

1 NOT FOR PUBLICATION
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 United States Commodity Futures Trading
10 Commission,

11 Plaintiff,

12 v.

13 Cory Williams, *et al.*,

14 Defendants.

No. CV-17-01325-PHX-JJT

ORDER

15
16 On July 21, 2017 Plaintiff U.S. Commodity Futures Trading Commission
17 (“Plaintiff,” “CFTC,” or “Commission”) filed a Motion for Entry of Default Judgment,
18 Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief against
19 Defendants Cory Williams (“Williams”) and Williams Advisory Group, LLC (“WAG”)
20 (collectively, “Defendants”) (Doc. 29). The Court granted the Motion in its March 6,
21 2018 Order (Doc. 36). The Court affirms its Order (Doc. 36) regarding the Motion for
22 Entry of Default Judgment, Permanent Injunction, Civil Monetary Penalty, and Other
23 Equitable Relief against Defendants and supplements it as follows:

24 **I. PROCEDURAL HISTORY**

25 1. On May 3, 2017, Plaintiff filed a Complaint for Injunctive and Other
26 Equitable Relief and for Civil Monetary Penalties for violations of the Commodity
27 Exchange Act (the “Act”), 7 U.S.C. §§ 1-26 (2012), and Commission Regulations
28 (“Regulations”), 17 C.F.R. §§ 1.1-190.10 (2016). (“Complaint” or “Compl.,” Doc. 1).

1 2. On May 8, 2017, pursuant to Federal Rule of Civil Procedure 4(e)(2)(A),
2 Plaintiff's process server personally served Williams with the Summons, the Complaint,
3 and all associated papers at his residence in Gilbert, Arizona. (Proof of Service executed
4 by Sarah Zirakim, dated May 8, 2017, Doc. 15).

5 3. Also on May 8, 2017, pursuant to Federal Rule of Civil Procedure
6 4(h)(1)(B), Plaintiff's process server served WAG with the Summons, the Complaint, and
7 all associated papers by providing them to Williams, an officer of WAG who is
8 "authorized to accept service" on behalf of WAG. (Proof of Service executed by Sarah
9 Zirakim, dated May 8, 2017, Doc. 16).

10 4. Pursuant to Federal Rules of Civil Procedure 12(a)(1)(A)(i) and 6(a)(1)(C),
11 all Defendants were required to answer or move against the Complaint within 21 days of
12 service, or by May 30, 2017. Defendants failed to appear in the action, plead, or
13 otherwise respond to the Complaint.

14 5. On May 31, 2017, Plaintiff submitted Applications for Entry of Default
15 Against Defendants (the "Applications") pursuant to Federal Rule of Civil Procedure
16 55(a) (Docs. 19, 20), which the Clerk of the Court granted on June 1, 2017.

17 6. Also on June 1, 2017, the Court conducted a hearing on Plaintiff's Motion
18 for an Order of Preliminary Injunction. (Doc. 13). Neither Defendant responded to
19 Plaintiff's Motion for an Order of Preliminary Injunction or appeared at the hearing.
20 (Doc. 22).

21 7. On June 8, 2017, this Court granted Plaintiff's Motion for a Preliminary
22 Injunction (Doc. 23), and thereafter Plaintiff served the Defendants with a copy of the
23 Order granting Plaintiff's Motion for a Preliminary Injunction.

24 8. The only pleading filed on behalf of any Defendant was Defendant
25 Williams' letter motion dated June 8, 2017, to vacate the preliminary injunction and to
26 stay the proceedings (Doc. 24), which this Court denied on June 19, 2017 (Doc. 25). The
27 Court also ordered Defendant WAG, a corporate entity, to enter an appearance in this
28 case through counsel within 30 days of issuance of the Order. (Doc. 25). Neither

1 Defendant has pled, responded to the Compliant, or otherwise defended the action.
2 Further, Defendant WAG has failed to file a notice of appearance with the Court, in
3 violation of the Court's June 19, 2017 Order. Plaintiff's instant motion followed.

4 **II. FINDINGS OF FACT**

5 **A. The Parties**

6 9. Plaintiff United States Commodity Futures Trading Commission is an
7 independent federal regulatory agency charged by Congress with the administration and
8 enforcement of the Act and Regulations. The CFTC maintains its principal office at 1155
9 21st Street N.W., Washington, D.C. 20581.

10 10. Defendant Williams Advisory Group, LLC ("WAG") is an Arizona limited
11 liability company formed on September 27, 2010, with its principal place of business at
12 2484 E. Lodgepole Drive, Gilbert, Arizona 85298. WAG has never been registered in any
13 capacity with the CFTC.

14 11. Defendant Cory Williams is an individual residing in Gilbert, Arizona.
15 Williams is the founder, president and agent of WAG. Williams has never been registered
16 in any capacity with the CFTC.

17 **B. Defendants' Fraudulent Scheme**

18 12. From at least April 2014 through December 2016 ("Relevant Period"),
19 Williams, individually and as agent and officer of WAG, fraudulently solicited and
20 directly accepted \$13,131,390 million from at least 40 individuals and/or entities ("pool
21 participants" or "participants") to participate in a pooled investment vehicle for the
22 purported purpose of trading commodity futures contracts.

