, 2022, the court ordered Plaintiff to file an  
7 amended and superseding motion as to the Defaulting Defendants. Dkt. 153.  
8 Accordingly, now before the court is the amended Motion, which was filed on July 1,  
9 2022. Dkt. 154.

## 10 **II. Factual Background**

11 “The general rule of law is that upon default the factual allegations of the  
12 complaint, except those relating to the amount of damages, will be taken as true.”  
13 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (citation and  
14 quotation marks omitted). Thus, for purposes of the subject Motion, the court takes  
15 the following facts pleaded in the Complaint as true:

16 In or around August 2014, Defaulting Defendants began seeking investments  
17 into a pooled investment vehicle operated by MPC and marketed to prospective  
18 investors as the Global Opportunity Fund (the “Fund”). Compl. ¶ 25. From August  
19 2014 through at least December 2015, the Defaulting Defendants received more than  
20 \$2.3 million from at least 19 investors for the purpose of investing in the fund.  
21 Compl. ¶ 26. The investor funds, however, were pooled into MPC’s bank account  
22 rather than being held in separate accounts in adherence to the guidance set forth by  
23 the CFTC. *Id.*

24 Adam Hewko is the owner of MPC and had decision-making authority. *Id.*  
25 ¶ 106. He held himself out to investors as MPC’s Manager, signed documents on  
26 behalf of the company, and opened and controlled the futures trading account in  
27 MPC’s name. *Id.* ¶¶ 106-11. MPC was never registered with the CFTC as a  
28 community pool operator nor did it ever qualify for any registration exemption. *Id.*

1 ¶ 104. Adam Hewko was never registered with the CFTC as an associated person  
2 of a commodity pool operator, nor did he qualify for any registration exemption.  
3 *Id.* ¶ 105.

4 Defaulting Defendants represented to investors their funds would be traded  
5 using a “global macro strategy.” *Id.* ¶¶ 29-32. MPC accepted and received funds, at  
6 least in part, for the purpose of trading futures contracts. *Id.* ¶ 33. From September  
7 2014 to November 2014, MPC transferred more than \$1.1 million collected from the  
8 investors into a futures trading account with a Futures Commission Merchant (“FCM-  
9 1”) registered with the CFTC. *Id.* ¶ 36. On or around September 2014, Adam Hewko  
10 confirmed his intention as MPC’s manager to trade futures contracts with the fund’s  
11 assets; he also stated he was the sole source of MPC’s funds. *Id.* ¶¶ 37-38. In  
12 December 2014, he moved the funds from FCM-1 to another account registered with  
13 the CFTC (“FCM-2”), where they remained until approximately summer 2016. *Id.* ¶  
14 40. The accounts were used to conduct limited trading of futures contracts, including  
15 crude oil and E-mini S&P futures contracts, both of which were traded on designated  
16 contract markets. *Id.* ¶ 41.

17 Until January 2016, the Defaulting Defendants did not routinely provide their  
18 investors with account statements. *Id.* ¶ 42. Defendants began issuing quarterly  
19 statements in around January 2016; however, all investment returns claimed in  
20 account statements provided from fourth quarter 2015 through third quarter 2018 were  
21 false. *Id.* ¶¶ 43-46. While the fund suffered losses during this period, investors  
22 received statements indicating returns with wide ranging percentages of false growth.  
23 *Id.* ¶¶ 48-49, 53. For example, account statements for year-end 2015 falsely stated  
24 that returns “since inception” exceeded 20% for many investors and more than 30%  
25 for at least one investor, when the funds had only been used to trade a small amount of  
26 futures contracts in September and October 2014 and January 2015, and incurred  
27 losses. *Id.* ¶¶ 54-55. At that time, MPC also provided investors a letter from Adam  
28 Hewko claiming the fund had “come out on top,” that it had “grown [their] money and

1 will continue to do so,” and that it had “come into a position where income can be  
2 made available.” *Id.* ¶¶ 65-66.

3 Despite his statements to investors, Adam Hewko wrote in an internal email  
4 dated January 5, 2016, that MPC had a “loss on the year,” and that MPC could “assign  
5 50% loss to all [investors] and hope it works out,” but that “I for sure, will be put thru  
6 the grinder legally.” *Id.* ¶¶ 56-59, 63, 67. Defaulting Defendants continued sending  
7 false account statements, quarterly, into 2018. *Id.* ¶¶ 8, 44, 62, 69, 73, 76.

8 Throughout this entire period, Defaulting Defendants knew these statements were  
9 false, as the fund had never earned any investment gains. *Id.* ¶¶ 9, 54, 63, 68, 70-72,  
10 74-75, 77.

11 Defaulting Defendants did not use investor funds in the manner represented to  
12 investors, and instead misappropriated funds for the benefit of Adam Hewko, his  
13 family, and unrelated companies he owned or controlled. *Id.* ¶ 78. Adam Hewko  
14 received more than \$550,000 in payments from MPC to which he was not entitled,  
15 and directed the payment of more than \$1.2 million from MPC to or for the benefit of  
16 his unrelated business ventures. *Id.* ¶¶ 79-83. During this period, Adam Hewko  
17 repeatedly and falsely told investors MPC could not satisfy any withdrawal requests  
18 because the fund assets were “in a trade.” *Id.* ¶¶ 85-87.

