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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

CUNWEN ZHU and JUSTBY
INTERNATIONAL AUCTIONS,

Defendants.

Case No.: 2:23-cv-4937 MEMF (AGR_x)

**ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT [ECF NO. 25]**

Before the Court is the Motion for Default Judgment filed by Plaintiff Commodity Futures Trading Commission. ECF No. 25. For the reasons stated herein, the Court thereby GRANTS the Motion for Default Judgment.

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1 **I. Background**

2 **A. Factual Background¹**

3 Plaintiff Commodity Futures Trading Commission (“CFTC”) is an independent federal
4 regulatory agency charged by Congress with the administration and enforcement of the Commodity
5 Exchange Act and Regulations (“Act and Regulations”). Compl. ¶ 20. Defendant Justby
6 International Auctions (“Justby”) is a corporation that purports to engage in the business of
7 purchasing and selling art, antiques, and collectibles. *Id.* ¶ 21. Justby was established by Defendant
8 Cunwen Zhu (“Zhu,” and collectively, “Defendants”) in April of 2021. *Id.* Zhu was Justby’s Chief
9 Executive Officer and registered agent. *Id.* ¶¶ 21–22. Defendants have never registered with the
10 Commission in any capacity. *Id.*

11 From approximately April 2021 through March 2022 (the “Relevant Period”), Zhu and
12 Justby, while acting as a common enterprise with other known and unknown entities (the “Scheme
13 Entities”), engaged in a scheme to defraud at least twenty-nine (29) U.S. customers (“Scheme
14 Customers”) by misappropriating at least \$1,352,843 in connection with the sale of leveraged,
15 margined, or financed agreements, contracts or transactions in off-exchange retail foreign currency
16 (“forex”) contracts and/or digital asset commodities, such as Bitcoin, to U.S. customers who were
17 not eligible contract participants. *Id.* ¶ 1.

18 The Scheme Entities solicited customers to invest in forex and/or digital asset commodities
19 by providing them with false trading records and failing to disclose material information. *Id.* ¶ 3.
20 Defendant Zhu, individually, and as the controlling person of Justby, accepted Scheme Customers’
21 funds into Justby’s bank accounts knowing, or recklessly disregarding, that these funds were
22 intended to be used to engage in forex and/or digital asset commodity transactions on behalf of the
23 Scheme Customers. *Id.* ¶ 2. Defendants misappropriated the \$1,352,843 they received from the
24 Scheme Customers by transferring the funds from Justby’s bank accounts to Zhu’s personal bank
25 accounts. *Id.* Once in his bank account, a portion of the misappropriated funds were used by Zhu to
26 pay for his personal expenses, while the majority of the funds were transferred again to other bank
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28 ¹ Unless otherwise indicated, the following factual background is derived from the allegations in Plaintiff’s
Complaint. ECF No. 1 (“Compl.”).

1 accounts, digital asset commodity trading accounts and digital wallet addresses controlled by
2 Defendants and the Scheme Entities. *Id.* The Scheme Entities controlled third-party applications
3 (“applications”) which gave the appearance that Scheme Customers were profitably trading forex
4 and/or digital asset commodities on legitimate trading platforms. *Id.* ¶ 5. Unbeknownst to the
5 Scheme Customers, these trading accounts were a complete ruse, and no actual trading took place on
6 behalf of the Scheme Customers. *Id.*

7 The Scheme Customers ultimately lost nearly all of their trading funds. *Id.* ¶ 11. Defendants
8 misappropriated all of the \$1,340,000 sent to Justby by the Scheme Customers, and did not return
9 any of the funds sent to them by the Scheme Customers. *Id.* ¶¶ 12, 79.

10 **B. Procedural History**

11 On June 22, 2023, CFTC filed an action alleging violations of the Act and Regulations,
12 specifically fraud in connection with forex and fraud by deceptive device or contrivance, and
13 seeking injunctive and other equitable relief. ECF No. 1 (“Complaint”).

14 On July 21, 2023, CFTC filed proofs of service indicating that Defendants had been served
15 with the Summons and Complaint in this action on June 30, 2023. ECF Nos. 20, 21. On July 25,
16 2023, CFTC requested default to be entered against Defendants. ECF No. 22. On July 28, 2023, the
17 Clerk entered default against Defendants. ECF No. 23.

18 On August 25, 2023, CFTC filed the instant Motion for Default Judgment against
19 Defendants. ECF No. 25 (“Motion”). On November 29, 2023, the Court ordered CFTC to provide
20 notice to Defendants of the December 7, 2023, hearing date on the Motion, and file a proof of
21 service indicating that such notice was given. ECF No. 32. On December 4, 2023, CFTC filed a
22 proof of service indicating that Defendants were served notice of the Motion and hearing date. ECF
23 No. 34. The Court called the matter for hearing on December 7, 2023. Neither Defendants nor
24 anyone representing Defendants appeared at the hearing. The Court provided CFTC with a tentative
25 order in advance of the hearing. At the hearing, CFTC informed the Court that it would submit on
26 the tentative order.

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1 **II. Applicable Law**

2 Federal Rule of Civil Procedure 55(b) authorizes a district court to grant default judgment
3 after the Clerk of the Court enters default under Rule 55(a). Fed. R. Civ. P. 55(b). Local Rule 55-1
4 requires the party seeking default judgment to file a declaration establishing: (1) when and against
5 what party the default was entered; (2) the pleading on which default was entered; (3) whether the
6 defaulting party is an infant or incompetent person, and if so, whether that person is represented by a
7 general guardian, committee, conservator, or other like fiduciary who has appeared; (4) that the
8 Servicemembers Civil Relief Act does not apply; and (5) that the defaulting party was properly
9 served with notice if required by Rule 55(b)(2). C.D. Cal. L.R. 55-1.

10 Once default has been entered, the factual allegations in the complaint, except those
11 concerning damages, are deemed admitted by the non-responding party. *See* Fed. R. Civ. P. 8(b)(6);
12 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987). However, default
13 judgment is not automatic upon the Clerk’s entry of default; rather, it is left to the sound discretion
14 of the court. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092–93 (9th Cir. 1980). When deciding whether to
15 enter default judgment, courts consider seven factors, commonly known as the *Eitel* factors:

- 16 (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff’s
17 substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at
18 stake in the action; (5) the possibility of a dispute concerning material facts; (6)
19 whether the default was due to excusable neglect; and (7) the strong policy
20 underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

21 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

22 **III. Discussion**

23 CFTC requests that the Court grant its Motion for Default Judgment. Before doing so, the
24 Court must consider whether CFTC has satisfied the procedural requirements of Federal Rule of
25 Civil Procedure 55 and Local Rule 55-1 and whether the *Eitel* factors weigh in favor of granting
26 default judgment. For the reasons discussed below, the Court finds that CFTC has satisfied the
27 procedural requirements and the *Eitel* factors weigh in favor of granting default judgment.

