

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 23-cv-23703-JB

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

ROBERTO PULIDO, *et al.*,

Defendants.

**ORDER ENTERING DEFAULT JUDGMENT, PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY AND ANCILLARY EQUITABLE RELIEF**

THIS CAUSE is before the Court on Plaintiff U.S. Commodity Futures Trading Commission's ("Plaintiff" or the "Commission") Motion for Entry of an Order for Default Final Judgment, Permanent Injunction, Civil Monetary Penalties, and Other Equitable Relief Against Defendants (the "Motion"). ECF No. [23]. No response to the Motion has been filed, and the deadline to do so has passed.

I. BACKGROUND

On September 28, 2023, Plaintiff filed its Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties under the Commodity Exchange Act ("Act") against Roberto Pulido a/k/a Berto Delvanicci ("Pulido") and Lions of Forex LLC ("LOF") (collectively, "Defendants"). ECF No. [1]. Plaintiff effected service of process on Defendants on November 13, 2023. ECF No. [6], Exhs. A and B. Defendant LOF has not appeared through counsel as required for an entity to defend against this action. On December 19, 2023, Plaintiff filed a Request for Entry of

Default against Defendant LOF, ECF No. [11], pursuant to Fed. R. Civ. P. 55(a). The Clerk of Court entered a default against Defendant LOF on December 20, 2023. ECF No. [12].

Defendant Pulido requested two extensions of time to file an Answer or otherwise defend (*see* ECF Nos. [8], [14]), the first of which the Court granted,¹ giving Pulido until January 15, 2024 to file an Answer or otherwise defend (ECF No. [10]). As to Pulido's second request for an extension, the Court imposed a deadline of February 9, 2024 for Pulido to file a response to the Complaint (ECF No. [19]). Defendant Pulido failed to file an Answer or otherwise respond by the Court's deadline of February 9, 2024, and still has not done so. On February 14, 2024, Plaintiff filed its Request for Entry of Default against Defendant Pulido (ECF No. [20]) pursuant to Fed. R. Civ. P. 55(a). Given that neither Defendant is an infant or incompetent person, and both Defendants were duly served with process and a copy of the Complaint yet failed to answer or otherwise defend this action within the time required by Rule 12(a)(1) of the Federal Rules of Civil Procedure, the Clerk of the Court entered default against Pulido on February 14, 2024. ECF No. [21]. On February 15, 2024, the Court issued an Order on Default Judgment Procedure. ECF No. [22]. The instant Motion followed.

¹ In that same Order, the Court also granted Defendant Pulido's request to seek representation through the Court's Volunteer Attorney Program and directed the Clerk to post an entry on the U.S. District Court for the Southern District of Florida's website. *See Order on Defendant's Motion for Referral to Volunteer Attorney Program and for Extension of Time* entered on December 13, 2023, ECF No. 10. *See also* posting dated December 15, 2023 at https://www.flsd.uscourts.gov/available_cases.

As mentioned, neither Defendant filed a response in opposition to the Motion. On October 24, 2024, the Court held oral argument on the Motion at which counsel for Plaintiff appeared and Defendant Roberto Pulido appeared *pro se* (the “Hearing”). Defendant Lions of Forex LLC did not appear at the Hearing because it is not represented by counsel. At the Hearing and as documented in the Court’s subsequent Paperless Order, the Court allowed Mr. Pulido to file a motion to set aside the Clerk’s default previously entered against him, as well as an answer to the Complaint, by November 4, 2024. ECF No. [31]. The Court specifically advised Mr. Pulido that “failure to do so may result in the entry of a default judgment against him.” *Id.*

Nonetheless, Mr. Pulido did not file a motion to set aside the Clerk’s default or an answer to the Complaint. Instead, on November 4, 2024, Mr. Pulido filed a “letter” to the Court “regarding the potential loss of [his] professional trading career that the CFTC is requesting due to a civil default.” ECF No. [32]. In his letter, Mr. Pulido does not attempt to set forth any grounds that might warrant vacatur of the default nor any defenses to the allegations in the Complaint. *Id.* To the contrary, Mr. Pulido states that he “understand[s] the default judgment” and expresses his opinion that “to end [his] personal trading for myself is not right” *Id.*