### 19 JURISDICTION AND VENUE

20 This court has jurisdiction over this action under 28 U.S.C. § 1331 and 28  
21 U.S.C. § 1345. Section 6c(a) of the Commodity Exchange Act (the “Act”), 7 U.S.C.  
22 § 13a-1(a), authorizes the CFTC to seek injunctive and other relief against any person  
23 whenever it appears to the CFTC that such person has engaged, is engaging, or is  
24 about to engage in any act or practice constituting a violation of any provision of the  
25 Act or any rule, regulation, or order thereunder.

26 Venue properly lies in this district pursuant to 7 U.S.C. § 13a-1(e), because  
27 Adam Hewko resides in this district, Defaulting Defendants transacted business in this  
28

1 district, and Defaulting Defendants committed certain acts and practices in violation  
2 of the Act and Regulations in this district. *See* Compl. ¶¶ 1-2.

3 **DISCUSSION**

4 **I. Procedural Requirements**

5 In this district, a motion for a default judgment must be accompanied by a  
6 declaration in compliance with Fed. R. Civ. P. 55(b)(1) and (2), and include the  
7 following:

- 8 (a) When and against what party the default was entered;  
9 (b) The identification of the pleading to which default was entered;  
10 (c) Whether the defaulting party is an infant or incompetent person, and  
11 if so, whether that person is represented by a general guardian,  
12 committee, conservator or other representative;  
13 (d) That the Servicemembers Civil Relief Act (50 U.S.C. App. § 521)  
14 does not apply; and  
15 (e) That notice has been served on the defaulting party, if required by  
16 [Fed. R. Civ. P.] 55(b)(2).

15 Local Rule 55-1.

16 The Motion and supporting materials state: (a) default was entered against  
17 Defendant Adam Hewko on April 16, 2021, and against Defendant MPC on May 10,  
18 2021; (b) default was entered by a clerk of the court on the operative Complaint; (c)  
19 Defendants are believed to not be minors or incompetent persons; and (d) the  
20 Servicemembers Civil Relief Act does not apply to this action. *See* Dkt. 154-2 (Roth  
21 Decl.) ¶¶ 11-13, 19-21; Dkts. 116, 125.

22 Accordingly, Plaintiff has met the procedural requirements of Local Rule 55-1.

23 **II. Default Judgment Legal Standard**

24 The court clerk is generally authorized to enter default judgment at a plaintiff's  
25 request against a defendant without a court hearing or judicial action if the claim is for  
26 "a sum certain or a sum that can be made certain by computation." Fed. R. Civ. P.  
27 55(b)(1) ("Rule 55"). In all other cases, the plaintiff must apply to the court for a  
28 default judgment. Fed. R. Civ. P. 55(b)(2).

1 Rule 55 gives the court considerable discretion as to what it may require as a  
2 prerequisite to the entry of a default judgment. *TeleVideo*, 826 F.2d at 917. “The  
3 court may conduct hearings or make referrals—preserving any federal statutory right  
4 to a jury trial—when, to enter or effectuate judgment, it needs to: (A) conduct an  
5 accounting; (B) determine the amount of damages; (C) establish the truth of any  
6 allegation by evidence; or (D) investigate any other matter.” Fed. R. Civ. P. 55(b)(2)  
7 (paragraph breaks omitted). “The general rule of law is that upon default the factual  
8 allegations of the complaint, except those relating to the amount of damages, will be  
9 taken as true.” *TeleVideo*, 826 F.2d at 917-18 (citation and quotation marks omitted).  
10 However, facts which are not established by the pleadings or claims which are not  
11 well-pleaded cannot support a default judgment. *Alan Neuman Prods., Inc. v.*  
12 *Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988).

13 “Factors which may be considered by courts in exercising discretion as to the  
14 entry of a default judgment include: (1) the possibility of prejudice to the plaintiff,  
15 (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint,  
16 (4) the sum of money at stake in the action[,] (5) the possibility of a dispute  
17 concerning material facts[,] (6) whether the default was due to excusable neglect, and  
18 (7) the strong policy underlying the Federal Rules of Civil Procedure favoring  
19 decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

20 The court considers the *Eitel* factors below.

### 21 **III. Analysis of *Eitel* Factors**

#### 22 **A. Possibility of Prejudice to the Plaintiff**

23 First, the CFTC has established it will be prejudiced and deprived of the  
24 opportunity to obtain judicial resolution of its claims if the Motion is not granted.  
25 Adam Hewko’s Answer has been stricken and default entered because of his failure to  
26 participate fully in discovery and comply with court orders. MPC has failed to appear.  
27 Absent entry of default judgment, the CFTC would be prejudiced by its inability to  
28 enforce federal commodities laws efficiently and effectively. *See CFTC v. Fin. Tree*,

1 No. 2:20-cv-01184-TLN-AC, 2022 WL 36416, at \*12 (E.D. Cal. Jan. 4, 2022), *report*  
2 *and recommendation adopted by* 2022 WL 718391 (E.D. Cal. Mar. 9, 2022) (“The  
3 CFTC has strong, congressionally mandated interests in enforcing the Act, obtaining  
4 restitution ... for victims of fraud, and deterring future wrongdoing through penalties,  
5 among other monetary relief.”).