23 13. Williams traded significant volumes of E-Mini S&P 500 futures contracts
24 in his personal trading accounts using participants' funds and consistently suffered heavy
25 trading losses. Williams' trading for his own benefit in his personal accounts resulted in
26 losses of more than \$8.3 million. Williams lost money every single month he traded from
27 April 2014 through and including December 2016, all while falsely representing to
28 participants that he was profitably trading on their behalf.

1 14. Williams returned \$3,406,373 million of the original \$13,131,390 in
2 participant funds to certain participants as withdrawals of principal or as purported
3 trading “profits” in furtherance of Defendants’ fraudulent scheme. However, the majority
4 of participants were unable to obtain a return of their funds.

5 15. Williams used the remaining \$1.3 million of \$13,131,390 originally
6 received from participants to pay for his personal expenses throughout the Relevant
7 Period on such items as jewelry, charitable donations in his name, and living expenses.

8 16. At no time did Williams operate the pool as a legal entity separate from that
9 of the pool operator, nor did Williams ever open a pooled trading account for the benefit
10 of participants. Instead, Williams misappropriated pool participants’ funds and diverted
11 them for Defendants’ own use by: transferring pool participants’ funds to personal bank
12 accounts held in the name of Williams and/or the names of Williams and his wife,
13 Brittany Williams, and/or WAG; funding trading accounts held in the name of, and for
14 the benefit of, Williams; and, paying for Williams’ personal expenses. Williams further
15 misappropriated pool participants’ funds by diverting a portion to other participants as
16 withdrawals of principal or purported profits in the form of a “Ponzi” scheme.

17 17. Williams, individually and as agent and officer of WAG, made
18 misrepresentations of material facts to participants, including but not limited to, falsely
19 claiming to have profitably traded on behalf of participants, when in fact Williams knew
20 that he was consistently losing money trading participants’ funds.

21 18. Williams, individually and as agent and officer of WAG, also omitted
22 material facts in his communications with participants, including but not limited to failing
23 to disclose: Williams’ misappropriation of participants’ funds; Williams’ failure to
24 register as a commodity pool operator (“CPO”) as required by the Act; Williams’ failure
25 to operate the pool as a separate legally cognizable entity in violation of the Regulations;
26 Williams’ commingling of funds in violation of the Regulations; and Williams’ failure to
27 accept funds in the name of the pool in violation of the Regulations.

28

- 1 (1) the sufficiency of the complaint;
- 2 (2) the substantive merits of plaintiff's claims;
- 3 (3) the possibility of a dispute concerning material facts;
- 4 (4) whether default resulted from excusable neglect;
- 5 (5) the prejudice to plaintiff if the motion is denied;
- 6 (6) the strong policy of the Federal Rules of Civil Procedure favoring
- 7 decisions on the merits; and
- 8 (7) the amount of money at stake.

9 **1. All Four Causes of Action in the Complaint Are Sufficiently Alleged**
10 **and Have Substantive Merit (*Eitel* Factors 1 and 2)**

11 25. In considering a motion for default judgment, the Court treats "factual
12 allegations of the complaint, except those relating to the amount of damages . . . as true."
13 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (citing *Geddes v.*
14 *United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977)). The first two *Eitel* factors are (1)
15 the merits of Plaintiff's substantive claim and (2) the sufficiency of the complaint. These
16 factors require that a plaintiff "state a claim on which the [plaintiff] may recover." *Philip*
17 *Morris, USA, Inc. v. Castworld Prods, Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003); *see*
18 *also Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978). As described below, the
19 Complaint has adequately pled all four asserted causes of action.

20 **a. Defendants Violated 7 U.S.C. § 6b(a)(1)(A)-(C) (2012) (Fraud in**
21 **Connection with Commodity Futures Contracts – Complaint**
22 **Count I)**

23 26. Pursuant to 7 U.S.C. § 6b(a)(1)(A)-(C) (2012), it is unlawful for any person,
24 in or in connection with any order to make, or the making of, a futures contract on or subject
25 to the rules of a designated contract market to: (A) cheat or defraud or attempt to cheat or
26 defraud another person; (B) willfully to make or cause to be made to the other person any
27 false report or statement or willfully to enter or cause to be entered for the other person any
28 false record; or (C) willfully to deceive or attempt to deceive such other person by any
means whatsoever in connection with such contract.