After multiple opportunities, Defendants have failed to articulate any reason why the relief requested in the Motion is improper. Accordingly, upon due consideration of the Motion and the exhibits attached thereto, and having carefully considered the Complaint, the allegations of which are well-pleaded and are taken as true for purposes of the Motion, the pertinent portions of the record, and the relevant

legal authorities, pursuant to Fed. R. Civ. P. 55(b)(2) and Local rule 7.1(a)(1)(e), it is hereby **ORDERED AND ADJUDGED** that the Motion, ECF No. [23], is **GRANTED**. The Court enters the following Order finding Defendants liable as to all violations as alleged in the Complaint, ECF No. [1], and imposes on Defendants a permanent injunction, registration and trading bans, a restitution obligation, civil monetary penalties, and ancillary equitable relief, as more fully described herein.

I. FINDINGS OF FACT

Except where noted below, the following Findings of Fact are set forth in the Complaint.

A. The Parties

1. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1-26, and the Regulations promulgated thereunder, 17 C.F.R. pts. 1-190.

2. Defendant **Roberto Pulido**, also known as Berto Delvanicci, is an individual whose last known address is in Miami, Florida. Pulido, using the name Berto Delvanicci, held himself out in various social media platforms as being the CEO of LOF, and, using the name Roberto Pulido, was listed as the sole manager of LOF in LOF's incorporation papers. Pulido was also the sole signatory to LOF's bank accounts. In at least one instance, Pulido signed an agreement bearing the LOF lion's head logo with a client to trade retail foreign currency ("forex") on his behalf. Pulido has never been registered with the Commission in any capacity.

3. Defendant **Lions of Forex LLC** is an entity registered to do business in the State of Florida and has never been registered with the Commission in any capacity.

B. Other Related Entity

4. Berto Delvanicci LLC (“BDLLC”) is an entity also registered to do business in the State of Florida and has never been registered with the Commission in any capacity. Pulido held himself out as the sole owner of BDLLC, was listed as the sole manager of BDLLC in BDLLC’s incorporation papers, and was the sole signatory to bank accounts opened in the name of BDLLC. BDLLC has never been registered with the Commission in any capacity.

C. Defendants’ Operation of LOF and BDLLC

5. In order to conduct the retail forex fraud scheme described herein, Pulido used a LOF website and accounts on social media platforms and established bank accounts in the name of LOF and BDLLC over which Pulido had sole control.

Incorporation Documents

6. On June 20, 2018, LOF’s incorporation documents were filed with the Florida Division of Corporations. According to that filing, Pulido is the sole person authorized to manage LOF; Article III of the incorporation documents states simply “Forex.” On October 8, 2019, a Limited Liability Company Reinstatement for LOF was filed with the Florida Division of Corporations. In that filing, Pulido was listed as the Registered Agent and sole Manager of LOF. On January 12, 2022, another Limited Liability Company Reinstatement for LOF was filed with the Florida

Division of Corporations and in this filing, Pulido again was listed as the Registered Agent and sole Manager of LOF.

7. On June 6, 2019, incorporation documents for BDLLC were filed with the Florida Division of Corporations. According to that filing, Pulido is the sole Manager and Registered Agent of BDLLC and the email address, infolionsofforex@gmail.com, was listed as the email address to be used for future annual report notifications for BDLLC. Also according to that filing, Article III simply states “consulting, marketing, software.”

Defendants’ Bank Accounts

8. On or about June 21, 2018, Pulido opened a bank account in the name of LOF at Citibank with a bank account number ending in 5964 (“LOF 5964”) for which he was the sole signatory.

9. In account opening documents for LOF 5964, Pulido indicated that he was the President and sole owner of LOF and that LOF was in the business of “mentorship and sales training for marketing and general sales” and also for “educational services for start of businesses (sic).”

10. On or about January 9, 2019, Pulido opened a bank account in the name of LOF at Wells Fargo Bank with bank account number ending in 1228 (“LOF 1228”).

11. In account opening documents for LOF 1228, Pulido indicated that he was the sole owner of LOF, that LOF was in the educational services industry, and that LOF offered “consulting business training and sales hospality (sic).”