6 Thus, the first *Eitel* factor favors entry of default judgment.

7 **B. Merits of Plaintiff’s Claims and Sufficiency of the Complaint**

8 The next two *Eitel* factors are (1) the merits of the plaintiff’s substantive claim,  
9 and (2) the sufficiency of the complaint. *Eitel*, 782 F.2d at 1471-72. The Ninth  
10 Circuit has suggested these two factors require a plaintiff to “state a claim on which  
11 the [plaintiff] may recover.” *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).  
12 Therefore, the court must evaluate whether the allegations in the Complaint  
13 sufficiently establish violations of the Commodity Exchange Act and its implementing  
14 regulations. *See Danning*, 572 F.2d at 1388.

15 Here, the Complaint pleads sufficient facts to state claims for each of the  
16 violations of the Act and Regulations set forth therein. The court finds the CFTC has  
17 stated claims upon which it may recover against Defaulting Defendants for violations  
18 of: Section 6(c)(1), 7 U.S.C. § 9(1) and Regulation 180.1(a), 17 C.F.R. § 180.1(a)  
19 (fraud by deceptive device or contrivance); Section 4o(1)(a)-(b), 7 U.S.C. § 6o(1)(a)-  
20 (b) (fraud by a commodity pool operator and associated person of a commodity pool  
21 operator); Section 4m(1), 7 U.S.C. § 6m(1) (failure to register as a community pool  
22 operator); 7 U.S.C. § 6k(2) and Regulation 3.12, 17 C.F.R. § 3.12 (failure to register  
23 as an associated person of a community pool operator, and community pool operator  
24 association with unregistered associated person); Regulation 4.20(a)-(c), 17 C.F.R.  
25 § 4.20(a)-(c) (failure to operate pool as separate entity, failure to receive funds in  
26 pool’s name, commingling pool funds); Regulation 4.21, 17 C.F.R. § 4.21 (failure to  
27 provide required disclosures); and Regulation 4.22, 17 C.F.R. § 4.22 (failure to  
28 provide monthly statements). *See* Dkt. 154-1 (Am. Mot. Br.) at 7-17.



1           Therefore, the second and third *Eitel* factors favor entry of default judgment.

2           **C.     Sum of Money at Stake**

3           Next, the court considers “the amount of money at stake in relation to the  
4 seriousness of [the] [d]efendant’s conduct.” *Pepsico, Inc. v. Cal. Sec. Cans*, 238 F.  
5 Supp. 2d 1172, 1176 (C.D. Cal. 2002); *see also Eitel*, 782 F.2d at 1471-72.

6           The amount of money at stake does not warrant denying default judgment.  
7 Defaulting Defendants’ fraudulent conduct and registration violations constitute core  
8 violations of the Act and implementing Regulations, and the relief the CFTC seeks is  
9 reasonable, authorized by the Act and implementing Regulations, and consistent with  
10 prior default judgment awards in similar CFTC enforcement actions. *See, e.g., CFTC*  
11 *v. Am. Bullion Exch. ABEX Corp.*, No. 8:10-cv-01876-DOC (KESx), 2014 WL  
12 12603558, at \*11 (C.D. Cal. Sept. 16, 2014) (entering default judgment for  
13 Commission and ordering civil monetary penalty exceeding \$14 million); *CFTC v.*  
14 *Safevest, LLC*, No. 8:08-cv-00474-JVS (MLGx), 2009 WL 2448116, at \*2-5 (C.D.  
15 Cal. July 13, 2009) (entering default judgment for the Commission and ordering, *inter*  
16 *alia*, restitution of \$17.8 million plus pre-judgment interest for a total of \$18.4 million,  
17 and a total civil monetary penalty of \$2 million); *CFTC v. The Trade Tech Institute,*  
18 *Inc.*, 2:11-cv-02163-GHK (PLAx), 2012 WL 13008332, at \*4-5 (C.D. Cal. Jun. 19,  
19 2012) (default judgment and ordering restitution of \$2.3 million and a civil monetary  
20 penalty of \$8.7 million).

21           The fourth *Eitel* factor weighs in favor of entry of default judgment.

22           **D.     Possibility of a Dispute Concerning Material Facts**

23           The court may also consider whether there is a possibility of a dispute between  
24 the parties concerning material facts. *Eitel*, 782 F.2d at 1471-72. Here, MPC never  
25 appeared in the action, although it was properly served through Adam Hewko. While  
26 Adam Hewko appeared, his Answer was stricken for failure to comply with this  
27 court’s orders. Nothing in the record before the court has raised a dispute of material  
28

1 fact. Thus, it appears no genuine dispute of material fact would preclude granting  
2 Plaintiff's Motion.

