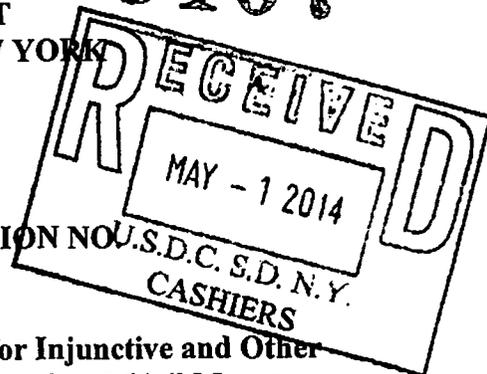


14 CV

3107

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



U.S. COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

EJS CAPITAL MANAGMENT, LLC, ALEX  
VLADIMIR EKDESHMAN and EDWARD J.  
SERVIDER,

Defendants,

and

ALISA EKDESHMAN, EXECUTIVE  
SERVICES OF FLORIDA, LLC,  
EXECUTIVE MANAGEMENT OF  
MONTANA, INC., and MICHAEL VILNER,

Relief Defendants.

CIVIL ACTION NO. )  
U.S.D.C. S.D. N.Y. )  
CASHIERS )  
Complaint for Injunctive and Other )  
Equitable Relief and Civil Monetary )  
Penalties Under the Commodity )  
Exchange Act )  
JURY TRIAL DEMANDED )

Plaintiff, U.S. Commodity Futures Trading Commission ("Commission" or "CFTC"), by  
its attorneys, alleges as follows:

**I. SUMMARY**

1. From at least April 2013 through the present ("Relevant Period"), Edward J. Servider ("Servider"), Alex Vladimir Ekdeshman ("Ekdeshman") and EJS Capital Management, LLC ("EJS") (collectively, "Defendants"), have fraudulently solicited more than \$2 million from at least 90 customers in connection with agreements, contracts or transactions in off-exchange foreign currency ("forex"). The forex transactions are offered to or entered into on a leveraged or margined basis with counterparties who are not Eligible Contract Participants ("ECPs"). Defendants solicit customers by the use of telephone solicitations by

agents of the Defendants (“Telemarketers” or “Defendants’ Agents”) and via the website *www.ejsfinancial.com* (the “website”), and are misappropriating almost all the customer funds they are receiving.

2. Customers wire, mail or use FedEx to send their funds directly to a U.S. bank account held in the name of EJS. Customers are advised by Defendants’ Agents that their funds will be used by EJS to trade forex on their behalf. The Defendants subsequently send customers false account statements that show fictitious trading activity in each customer’s account.

3. Unknown to customers, of the more than \$2 million the Defendants have accepted thus far for forex trading during the Relevant Period, none of it has been traded and almost all of it has been misappropriated by the Defendants for their personal and business uses and to pay the Relief Defendants.

4. Defendants knowingly, willfully, or with reckless disregard for the truth thereof, have failed to disclose to customers and prospective customers that Defendants: (1) have failed to trade their funds as promised; (2) are misappropriating customer funds to pay for personal and business expenses; (3) are not informing prospective customers that the historical trading performance on the website, *www.ejsfinancial.com*, is fictitious and; and (4) are issuing false account statements to customers.

5. Defendants knowingly, willfully, or with reckless disregard for the truth, falsely represent their past trading performance when soliciting customers to invest with EJS.

6. During the Relevant Period, Servider and Ekdesman have exercised day-to-day control over the business operations of EJS. Servider and Ekdesman have opened two bank accounts in EJS’s name, are the only two signatories on those accounts, and have signed all

checks drawn on those accounts. Accordingly, Servider and Ekdesman hold and exercise direct or indirect control over EJS and have not been acting in good faith or have been knowingly inducing the above-described fraudulent acts throughout the Relevant Period. Therefore, Servider and Ekdesman are liable for EJS's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

7. By this conduct and the conduct further described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of provisions of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 1 et seq. (2006 & Supp. V 2011). Specifically, Sections 4b(A)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(A)(2)(A)-(C) and Regulation § 5.2(b), 17 C.F.R. § 5.2(b). Ekdesman, Servider and the other agents of EJS committed the acts and omissions alleged herein within the course and scope of their respective employment, agency or office with EJS. Therefore, EJS is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006 & Supp. V 2011), and Regulation 1.2, 17 C.F.R. § 1.2 (2012), as principal for the actions and omissions of Ekdesman, Servider and its other agents in violation of the Act.