28 **A. CFTC has Satisfied Procedural Requirements**

 As an initial matter, the Court has subject matter jurisdiction over the claims pursuant to 28
U.S.C. § 1331 (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (providing that U.S.

1 district courts have original jurisdiction over civil actions commenced by the United States or by any
2 agency expressly authorized to sue by Act of Congress). The Court is satisfied that personal
3 jurisdiction exists over Defendants and venue is proper—Zhu resides in California, Justby is a
4 corporation registered with the state of California, and a number of the alleged violations by
5 Defendants occurred in California. Compl. ¶¶ 9, 10, 16, 17.

6 Defendants were served on June 30, 2023. ECF Nos. 20, 21. Pursuant to Federal Rule of
7 Civil Procedure 55, CFTC sought entry of default by the Clerk of the Court, which was entered on
8 July 28, 2023. ECF Nos. 22, 23. In accordance with Local Rule 55-1, CFTC has represented that
9 default has been entered against Defendants, they are not infants or incompetent persons, and the
10 Servicemembers Civil Relief Act does not apply. ECF No. 25-2 (“Kenmotsu Decl.”) ¶¶ 10, 11.
11 Therefore, the requisite procedural requirements for seeking default judgment have been met.

12 **B. The *Eitel* Factors Weigh in Favor of Granting Default Judgment**

13 The Court next considers the *Eitel* factors and finds that they weigh in favor of granting
14 default judgment.

15 i. CFTC will suffer prejudice in the absence of default judgment.

16 First, the Court considers whether CFTC will suffer prejudice if default judgment is not
17 entered. Here, based on the facts established by the Complaint, the Court concludes that CFTC
18 would suffer prejudice from being deprived of the opportunity to enforce its rules and obtain a
19 judgment on the merits against defendants who have committed fraud in violation of the Act and
20 Regulations. Specifically, CFTC has congressionally mandated interests in enforcing the Act and
21 Regulations and deterring future wrongdoing through penalties, and if default judgment were denied
22 here, it would be unable to act on its mandate. Accordingly, this factor weighs in favor of granting
23 default judgment.

24 ii. The Complaint sufficiently states meritorious claims.

25 Next, the Court considers whether CFTC has stated valid claims for which it can seek relief.
26 *See Kloeping v. Fireman’s Fund*, 1996 WL 75314 (N.D. Cal. Feb. 13, 1996) (“The Ninth Circuit
27 has suggested that [the factors] involving the substantive merits of plaintiff’s claim and the
28 sufficiency of the complaint – require that plaintiffs’ allegations ‘state a claim on which the

1 [plaintiff] may recover.”) (citing *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978)). 7 U.S.C.
2 § 2(c)(2)(C) provides CFTC with jurisdiction over the forex solicitations and transactions at issue in
3 this action.

4 As discussed next, the Court finds that the Complaint demonstrates meritorious claims of (1)
5 fraud in connection with forex, and (2) fraud by deceptive device or contrivance, in violation of the
6 Act and Regulations, which weighs in favor of granting default judgment. The Court also finds that
7 Defendants are jointly and severally liable with each other, as well as the Scheme Entities, for these
8 violations.

9 *1. Fraud in Connection with Forex (Count One)*

10 7 U.S.C. § 6b(a)(2)(A)-(C), makes it unlawful:

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

21 Pursuant to 7 U.S.C. § 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 6b applies to the forex
22 transactions, agreements, or contracts offered by Defendants “as if” they were contracts of sale of a
23 commodity for future delivery. Specifically, 7 U.S.C. § 2(c)(2)(C)(i)(I)(aa) applies to “any
24 agreement, contract, or transaction in foreign currency that is offered to, or entered into with, a
25 person that is not an eligible contract participant.” Here, CFTC has alleged that “[m]ost of the
26 Scheme Customers were not eligible contract participants pursuant to Section 1a(18)(A)(xi) of the
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1 Commodity Exchange Act.” Compl. ¶ 4.² The Court finds that the Complaint sufficiently establishes
 2 fraud by Defendants through misrepresentation, as well as fraud through misappropriation.³

3 **a. Fraud by Material Misrepresentations and Omissions**

4 “Under 7 U.S.C. § 6(b)(a)(2), it is unlawful for a person to ‘cheat or defraud’ a customer
 5 through trades, or to willfully ‘deceive or attempt to deceive the other person.’” *Chu v. CFTC*, 823
 6 F.3d 1245, 1251 (9th Cir. 2016). Liability under this statute “contains an element of scienter which is
 7 more than ‘[m]ere negligence, mistake, or inadvertence.’” *Id.* The Eleventh Circuit has set forth
 8 three elements to establish liability for fraud based on misrepresentations and omissions under
 9 Section 7 U.S.C. § 6b(a)(2)(A)-(C) of the Act and 17 C.F.R. § 5.2(b)(1)-(3) (2022)—specifically,
 10 CFTC must prove that: (1) a misrepresentation, false or misleading statement, or deceptive omission
 11 was made; (2) with scienter; and (3) the misrepresentation, false or misleading statement, or
 12 deceptive omission was material. *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328 (11th Cir.
 13 2002); *see also CFTC v. Capitol Equity FX LLC*, 2017 WL 9565340, at *3 (C.D. Cal. July 31, 2017).

14 Here, Defendants are alleged to have made intentional and material misrepresentations and
 15 omissions to Scheme Customers. Defendants, in concert with the Scheme Entities, provided false
 16 information to Scheme Customers in the form of false trading records and bank statements. Compl.
 17 ¶¶ 6–8, 49–55. The trading applications used by the Scheme Entities provided false trade
 18 information to Scheme Customers, including false trade reports, account balances, profits and losses.
 19 *Id.* In addition, Justby’s bank account records were falsified and sent to at least one Scheme
 20 Customer. *Id.* 54–55. Moreover, Defendants failed to disclose material facts to the Scheme
 21 Customers, including that: (i) their funds would not be used for trading; (ii) their funds would be
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 24 ² Section 1a(18)(A)(xi) provides that an “eligible contract participant” only includes individuals who have
 25 “amounts invested on a discretionary basis, the aggregate of which is in excess of—\$10,000,000; or
 26 \$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated
 27 with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.”