12. Pulido was the sole signatory of LOF 1228.

13. On or about July 16, 2019, Pulido opened a bank account in the name of BDLLC at Wells Fargo Bank with bank account number ending in 7182 (“BDLLC 7182”).

14. In account opening documents for BDLLC 7182, Pulido indicated that he was the sole owner of BDLLC, that BDLLC was in the professional, scientific and technical services industries, and described the business of BDLLC to be that of “software consulting developer.”

15. Pulido was the sole signatory of BDLLC 7182.

16. On or about January 20, 2021, Pulido opened a bank account in the name of BDLLC at Citibank with bank account number ending in 3618 (“BDLLC 3618”).

17. In account opening documents for BDLLC 3618, Pulido indicated that he was the President and sole owner of BDLLC.

18. Pulido was the sole signatory of BDLLC 3618.

LOF's Website

19. According to LOF's website which was created on or about July 8, 2016, lionsofforex.com, Delvanicci is described as the founder and head trader of LOF. LOF's website further claimed that LOF offered an “exclusive forex trading & mentorship platform . . . by opening the doors to a \$5.3 trillion dollar a day industry” where subscribers to LOF's services would “learn to master the markets with veteran trader Berto Delvanicci.” The LOF website also explained that retail forex is traded on margin with a high degree of leverage.

20. LOF's website offered prospective subscribers various investment packages, all of which included sending subscribers signals to buy or sell retail forex for a monthly fee. Higher priced packages offered by LOF also included live one on one training with "Berto Delvanicci," daily webinars, and/or "live trading sessions" with "Berto Delvanicci" for which Defendants charged higher monthly fees.

C. Defendants' Retail Forex Fraud Scheme

21. Throughout the period of at least January 2019 to at least March 2021 (the "Relevant Period"), Defendants used multiple means or instrumentalities of interstate commerce, including phone, text messaging, app- and web-based social media platforms, and LOF's website www.lionsofforex.com, to market "Berto Delvanicci" to the public as a highly successful retail forex trader who consistently earned huge profits trading retail forex.

22. Defendants further marketed LOF as a provider of purportedly highly successful trading signal services in order to establish a relationship with prospective clients and ultimately induce them to send their funds to Defendants for the purported purpose of having Pulido exercise discretion to trade retail forex on their behalf.

23. For example, according to LOF's website, if you subscribe to LOF's signals service you would "get exclusive access" to retail forex signals from "7-figure trader Berto Delvanicci," LOF's "Founder [and] Head Trader" who had started trading in 2012 and had made a lifetime profit of \$1.7 million. The website further

stated that 90% of LOF's retail forex signals were profitable and that LOF's "consistent results speak for themselves (sic)—and our members can definitely agree!"

24. In addition, Pulido—again using the name Berto Delvanicci—posted numerous videos on social media platforms such as YouTube, Facebook and Instagram in which he claimed to have made profits trading according to his own signals. For example, in an Instagram post on or about September 27, 2017, Pulido stated "FOREX TURNED ME INTO A MILLIONAIRE" and, in a Facebook post on or about November 19, 2017, Pulido stated that "USDJPY^[2] IS MY GO TOO (sic) PAIR THIS IS WHY THE YEN IS TATTOOED ON ME GOT ME TO A MILLION." (Emphasis in original.)

25. Beginning in or about January 2019, Pulido began offering the opportunity to prospective clients, which included, in part, subscribers to LOF's signals service, to have Pulido purportedly trade retail forex on their behalf.

26. Pulido falsely guaranteed to clients and prospective clients that they would earn substantial monthly profits by having Pulido or aka "Berto" use his discretion to trade retail forex on their behalf. Pulido also falsely represented to clients and prospective clients that they could withdraw their funds and have them returned at any time. These statements were false at the time they were made and LOF knew that these statements were false. Indeed, clients were not paid their guaranteed profits as represented and client requests to withdraw and return their funds were ignored or simply refused.

² Meaning the currency pair U.S. Dollar/Japanese Yen.

