

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-60695-CIV-ZLOCH

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

**DEFAULT FINAL JUDGMENT AND
PERMANENT INJUNCTION**

vs.

GOLD DISTRIBUTORS, INC., and
JORDAN CAIN,

Defendants.

THIS MATTER is before the Court upon Plaintiff U.S. Commodity Futures Trading Commission's Motion For Entry Of Default Judgment, Permanent Injunction, Civil Monetary Penalty And Ancillary Equitable Relief Pursuant To Fed. R. Civ. P. 55(b) And Local R. 7.1(a)(1)(E) (DE 9). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises

The Court notes that Defendants Gold Distributors, Inc., and Jordan Cain (hereinafter "GDI and Cain" or "Defendants") were duly served with process on March 19, 2014. See DE Nos. 5 and 6. Defendants failed to file appropriate motions or responsive pleadings within the time prescribed by law. The Clerk of the Court entered the default against Defendants (DE

8), which was approved, adopted and ratified by the Court (DE 13).

By the instant Motion (DE 9), Plaintiff seeks permanent injunctive and other equitable relief against Defendants, as well as the imposition of civil penalties, for violations of Section 4(a) of the Commodity Exchange Act (the "Act"), as amended, 7 U.S.C. § 6(a) (Supp. IV 2011). The well-pleaded allegations made in Plaintiff's Complaint (DE 1) are deemed to have been admitted by Defendants by virtue of the default entered against them. Cotton v. Mass. Mut. Life Ins. Co., 402 F.3d 1267, 1277-78 (11th Cir. 2005) (citations omitted). Thus, the Court makes the following findings of fact:

Plaintiff, the United States Commodity Futures Trading Commission, an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ 1 et seq., and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 et seq. (2010). The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Defendant Gold Distributors, Inc., is a Florida corporation with its principal place of business in Hallandale Beach, Florida. GDI is a firm that claimed to be a gold and silver distributor selling gold and silver bullion to the public. GDI solicited retail customers to execute financed

precious metals transactions. GDI has never been registered with the Commission. GDI ceased doing business in March, 2013. Defendant Jordan Cain is an individual whose last known residential address is in Miami, Florida. Cain has never been registered with the Commission. Cain was the owner, operator and controlling person of GDI.

GDI introduced customers to AmeriFirst Management, LLC (hereinafter "AmeriFirst"), a precious metals wholesaler and clearing firm that purported to confirm the execution of customer precious metal transactions. AmeriFirst held itself out on its website as a precious metals clearing and financing firm for precious metals dealers and claimed to provide dealers with "tangible assets in a growing physical market" and guarantee[s] that every ounce of metal in [the dealer's] customers [sic] account exists and is ready for delivery at any point and time." On its website, AmeriFirst's product offering was gold, silver, and platinum in bar and coin form. On its website, AmeriFirst also claimed to provide customer financing options for precious metal dealers. It operated throughout the United States using a network of over 30 solicitation firms such as GDI that it refers to as "dealers." On February 25, 2013, AmeriFirst ceased operations.

Between January 2012 and February 2013, Defendants offered to enter into, executed, and confirmed the execution of financed

precious metals (gold and silver) transactions with persons who were not eligible contract participants ("ECPs") as defined in the Commodity Exchange Act. The Act defines an ECP, in relevant part, as an individual who has amounts invested on a discretionary basis, the aggregate of which exceeds \$10 million, or \$5 million if the individual enters into 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. 7 U.S.C. § 1a(18)(xi). Gold Distributors's customers were not ECPs. The precious metal transactions were financed by AmeriFirst. It is only the financed precious metal transactions through AmeriFirst that are at issue here. Plaintiff U.S. Commodity Futures Trading Commission had a pending action against AmeriFirst in this District, CFTC v. AmeriFirst Management, LLC, et al., No. 0:13-cv-61637-WPD (S.D. Fla. Sept. 19, 2013), which was settled as to liability by a Consent Order entered on September 19, 2013 and with respect to a civil monetary penalty and restitution by a Supplemental Consent Order entered on July 24, 2014.