28 ³ The language of 17 C.F.R. § 5.2(b)(1)-(3) (2022), mirrors that of 7 U.S.C. § 6b(a)(2)(A)-(C), with the
 additional element that the conduct must involve the “use of the mails or by any means or instrumentality of
 interstate commerce.” Here, as Defendants are alleged to have used means and instrumentalities of interstate
 commerce, including wire transfers, and electronic communications in connection with their conduct, the
 Court finds this additional element established.

1 misappropriated; and (iii) the applications used by the Trading Firms were completely fraudulent, no
2 trading occurred and the posted returns were fake. *Id.* ¶ 8. These omissions are sufficiently material
3 for purposes of Defendants’ liability as in this case, these representations would have caused the
4 Scheme Customers to give money to Defendants. *See R.J. Fitzgerald & Co, Inc.*, 310 F.3d at 1328–
5 29. (“A representation or omission is ‘material’ if a reasonable investor would consider it important
6 in deciding whether to make an investment.”).

7 Defendants also acted with the requisite scienter to violate 7 U.S.C. § 6b(a)(2)(A)-(C) of the
8 Act and 17 C.F.R. § 5.2(b)(1)-(3) (2022). Scienter requires proof that a defendant committed the
9 alleged wrongful acts intentionally or with reckless disregard for his or her duties under the Act. *See*
10 *CFTC v. Noble Metals Int’l*, 67 F.3d 766, 774 (9th Cir. 1995) (holding that scienter is established
11 when defendants act intentionally or with “careless disregard”); see also *Lawrence v. CFTC*, 759
12 F.2d 767, 773 (9th Cir. 1985) (finding that the Commission only needed to show that a defendant’s
13 actions were “intentional as opposed to accidental”). The evidence here shows that Defendants acted
14 knowingly or, at the very least with reckless disregard for the truth of the fraudulent conduct, by
15 accepting Scheme Customer deposits that were intended for trading forex and/or digital asset
16 commodities and then misappropriating said funds. Scienter is established here based on the
17 Defendants knowingly or recklessly accepting \$1,352,843 in Scheme Customer funds, some of
18 which was flagged and designated for trading investments and then immediately transferring those
19 funds to Zhu’s personal bank accounts. As the sole signatory on the Justby bank accounts, Zhu had
20 personal knowledge of the origin of funds being accepted into the accounts and was responsible for
21 the disposition of those funds.⁴ Defendants accepted Scheme Customer funds knowing they had no
22 legitimate business relationship with the Scheme Customers and knowing that some of the funds
23 were given to them for investment purposes.

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26 ⁴ Zhu’s scienter can be imputed to Justby. Courts have imputed scienter to a corporation based on the actions
27 of their agents who are acting in the scope of their employment or apparent authority. *See In re ChinaCast*
28 *Educ. Corp. Securities Litigation*, 809 F.3d 471, 476 (9th Cir. 2015) (in the context of securities fraud,
holding that a CEO’s “scienter can be imputed to the corporation”); see also *Mizzaro v. Home Depot, Inc.*,
544 F.3d 1230, 1254 (11th Cir. 2008) (“Corporations, of course, have no state of mind of their own. Instead,
the scienter of their agents must be imputed to them.”).

1 **b. Fraud by Misappropriation**

2 Courts have also held that the misappropriation of customer funds in connection with forex
 3 trading constitutes fraud in violation of 7 U.S.C. § 6b(a)(2)(A) and (C) of the Act and 17 C.F.R. §
 4 5.2(b)(1) and (3) (2022). *See CFTC v. Driver*, 877 F. Supp. 2d 968, 978 (C.D. Cal. 2012) (finding
 5 that “[s]oliciting or obtaining funds from investors for trading, then failing to trade the funds while
 6 using them for personal and business expenses, is misappropriation” and granting summary
 7 judgment to CFTC on claims that commodity pool operator’s misappropriation of customer funds
 8 violated 7 U.S.C. § 6b and 6o of the Act); *CFTC v. Weinberg*, 287 F. Supp. 2d 1100, 1106 (C.D.
 9 Cal. 2003) (“Defendant’s misappropriation of funds entrusted to him for trading purposes is ‘willful
 10 and blatant fraudulent activity’ that clearly violates Section 4b(a) of the Act.”).

11 Here, in addition to fraudulently procuring the customer funds, Defendants are alleged to
 12 have misappropriated the funds in violation of 7 U.S.C. § 6b(a)(2)(A) and (C) of the Act and 17
 13 C.F.R. § 5.2(b)(1) and (3) by failing to use the funds to trade and diverting the funds for their
 14 personal use and to digital wallets, digital asset trading platforms, and bank accounts controlled by
 15 the Scheme Entities. Compl. ¶ 2. *Scienter* is also established because Defendants had control over
 16 the bank accounts from which Scheme Customer funds were accepted and misappropriated. *Driver*,
 17 877 F. Supp. 2d at 978 (finding fraud with requisite *scienter* where defendant “had control over the
 18 bank accounts where [customer] funds were deposited and controlled the futures trading accounts”).
 19 This is sufficient to establish fraud by misappropriation, in addition to fraud by misrepresentation.

20 *2. Fraud by Deceptive Device or Contrivance (Count Two)*

21 7 U.S.C. § 9(1) of the Act makes it unlawful for any person, directly or indirectly, to:

22 [U]se or employ, or attempt to use or employ, in connection with any swap, or a
 23 contract of sale of any commodity in interstate commerce, or for future delivery on
 24 or subject to the rules of any registered entity, any manipulative or deceptive device
 25 or contrivance, in contravention of such rules and regulations as the Commission
 shall promulgate

26 17 C.F.R. § 180.1(a)(1)-(3) (2022), provides that:

27 It shall be unlawful for any person, directly or indirectly, in connection with any
 28 swap, or contract of sale of any commodity in interstate commerce, or contract for

1 future delivery on or subject to the rules of any registered entity, to intentionally or
recklessly:

2 (1) Use or employ, or attempt to use or employ, any manipulative device, scheme,
3 or artifice to defraud;

4 (2) Make, or attempt to make, any untrue or misleading statement of a material fact
5 or to omit to state a material fact necessary in order to make the statements made
not untrue or misleading;

6 (3) Engage, or attempt to engage, in any act, practice, or course of business, which
7 operates or would operate as a fraud or deceit upon any person