3 The fifth *Eitel* factor weighs in favor of entry of default judgment.

4 **E. Whether Default Was Due to Excusable Neglect**

5 Excusable neglect is unlikely when a defendant is properly served and,  
6 therefore, aware of a plaintiff's pending action in court. *Wecosign, Inc. v. IFG*  
7 *Holdings, Inc.*, 845 F. Supp. 2d 1072, 1082 (C.D. Cal. 2012). Defaulting Defendants  
8 were properly served with copies of the Summons and Complaint in this matter, but  
9 MPC failed to answer or defend the action, while Adam Hewko's Answer was  
10 stricken and his default entered because of his intentional failure to participate fully in  
11 discovery and comply with court orders. Dkt. 115. There is no evidence of excusable  
12 neglect.

13 The sixth *Eitel* factor is met and weighs in favor of entry of default judgment.

14 **F. Policy Favoring Decisions on the Merits**

15 "Cases should be decided upon their merits whenever reasonably possible."  
16 *Eitel*, 782 F.2d at 1472. However, "[t]he very fact that [Rule] 55(b) exists shows that  
17 this preference, standing alone, is not dispositive." *Klopping v. Fireman's Fund*, No.  
18 3:94-cv-02684-TEH, 1996 WL 75314, at \*3 (N.D. Cal. Feb. 13, 1996). The  
19 Defaulting Defendants' intentional decision not to comply with the court's orders to  
20 participate in the lawsuit makes it impractical, if not impossible, for the court to render  
21 a decision on the merits. Accordingly, while the final *Eitel* factor generally weighs  
22 against granting default judgment, the court finds this factor is neutral here.

23 **G. Conclusion on Eitel Factors**

24 In sum, six of the seven *Eitel* factors favor entering default judgment against  
25 Defaulting Defendants, while the final factor, the policy favoring a determination on  
26 the merits, is neutral. *See Eitel*, 782 F.2d at 1471-72. The court, therefore, finds it  
27 appropriate to enter default judgment in Plaintiff's favor and against the Defaulting  
28 Defendants. The court now turns to the appropriateness of Plaintiff's requested relief.

1 **IV. Remedies and Damages**

2 The CFTC seeks a permanent injunction, restitution, and a civil monetary  
3 penalty against Defaulting Defendants.

4 **A. Permanent Injunction**

5 Section 6c(a) of the Act authorizes the court to grant permanent injunction. 7  
6 U.S.C. § 13a-1(a). Pursuant to 7 U.S.C. § 13a-1(a), “[t]he CFTC is entitled to a  
7 permanent injunction upon a showing that a violation [of the Act or Regulations] has  
8 occurred and is likely to continue unless enjoined.” *CFTC v. Driver*, 877 F. Supp. 2d  
9 968, 981 (C.D. Cal. 2012), *aff’d* 585 F. App’x 366 (9th Cir. 2014); *see also MAI Sys.*  
10 *Corp. v. Peak Comput.*, 991 F.2d 511, 520 (9th Cir. 1993). As a result, “[o]nce a  
11 violation of the Act has been shown, the moving party need only show the existence  
12 of some reasonable likelihood of future violations.” *CFTC v. Wilson*, No. 3:11-cv-  
13 01651-WQH-BLM, 2011 WL 6398933, at \*2 (S.D. Cal. Dec. 20, 2011) (*quoting*  
14 *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979)).

15 The court may infer a likelihood of future violations of the Act and Regulations  
16 from past unlawful and systematic conduct. *See CFTC v. Yu*, No. 4:12-cv-03921-  
17 YGR, 2012 WL 3283430, at \*4 (N.D. Cal. Aug. 10, 2012). The court may also  
18 consider “the egregiousness of the defendant’s actions, whether the violation was  
19 isolated or recurrent, the degree of scienter involved, the sincerity of the defendant’s  
20 assurances against future violations, the defendant’s recognition of his conduct’s  
21 wrongfulness, and the likelihood that the defendant’s occupation will present  
22 opportunities for future violations.” *Driver*, 877 F. Supp. 2d at 981-82.

23 Here, the court finds a permanent injunction prohibiting Defaulting Defendants  
24 from engaging in future violations of the Act or related regulations, and from trading  
25 for themselves and others, is warranted. Based on the foregoing numerous statutory  
26 violations by Defaulting Defendants, it can be presumed that there is a reasonable  
27 likelihood of future violations, especially considering that Defaulting Defendants have  
28 either failed to defend themselves in this action or had their Answer stricken for

1 failure to comply with court orders. Defaulting Defendants have not accepted  
2 responsibility for their wrongful conduct, nor have they provided any assurance  
3 against future violations. Further, based on the facts alleged in the Complaint, the  
4 violations of Defaulting Defendants were egregious, intentional, and systemic.

5 It, therefore, is appropriate to conclude that Defaulting Defendants are likely to  
6 continue their pattern of wrongdoing unless permanently enjoined by the court.