During the Relevant Period, Cain was the President of GDI, sole shareholder of GDI, sole signatory on GDI bank accounts, and sole decision maker with regard to the hiring and firing of GDI employees and agents. In the financed precious metals transactions, the customers invested only a percentage of the

total metal value, typically 25%, and would receive a loan for the remaining 75% of the metal's value by AmeriFirst, who was the offeror. The customers were charged a finance charge on the loan, as well as a service charge. The customers also paid a commission on the total metal value, with a maximum commission of 15%, and a mark-up on the spot price of the metal, typically 3%. Thus, due to the high fees, finance charges and commissions, Defendants' customers never even broke even on their investments, let alone earned a profit, because much of their principal investment was consumed by these charges. After a customer invested, Defendants contacted AmeriFirst to effectuate the transaction. Defendants collected the funds needed for the transaction and after deducting its commission, sent the funds to AmeriFirst. AmeriFirst provided back office support services to GDI, including confirmation of the transaction to the customer. Defendants introduced 27 customers to AmeriFirst and transferred at least \$797,577.60 to AmeriFirst for the purchase of precious metals. Defendants received commissions and fees totaling at least \$337,266.98 for the retail financed precious metals transactions executed through AmeriFirst. Defendants and AmeriFirst never actually delivered any precious metals to any of Defendants' customers.

By the conduct described above, Defendants offered to enter into, entered into, executed, confirmed the execution of, or

conducted an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in, transactions in, or in connection with, retail commodity transactions. The retail commodity transactions described herein were offered by Defendants and AmeriFirst and entered into (a) on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, (b) with persons who are not ECPs or eligible commercial entities as defined by the Commodity Exchange Act, and (c) not made or conducted on, or subject to, the rules of any board of trade, exchange or contract market. The gold and silver described herein are commodities as defined by Section 1a(9) of the Act, 7 U.S.C. § 1a(9) (2012). Each offer to enter into, entrance into, execution, confirmation, solicitation or acceptance of an order for a retail commodity transaction made during the relevant time period is a separate and distinct violation of Section 4(a) of the Act. Cain directly or indirectly controlled GDI and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting GDI's violations of Section 4(a) alleged in the Complaint. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13(b), Cain is liable for each of GDI's violations of Section 4(a) of the Act. The acts and omissions of Cain described herein were done within the scope of his

employment or office with GDI. Therefore, GDI is liable as a principal for each of Cain's acts, omissions or failures constituting violations of Section 4(a) pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C § 2(a)(1)(B). The Court finds that, unless restrained and enjoined by this Court, there is a reasonable likelihood that the Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

Accordingly, after due consideration, it is

ORDER AND ADJUDGED as follows:

1. The Court has jurisdiction over the parties hereto and the subject matter herein;

2. Plaintiff U.S. Commodity Futures Trading Commission's Motion For Entry Of Default Judgment, Permanent Injunction, Civil Monetary Penalty And Ancillary Equitable Relief Pursuant To Fed. R. Civ. P. 55(b) And Local R. 7.1(a)(1)(E) (DE 9) be and the same is hereby **GRANTED**;

3. Pursuant to Federal Rules of Civil Procedure 55 and 58, Default Final Judgment be and the same is hereby **ENTERED** in favor of Plaintiff U.S. Commodity Futures Trading and against Defendants Gold Distributors, Inc., and Jordan Cain;

IT IS FURTHER ORDERED AND ADJUDGED THAT

4. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1,

Defendants are **PERMANENTLY RESTRAINED, ENJOINED, AND PROHIBITED**
from directly or indirectly:

a. Offering to enter into, entering into, confirming the execution of, conducting an office in the United States for the purpose of soliciting, or accepting any order for, or otherwise dealing in any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery, unless such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a);