8 While there does not appear to be binding precedent holding as such, the Court is satisfied
9 that Bitcoin falls under the definition of a “commodity” under these statutes. As defined under 7
10 U.S.C. § 1a, a commodity includes “all services, rights, and interests . . . in which contracts for
11 future delivery are presently or in the future dealt in.” Although previously the Commodity
12 Exchange Act applied mostly to agricultural commodities, the 1974 amendments expanded the
13 definition of a commodity with the purpose of allowing “regulation of futures contracts and other
14 transactions in a growing number of commodities such as coffee, sugar, and foreign currencies that
15 were being traded” on unregulated exchanges. *Board of Trade of City of Chicago v. S.E.C.*, 677 F.2d
16 1137, 1143 (7th Cir. 1982), *vacated on other grounds by S.E.C. v. Board of Trade of City of*
17 *Chicago*, 459 U.S. 1026 (1982); *see also CFTC v. Frankwell Bullion Ltd.*, 99 F.3d 299, 302 (9th Cir.
18 1996) (noting that Congress “broadened the reach of the CEA to cover additional commodities,”
19 including foreign currencies that were not transacted on organized exchanges). Here, the Court finds
20 no reason to treat Bitcoin, a virtual currency, differently than any other good that CFTC does have
21 the power to regulate.⁵

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25 ⁵ Other courts have held that digital asset commodities such as Bitcoin are encompassed in the definition of a
26 “commodity” under 7 U.S.C. § 1a(9), and contracts for their sale are subject to the prohibitions of 7 U.S.C.
27 § 9(1) of the Act, and 17 C.F.R. § 181(a)(1)-(3) (2022). *See CFTC v. McDonnell*, 287 F. Supp. 3d 213, 217
28 (E.D.N.Y. 2018), recons. denied, 321 F. Supp. 3d 366, 367-68 (E.D.N.Y. 2018) (finding that “[v]irtual
currencies can be regulated by CFTC as a commodity . . . They fall well-within the common definition of
'commodity' as well as the [Act's] definition of 'commodities' as 'all other goods and articles . . . in which
contracts for future delivery are presently or in the future dealt in.'”); *Carmel v. Mizuho Bank, Ltd.*, 2019 WL
10186488, at *13 (C.D. Cal. Nov. 14, 2019) (noting that “Bitcoin itself is a commodity”).

1 To state a claim for violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3) (2022),
 2 CFTC needs to allege that Defendants: (1) engaged in prohibited conduct (i.e., employed a
 3 fraudulent scheme, made material misrepresentations or materially misleading omission, or
 4 misappropriated customer funds); (2) in connection with the sale of a commodity in interstate
 5 commerce; and (3) with scienter. *See, e.g., CFTC v. McDonnell*, 332 F. Supp. 3d 641, 717 (E.D.N.Y.
 6 2018).

7 **a. Defendants Engaged in a Prohibited Fraudulent Scheme**

8 The same conduct that violates 7 U.S.C. § 6b(a)(2)(A)-(C) of the Act also violates 7 U.S.C.
 9 § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3) (2022), and the same scienter analysis above regarding 7
 10 U.S.C. § 6b(a)(2)(A)-(C) applies here as well. *See CFTC v. S. Tr. Metals, Inc.*, 894 F.3d 1313, 1325
 11 (11th Cir. 2018).

12 Defendants violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3) (2022) by conducting a
 13 scheme to defraud customers in connection with the sale of contracts for the trading of forex and/or
 14 digital asset commodities, including deceiving customers by, among other things:

15 (i) misappropriating Scheme Customer funds; (ii) sending, or causing false trading records to be sent
 16 to Scheme Customers; (iii) sending or causing false bank records to be sent to a Scheme Customer;
 17 and (iv) omitting to provide material information to Scheme Customers. This type of conduct falls
 18 within the Act and Regulations and has been recognized as a violation subject to an enforcement
 19 action. *See McDonnell*, 332 F. Supp. 3d at 723 (holding 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-
 20 (3) (2022) were violated by misappropriating funds and fraudulent misrepresentations in connection
 21 with virtual currency transactions).

22 The “in connection” with requirement of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3)
 23 (2022) is satisfied where the contract of sale of a commodity in interstate commerce and the fraud
 24 are not independent events. *SEC v. Zandford*, 535 U.S. 813, 818–26 (2002) (finding, in the securities
 25 context, the “in connection with” requirement was satisfied where a broker sold customer securities
 26 for the purpose of transferring the proceeds to his own account); *SEC v. DiBella*, No. 3:04-CV-1342-
 27 EBB, 2005 WL 3215899, at *6 (D. Conn. Nov. 29, 2005) (“A fraudulent scheme that coincides with
 28 the sale of securities satisfies the ‘in connection with’ requirement of section 10(b) [of the Exchange

1 Act] and Rule 10b-5.” (citing *Zandford*, 535 U.S. at 825)). The “in connection with” requirement is
2 construed broadly. *See, e.g., SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992); *see also*
3 *Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices*
4 *and Prohibition on Price Manipulation*, 76 Fed. Reg. 41,398, 41,405 (July 14, 2011) (“The
5 Commission interprets the words ‘in connection with’ broadly, not technically or restrictively.”).

6 In this case, the fraudulent conduct occurred, and the material misrepresentations and
7 omissions were made, in connection with contracts of sale of a commodity in interstate commerce.
8 Defendants obtained at least \$1,352,843 from Scheme customers located in the U.S. for the purpose
9 of entering into contracts for the trading of forex and/or digital asset commodities as evidenced by
10 the Scheme Customers’ wire notations and “trading account” records. This is sufficient to
11 demonstrate prohibited conduct in connection with the sale of a commodity in interstate commerce.

12 **b. Defendants Acted with Scienter**

13 The level of scienter required to plead a cause of action under 17 C.F.R. § 180.1(a) is
14 reckless or intentional. *CFTC v. Kraft Foods Grp.*, 153 F. Supp. 3d 996, 1015 (N.D. Ill. 2015) (citing
15 76 Fed. Reg. at 41,404). This standard is satisfied if a defendant “intended to defraud, manipulate, or
16 deceive, or if [d]efendant’s conduct represents an extreme departure from the standards of ordinary
17 care.” *R.J. Fitzgerald & Co.*, 310 F.3d at 1328. It is also satisfied when a defendant’s conduct
18 “involves highly unreasonable omissions or misrepresentations that present a danger of misleading
19 [customers] which is either known to the Defendant or so obvious that Defendant must have been
20 aware of it.” *Id.* (quotation omitted); *see also Kraft*, 153 F. Supp. 3d at 1015 (scienter requires facts
21 showing that conduct was reckless or intentional and is satisfied by a showing of “an extreme
22 departure from the standards of ordinary care”).