27. A review of the bank accounts where client funds were deposited and/or transferred to (LOF 5964, LOF 1228, BDLLC 7182 and BDLLC 3618, (collectively the “Bank Accounts”) revealed that no funds were sent to or received from any trading firms and, instead, as further discussed below, client funds deposited in those Bank Accounts were withdrawn in cash, used to pay Pulido’s personal expenses and used to make debit card purchases. *See Declaration of Michael Cazakoff in Support of Plaintiff’s Motion for Default Judgment, Including Information Under the Servicemembers Civil Relief Act*, ECF No. [23-1], ¶ 19, Exh. D, filed on March 7, 2024.

28. The Complaint describes Defendants’ fraudulent conduct with respect to four specific clients.

Client #1

29. In or about early April 2019, a subscriber (“Client #1”) paid \$3,000 for one of LOF’s signals packages via Apple Pay. In or about mid-April 2019, Pulido, representing himself as “Berto,” told Client #1 located in California that if she invested her funds with Defendants, Pulido would use her funds to establish a retail forex trading account in her name and that he would exercise his discretion to trade on her behalf.

30. Pulido guaranteed Client #1 that, through his retail forex trading of her funds, he would pay her monthly profits, as set forth in Paragraph 33 below. He also promised her that she could withdraw her funds at any time.

31. Pulido also agreed to add \$3,000 to Client #1’s trading account that Client #1 had previously sent to LOF to purchase its signals subscription service.

32. Pulido directed Client #1 to transfer her funds into accounts LOF 1228 and LOF 5964 and to transfer funds to Defendants via Apple Pay. As a result of Pulido's promises, Client #1 transferred \$22,000 to Pulido as follows:

- a. between April 25 and 26, 2019, Client #1 deposited a total of in \$4,030 into LOF 5964;
- b. between April 23 and 26, 2019, Client #1 deposited a total of \$8,000 into LOF 1228; and
- c. between April 20 and 23, 2019, Client #1 paid approximately \$9,970 to Defendants via Apple Pay.

See ECF No. [23-1], ¶ 19, Exh. D.

33. After Client #1 sent her funds to accounts LOF 1228 and LOF 5964, on or about May 5, 2019, Pulido texted Client #1 ("May 5 Text") a breakdown, by month over a two-year time period, of the profits she was guaranteed to make from Pulido's trading of retail forex on her behalf. This May 5 Text referred to each month by number and then listed the profits for that month as follows:

"1 \$2,000
2 \$2,250
3 \$2,500
4 \$3,000
5 \$3,250
6 \$3,500
7 \$3,700
8 \$4,000
9 \$4,500
10 \$5,000
11 \$5,250
12 \$5,500

1 \$5,700

2 \$6,000
3 \$6,200
4 \$6,500
5 \$6,700
6 \$7,000
7 \$7,200
8 \$7,500
9 \$7,700
10 \$8,000
11 \$8,200”

34. After Client #1 made her final deposit in April 2019, Defendants then provided a written contract to Client #1 which listed her monthly guaranteed profit (next to a month number) in the same amount as was listed on the May 5 Text. The contract further stated that Client #1’s funds would turn “into a consistent variable return per month” which “is guaranteed and delivered on the 1st of each month” and that the “Term of Investment” was “24 months.”

35. The contract also stated that “all trades will be documented and the amount made will be shown for the investor to review monthly.”

36. Since the contract, like the May 5 Text, did not include a specific month and year when the stated monthly guaranteed profits would be paid, Client #1 added this information to the contract. Specifically, Client #1 wrote into the contract that the first month of guaranteed profits would begin in June 2019 and continue monthly through May 2021. Client #1 then signed the contract on May 7, 2019 and returned it to Pulido.

37. However, on or about June 1, 2019—the date Client #1 was to receive her first guaranteed monthly profit payment according to the contract—Client #1

texted Pulido, “Hey Berto! [I]t’s the 1st, how will we handle the statement and payment?”

38. On or about June 2, 2019, Pulido stated in a text to Client #1 that Pulido “waited to sign the contract [until] June 1st;” that “everything else [in the contract] looks good[,] jus[t] move the dates forward by 1 [month];” and that Client #1’s account was “all set up and ready to go.”