8. In advising and managing the trading of commodity futures for compensation and profit, EJS has been acting as a Commodity Trading Advisor ("CTA") without being registered with the Commission as required by the Commodity Exchange Act (the "Act") and Commission Regulations ("Regulations").

9. EJS's failure to register as a CTA violates Section 4m(1) of the Act, 7 U.S.C. § 6m(1) and Regulation § 5.3(a)(3), 17 C.F.R. § 5.3(a)(3).

10. By this conduct and the conduct further described herein, Defendant EJS violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) for which it is liable. Defendants Servider and

Ekdesman are liable for EJS's violations as controlling persons pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

11. Further, Ekdesman's participation in this scheme is a violation of a Consent Order agreed to by Ekdesman on July 8, 2013 and entered by the Court on September 9, 2013 in *CFTC v. Paramount Management, LLC and Alex Vladimir Ekdesman*, C.A. No. 13-Civ. 4436 (CM) (SDNY Sept. 9, 2013) ("Consent Order"). This violation of the Consent Order also constitutes a violation of Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a) (2006 and Supp. V 2011).

12. By this conduct and the conduct further described herein, Ekdesman is in contempt of Court for violation of the Consent Order which prohibited Ekdesman from directly or indirectly: (a) cheating or defrauding other persons in connection with an order or sale of any commodity for future delivery on behalf or with any other person not on a designated contract market; (b) soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any forex contracts; and (c) acting as a principal, agent or any other officer or employee of any person that is required to be registered with the Commission.

13. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006 & Supp. V 2011), the CFTC brings this action to enjoin the Defendants' unlawful acts and practices and to compel their compliance with the Act and to further enjoin them from engaging in any commodity-related activity.

14. In addition, the CFTC seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement,

rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

15. Unless restrained and enjoined by this Court, Defendants likely will continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

## **II. JURISDICTION AND VENUE**

16. The Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006 & Supp. V 2011), which authorizes the CFTC to seek injunctive and other relief against any person whenever it shall appear to the CFTC that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

17. The Commission possesses jurisdiction over the forex solicitations and transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2012).

18. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006 & Supp. V 2011), because Defendants transact business in this District and certain transactions, acts, practices, and courses of business alleged in this Complaint occurred, are occurring, or are about to occur within this District.

## **III. PARTIES**

19. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, as amended, 7 U.S.C. §§ 1 *et seq.* (2006 & Supp. V 2011), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

20. Defendant **EJS Capital Management, LLC** is a Nevada limited liability company with a business address of 40 Wall Street, 28<sup>th</sup> Floor, New York, N.Y. 10005. EJS has never been registered with the Commission in any capacity.

21. Defendant **Edward J. Servider** is an individual residing in Staten Island, New York. At all times, and with respect to all conduct described in this Complaint, he was the managing member, a signatory to the EJS bank accounts at Bank of America and exercised control over EJS. Servider has never been registered with the Commission in any capacity.

22. Defendant **Alex Vladimir Ekdeshman** is an individual residing in Holmdel, New Jersey. Ekdeshman was barred by the SDNY Consent Order from the conduct he has participated in as more fully alleged in this Complaint. Ekdeshman is a principal and member of EJS, a signatory to the EJS bank accounts at Bank of America and exercises control over EJS. Ekdeshman has never been registered with the Commission in any capacity.

23. Relief Defendant **Alisa Ekdeshman** is an individual residing in Holmdel, New Jersey and the wife of Ekdeshman. She has received investor funds which were illegally solicited and misappropriated by Defendants and she has no legitimate claim to these funds. Alisa Ekdeshman has never been registered with the Commission in any capacity.

24. Relief Defendant **Executive Services of Florida, LLC** (“Executive Services”) is a Florida limited liability company with a business address of 18911 Collins Avenue, North Miami Beach, Florida 33160. Executive Services has received investor funds which were illegally solicited and misappropriated by Defendants and it has no legitimate claim to these funds. Executive Services has never been registered with the Commission in any capacity.

25. Relief Defendant **Executive Management of Montana, Inc.** (“EMI”) is a Montana corporation with a business address of 18911 Collins Avenue, North Miami Beach,

Florida 33160. Through Relief Defendant Executive Services, EMI has received investor funds which were illegally solicited and misappropriated by Defendants and it has no legitimate claim to these funds. EMI has never been registered with the Commission in any capacity.