23 The same evidence that supports scienter in the analysis regarding 7 U.S.C. Section 6b(a) of
24 the Act applies here. Based on the allegations in the Complaint, Defendants acted willfully or, at the
25 very least, with reckless disregard for the truth. Defendants accepted customer funds knowing they
26 were not trading forex and/or digital asset commodities for Scheme Customers, knowing they had no
27 legitimate business relationship with Scheme Customers, and knowing they were misappropriating
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1 funds they accepted from Scheme Customers. Accordingly, Defendants acted with the requisite
2 scienter to support a violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

3 *3. Defendants are Jointly and Severally Liable for the Violations*

4 **a. Common Enterprise**

5 The Complaint alleges that Defendants are jointly and severally liable for the Scheme
6 Entities' alleged violations because the individuals and entities operated and functioned as a
7 common enterprise. When entities and individuals operate as a common enterprise, each may be held
8 liable for the unlawful acts and practices of other members of the enterprise. *FTC v. Network*
9 *Services Depot, Inc.*, 617 F.3d 1127, 1143 (9th Cir. 2010) (common enterprise may be
10 “demonstrated by a showing of strongly interdependent economic interests or the pooling of assets
11 and revenues”); *FTC v. WV Universal Mgmt., LLC*, 877 F.3d 1234, 1240 (11th Cir. 2017)
12 (recognizing that courts have justly imposed joint and several liability where a common enterprise
13 exists); *see also FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 637 (6th Cir. 2014) (affirming
14 finding a common enterprise and imposition of joint and several liability where each of the corporate
15 and individual defendants made up a “messy maze of interrelated business entities”).

16 There is no universal test for a common enterprise, but the inquiry is fact-specific, and courts
17 often look at a number of factors to determine whether there was a common enterprise, including
18 whether the companies operated under common control, whether they shared office space and/or
19 officers, whether their business was transacted through interrelated companies, whether they
20 commingled corporate funds or failed to maintain separation of the companies, whether they had
21 unified advertising, and whether the evidence reveals that no real distinction existed between the
22 corporate defendants. *See Network Services Depot, Inc.*, 617 F.3d at n.6 (affirming district court
23 finding that the defendants constituted a “single enterprise,” where there was shared ownership and
24 management, phone numbers, employees, emails, and all were involved in the promotion and sale of
25 the same thing); *see also CFTC v. Trade Exch. Network Ltd.*, 117 F. Supp. 3d 29, 38–39 (D.D.C.
26 2015) (setting forth the following common enterprise factors under Commodity Exchange Act cases:
27 “(1) maintain officers and employees in common, (2) operate under common control, (3) share
28 offices, (4) commingle funds, and (5) share advertising and marketing,” as well as whether

1 “corporate formalities are observed and whether the companies conduct business at arm's length”
2 (internal quotations and citations omitted).

3 Here, Defendants and the Scheme Entities are alleged to have acted as a single, integrated
4 common enterprise—they shared common control, assets, customers, solicitations, funds, resources,
5 had a unified marketing strategy, and business scheme. Compl. ¶¶ 67–70. Scheme Customer funds
6 were commingled in Justby’s bank accounts, and even when Scheme Customers withdrew money,
7 the funds came from other accounts under the control of the Scheme Enterprise. *Id.*

8 In addition, the transfer and flow of funds between the Defendants and the Scheme
9 Enterprise indicates that they were part of a common enterprise. Defendants purchased digital asset
10 commodities which were transferred to platforms controlled by the Scheme Entities, and Defendants
11 also sent wire transfers to bank accounts controlled by the Scheme Entities. Compl. ¶ 78. Wire
12 transfers from Scheme Customers into Justby’s bank accounts were reflected quickly in their
13 fictitious trading accounts, which were controlled by the Scheme Entities. *Id.* ¶¶ 50, 53. The sharing
14 common bank accounts, digital asset wallets, and digital asset commodity trading accounts indicates
15 a common enterprise. Accordingly, the Court finds a common enterprise here that supports joint and
16 several liability between Defendants and the Scheme Entities.

17 **b. Principal-Agent and Controlling Person Liability**

18 Under 7 U.S.C. § 2(a)(1)(B), and 17 C.F.R. § 1.2, a principal is strictly liable for the
19 violations of its officials, agents, or other persons acting for it within the scope of their employment
20 or office. *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986) (“[W]e have no doubt that
21 section 2(a)(1) imposes strict liability on the principal . . . provided, of course, as the statute also
22 states expressly, that the agent’s misconduct was within the scope or (equivalently but more
23 precisely) in furtherance of the agency.”); *see also Dohmen-Ramirez v. CFTC*, 837 F.2d 847, 858
24 (9th Cir. 1988) (finding “[i]t is not necessary to show control to establish agency under the CEA”).
25 The fraudulent conduct of Zhu occurred within the scope of his employment with Justby. Therefore,
26 Justby is liable for Zhu’s violations of the Act and Regulations pursuant to 7 U.S.C. § 2(a)(1)(B),
27 and 17 C.F.R. § 1.2 (2022).
28

1 Further, 7 U.S.C. § 13c(b) provides that any person who, directly or indirectly, controls any
2 person who has violated the Act, or the Regulations promulgated thereunder, may be held liable for
3 such violations to the same extent as the controlled person. To establish liability as a controlling
4 person pursuant to 7 U.S.C. § 13c(b), plaintiff must show that the person possesses the requisite
5 degree of control and either: (1) knowingly induced, directly or indirectly, the acts constituting the
6 violation; or (2) failed to act in good faith. *CFTC v. Equity Fin. Grp. LLC*, 572 F.3d 150, 160-61 (3d
7 Cir. 2009) (finding individual defendants liable as controlling persons for corporation’s failure to
8 register as commodity pool operator).