1 27. Plaintiff can establish a violation of 7 U.S.C. § 6b(a)(1)(A)-(C) (2012) by
2 showing that Defendants made a material misrepresentation, misleading statement, or
3 deceptive omission with scienter. *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328
4 (11th Cir. 2002); *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 446-47 (D.N.J. 2000). Scienter
5 exists if Defendants “knew the representations [they made] were false and were
6 calculated to cause harm” or “were made with a reckless disregard for their truth or
7 falsity.” *CFTC v. Nat’l Invest. Consultants, Inc.*, No. C 05-02641, 2005 WL 2072105, at
8 *8 (N.D. Cal. Aug. 26, 2005). The CFTC must demonstrate only that Defendants’ actions
9 were “intentional as opposed to accidental.” *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th
10 Cir. 1985). A statement or omission is material if “it is substantially likely that a
11 reasonable investor would consider the matter important in making an investment
12 decision.” *CFTC v. Weinberg*, 287 F. Supp. 2d 1100, 1105 (C.D. Cal. 2003) (quoting
13 *CFTC v. Noble Wealth Data Info. Services, Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000)).
14 Topics such as “the likelihood of profit, [and] the risk of loss” are material. *CFTC v.*
15 *Emerald Worldwide Holdings, Inc.*, No. CV03-8339AHM, 2005 WL 1130588, at *8
16 (C.D. Cal. Apr. 19, 2005).

17 **i. Material Misrepresentations and Omissions**

18 28. The facts of the Complaint, which the Court takes as true for purposes of
19 the instant motion, sufficiently allege that Williams, individually and as agent and
20 principal of WAG, made the following material misrepresentations during the Relevant
21 Period, among others: (i) pool participant funds would be pooled to trade commodity
22 futures and returns would be derived from the pool’s trading profits; (ii) Williams was a
23 successful and profitable trader; and (iii) Williams’ trading was consistently profitable
24 during the Relevant Period. These material misrepresentations violated 7 U.S.C. §
25 6b(a)(1)(A)-(C) (2012).

26 29. The Complaint also sufficiently alleges that Williams, individually and as
27 agent and principal of WAG, intentionally omitted material information from pool
28 participants in violation of 7 U.S.C. § 6b(a)(1)(A) and (C) (2012), including that: (i)

1 Williams never set up the pool as an entity cognizable as a legal entity separate from the
2 pool operator; (ii) no trading on behalf of the pool took place; (iii) Williams
3 misappropriated pool participants' funds for his own use; (iv) Williams was not
4 registered with the CFTC as a CPO as required by the Act and was operating the pool
5 without the required CPO registration; (v) Williams commingled participants' funds with
6 his own funds and WAG's funds in violation of federal law; and (vi) purported "returns"
7 or withdrawals of principal paid to some pool participants were in fact the principal
8 deposits of other pool participants and were not generated by profitable futures trading.

9 **ii. Material Misrepresentations and Omissions**

10 30. The Complaint sufficiently alleges that Defendants violated 7 U.S.C.
11 § 6b(a)(1)(A) and (C) (2012) by misappropriating pool participants' funds.
12 Misappropriation of customer funds is "willful and blatant fraudulent activity" that
13 clearly violates [7 U.S.C. § 6b(a)]." *Weinberg*, 287 F. Supp. 2d at 1106 (quoting *Noble*
14 *Wealth*, 90 F. Supp. 2d at 687).

15 31. As the Complaint alleges, Williams misappropriated pool participants'
16 funds by: (i) using pool participants' funds to pay the personal expenses of Williams; (ii)
17 depositing pool participants' funds into bank and trading accounts in the name of
18 Williams; and (iii) returning pool participants' funds as purported "profits" in the manner
19 of a "Ponzi" scheme.

20 **iii. False Reports and Statements**

21 32. The Complaint sufficiently alleges that during the Relevant Period,
22 Williams sent text messages to participants containing fabricated weekly profits in
23 violation of 7 U.S.C. § 6b(a)(1)(B) (2012). These text messages falsely represented that
24 trading on behalf of participants had occurred, and that participants' investments had
25 increased in value as a result of profitable futures trading by Williams. In reality, pool
26 participants accrued no profits and suffered total or near total losses of their deposits.
27 Williams fabricated these records to falsely reflect trading profits and account balances
28 that did not exist, to conceal misappropriation, and to solicit additional pool participants.

1 In so doing, Williams violated 7 U.S.C. § 6b(a)(1)(B) (2012) by making and
2 disseminating these fabricated weekly profits. *See* Driver, 877 F. Supp. 2d at 978 (CFTC
3 prevailed on fraud claims where defendant fabricated account statements reflecting
4 illusory trading profits); *see also* CFTC v. Crombie, No. C 11-4577 CW, 2013 WL
5 3957506, at *23, *28 (N.D. Cal. July 26, 2013) (use of sham account statements violated
6 7 U.S.C. § 6b(a)).

7 **b. Defendant Williams Violated 7 U.S.C. § 6o(1)(A) and (B) (2012)**
8 **(Fraud by a Commodity Pool Operator – Complaint Count II)**

9 33. In relevant part, 7 U.S.C. § 1a(11) (2012) defines a commodity pool
10 operator (“CPO”) as:

11 any person – (i) engaged in a business that is of the nature of a commodity
12 pool, investment trust, syndicate, or similar form of enterprise, and who, in
13 connection therewith, solicits, accepts, or receives from others, funds,
14 securities, or property . . . for the purpose of trading in any commodity
interests, including any – (I) commodity for future delivery, . . . ;
(II) agreement, contract or transaction described in [7 U.S.C.
§ 2(c)(2)(C)(i)]

15 34. Pursuant to 7 U.S.C. § 6o(1) (2012), it is unlawful for a CPO to use the
16 mails or any means or instrumentality of interstate commerce to: (A) employ any device,
17 scheme, or artifice to defraud any prospective or existing pool participant; or (B) engage
18 in any transaction, practice, or course of business that operates as a fraud or deceit upon
19 any prospective or existing pool participant.