7 **B. Payment of Restitution, Civil Monetary Penalties, and Post-**  
8 **Judgment Interest**

9 The court may rely on declarations in lieu of a damages hearing. *See, e.g.,*  
10 *CFTC v. Emerald Worldwide Holdings, Inc.*, No. 2:03-cv-08339-AHM (Ex), 2005  
11 WL 1130588, at \*13 (C.D. Cal. Apr. 19, 2005) (finding “no reason to hold an  
12 evidentiary hearing on damages” because the CFTC-submitted documentary evidence  
13 was “sufficient” to enter default judgment). The CFTC’s burden in proving up  
14 damages “is relatively lenient” and need “only prove that the compensation sought  
15 relates to the damages that flow naturally from the well-pleaded injuries.” *SEC v.*  
16 *Pedras*, No. 2:13-cv-07932-GAF (MRWx), 2014 WL 12597332, at \*8 (C.D. Cal. Apr.  
17 16, 2014) (citations omitted). As evidence of damages, the CFTC filed the  
18 Declaration of Michael Cazakoff. Dkt. 127 (“Cazakoff Decl.”). The court finds this  
19 evidence sufficient to establish Plaintiff’s damages and finds no reason to hold an  
20 evidentiary hearing on this issue.

21 *I. Restitution*

22 The CFTC is authorized to seek, and the court to impose, equitable remedies for  
23 violations of the Act. 7 U.S.C. § 13a-1(d)(3)(A). Those equitable remedies include  
24 “restitution to persons who have sustained losses proximately caused by such  
25 violation (in the amount of such losses).” *Id.*

26 As a result of Defaulting Defendants’ conduct, their fund investors incurred net  
27 losses totaling \$1,906,395. Cazakoff Decl. ¶ 9. This figure reflects the total funds  
28 that were invested (\$2,578,250) minus the funds MPC returned to investors

1 (\$698,959), not including \$27,104 refunded to three investors in excess of the  
2 amounts they originally invested. *See id.* The court finds these losses are directly  
3 connected to, and caused by, Defaulting Defendants' violations of the Act.

4 Accordingly, Defaulting Defendants are ordered to pay \$1,906,395 on a joint  
5 and several basis. The court's separate June 7, 2022 Consent Order requires Daniel  
6 Hewko to pay restitution in the amount of \$500,000, and provides that "[f]or any  
7 amounts paid by [Adam Hewko and/or MPC] to satisfy their restitution obligations ...  
8 [Daniel Hewko] shall receive a dollar-for-dollar credit against his Restitution  
9 Obligation." Dkt. 152. Likewise, Defaulting Defendants will receive a dollar-for-  
10 dollar credit against their restitution obligation for any amounts paid by Daniel Hewko  
11 to satisfy his restitution obligation.

## 12 2. *Civil Monetary Penalty*

13 In actions brought by the CFTC, the court may impose a civil monetary penalty  
14 ("CMP") not more than the greater of 1) triple the monetary gain to the person for  
15 each violation of the Act or Regulations, or 2) \$100,000 (adjusted for inflation to  
16 \$185,242) per violation. 7 U.S.C. § 13a-1(d)(1), 17 C.F.R. § 143.8(a)(b)(1).

17 When deciding a CMP, the court may consider the gravity of the offense and  
18 the amount sufficient to act as a deterrent. *Miller v. CFTC*, 197 F.3d 1227, 1236 (9th  
19 Cir. 1999). This may include the nature of the violations, whether defendants acted  
20 with scienter, the consequences of the violations, the financial benefits to defendants,  
21 and the harm to customers or the market. *Am. Bullion Exch.*, 2014 WL 3896023, at  
22 \*19 (citations omitted). Courts and the CFTC have held that "a high civil monetary  
23 penalty is warranted where customers have been defrauded of a substantial amount of  
24 money." *Driver*, 877 F. Supp. 2d at 982.

25 The CFTC seeks a CMP of approximately three times the amount Defaulting  
26 Defendants were unjustly enriched. The monetary gain to MPC was the amount  
27 received from investors, less the amounts returned: \$1,906,395. Cazakoff Decl. ¶ 10.  
28

1 Triple the monetary gain to MPC is \$5,719,185, and the CFTC requests a rounded  
2 CMP of \$5.7 million, on a joint and several basis.

3 Having considered the above factors, the court agrees that Defaulting  
4 Defendants' conduct warrants a considerable penalty. Based on the allegations in the  
5 Complaint and evidence before the court, Defaulting Defendants acted intentionally  
6 and with scienter, fraudulently solicited over \$2 million, misappropriated funds, and  
7 lied to investors over the course of numerous years. Defaulting Defendants attempted  
8 to conceal their fraud by providing false account statements representing gains  
9 between 2016 and 2018, and avoided withdrawal demands by falsely claiming MPC  
10 fund assets were unavailable because they were in a trade. Additionally, Defaulting  
11 Defendants have either failed to defend in this action or to comply with court orders.

12 In light of the foregoing, the court concludes that a CMP in the amount of three  
13 times CMP's gain is an appropriate penalty. Joint and several liability as to MPC's  
14 penalty is appropriate given Adam Hewko's control over MPC. Accordingly,  
15 Defaulting Defendants are assessed a penalty of \$5.7 million on a joint and several  
16 basis.