26. Relief Defendant **Michael Vilner (“Vilner”)** is an individual residing in Sunny Isles Beach, Florida. Vilner is the sole principal of Relief Defendants Executive Services and EMI and is the sole signatory on their bank accounts. Through Relief Defendants Executive Services and EMI, Vilner has received investor funds which were illegally solicited and misappropriated by Defendants and he has no legitimate claim to these funds. Vilner has never been registered with the Commission in any capacity.

#### **IV. STATUTORY BACKGROUND**

27. On October 18, 2010, the Commission enacted new regulations, Commission Regulation Part 5, 17 C.F. R. § 5 et. seq. (2010), implementing certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (“the Wall Street Transparency and Accountability Act of 2010”), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), with respect to off-exchange forex transactions.

28. Sections 2(c)(2)(C)(i) and (vii) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(i) and (vii) (2006 & Supp. V 2011), provides that the Commission has jurisdiction over forex transactions in pertinent part, if the transactions are offered to or entered into with a person that is not an Eligible Contract Participants (“ECP”) on a leveraged or margined basis; the transactions do not result in actual delivery within two days or otherwise create an enforceable obligation to

make/take delivery in connection with the parties' line of business; and neither the counterparty to the transactions nor the Defendants are one of certain enumerated persons.

29. In order to qualify as an ECP a customer must be an individual who has amounts invested on a discretionary basis the aggregate of which is in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction "to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual." Section 1a(18)(A)(xi) of the Act, 7 U.S.C. § 1a(18)(A)(xi) (2011).

30. The counterparty to the forex transactions offered to the customers were not financial institutions, registered broker dealers, certain FCMs registered with the Commission, financial holding companies, and investment bank holding companies nor were they associated persons with such types of entities. In the instant matter, since the money was not traded, there is no excluded counterparty of the customers. Section 2(c)(2)(B)(i)(II) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)(II) (2006 & Supp. V 2011)

## V. FACTS

31. Defendants' scheme involves the telemarketing and misrepresentations of a past track record of trading profits. Once customers agreed to invest, Defendants' Agents instructed customers to mail or FedEx their funds to EJS or to wire their funds directly to a bank account held in the name of EJS at Bank of America. Customers are advised that their funds would be used to trade off-exchange forex on their behalf. Defendants then misappropriated customer funds and issued account statements to customers purportedly showing trading activity in the customer's account. These account statements are false.

**A. Defendants Fraudulent Operations**

32. During the Relevant Period, the Defendants and/or their Agents have solicited and continue to solicit customers and prospective customers through cold calls made by Defendants' agents and through the Defendants' website. In these solicitations, Defendants and/or their Agents solicit the retail public to open leveraged, off-exchange forex trading accounts which the Defendants will then purportedly trade on behalf of customers.

33. The "Performance Report" contained in Defendants' website states that EJS achieved a 2011 Gross Return of 21.86 percent, a 2012 Gross Return of 30.47 percent, and a 2013 Gross Return of 76.71 percent. This trading record is false. Indeed, EJS has not conducted and is not conducting any trading at all. EJS did not even exist in 2011 and 2012, was not formed as a Nevada corporation until January 30, 2013, and did not open its bank accounts until March 2013.

34. EJS customers, many of whom were not ECPs, open accounts with EJS using U.S. dollars in order to profit from forex speculative trading on a leveraged basis. However, no actual trading on behalf of EJS customers took place.

35. During the Relevant Period, Defendants' Agents have instructed customers to wire their funds directly to a U.S. bank account in EJS's name that is controlled by Servider and Ekdeshman, or to send a check by U.S. mail or FedEx to EJS's office. Customers are further informed by Defendants' Agents and in their account paperwork that their funds will be used by EJS to trade forex on their behalf and that EJS will manage the forex trading, thus giving EJS discretionary trading authority in the individual customer accounts. EJS charged a fee based on the amount that the accounts profited. Once customers open an account with EJS, Defendants provide customers with account statements which list various purported trades.

36. Customers providing checks are instructed to make the checks payable to “EJS Capital Management, LLC” and to send the checks to EJS’s address at 40 Wall Street, 28th Floor, New York, N.Y. Customers wiring funds to EJS are told to send a wire transfer to the EJS bank account ending in 8535 at a Bank of America branch located at 29 Broadway, New York, NY. The account ending in 8535 is in EJS’s name, and Servider and Ekdesman are the only two signatories on the account. Accordingly, Servider and Ekdesman control all deposits of customer funds into the two accounts and all withdrawals of customer funds from the accounts.