20 35. As alleged in the Complaint, during the Relevant Period Williams acted as
21 a CPO by soliciting, accepting, or receiving funds from the public while engaged in a
22 business that is of the nature of an investment trust, syndicate, or similar form of
23 enterprise, for the purpose of, among other things, trading in commodity futures
24 contracts.

25 36. As alleged in the Complaint, during the Relevant Period Williams violated
26 7 U.S.C. § 6o(1)(A) and (B) (2012) by using interstate commerce to fraudulently solicit
27 and pool funds for a commodity pool purporting to trade in commodity futures contracts.
28

1 c. **Defendant Williams Violated 17 C.F.R. § 4.20(a)(1), (b), and (c)**
2 **(2016) (Prohibited Activities by a Commodity Pool Operator –**
3 **Complaint Count III)**

3 37. Pursuant to 17 C.F.R. § 4.20(a)(1) (2016), “a commodity pool operator
4 must operate its pool as an entity cognizable as a legal entity separate from that of the
5 pool operator.”

6 38. The Complaint sufficiently alleges that during the Relevant Period
7 Williams violated 17 C.F.R. § 4.20(a)(1) (2016) by maintaining no distinction between
8 himself and the pool and by failing to establish the pool as a separate legal entity.

9 39. Pursuant to 17 C.F.R. § 4.20(b) (2016), “[a]ll funds, securities or other
10 property received by a commodity pool operator from an existing or prospective pool
11 participant for the purchase of an interest or as an assessment . . . on an interest in a pool
12 that it operates or that it intends to operate must be received in the pool’s name.”

13 40. The Complaint sufficiently alleges that during the Relevant Period
14 Williams violated 17 C.F.R. § 4.20(b) (2016) by operating an investment trust, syndicate,
15 or similar form of enterprise for the purpose of, among other things, trading in
16 commodity futures contracts, and receiving funds, securities or other property from
17 existing or prospective pool participants for the purchase of an interest in the pool, and
18 not in the pool’s name.

19 41. 17 C.F.R. § 4.20(c) (2016) provides, “[n]o commodity pool operator may
20 commingle the property of any pool that it operates or that it intends to operate with the
21 property of any other person.”

22 42. The Complaint sufficiently alleges that during the Relevant Period
23 Williams violated 17 C.F.R. § 4.20(c) (2016) by failing to maintain pool funds separately
24 from Williams’ own funds and WAG’s funds; commingling pool funds with the personal
25 funds of Williams and Brittany Williams and the funds of WAG; and, placing pool funds
26 into the personal bank and trading accounts of Williams.

1 **d. Defendant Williams Violated 7 U.S.C. § 6m(1) (2012) (Failure to**
2 **Register as a CPO – Complaint Count IV**

3 43. Pursuant to 7 U.S.C. § 6m(1) (2012), a CPO is prohibited, unless registered
4 as such with the CFTC, from making use of the mails or any means or instrumentality of
5 interstate commerce in connection with its business as a CPO.

6 44. The Complaint sufficiently alleges that during the Relevant Period
7 Williams violated 7 U.S.C. § 6m(1) (2012) by soliciting and accepting funds from pool
8 participants for the purported purpose of trading commodity futures without registering
9 with the CFTC as a CPO. Williams routinely used instrumentalities of interstate
10 commerce in connection with his business as a CPO by utilizing emails, texts and/or
11 phone calls in his communications with participants.

12 **e. Principal-Agent and Control Person Liability**

13 45. The Complaint sufficiently alleges that Williams at all times controlled
14 WAG and did not act in good faith and knowingly induced WAG to violate the Act and
15 Regulations. Pursuant to 7 U.S.C. § 13c(b) (2012), the Court finds Williams liable for
16 WAG’s violations of the Act and Regulations.

17 46. The Court also finds that Williams acted within the course and scope of his
18 employment, agency, or office with WAG. Pursuant to 7 U.S.C. § 2(a)(1)(B) (2012) and
19 17 C.F.R. § 1.2 (2016), WAG is therefore liable for Williams’ violations of the Act and
20 Regulations.