### 17 3. *Post-Judgment Interest*

18 The CFTC is also entitled to post-judgment interest on any restitution and CMP  
19 awards ordered by the court. 28 U.S.C. § 1961(a). The court grants the CFTC's  
20 request for post-judgment interest on the full CMP obligation, as well as post-  
21 judgment interest on the restitution award of \$1,906,395 less the amount agreed upon  
22 in Daniel Hewko's Consent Order. *See* Dkt. 152. In light of Daniel Hewko's  
23 payment of post-judgment interest on \$500,000 of the total restitution, the post-  
24 judgment interest for Defaulting Defendants' is assessed on the remaining restitution  
25 total of \$1,406,395. If the CMP and restitution obligations are not paid immediately,  
26 post-judgment interest shall accrue beginning on the date of entry of this order and  
27 determined by using the Treasury Bill rate prevailing on the date of entry of this order,  
28 pursuant to 28 U.S.C. § 1961.

**IT IS HEREBY ORDERED THAT:**

1  
2 1. Plaintiff CFTC’s Amended Motion for Default Judgment against  
3 Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC is GRANTED.

4 2. Based upon and in connection with the foregoing conduct, pursuant to  
5 Section 6c of the Act, 7 U.S.C. § 13a-1, Defendants Daniel Adam Hewko and Main  
6 and Prospect Capital, LLC are permanently restrained, enjoined, and prohibited from  
7 directly or indirectly:

8 a. Using or employing (or attempting to use or employ) a device,  
9 scheme, or artifice to defraud any person; making (or attempting to make)  
10 untrue or misleading statements of material fact or omitting to state a material  
11 fact in order to make the statements made not untrue or misleading; and/or  
12 engaging (or attempting to engage) in transactions, practices, or courses of  
13 business that operate as a fraud or deceit on any person, in violation of Section  
14 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. §  
15 180.1(a); and

16 b. Using the mails or any means or instrumentality of interstate  
17 commerce, as a Commodity Pool Operator (“CPO”) or Commodity Trading  
18 Advisor (“CTA”) or as an Associated Person (“AP”) of a CPO or CTA, to  
19 employ a device, scheme, or artifice to defraud any client or participant or  
20 prospective client or participant, or to engage in any transaction, practice, or  
21 course of business which operates as a fraud or deceit upon any client or  
22 participant or prospective client or participant, in violation of Section 4o(1)(A)-  
23 (B) of the Act, 7 U.S.C. §§ 6o(1)(A)-(B).

24 3. Based upon and in connection with the foregoing conduct, pursuant to  
25 Section 6c of the Act, 7 U.S.C. § 13a-1, Defendant Daniel Adam Hewko is  
26 permanently restrained, enjoined, and prohibited from directly or indirectly:

27 a. Being associated with a CPO as a partner, officer, employee,  
28 consultant, or agent (or any person occupying a similar status or performing

1 similar functions), in any capacity involving the solicitation of funds, securities,  
2 or property for a participation in a commodity pool or the supervision of any  
3 person or persons so engaged, unless registered with the Commission as an AP  
4 of a CPO, in violation of Section 6k(2) of the Act, 7 U.S.C. § 6k(2) and  
5 Regulation 3.12, 17 C.F.R. § 3.12.

6 4. Based upon and in connection with the foregoing conduct, pursuant to  
7 Section 6c of the Act, 7 U.S.C. § 13a-1 Defendant Main and Prospect Capital, LLC is  
8 permanently restrained, enjoined, and prohibited from directly or indirectly:

9 a. Making use of the mails or any means or instrumentality of  
10 interstate commerce in connection with its business as a CPO without  
11 registering as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C.  
12 § 6m(1);

13 b. Permitting any person not registered with the Commission to  
14 become or remain associated with it as an AP of a CPO, when Defendant Main  
15 and Prospect Capital, LLC knows or should know that such person is not  
16 registered as an AP of a CPO, in violation Section 4k(2) of the Act, 7 U.S.C.  
17 § 6k(2);

18 c. Failing to operate a commodity pool as a legal entity separate from  
19 itself; failing to receive pool participants' funds in the name of the pool that was  
20 a legal entity separate from itself; and commingling the property of the pool  
21 with property of Defendant Main and Prospect Capital, LLC or others, in  
22 violation of Regulation 4.20, 17 C.F.R. § 4.20;

23 d. Failing, in connection with its CPO business, to provide a  
24 disclosure document to investors or by providing a disclosure that does not  
25 contain information required by Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24,  
26 4.25, in violation of Regulation 4.21, 17 C.F.R. § 4.21; and

27 e. Failing, in connection with its CPO business, to provide account  
28 statements and annual reports, as required, and that comply with the



1 requirements of Regulation 4.22, 17 C.F.R. § 4.22, in violation of that  
2 provision.