37. Contrary to the claims made during the solicitations, Defendants have not managed or traded any customer accounts. Instead, Defendants have misappropriated and are misappropriating the customer funds. Defendants have failed to disclose to customers and prospective customers that they are misappropriating customer funds.

38. Between April, 2013 and March 31, 2014, at least 90 customers sent EJS wire transfers and checks in various amounts ranging between \$1,000 and \$249,000 to open or to further fund their managed accounts with EJS. Thus far, Defendants have received and accepted more than \$2 million in funds sent by customers and deposited into the Bank of America account.

39. Out of the more than \$2 million received from EJS customers for forex trading purposes, less than a total of \$61,000 has been returned thus far to customers.

40. Thus far, Servider and Ekdesman have misappropriated customer funds of more than \$348,000 through cash withdrawals and payments for personal expenses. These personal expenses include restaurants, entertainment, groceries, clothing, shoes, vacations in Florida and

Italy, automobile leases and liquor purchases. Defendants have not disclosed to customers that their funds are being used and will be used for Servider's and Ekdeshman's personal expenses.

41. Defendants also have misappropriated customer funds totaling at least \$1.1 million for purported business expenses, including office rent, office supplies, parking, employee salaries and commissions, telephone bills, and payments to FedEx and Craigslist. Defendants have not disclosed to customers that their funds are being used for such purposes.

42. Thus far, Relief Defendant Alisa Ekdeshman has received at least \$97,000 in checks and one wire transfer from the two EJS bank accounts and she has no legitimate claim to these funds.

43. Thus far Relief Defendant Executive Services has received a total of at least \$405,000 in checks and wire transfers from the two EJS bank accounts and has transferred \$394,000 of that amount to a bank account in the name of EMI at Citibank. Of that \$394,000, approximately \$70,000 remained in the EMI Citibank account as of March 31, 2014, and the remainder had been transferred to other bank accounts controlled by Vilner or had been used to pay his personal and purported business expenses. Further, an analysis of Executive Services bank account reveals that it is almost entirely funded by deposits from the EJS bank accounts. In addition, the EMI Citibank account is almost entirely funded by deposits from the Executive Services bank account. The bank records further show that no funds from either the Executive Services or EMI bank accounts are transferred back to the EJS bank accounts. Relief Defendants Executive Services, EMI and Vilner have no legitimate claim to the funds they received, directly and indirectly, from the two EJS bank accounts.

44. As of March 31, 2014, the remaining balance in the EJS bank accounts total \$141,064.69.

45. In a Limited Power of Attorney form in its website, EJS identifies itself as the Trading Agent responsible for purchasing and selling foreign currencies on the OTC foreign exchange markets on margin on behalf of its customers. The Limited Power of Attorney also identifies, with the initials "ACM," what appears to be a forex clearing firm or counterparty to which EJS purportedly sends customer funds and trading instructions. However, no funds have been sent to an entity by that name or with those initials from either of EJS's bank accounts at Bank of America, and in fact EJS's bank records do not show any funds being sent to any forex clearing firm or counterparty.

46. Defendants have issued and are issuing false account statements to their customers to hide their fraud from them. These individual customer account statements list purported profits from forex trading activity. These statements are false because customer funds are not traded and no profits have been generated. Defendants have knowingly, willfully or recklessly not disclosed to their customers that these account statements are false.

47. Defendants and their customers are not United States financial institutions, registered broker dealers (or their associated persons), futures commission merchants (or their affiliated persons), financial holding companies, or retail foreign exchange dealers.

48. Many of Defendants' customers are non- ECPs. These customers, at the time they were solicited by the Defendants to engage in managed forex transactions on a leveraged or margined basis, did not have amounts invested on a discretionary basis, the aggregate of which was in excess of:

- a. \$10,000,000, or

- b. \$5,000,000 and who entered in the agreement, contract, or transaction with the Defendants in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred by the customer.

**B. EJS's Controlling Persons**

49. Servider and Ekdesman were in control of the day-to-day business operations of EJS during the relevant period. Servider signed the Bank of America paperwork opening the two EJS bank accounts as "member/manager," and Ekdesman signed that same paperwork as "member."