21 **2. Default Judgment is Proper Under the Remaining *Eitel* Factors**

22 47. The Court finds that there is no possibility of a dispute concerning material
23 facts (*Eitel* factor 3) because Defendants have conceded all allegations in the Complaint,
24 which must be taken as true for purposes of this Motion. *See* Fed. R. Civ. P. 8(b)(6); *see*
25 *also Sky Billiards, Inc. v. Loong Star, Inc.*, EDCV 14–921, 2016 WL 6661175, at *5
26 (C.D. Cal. Mar. 17, 2016) (defendants’ failure to respond “supports the conclusion that
27 the possibility of a dispute as to the material facts is minimal”).
28

1 48. Defendants' failure to respond to the Complaint is not the result of
2 "excusable neglect" (*Eitel* factor 4). All Defendants were served with the Summons and
3 Complaint by process server (*see* Proofs of Service executed by Sarah Zirakim, dated
4 May 8, 2017, Docs. 15-16). Defendants have failed to answer, plead or defend in this
5 action. Defendant Williams appeared via a letter motion in which he acknowledged
6 "being sued by the CFTC" (Doc. 24) and accordingly, the Court has already concluded
7 that Williams has actual notice of this lawsuit (Doc. 25). Therefore, there is no indication
8 that Defendants' failure to plead or respond to the Complaint is due to excusable neglect.
9 *See Bankers Ins. Co. v. Old West Bonding Co.*, No. CV11-1804, 2012 WL 2912912, at *2
10 (D. Ariz. July 16, 2012) (granting default judgment motion against a corporation that
11 "initially attempted to appear through *pro se* defendant"); *Halsey v. Colonial Asset*
12 *Mgmt.*, No. 5:13-cv-02025, 2014 WL 12601015, at *2 (C.D. Cal. July 17, 2014)
13 ("Defendant was served with the summons and Complaint, but has failed to appear in this
14 action. Therefore, there is no indication that Defendant's default is due to excusable
15 neglect, or that the material facts are in dispute.").

16 49. Plaintiff has established that it will be prejudiced if default judgment is not
17 entered (*Eitel* factor 5), because Plaintiff will be impeded from fulfilling its congressional
18 mandate to enforce the Act. *See SEC v. Fortitude Group, Inc.*, C.A. No. 16-50, 2017 WL
19 818604, at *2 (W.D. Pa. Feb. 10, 2017) (granting SEC's motion for default judgment
20 because SEC would "be prejudiced by its inability to effectively enforce federal securities
21 laws" if motion were denied). Plaintiff will be prejudiced absent entry of default
22 judgment because it "will be deprived of the opportunity to obtain judicial resolution of
23 its claim[s]." *Sky Billiards*, 2016 WL 6661175, at *5; *see also Halsey*, 2014 WL
24 12601015, at *4.

25 50. The "strong policy" favoring decisions on the merits (*Eitel* factor 6) does
26 not justify denying default judgment here. Although public policy favors a decision on
27 the merits, "[d]efendant's failure to answer Plaintiffs' Complaint makes a decision on the
28

1 merits impractical, if not impossible.” *PepsiCo, Inc. v. California Sec. Cans*, 238 F. Supp.
2 2d 1172, 1177 (C.D. Cal. 2002).

3 51. In addition, entry of default judgment in this action satisfies another
4 important policy goal — protecting the integrity of the commodity futures markets. *See*
5 *Stephen Bronte, Advisors, LLC v. CFTC*, 90 F. App’x 251, 252 (9th Cir. 2004)
6 (describing CFTC as “the ‘statutory guardian’ entrusted with the enforcement of the
7 congressional scheme for safeguarding the public interest in the commodity futures
8 markets”) (citing *Lawrence v. CFTC*, 759 F.2d 767, 776 (9th Cir. 1985)).

9 52. The amount of money at stake in relation to the seriousness of the
10 defendant’s conduct does not warrant denying default judgment (*Eitel* factor 7).
11 Defendants’ fraudulent conduct and registration violations constitute “core” violations of
12 the Act and Regulations that attack the integrity of the commodity markets. The relief
13 Plaintiff seeks is reasonable, is authorized by the Act and Regulations, and is consistent
14 with prior default judgment awards in similar CFTC enforcement actions. *See, e.g.*,
15 *CFTC v. Am. Bullion Exch. ABEX Corp.*, No. SACV10–1876, 2014 WL 12603558, at
16 *11 (C.D. Cal. Sept. 16, 2014) (entering default judgment for CFTC and ordering
17 defendants to pay a civil monetary penalty exceeding \$14 million); *CFTC v. Safevest,*
18 *LLC*, No. SACV08–00474, 2009 WL 2448116, at *4-5 (C.D. Cal. July 13, 2006) (after
19 defendants’ default, Court ordered \$18.4 million in disgorgement and \$2 million in civil
20 monetary penalties); *cf. CFTC v. Schiera*, No. CV05 2660 CAS, 2006 WL 4586786, at
21 *7, *9 (S.D. Cal. Dec. 11, 2006) (entering default judgment and ordering defendants to
22 disgorge \$3 million and pay a \$9 million civil monetary penalty).

23 IV. REMEDIES AND DAMAGES

24 A. **Permanent Injunction**

25 53. 7 U.S.C. § 13a-1(a) (2012) authorizes the CFTC to seek, and the Court to
26 impose, injunctive relief against any person whenever it shall appear to the CFTC that
27 such person has engaged in any act or practice that violates the Act or Regulations.
28

1 54. Pursuant to 7 U.S.C. § 13a-1(a) (2012), “[t]he CFTC is entitled to a
2 permanent injunction upon a showing that a violation [of the Act or Regulations] has
3 occurred and is likely to continue unless enjoined.” *Driver*, 877 F. Supp. 2d at 981
4 (citations omitted). As a result, “[o]nce a violation is demonstrated, the [CFTC] need
5 show only that there is some reasonable likelihood of future violations.” *CFTC v. Wilson*,
6 No. 11CV1561, 2011 WL 6398933, at *2 (S.D. Cal. Dec. 20, 2011) (quoting *CFTC v.*
7 *Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979)).