9 To establish the first element, a defendant must possess general control over the operation of
10 the entity principally liable. *See, e.g., R.J. Fitzgerald*, 310 F.3d at 1334 (recognizing an individual
11 who “exercised the ultimate choice-making power within the firm regarding its business decisions”
12 as a controlling person). Evidence that a defendant is the sole principal, stockholder, member of the
13 board of directors or the authorized signatory on the company’s bank accounts indicates the power to
14 control a company. CFTC must also show that a defendant possessed specific control, which is “the
15 power or ability to control the specific transaction or activity upon which the primary violation was
16 predicated.” *Monieson v. CFTC*, 996 F.2d 852, 860 (7th Cir. 1993) (internal quotation marks and
17 citation omitted). The defendant does not need to participate in or benefit from the wrongdoing; the
18 issue is whether the defendant has the power to address the illegal conduct. *Id.*

19 In addition to control, CFTC must show the controlling person knowingly induced, directly
20 or indirectly, the acts constituting the violation, or did not act in good faith. To show knowing
21 inducement, the Commission must show that a defendant had actual or constructive knowledge of
22 the core activities that constituted the violation of the Act or the Regulations, and allowed the
23 activities to continue. *R.J. Fitzgerald*, 310 F.3d at 1334. To show lack of good faith, CFTC must
24 show that a defendant failed to maintain a “reasonably adequate system of internal supervision and
25 control” or did not oversee the system “with any reasonable diligence.” *Monieson*, 996 F.2d at 860
26 (quoting *Harrison v. Dean Witter Reynolds, Inc.*, 974 F.2d 873, 881 (7th Cir. 1992)).

27 Here, Zhu is liable as a controlling person. Zhu was the sole owner, CEO and registered
28 agent of Justby. Compl. ¶ 31. Zhu admitted to Division staff that he exercised sole control over

1 Justby, set up Justby’s bank accounts and was responsible for its employees. *Id.* ¶ 32. Zhu controlled
2 Justby’s bank accounts and used the accounts to misappropriate Scheme Customer funds. *Id.* ¶ 78.
3 Therefore, Zhu knowingly induced the violations because he had actual or constructive knowledge
4 of the wrongdoing, and can be found liable for Justby’s violations.

5 iii. The sum of money at stake is reasonable to the conduct alleged.

6 This factor considers “the amount of money at stake in relation to the seriousness of the
7 defendant’s conduct,” and weighs in favor of a default judgment. *PepsiCo, Inc. v. Los Potros Dist.*
8 *Ctr., LLC*, No. CV-07-2425, 2008 WL 942283, at *3 (D. Ariz. Apr. 7, 2008). Defendants’ fraudulent
9 conduct constitute violations of the Act and Regulations. The relief sought by CFTC is reasonable—
10 both restitution and civil monetary penalties are authorized by the Act and Regulations. *See* 7 U.S.C.
11 § 13a-1(d); *see also CFTC v. Saffron*, 2023 WL 561316, at *2 (9th Cir. Jan. 27, 2023) (affirming
12 district court’s award of “restitution, disgorgement, and civil monetary penalties”). Moreover, the
13 relief sought is consistent with prior default judgment awards in similar CFTC actions. *See e.g.*,
14 *CFTC v. Am. Bullion Exch. ABEX Corp.*, No. SACV10–1876, 2014 WL 12603558, at *11 (C.D. Cal.
15 Sept. 16, 2014) (entering default judgment for CFTC and ordering defendants to pay a civil
16 monetary penalty exceeding \$14 million); *CFTC v. Safevest, LLC*, No. SACV08–00474, 2009 WL
17 2448116, at *4-5 (C.D. Cal. July 13, 2006) (after defendants’ default, Court ordered \$18.4 million in
18 disgorgement and \$2 million in civil monetary penalties); *cf. CFTC v. Schiera*, No. CV05 2660
19 CAS, 2006 WL 4586786, at *7, *9 (S.D. Cal. Dec. 11, 2006) (entering default judgment and
20 ordering defendants to disgorge \$3 million and pay a \$9 million civil monetary penalty).

21 iv. There is little possibility of dispute concerning the material facts.

22 Upon entry of default, all well-pleaded facts in the complaint are taken as true, except those
23 relating to damages. *See TeleVideo Systems*, 826 F.2d at 917-18. Here, the Complaint alleges the
24 facts necessary to establish its claims, and default has been entered against Defendants. Moreover,
25 CFTC has submitted a sworn declaration from an investigator who has made findings in this case to
26 support its claims. ECF No. 25-3 (“Vilenskiy Decl.”). As Defendants have not appeared nor asserted
27 any defenses, there is no possibility of a dispute of material fact at this time. Accordingly, the Court
28 finds that this factor weighs in factor of granting default judgment.

1 v. It is unlikely that Defendants acted with excusable neglect.

2 The Court next considers whether the default resulted from excusable neglect. It appears that
3 Defendants were properly served with the Summons and Complaint. ECF Nos. 20, 21. Moreover,
4 Defendants were provided notice of the Motion as well as the hearing date and failed to appear. ECF
5 No. 34.⁶ Accordingly, it appears unlikely that the default is a result of excusable neglect, and
6 therefore this factor weighs in favor of granting default judgment.

7 vi. The policy favoring resolution on the merits is negligible.

8 Although there is a preference to resolve cases on the merits, it is Defendants' failure to
9 respond to the Complaint that makes such a resolution impossible. Therefore, the Court finds that
10 this factor negligible in making a finding on whether to grant default judgment.

11 **IV. Remedies & Damages**

12 **A. Permanent Injunction**

13 7 U.S.C. § 13a-1(a) authorizes CFTC to seek injunctive relief against any person that has
14 engaged, is engaging, or is about to engage in any act or practice constituting a violation of any
15 provision of the Act or any rule, regulation, or order thereunder. Pursuant to 7 U.S.C. § 13a-1(a)
16 (2012), “[t]he CFTC is entitled to a permanent injunction upon a showing that a violation [of the Act
17 or Regulations] has occurred and is likely to continue unless enjoined.” *Driver*, 877 F. Supp. 2d at
18 981 (citations omitted). As a result, “[o]nce a violation is demonstrated, the [CFTC] need show only
19 that there is some reasonable likelihood of future violations.” *CFTC v. Wilson*, No. 11CV1561, 2011
20 WL 6398933, at *2 (S.D. Cal. Dec. 20, 2011) (quoting *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir.
21 1979)).

22 The Court may infer a likelihood of future violations of the Act and Regulations from past
23 unlawful conduct. *See Driver*, 877 F. Supp. 2d at 981 (“In drawing such an inference from past
24 violations, ‘the Court should look at the totality of the circumstances, and factors suggesting that the
25 infraction might not have been an isolated occurrence are always relevant.’”) (quoting *Co Petro*
26 *Mktg. Grp., Inc.*, 502 F. Supp. at 818). In deciding whether to issue a permanent injunction, the
27

28 ⁶ Defendants were also served notice of the initial hearing date of the Motion on November 9, 2023, in addition to the continued date of December 7, 2023. ECF No. 28.