50. Servider and Ekdesman were the sole signatories on the EJS Bank of America account. Servider and Ekdesman controlled all deposits of customer funds into the account, signed paychecks of employees, signed checks to pay bills of EJS and controlled all withdrawals of customer funds from the account, including the misappropriated funds.

**C. Ekdesman' Contempt of a Court Order in Violation the Act**

51. The Consent Order was agreed to by Ekdesman on July 8, 2013.

52. On September 9, 2013, US District Court Judge Colleen McMahon entered the Consent Order.

53. In that Consent Order, Ekdesman agreed, and the Court found, that from at least July 16, 2011, Ekdesman, as the agent of Paramount Management, LLC ("Paramount"), fraudulently solicited and misappropriated at least \$1,337,172 from approximately 110 customers in connection with agreements, contracts or transactions in forex. The Court also found in this Consent Order that Ekdesman cheated, defrauded and deceived customers in violation of section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2006 & Supp. V 2011).

54. The Consent Order also ordered Ekdeshman and Paramount to pay restitution to customers in the amount of \$1,146,000 and a civil monetary penalty in the amount of \$1,337,000. Other than a restitution payment of \$24,970.47 made on or about October 16, 2013, most of the restitution amount, and none of the civil monetary penalty, has been paid.

55. The Consent Order permanently enjoined Ekdeshman from “directly or indirectly cheating or defrauding, or attempting to cheat or defraud, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market of Section 4b(a)(2)(A)-(C) of the Act, as amended, 7 U.S.C. § 6b(a)(2)(A)-(C) (2006 & Supp. V 2011).”

56. The Consent Order also permanently enjoined Ekdeshman from “directly or indirectly soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps.”

57. The Consent Order also permanently enjoined Ekdeshman from “directly or indirectly [a]cting as principal..., agent or any other officer or employee of any person...required to be registered with the Commission...”

58. By the conduct described herein, Ekdeshman violated the terms of the Consent Order.

**VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT  
AND COMMISSION REGULATIONS**

**COUNT I**

**Violations Of Sections 4b(a)(2)(A)-(C) Of The Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C)  
(Fraud By Misappropriation And Omissions)**

59. Paragraphs 1 through 58 are re-alleged and incorporated herein by reference.

60. Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2006 & Supp. V 2011), make it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market -- (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made 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 such other person.

61. Pursuant to Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iv) (2006 & Supp. V 2011), Section 4b(a)(2) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2006 & Supp. V 2011) applies to Defendants' foreign currency transactions "as if" they were a contract of sale of a commodity for future delivery.

62. During the Relevant Period, Defendants violated Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2006 & Supp. V 2011), in that Defendants cheated or defrauded, or attempted to cheat or defraud, and willfully deceived, or attempted to deceive, customers by, among other things: (1) not trading their funds as promised; (2)

misappropriating customer funds to pay for personal and business expenses; (3) not informing prospective customers that the historical trading performance on the website, *www.ejsfinancial.com*, is purely fictitious; (4) issuing false account statements to customers and by (5) representing on their website a fictitious trading performance.

63. Defendants engaged in the acts and practices described above willfully, knowingly or with reckless disregard for the truth.

64. The foregoing acts, omissions, and failures of EJS occurred within the scope of Servider's and Ekdeshman's employment, office, or agency with EJS. Therefore, EJS is liable for these acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006 & Supp. V 2011), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

65. Servider and Ekdeshman held and exercised direct or indirect control over EJS and either did not act in good faith or knowingly induced EJS's violations of Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2006 & Supp. V 2011). Servider and Ekdeshman are therefore liable for EJS's violations as controlling persons pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

66. Each misappropriation, misrepresentation or omission of material fact, and issuance of a false statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2006 & Supp. V 2011).

## COUNT II

### **Violations Of Regulation 5.2(b), 17 C.F.R. § 5.2(b) (Fraud By Misappropriation And Omissions)**

67. Paragraphs 1 through 66 are re-alleged and incorporated herein by reference.

68. Regulation § 5.2(b), 17 C.F.R. § 5.2(b) provides that it shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) to cheat or defraud or attempt to cheat or defraud any person; (2) 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; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

69. During the Relevant Period, Defendants violated Regulation § 5.2(b), 17 C.F.R. § 5.2(b), in that Defendants cheated or defrauded, or attempted to cheat or defraud, and willfully deceived, or attempted to deceive, customers by, among other things: (1) not trading their funds as promised; (2) misappropriating customer funds to pay for personal and business expenses; (3) not informing prospective customers that the historical trading performance on the website, [www.ejsfinancial.com](http://www.ejsfinancial.com), is purely fictitious; (4) issuing false account statements to customers and by (5) representing on their website a fictitious trading performance.