8 55. The Court may infer a likelihood of future violations of the Act and
9 Regulations from past unlawful conduct. *See CFTC v. Yu*, No. 12–CV–3921, 2012 WL
10 3283430, at *4 (N.D. Cal. Aug. 10, 2012). The Court may also consider whether
11 Defendants “have exhibited any recognition of the wrongfulness of their conduct,” or
12 have committed “willfully contumacious behavior.” *CFTC v. Brockbank*, 505 F. Supp. 2d
13 1169, 1174 (D. Utah 2007) (issuing permanent injunction), *aff’d*, 316 F. App’x 707 (10th
14 Cir. 2008).

15 56. As described above, the well-pleaded facts of the Complaint and the
16 evidence Plaintiff has placed before the Court through declarations establish that
17 Defendants’ unlawful conduct makes it highly likely that they will be repeat violators of
18 the Act and Regulations unless permanently enjoined by this Court.

19 57. As alleged, Williams fraudulently solicited and misappropriated
20 \$13,131,390 over a more than two-year period and went to great lengths to conceal his
21 fraud, including by sending weekly text messages containing fabricated weekly profits to
22 pool participants and by making “Ponzi” scheme-like payments to certain participants.

23 58. Based on the foregoing, the Court finds that the allegations of the
24 Complaint, and the evidence Plaintiff has submitted in this action establish that:

- 25 (a) Defendants violated 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012), and
26 Defendant Williams violated 7 U.S.C. §§ 6m(1), 6o(1)(A) and (B)
27 (2012), and 17 C.F.R. §§ 4.20(a)(1), (b), and (c) (2016); and
28

1 (b) There is a reasonable likelihood that Defendants will continue to
2 violate the Act and Regulations unless permanently restrained and
3 enjoined by this Court. The intentional and egregious nature of
4 Defendants' fraudulent conduct warrants permanent injunctive relief,
5 including registration and trading bans.

6 59. Accordingly, Defendants and their agents, servants, employees, assigns,
7 attorneys, holding companies, alter egos, and persons in active concert or participation
8 with them, including any of their successors, are permanently restrained, enjoined, and
9 prohibited from directly or indirectly:

- 10 (a) engaging in conduct that violates 7 U.S.C. §§ 6b(a)(1)(A)-(C),
11 6m(1), and 6o(1)(A) and (B) (2012); and 17 C.F.R. §§ 4.20(a)(1),
12 (b), and (c) (2016);
- 13 (b) trading on or subject to the rules of any registered entity (as that term
14 is defined in 7 U.S.C. § 1a(40) (2012));
- 15 (c) entering into any transaction involving "commodity interests" (as
16 that term is defined in 17 C.F.R. § 1.3(yy) (2016)) for their own
17 personal account or for any account in which they have a direct or
18 indirect interest;
- 19 (d) having any commodity interests traded on their behalf;
- 20 (e) controlling or directing trading for or on behalf of any other person
21 or entity, whether by power of attorney or otherwise, in any account
22 involving commodity interests;
- 23 (f) soliciting, receiving, or accepting any funds from any person for the
24 purpose of purchasing or selling any commodity interests;
- 25 (g) applying for registration or claiming exemption from registration
26 with the CFTC in any capacity, and engaging in any activity
27 requiring registration or exemption from registration with the CFTC,
28 except as provided for in 17 C.F.R. § 4.14(a)(9) (2016);

1 (h) acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a)
2 (2016)), agent, or any other officer or employee of any person
3 registered, exempted from registration, or required to be registered
4 with the CFTC, except as provided for in 17 C.F.R. § 4.14(a)(9)
5 (2016); and

6 (i) engaging in any business activities related to commodity interests.

7 **B. Restitution, Civil Monetary Penalty, and Post-Judgment Interest**

8 **1. Restitution**

9 60. 7 U.S.C. § 13a-1(d)(3)(A) (2012) authorizes the CFTC to seek, and the
10 Court to impose, equitable remedies for violations of the Act, including “restitution to
11 persons who have sustained losses proximately caused by such violation (in the amount
12 of such losses).” Restitution exists to “restore the status quo” and reflects “the difference
13 between what defendants obtained and the amount customers received back” *Driver*,
14 877 F. Supp. 2d at 981 (entering default judgment and ordering restitution equal to the
15 amount of money solicited minus the amount returned to customers). *See also CFTC v.*
16 *Leighton*, No. 2:12-cv-04012, 2013 WL 4101874, at *9 (C.D. Cal. July 8, 2013)
17 (ordering restitution equal to the “net losses to pool participants”); *Emerald Worldwide*,
18 2005 WL 1130558, at *10 (“[t]he appropriate amount of restitution is the total amount
19 invested by customers, less refunds made by the defendants to the customers.”).