1 Court may also consider “the egregiousness of the defendant’s actions, whether the violation was
 2 isolated or recurrent, the degree of scienter involved, the sincerity of the defendant’s assurances
 3 against future violations, the defendant’s recognition of his conduct’s wrongfulness, and the
 4 likelihood that the defendant’s occupation will present opportunities for future violations.” *Driver*,
 5 877 F. Supp. 2d at 981-82.

6 Here, the Court finds that given Defendants’ past conduct, and the egregiousness of the
 7 conduct, it is likely that they will be repeat violators of the Act and Regulations unless permanently
 8 enjoined by this Court. As alleged, Defendants fraudulently solicited and misappropriated at least
 9 \$1,352,843 from twenty-nine (29) individuals during the Relevant Period. Compl. ¶ 78; Vilenskiy
 10 Decl. ¶ 7–8.⁷ Moreover, Defendants went to great lengths to conceal their fraud, including by
 11 converting scheme customer funds to less-traceable digital assets, such as stablecoins, and funneling
 12 funds through various banks and digital wallets. *Id.* Based on the foregoing, the Court finds that the
 13 allegations of the Complaint, and the evidence CFTC has submitted in this action establish that
 14 Defendants have and there is a reasonable likelihood that Defendants will continue to violate the Act
 15 and Regulations unless permanently restrained and enjoined by this Court. The intentional and
 16 egregious nature of Defendants’ fraudulent conduct warrants permanent injunctive relief, including
 17 registration and trading bans. *See Saffron*, 2023 WL 561316, at *2 (affirming a district court’s
 18 permanent injunction banning a defendant from commodities trading). Accordingly, the Court will
 19 award injunctive relief.

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

21 i. Restitution

22 7 U.S.C. § 13a-1(d)(3)(A) authorizes CFTC to seek, and the Court to impose, equitable
 23 remedies for violations of the Act, including “restitution to persons who have sustained losses
 24 proximately caused by such violation (in the amount of such losses).” Restitution exists to “restore
 25 the status quo” and reflects “the difference between what defendants obtained and the amount
 26

27 ⁷ Vilenskiy has submitted that during the Relevant Period, he identified transactions from Scheme Customers,
 28 and specifically that \$758,500 was deposited into Justby’s JP Morgan Chase Bank account, \$230,100 was
 deposited into Justby’s Wells Fargo Bank account, and \$364,243.38 was deposited into Justby’s Bank of
 America account. Vilenskiy Decl. ¶¶ 17, 21, 23.

1 customers received back” *Driver*, 877 F. Supp. 2d at 981 (entering default judgment and
 2 ordering restitution equal to the amount of money solicited minus the amount returned to customers).

3 Defendants’ illegal conduct caused clients to incur net losses totaling \$1,352,843, which
 4 reflects the total funds Defendants fraudulently misappropriated minus the funds they returned to
 5 Scheme Customers. *See* n.7, *supra*. Accordingly, the Court will order Defendants to pay restitution
 6 in the amount of \$1,352,843, which reflects clients’ net losses plus post-judgment interest thereon.

7 ii. Civil Monetary Penalty

8 Pursuant to 7 U.S.C. § 13a-1(d)(1)(A) and 17 C.F.R. § 143.8(b)(1) (2022), CFTC is
 9 authorized to seek a civil monetary penalty (“CMP”) equal to the higher of triple a defendant’s
 10 monetary gain from each violation of the Act or Regulations, or \$214,514 per violation.⁸ A court
 11 may “fashion a civil monetary penalty appropriate to the gravity of the offense and sufficient to act
 12 as a deterrent.” *CFTC v. Trimble*, No. 11-cv-02887-PAB-KMT, 2013 WL 317576, at *9 (D. Colo.
 13 Jan. 28, 2013) (citing *Miller v. CFTC*, 197 F.3d 1227, 1236 (9th Cir. 1999)). Here, the Court finds
 14 that a significant CMP is warranted as Defendants’ conduct was intentional and caused significant
 15 harm to the Scheme Customers. *See Driver*, 877 F. Supp. 2d at 982 (noting that “a high civil
 16 monetary penalty is warranted where customers have been defrauded of a substantial amount of
 17 money”). Specifically, the Court finds that a CMP of triple the gain to Defendants from the fraud to
 18 be reasonable under these circumstances. *See id.* at 981, 983 (ordering payment of \$9.5 million
 19 restitution and a CMP of \$31.8 million). The total monetary gain to Defendants was \$1,352,843;
 20 triple the monetary gain to Defendants is \$4,058,529. Accordingly, the Court will order a civil
 21 monetary penalty in the rounded amount of four million dollars (\$4,000,000) (“CMP Obligation”).

22 **V. Conclusion**

23 For the foregoing reasons, the Court hereby GRANTS the Motion for Default Judgment and
 24 ORDERS as follows:

25
 26
 27 ⁸ 17 C.F.R. § 143.8 provides the statutory inflation adjustment amounts of civil monetary penalties.
 28 Specifically for non-manipulation violations, it provides that the civil monetary penalty to be imposed by a
 federal district court in a civil injunctive action is \$214,514 for violations after November 2, 2015. 17 C.F.R.
 § 143.8(b)(1).

- 1 1. The Court finds that Defendants have violated 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R.
2 § 5.2(b)(1)-(3) (2022);
- 3 2. The Court finds that Defendants have violated 7 U.S.C. § 9(1), and 17 C.F.R. §
4 180.1(a)(1)-(3) (2022);
- 5 3. Defendants and their agents, servants, employees, assigns, attorneys, holding companies,
6 alter egos, and persons in active concert or participation with them, including any of their
7 successors, are permanently restrained, enjoined, and prohibited from directly or
8 indirectly:
 - 9 a. engaging in conduct that violates 7 U.S.C. §§ 6b(a)(2)(A)-(C), 9(1), and 17 C.F.R.
10 §§ 5.2(b)(1)-(3) and 180.1(a)(1)-(3) (2022);
 - 11 b. trading on or subject to the rules of any registered entity (as that term is defined in
12 7 U.S.C. § 1a(40));
 - 13 c. entering into any transaction involving “commodity interests” (as that term is
14 defined in 17 C.F.R. § 1.3(yy)) for their own personal account or for any account
15 in which they have a direct or indirect interest;
 - 16 d. having any commodity interests traded on their behalf;
 - 17 e. controlling or directing trading for or on behalf of any other person or entity,
18 whether by power of attorney or otherwise, in any account involving commodity
19 interests;
 - 20 f. soliciting, receiving, or accepting any funds from any person for the purpose of
21 purchasing or selling any commodity interests;
 - 22 g. applying for registration or claiming exemption from registration with the CFTC
23 in any capacity, and engaging in any activity requiring registration or exemption
24 from registration with the CFTC, except as provided for in 17 C.F.R. § 4.14(a)(9)
25 (2022);
 - 26 h. acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2022)), agent,
27 or any other officer or employee of any person registered, exempted from
28 registration, or required to be registered with the CFTC, except as provided for in

1 17 C.F.R. § 4.14(a)(9) (2022); and

2 i. engaging in any business activities related to commodity interests.