3 5. Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC  
4 are permanently restrained, enjoined, and prohibited from directly or indirectly:

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

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

10 c. Having any commodity interests traded on their behalf;

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

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

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

20 g. Acting as a principal (as that term is defined in Regulation 3.1(a),  
21 17 C.F.R. § 3.1(a)), agent, or any other officer or employee of any person (as  
22 that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from  
23 registration, or required to be registered with the Commission except as  
24 provided for in 17 C.F.R. § 4.14(a)(9).

25 6. Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC  
26 shall pay, jointly and severally, restitution in the amount of one million nine hundred  
27 six thousand three hundred ninety-five dollars (\$1,906,395) (“Restitution  
28 Obligation”). If the Restitution Obligation is not paid immediately, post-judgment

1 interest shall accrue on \$1,406,395 of the Restitution Obligation beginning on the date  
2 of entry of this Order and shall be determined by using the Treasury Bill rate  
3 prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

4 7. For any amounts paid by co-defendant Daniel Hewko to satisfy his  
5 restitution obligation in this case, as set forth in this court's Consent Order for  
6 Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against  
7 Defendant Daniel Hewko (Dkt. 152), Defendants Daniel Adam Hewko and Main and  
8 Prospect Capital, LLC shall receive a dollar-for-dollar credit against their Restitution  
9 Obligation.

10 8. To effect payment of the Restitution Obligation and the distribution of  
11 any restitution payments to Defendant Main and Prospect Capital, LLC's pool  
12 participants/clients, the court appoints the National Futures Association ("NFA") as  
13 Monitor ("Monitor"). The Monitor shall receive restitution payments from Defaulting  
14 Defendants and make distributions as set forth below. Because the Monitor is acting  
15 as an officer of this court in performing these services, the NFA shall not be liable for  
16 any action or inaction arising from NFA's appointment as Monitor, other than actions  
17 involving fraud.

18 9. Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC  
19 shall make Restitution Obligation payments, and any post-judgment interest  
20 payments, under this Order to the Monitor in the name of "CFTC v. Main and  
21 Prospect Capital, LLC, et al., case no. 19-cv-9736, Restitution Fund" and shall send  
22 such payments by electronic funds transfer, or by U.S. postal money order, certified  
23 check, bank cashier's check, or bank money order, to the Office of Administration,  
24 National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago,  
25 Illinois 60606, under cover letter that identifies the paying defendant and the case  
26 name and docket number of this action. Defendants Daniel Adam Hewko and Main  
27 and Prospect Capital, LLC shall simultaneously transmit copies of the cover letter and  
28 the form of payment to the Chief Financial Officer, Commodity Futures Trading

1 Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C.  
2 20581.

3 10. The Monitor shall oversee the Restitution Obligation and shall have the  
4 discretion to determine the manner of distribution of such funds in an equitable  
5 fashion to Fund investors identified by the Commission or may defer distribution until  
6 such time as the Monitor deems appropriate. If the amount of Restitution Obligation  
7 payments to the Monitor are of a de minimis nature, such that the Monitor determines  
8 that the administrative cost of making a distribution to Fund investors is impractical,  
9 the Monitor may, in its discretion, treat such restitution payments as civil monetary  
10 penalty payments, which the Monitor shall forward to the Commission following the  
11 instructions for civil monetary penalty payments set forth below.

12 11. Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC  
13 shall cooperate with the Monitor as appropriate to provide such information as the  
14 Monitor deems necessary and appropriate to identify Fund investors to whom the  
15 Monitor, in its sole discretion, may determine to include in any plan for distribution of  
16 any Restitution Obligation payments. Defendants Daniel Adam Hewko and Main and  
17 Prospect Capital, LLC shall execute any documents necessary to release funds they  
18 have in any repository, bank, investment, or other financial institution, wherever  
19 located, in order to make partial or total payment toward the Restitution Obligation.

20 12. The Monitor shall provide the Commission at the beginning of each  
21 calendar year with a report detailing the disbursement of funds to Fund investors  
22 during the previous year. The Monitor shall transmit this report under a cover letter  
23 that identifies the name and docket number of this proceeding to the Chief Financial  
24 Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st  
25 Street, NW, Washington, D.C. 20581.

26 13. The amounts payable to each Fund investor shall not limit the ability of  
27 any Fund investor from proving that a greater amount is owed from Defaulting  
28 Defendants or any other person or entity, and nothing herein shall be construed in any

1 way to limit or abridge the rights of any Fund investor that exist under state or  
2 common law.

3 14. Pursuant to Fed. R. Civ. P. 71, each Fund investor who suffered a loss is  
4 explicitly made an intended third-party beneficiary of this Order and may seek to  
5 enforce obedience of this Order to obtain satisfaction of any portion of the restitution  
6 that has not been paid by Defendants Daniel Adam Hewko and Main and Prospect  
7 Capital, LLC to ensure continued compliance with any provision of this Order and to  
8 hold Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC in  
9 contempt for any violations of any provision of this Order.

10 15. To the extent any funds accrue to the U.S. Treasury for satisfaction of  
11 Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC's Restitution  
12 Obligation, such funds shall be transferred to the Monitor for disbursement in  
13 accordance with the procedures set forth above.