70. Defendants engaged in the acts and practices described above willfully, knowingly or with reckless disregard for the truth.

71. The foregoing acts, omissions, and failures of EJS occurred within the scope of Servider's and Ekdeshman's employment, office, or agency with EJS. Therefore, EJS is liable for these acts, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006 & Supp. V 2011), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

72. Servider and Ekdeshman held and exercised direct or indirect control over EJS and either did not act in good faith or knowingly induced EJS's violations of Regulation § 5.2(b), 17 C.F.R. § 5.2(b). Servider and Ekdeshman are therefore liable for EJS's violations as controlling persons pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

73. Each misappropriation, misrepresentation or omission of material fact, and issuance of a false statement, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation § 5.2(b), 17 C.F.R. § 5.2(b)

### **COUNT III**

**Violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006)  
Regulation § 5.3(a)(3), 17 C.F.R. § 5.3(a)(3)  
(Failure by EJS to Register as a CTA)**

74. Paragraphs 1 through 73 are re-alleged and incorporated herein by reference.

75. During the relevant period, EJS engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery, security futures product, or swap for compensation or profit, thus making it a commodity trading advisor as defined by Section 1a(12) of the Act, 7 U.S.C. § 1a(12).

76. During the relevant period, EJS made use of the mails or any means of interstate commerce in connection with its business as a CTA, while failing to register, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006). During the relevant period, EJS was not exempt from registering as a CTA. During the relevant period, EJS exercised discretionary trading authority or obtained written authorization to exercise discretionary trading authority over customer accounts of customers who were not ECPs in connection with retail forex transactions. As such, EJS was required to register as a CTA pursuant Regulation 5.3(a)(3), 17 C.F.R. § 5.3(a)(3) and failed to do so, in violation of Regulation 5.3(a)(3).

77. Servider and Ekdesman controlled EJS directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, EJS's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b)

(2006), Servider and Ekdesman are liable for EJS's violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006) and Regulation 5.3(a)(3), 17 C.F.R. § 5.3(a)(3).

#### COUNT IV

##### **Violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (Fraud by a Commodity Trading Advisor)**

78. Paragraphs 1 through 77 are re-alleged and incorporated herein by reference.

79. Section 4o(1) of the Act, 7 U.S.C. § 6o(1), makes it unlawful:

for a commodity trading advisor,...by use of mails or any means of instrumentality of interstate commerce, directly or indirectly—

to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

80. During the relevant period, EJS made use of the mails or any means of interstate commerce in connection with its business as a CTA, while failing to register, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1). During the relevant period, EJS was not exempt from registering as a CTA.

81. By the misconduct set forth above, Servider and Ekdesman controlled EJS, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, EJS's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Servider and Ekdesman are liable for EJS's violations of Section 4o(1) of the Act, 7 U.S.C. § 6o(1).

## COUNT V

**Violation of Section 6c(a) of the Act,  
as amended, 7 U.S.C. § 13a-1(a) (2006 and Supp. V 2011)  
(Contempt of Court against Defendant Ekdesman)**

82. Paragraphs 1 through 82 are re-alleged and incorporated herein by reference.

83. Ekdesman violated the provisions of the Consent Order by directly or indirectly soliciting funds from EJS customers to trade forex, accepting EJS customer funds and acting as a principal, agent or any other officer or employee of EJS which was required to be registered with the Commission. Ekdesman also cheated and defrauded EJS customers in violation of the Consent Order by (1) not trading their funds as promised; (2) misappropriating customer funds to pay for personal and business expenses; (3) not informing prospective customers that the historical trading performance on the website, [www.ejsfinancial.com](http://www.ejsfinancial.com), is purely fictitious; (4) issuing false account statements to customers; and (5) representing on their website a fictitious trading performance.

84. Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a) (2006 and Supp. V 2011) provides that whenever any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or order thereunder, the Commission may bring an action to enforce compliance with the Act or order thereunder.

85. Ekdesman's conduct that violated the Consent Order also violated Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a) (2006 and Supp. V 2011).

86. Each act constituting a violation of the Consent Order is alleged as a separate and distinct violation of Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a) (2006 and Supp. V 2011).