3 4. Defendants are ordered to pay, on a joint and several basis, restitution in the amount of
4 \$1,352,843, which reflects clients’ net losses plus post-judgment interest thereon (the
5 “Restitution Obligation”). Post-judgment interest shall accrue beginning on the date of
6 entry of this Order and shall be determined pursuant to 28 U.S.C. § 1961.

7 a. The Court appoints the National Futures Association (“NFA”) as Monitor to
8 distribute payments made against the Restitution Obligation to Defendants’
9 clients. The Monitor shall collect restitution payments from Defendants and make
10 distributions as set forth below. Because the Monitor is acting as an officer of this
11 Court in performing these services, NFA shall not be liable for any action or
12 inaction arising from NFA’s appointment as Monitor, other than actions involving
13 fraud.

14 b. Defendants shall make Restitution Obligation payments under this Order to the
15 Monitor in the name “Cunwen Zhu Restitution Fund” and shall send such
16 payments by electronic funds transfer, or by U.S. postal money order, certified
17 check, bank cashier’s check, or bank money order, to the Office of
18 Administration, National Futures Association, 300 South Riverside Plaza, Suite
19 1800, Chicago, Illinois 60606, accompanied by a cover letter identifying
20 Defendants and the name and docket number of this proceeding. Defendants shall
21 simultaneously transmit copies of the cover letter and the form of payment to the
22 Chief Financial Officer, Commodity Futures Trading Commission, Three
23 Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

24 c. The Monitor shall oversee the Restitution Obligation and shall have the discretion
25 to determine the manner of distribution of such funds in an equitable fashion to
26 Defendants’ clients identified by the CFTC, or may defer distribution until such
27 time as the Monitor deems appropriate. In the event that the amount of Restitution
28 Obligation payments to the Monitor are of a de minimis nature such that the

1 Monitor determines that the administrative cost of making a distribution to
2 eligible clients is impractical, the Monitor may, in its discretion, treat such
3 restitution payments as civil monetary penalty payments, which the Monitor shall
4 forward to the CFTC pursuant to the instructions for civil monetary penalty
5 payments set forth below.

- 6 d. Defendants shall cooperate with the Monitor as appropriate to provide such
7 information as the Monitor deems necessary and appropriate to identify
8 Defendants' clients to whom the Monitor, in its sole discretion, may determine to
9 include in any plan for distribution of any Restitution Obligation payments.
10 Defendants shall execute any documents necessary to release funds that they hold
11 in any repository, bank, investment, or other financial institution, wherever
12 located, in order to make partial or total payment toward the Restitution
13 Obligation.
- 14 e. The Monitor shall provide the CFTC at the beginning of each calendar year with a
15 report detailing the disbursement of funds to Defendants' clients during the
16 previous year. The Monitor shall transmit this report accompanied by a cover
17 letter identifying the name and docket number of this proceeding to the Chief
18 Financial Officer, Commodity Futures Trading Commission, Three Lafayette
19 Centre, 1155 21st Street, N.W., Washington, D.C. 20581.
- 20 f. The amounts payable to each client shall not limit the ability of any client to
21 prove that a greater amount is owed from Defendants or any other person or
22 entity, and nothing herein shall be construed in any way to limit or abridge the
23 rights of any client that exist under state or common law.
- 24 g. Pursuant to Federal Rule of Civil Procedure 71, each Scheme Customer who
25 suffered a loss is explicitly made an intended third-party beneficiary of this Order
26 and may seek to enforce this Order to obtain satisfaction of any portion of the
27 Restitution Obligation that has not been paid by Defendants, to ensure continued
28

1 compliance with any provision of this Order, and to hold Defendants in contempt
2 for any violations of any provision of this Order.

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

6 5. Defendants shall pay, jointly and severally, a civil monetary penalty in the rounded
7 amount of four million dollars (\$4,000,000) (“CMP Obligation”). If the CMP Obligation
8 is not paid within 30 days of entry of this order, then post-judgment interest shall accrue
9 on the full CMP Obligation beginning on the date of entry of this Order and shall be
10 determined pursuant to 28 U.S.C. § 1961.

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

16 MMAC/ESC/AMK326
17 Commodity Futures Trading Commission
18 Division of Enforcement
19 6500 S. MacArthur Blvd.
20 Oklahoma City, OK 73169
21 (405) 954-6569 office
22 (405) 954-1620 fax
23 9-AMC-AR-CFTC@faa.gov

24 b. If payment by electronic funds transfer is chosen, Defendants shall contact Marie
25 Thorne or her successor at the address above to receive payment instructions and
26 shall fully comply with those instructions. Defendants shall accompany payment
27 of the CMP Obligation with a cover letter identifying Defendants and the name
28 and docket number of this proceeding. Defendants shall simultaneously transmit

1 copies of the cover letter and the form of payment to the Chief Financial Officer,
2 Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st
3 Street, N.W., Washington, D.C. 20581.

- 4 6. Acceptance by the CFTC or the Monitor of any partial payment of the Restitution
5 Obligation or the CMP Obligation shall not be deemed a waiver of Defendants'
6 obligation to make further payments pursuant to this Order, or a waiver of the CFTC's
7 right to seek to compel payment of any remaining balance;
- 8 7. The injunctive and equitable relief provisions of this Order shall be binding upon
9 Defendants, upon any person under their authority or control, and upon any person who
10 receives actual notice of this Order, by personal service, email, facsimile or otherwise
11 insofar as he or she is acting in active concert or participation with Defendants;
- 12 8. This Court shall retain jurisdiction of this action to ensure compliance with this Order and
13 for all other purposes related to this action, including any motion by Defendants to
14 modify, or for relief from, the terms of this Order.

15
16 IT IS SO ORDERED.

17
18 Dated: December 7, 2023

19 
20 MAAME EWUSI-MENSAH FRIMPONG
21 United States District Judge
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