20 61. Defendants’ illegal conduct caused pool participants to incur net losses
21 totaling \$9,725,017, which reflects the total funds Williams fraudulently solicited
22 (\$13,131,390), minus the funds he diverted from some pool participants and passed to
23 other participants in the manner of a “Ponzi” scheme (\$3,406,373). (*See Decl. of Patricia*
24 *Gomersall*, dated May 4, 2017 (“Gomersall Decl.,” Doc. 13-3) ¶ 11; *Decl. of Patricia*
25 *Gomersall in Support of Restitution and Civil Monetary Penalty Amounts*, dated July 17,
26 2017 (“Gomersall Decl. II”) ¶ 8; *Gomersall Decl. II Attachment A*).

27 62. Accordingly, Defendants are ordered to pay, on a joint and several basis,
28 restitution in the amount of \$9,725,017 (nine million seven hundred twenty-five thousand

1 and seventeen dollars), plus post-judgment interest thereon (the “Restitution
2 Obligation”). Post-judgment interest shall accrue beginning on the date of entry of this
3 Order and shall be determined pursuant to 28 U.S.C. § 1961 (2012).

4 63. Defendants shall receive a dollar-for-dollar credit against the Restitution
5 Obligation for any payments made by them in satisfaction of any restitution amount
6 ordered by the sentencing court in the criminal case, *United States v. Williams*, CR-17-
7 01279-PHX-DLR (D. Ariz.). To receive credit for any payments made by Defendants in
8 satisfaction of any restitution amount ordered in the criminal case, Defendants shall
9 provide a copy of proof of payment to the Chief Financial Officer, Commodity Futures
10 Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C.
11 20581, and the Office of Administration, National Futures Association, 300 South
12 Riverside Plaza, Suite 1800, Chicago, Illinois 60606, accompanied by a cover letter
13 identifying Defendants and the name and docket number of this proceeding.

14 64. The Court appoints the National Futures Association (“NFA”) as Monitor
15 to distribute payments made against the Restitution Obligation to Defendants’ pool
16 participants. The Monitor shall collect restitution payments from Defendants and make
17 distributions as set forth below. Because the Monitor is acting as an officer of this Court
18 in performing these services, NFA shall not be liable for any action or inaction arising
19 from NFA’s appointment as Monitor, other than actions involving fraud.

20 65. Defendants shall make Restitution Obligation payments under this Order to
21 the Monitor in the name “Cory Williams Restitution Fund” and shall send such payments
22 by electronic funds transfer, or by U.S. postal money order, certified check, bank
23 cashier’s check, or bank money order, to the Office of Administration, National Futures
24 Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606,
25 accompanied by a cover letter identifying Defendants and the name and docket number
26 of this proceeding. Defendants shall simultaneously transmit copies of the cover letter
27 and the form of payment to the Chief Financial Officer, Commodity Futures Trading
28 Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

1 66. The Monitor shall oversee the Restitution Obligation and shall have the
2 discretion to determine the manner of distribution of such funds in an equitable fashion to
3 Defendants' pool participants identified by the CFTC, or may defer distribution until
4 such time as the Monitor deems appropriate. In the event that the amount of Restitution
5 Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor
6 determines that the administrative cost of making a distribution to eligible pool
7 participants is impractical, the Monitor may, in its discretion, treat such restitution
8 payments as civil monetary penalty payments, which the Monitor shall forward to the
9 CFTC pursuant to the instructions for civil monetary penalty payments set forth below.

10 67. Defendants shall cooperate with the Monitor as appropriate to provide such
11 information as the Monitor deems necessary and appropriate to identify Defendants' pool
12 participants to whom the Monitor, in its sole discretion, may determine to include in any
13 plan for distribution of any Restitution Obligation payments. Defendants shall execute
14 any documents necessary to release funds that they hold in any repository, bank,
15 investment, or other financial institution, wherever located, in order to make partial or
16 total payment toward the Restitution Obligation.

17 68. The Monitor shall provide the CFTC at the beginning of each calendar year
18 with a report detailing the disbursement of funds to Defendants' pool participants during
19 the previous year. The Monitor shall transmit this report accompanied by a cover letter
20 identifying the name and docket number of this proceeding to the Chief Financial Officer,
21 Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street,
22 N.W., Washington, D.C. 20581.

23 69. The amounts payable to each pool participant shall not limit the ability of
24 any pool participant to prove that a greater amount is owed from Defendants or any other
25 person or entity, and nothing herein shall be construed in any way to limit or abridge the
26 rights of any pool participant that exist under state or common law.

27 70. Pursuant to Federal Rule of Civil Procedure 71, each pool participant of
28 Defendants who suffered a loss is explicitly made an intended third-party beneficiary of

1 this Order and may seek to enforce this Order to obtain satisfaction of any portion of the
2 Restitution Obligation that has not been paid by Defendants, to ensure continued
3 compliance with any provision of this Order, and to hold Defendants in contempt for any
4 violations of any provision of this Order.