14 16. The total monetary gain to Defendant Main and Prospect Capital, LLC  
15 was \$1,906,395; triple the monetary gain to Defendant Main and Prospect Capital,  
16 LLC is \$5,719,185. Accordingly, Defendants Daniel Adam Hewko and Main and  
17 Prospect Capital, LLC shall pay, jointly and severally, a civil monetary penalty in the  
18 amount of five million, seven hundred thousand dollars (\$5,700,000) ("CMP  
19 Obligation"). If the CMP Obligation is not paid immediately, then post-judgment  
20 interest shall accrue on the full CMP Obligation beginning on the date of entry of this  
21 Order and shall be determined by using the Treasury Bill rate prevailing on the date of  
22 entry of this Order, pursuant to 28 U.S.C. § 1961.

23 17. Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC  
24 shall pay the CMP Obligation and any post-judgment interest, by electronic funds  
25 transfer, U.S. postal money order, certified check, bank cashier's check, or bank  
26 money order. If payment is to be made other than by electronic funds transfer, then  
27 the payment shall be made payable to the Commodity Futures Trading Commission  
28 and sent to the address below:

1 MMAC/ESC/AMK326  
2 Commodity Futures Trading Commission  
3 Division of Enforcement  
4 6500 S. MacArthur Blvd.  
5 HQ Room 266  
6 Oklahoma City, OK 73169  
7 (405) 954-6569 office  
8 (405) 954-1620 fax  
9 9-AMC-AR-CFTC@faa.gov  
10  
11

12 18. If payment by electronic funds transfer is chosen, Defendants Daniel  
13 Adam Hewko and Main and Prospect Capital, LLC shall contact Tonia King or her  
14 successor at the address above to receive payment instructions and shall fully comply  
15 with those instructions. Defendants Daniel Adam Hewko and Main and Prospect  
16 Capital, LLC shall accompany payment of the CMP Obligation with a cover letter that  
17 identifies the defendants and the case name and docket number of this action.  
18 Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC shall  
19 simultaneously transmit copies of the cover letter and the form of payment to the  
20 Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette  
21 Centre, 1155 21st Street, NW, Washington, D.C. 20581.

22 19. Partial Satisfaction: Acceptance by the Commission or the Monitor of  
23 any partial payment of Defendants Daniel Adam Hewko and Main and Prospect  
24 Capital, LLC's Restitution Obligation or CMP Obligation shall not be deemed a  
25 waiver of Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC's  
26 obligation to make further payments pursuant to this Order, or a waiver of the  
27 Commission's right to seek to compel payment of any remaining balance.

28 20. Any payments received from Defendants Daniel Adam Hewko and Main  
and Prospect Capital, LLC pursuant to this Order shall be applied first to satisfy its  
Restitution Obligation.

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

1 Notice to the Commission:  
2 Manal M. Sultan  
3 Deputy Director  
4 Commodity Futures Trading Commission  
5 290 Broadway, 6th Floor  
6 New York, NY 10007

7 Notice to Defendant Daniel Adam Hewko:  
8 73 Spring Valley  
9 Irvine, CA 92602

10 Notice to Defendant Main and Prospect Capital, LLC:  
11 274 Sunset Ave, Ste. E-313  
12 Suisun City, CA 94585

13 Notice to NFA:  
14 Daniel Driscoll, Executive Vice President, COO  
15 National Futures Association  
16 300 S. Riverside Plaza, Suite 1800  
17 Chicago, IL 60606-3447

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

20 22. Change of Address/Telephone: Until such time as Defendants Daniel  
21 Adam Hewko and Main and Prospect Capital, LLC satisfy in full their Restitution  
22 Obligation and CMP Obligation as set forth in this Order, Defendants Daniel Adam  
23 Hewko and Main and Prospect Capital, LLC shall provide written notice to the  
24 Commission by certified mail of any change to their telephone numbers and mailing  
25 addresses within ten calendar days of the change.

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

29 24. Continuing Jurisdiction of this Court: This court shall retain jurisdiction  
of this action to ensure compliance with this Order and for all other purposes related


1 to this action, including any motion by Defendants Daniel Adam Hewko and Main  
2 and Prospect Capital, LLC to modify or for relief from the terms of this Order.

3 25. Injunctive and Equitable Relief Provisions: The injunctive and equitable  
4 relief provisions of this Order shall be binding upon Defendants Daniel Adam Hewko  
5 and Main and Prospect Capital, LLC, upon any person under the authority or control  
6 of any of Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC, and  
7 upon any person who receives actual notice of this Order, by personal service, e-mail,  
8 facsimile or otherwise insofar as he or she is acting in active concert or participation  
9 with Defendants Daniel Adam Hewko and Main and Prospect Capital, LLC.

10 26. The Clerk of the Court is hereby instructed to enter this Order for Final  
11 Judgment by Default as to Defendants Daniel Adam Hewko and Main and Prospect  
12 Capital, LLC forthwith and without further notice.

13  
14 IT IS SO ORDERED.

15  
16 Dated: August 22, 2022

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18   
19 \_\_\_\_\_  
20 FERNANDO L. AENLLE-ROCHA  
21 United States District Judge  
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