## VII. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that this Court, as authorized by Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (2006 & Supp. V 2011), and pursuant to its own equitable powers, enter:

- A. An order finding that Defendants violated Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2006 & Supp. V 2011); Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006); Section 4o(1) of the Act, 7 U.S.C. § 6o(1) Regulation § 5.3(a)(3), 17 C.F.R. § 5.3(a)(3) Regulation 5.2(b), 17 C.F.R. § 5.2(b), and Regulation § 5.2(b), 17 C.F.R. § 5.2(b)
- B. An order finding that Defendant Ekdesman is in Contempt of Court and violated the Consent Order and Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a) (2006 and Supp. V 2011);
- C. Orders of preliminary and permanent injunction prohibiting Defendants and any other person or entity associated with them, from engaging in conduct in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2006 & Supp. V 2011), Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006); Section 4o(1) of the Act, 7 U.S.C. § 6o(1); Regulation § 5.3(a)(3), 17 C.F.R. § 5.3(a)(3); Regulation 5.2(b), 17 C.F.R. § 5.2(b), and Regulation § 5.2(b), 17 C.F.R. § 5.2(b);
- D. Order of preliminary and permanent injunction prohibiting Defendant Ekdesman and any other person or entity associated with him, from engaging in conduct in violation of Section 6c(a) of the Act, as amended, 7 U.S.C. § 13a-1(a) (2006 and Supp. V 2011);

- E. Orders of preliminary and permanent injunction prohibiting Defendants, and any other person or entity associated with them, from directly or indirectly:
1. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006 & Supp. V 2011));
  2. Entering into any transactions involving commodity futures, swaps, (as that term is defined in Section 1a(47) of the Act, as amended and as further defined by Commission Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)(6)(i)), options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (2006 & Supp. V 2011)) (“forex contracts”), for their own personal accounts or for any account in which they have a direct or indirect interest;
  3. Having any commodity futures, swaps, options on commodity futures, commodity options, security futures products, and/or forex contracts traded on their behalf;
  4. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, swaps, options on commodity futures, commodity options, security futures products, and/or forex contracts;

5. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, swaps, options on commodity futures, commodity options, security futures products, forex contracts, and/or retail commodity transactions;
  6. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and
  7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).
- F. An order directing Defendants, as well as any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act and the Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;
- G. An order directing the Relief Defendants Alexis Ekdesman, Executives Services of Florida, LLC, EMI and Michael Vilner as well as any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act and the

Regulations to which they have no legitimate claim, as described herein, and post-judgment interest thereon from the date of such violations;

- H. An order directing Defendants, as well as any successors thereof, to make full restitution, pursuant to such procedure as the Court may order, to every customer whose funds they received or caused another person or entity to receive as a result of acts and practices which constitute violations of the Act and the Regulations, as described herein, and pre- and post-judgment interest from the date of such violations;
- I. An order directing Defendants, as well as any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act and the Regulations as described herein;
- J. An order directing that Defendants and any successors thereof provide the Commission immediate and continuing access to their books and records, make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds they received from and paid to EJS customers, and other persons in connection with forex transactions or purported forex transactions, including the names, addresses and telephone numbers of any such persons from whom they received such funds from April 2013, to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from customers, including salaries, commissions, fees, loans and other disbursements of money

and property of any kind, from April 2013, to and including the date of such accounting;

- K. An order directing Defendants and any successors thereof to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to Defendants for each violation of the Act and/or Regulations; or (2) \$140,000 for each violation of the Act and/or Regulations, plus post-judgment interest;
- L. An order directing Defendants and any successors thereof to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and
- M. Such other and further relief as the Court deems proper.

**VIII. DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial.

Date: May 1, 2014

Respectfully submitted,



ATTORNEYS FOR PLAINTIFF U.S.  
COMMODITY FUTURES TRADING  
COMMISSION

Nathan B. Ploener  
Elizabeth Brennan  
Steven Ringer  
Manal M. Sultan  
Division of Enforcement  
Commodity Futures Trading Commission  
140 Broadway, 19<sup>th</sup> Floor  
New York, New York, 10005  
(646) 746-9700  
(646) 746-9940 (facsimile)  
[nploener@cftc.gov](mailto:nploener@cftc.gov)  
[ebrennan@cftc.gov](mailto:ebrennan@cftc.gov)  
[sringer@cftc.gov](mailto:sringer@cftc.gov)  
[msultan@cftc.gov](mailto:msultan@cftc.gov)