5 71. To the extent that any funds accrue to the U.S. Treasury for satisfaction of
6 the Restitution Obligation, such funds shall be transferred to the Monitor for
7 disbursement in accordance with the procedures set forth above.

8 **2. Civil Monetary Penalty**

9 72. 7 U.S.C. § 13a-1(d)(1) (2012) and 17 C.F.R. § 143.8(a)(4)(iii)(B) (2016)
10 authorize Plaintiff to seek a civil monetary penalty equal to the higher of triple
11 Defendants' monetary gain from each violation of the Act or Regulations, or \$170,472
12 per violation. The Court may "fashion a civil monetary penalty appropriate to the gravity
13 of the offense and sufficient to act as a deterrent." *CFTC v. Trimble*, No. 11-cv-02887,
14 2013 WL 317576, at *9 (D. Colo. Jan. 28, 2013) (citing *Miller v. CFTC*, 197 F.3d 1227,
15 1236 (9th Cir. 1999)).

16 73. The Court considers numerous factors in determining an appropriate civil
17 monetary penalty for violations of the Act and Regulations, including the nature of the
18 violations, whether defendants acted with scienter, the consequences of the violations, the
19 financial benefits to defendants, and the harm to customers. *ABEX*, 2014 WL 3896023, at
20 *19 (citing *CFTC v. Arrington*, 2014 WL 685331, at *22 (D. Neb. Jan. 28, 2014)).

21 74. Acting intentionally and with scienter, Williams fraudulently solicited and
22 misappropriated \$13,131,390 during the Relevant Period and then attempted to conceal
23 his fraud by providing text messages to participants containing fabricated weekly profits,
24 and by tendering "Ponzi" scheme-like payments to certain pool participants. (Gomersall
25 Decl. ¶¶ 11, 25, 31-33, 36-37; Gomersall Decl. II ¶¶ 6-7).

26 75. As a result of Williams' illegal conduct, pool participants incurred
27 significant losses as Defendants enriched themselves. (*See* Gomersall Decl. ¶¶ 30, 33, 36,
28

1 38; Gomersall Decl. II ¶ 8). The Court finds that these circumstances warrant imposition
2 of a significant civil monetary penalty.

3 76. Given Williams' intentional and egregious conduct, the Court finds that a
4 civil monetary penalty reflecting one time his monetary net gain from his fraud is
5 appropriate under the circumstances. This penalty is authorized by 7 U.S.C. § 13a-1(d)(1)
6 (2012) and 17 C.F.R. § 143.8(a)(4)(iii)(B) (2016).

7 77. Williams reaped net gains from his fraud in the amount of \$9,725,017,
8 which reflects the total amount of funds he fraudulently solicited during the Relevant
9 Period (\$13,131,390) minus the funds he returned to pool participants (\$3,406,373).
10 (Gomersall Decl. ¶ 1; Gomersall Decl. II ¶¶ 6-8).

11 78. Accordingly, Defendants are ordered to pay, on a joint and several basis, a
12 civil monetary penalty in the amount of \$9,725,017 (nine million seven hundred twenty-
13 five thousand and seventeen dollars), plus post-judgment interest thereon ("CMP
14 Obligation"). Post-judgment interest shall accrue on the CMP Obligation beginning on
15 the date of entry of this Order and shall be determined pursuant to 28 U.S.C. § 1961.

16 79. Defendants shall pay the CMP Obligation by electronic funds transfer, U.S.
17 postal money order, certified check, bank cashier's check, or bank money order. If
18 payment is to be made other than by electronic funds transfer, then the payment shall be
19 made payable to the Commodity Futures Trading Commission and sent to the address
20 below:

21 Commodity Futures Trading Commission
22 Division of Enforcement
23 ATTN: Accounts Receivables
24 DOT/FAA/MMAC/AMZ-341
25 CFTC/CPSC/SEC
26 6500 S. MacArthur Blvd.
27 Oklahoma City, OK 73169
28 (405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

80. If payment by electronic funds transfer is chosen, Defendants shall contact
Nikki Gibson or her successor at the address above to receive payment instructions and

1 shall fully comply with those instructions. Defendants shall accompany payment of the
2 CMP Obligation with a cover letter identifying Defendants and the name and docket
3 number of this proceeding. Defendants shall simultaneously transmit copies of the cover
4 letter and the form of payment to the Chief Financial Officer, Commodity Futures
5 Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C.
6 20581.

7 **V. MISCELLANOUS PROVISIONS**

8 81. Partial Satisfaction: Acceptance by the CFTC or the Monitor of any partial
9 payment of the Restitution Obligation or the CMP Obligation shall not be deemed a
10 waiver of Defendants' obligation to make further payments pursuant to this Order, or a
11 waiver of the CFTC's right to seek to compel payment of any remaining balance.

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

17 83. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of
18 this action to ensure compliance with this Order and for all other purposes related to this
19 action, including any motion by Defendants to modify, or for relief from, the terms of this
20 Order.

21 84. The Clerk of Court shall enter Judgment accordingly and close this matter.

22 Dated this 15th day of March, 2018.

23
24 
25 Honorable John J. Tuchi
26 United States District Judge
27
28