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

c. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2011)) ("commodity options"), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3 (xxx)), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts") for their own personal account or for any account in which they have a direct or indirect interest;

d. Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps and/or forex contracts traded on their behalf;

e. 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, options on commodity futures, commodity options, security futures products, swaps and/or forex contracts;

f. 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, swaps and/or forex contracts;

g. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and/or

h. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);

5. Defendants **SHALL** pay restitution in the amount of Three Hundred Thirty Seven Thousand Two Hundred Sixty Six Dollars and Ninety Eight Cents (\$337,266.98) (hereinafter "Restitution Obligation"), plus post-judgment interest, within ten (10) days of the date of the entry of this Default Final Judgment. Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Default Final Judgment and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Default Final Judgment, pursuant to 28 U.S.C. § 1961;

6. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants' customers, the Court **APPOINTS** the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect restitution payments from Defendants and make distributions as

set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

7. Defendants SHALL make Restitution Obligation payments under this Default Final Judgment to the Monitor in the name "Gold Distributors, Inc.- SETTLEMENT/RESTITUTION Fund" and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

8. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' customers identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a de minimis nature such that the Monitor

determines that the administrative cost of making a distribution to eligible customers is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in ¶¶ 14-15. below;

9. Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's customers to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation;

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

11. The amounts payable to each customer **SHALL** not limit the ability of any customer from proving that a greater amount is owed from Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law;

12. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Default Final Judgment and may seek to enforce obedience of this Default Final Judgment to obtain satisfaction of any portion of the restitution that has not been paid by Defendants to ensure continued compliance with any provision of this Default Final Judgment and to hold Defendants in contempt for any violations of any provision of this Default Final Judgment;

13. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligation, such funds **SHALL** be transferred to the Monitor for disbursement in accordance with the procedures set forth above;

14. Defendants **SHALL**, jointly and severally, pay a civil monetary penalty in the amount of One Million, Eleven Thousand, Eight Hundred Dollars and Ninety Four Cents (\$1,011,800.94) ("CMP Obligation"), plus post-judgment interest, within ten (10) days of the date of the entry of this Default Final Judgment. If the CMP Obligation is not paid in full within ten (10) days of

the date of entry of this Default Final Judgment, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Default Final Judgment and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Default Final Judgment pursuant to 28 U.S.C. § 1961 (2006);

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

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables - AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Defendants shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover

letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Any acceptance by the Commission of partial payment of Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Default Final Judgment, or a waiver of the Commission's right to seek to compel payment of any remaining balance;

16. Defendants' obligation to pay restitution and civil monetary penalties are all due and owing as of the date of this Order. Should Defendants, however, not be able to satisfy all these obligations at the same time, any payments from Defendants shall first be used to satisfy their restitution obligation. After Defendants' restitution obligation is satisfied fully, then any of Defendants' payments shall be applied to satisfaction of the civil monetary penalties;

17. Defendants **SHALL NOT** transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Commission, or any officer that may be appointed by the Court;

18. The equitable relief provisions of this Order shall be binding upon Defendants and any person who is acting in the capacity of agent, employee, servant, or attorney of Defendants,

and any person acting in active concert or participation with Defendants, who receives actual notice of this Order by personal service or otherwise;

19. All notices required to be given by any provision in this Default Final Judgment shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Manal M. Sultan
Deputy Director
Division of Enforcement
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005

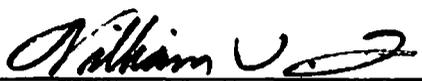
Notice to Monitor:

Office of Administration
National Futures Association
300 South Riverside Plaza, Suite 1800
Chicago, Illinois 60606

20. The Court retains jurisdiction to enforce this Default Final Judgment and Permanent Injunction; and

21. To the extent not otherwise disposed of herein, all pending Motions are hereby DENIED as moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 21st day of November, 2014.



WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

All Counsel and Parties of Record