39. On or about July 9, 2019, when Client #1 had not yet received her monthly guaranteed profit for July, Client #1 texted Pulido and requested that he provide proof that he had paid her the guaranteed monthly profit. In response, Pulido texted Client #1 and stated that “your investments are done through me and I waited on your info you didn’t send until later I didn’t see your message until recent just want to clarify that sending out[.] Moving forward just understand the game plan cool?”

40. On or about July 12, 2019, when Client #1 still had not received her monthly guaranteed profit for July, she again sent a text to Pulido asking why the profits had not yet been paid. In response, Pulido texted Client #1, “[h]ey don’t [t]hink I forgot about you G[irl]f[riend] got in a[n] accident not home yet bare (sic) with me.”

41. On or about July 13, 2019, Defendants paid Client #1 \$1,860.00 instead of the guaranteed monthly profit for July of \$2,000. *See* ECF No. [23-1], ¶ 19, Exh. D. When confronted by Client #1 as to why she had not been paid the full guaranteed amount of \$2,000, Pulido stated that he charged a fee for tax purposes.

42. On or about August 1, 2019, Client #1 texted Pulido requesting her guaranteed monthly profit for August. On or about August 3, 2019, when Client #1 still did not receive her monthly payment for August, Client #1 texted Pulido again asking him to send the guaranteed payment. On or about August 4, 2019, Defendants paid \$2,092.50 to Client #1 instead of the full guaranteed amount of \$2,250. *See* ECF No. [23-1], ¶ 19, Exh. D.

43. On or about August 17, 2019, Client #1 asked Pulido in a text to provide her “with the last two months trades [that Pulido had] made on the account.” Pulido responded by text, “[w]hat do you mean?” and never provided Client #1 with any trading documentation.

44. On or about September 1, 2019, Client #1 texted Pulido requesting her guaranteed monthly retail forex trading profit for September. On or about September 4, 2019, after Client #1 still had not received her guaranteed September payment, Client #1 sent a text to Pulido demanding that her money be returned. She further stated in that text: “Berto your service is the wors[t] I’ve ever experienced. Please send me back my 25k I’m done playing games with you.”

45. Defendants have not paid Client #1 her guaranteed monthly profits for September 2019 or for any of the remaining months pursuant to the contract (October 2019 through May 2021). Nor did Defendants provide any documentation of any trades and profits made by Defendants on behalf of Client #1. Further, in spite of Client #1’s repeated requests to return her original investment of \$25,000, Defendants have failed to do so.

46. No funds were deposited into accounts LOF 5964 and LOF 1228 from any trading firms and no funds were transferred from these accounts to any trading firms. Instead, after Client #1 made the deposits into these accounts, the funds were used in large part to make debit card purchases, cash withdrawals, payments to American Express and third parties for jewelry, cable and wireless phone service providers, and transfers to Pulido's personal checking account. *See* ECF No. [23-1], ¶ 19, Exh. D.

Client #2

47. After observing Pulido's postings on Instagram regarding his retail forex trading, another client "(Client #2)" contacted Pulido and beginning in or about May 2019, Pulido offered to trade retail forex on behalf of Client #2 who was located in California. Pulido guaranteed that Defendants would pay Client #2 a "residual income" of between \$5,000 and \$20,000 each month generated by Pulido's successful retail forex trading on Client #2's behalf. Pulido directed Client #2 to transfer funds to LOF 1228.

48. As a result of these representations, between May 9 and 13, 2019, Client #2 transferred a total of \$55,000 to account LOF 1228. *See* ECF No. [23-1], ¶ 19, Exh. D.

49. On or about July 5, 2019, Client #2 transferred an additional \$5,000 to account LOF 1228, again, for Pulido to use his discretion to trade retail forex on Client #2's behalf. *See* ECF No. [23-1], ¶ 19, Exh. D.

50. Defendants have not paid any guaranteed monthly trading profits to Client #2 and Defendants have not returned any of Client #2's funds.

51. Again, no funds were deposited into account LOF 1228 from any trading firms and no funds were transferred from this account to any trading firms. Instead, after Client #2 made the deposits into LOF 1228, Pulido withdrew a large portion of the funds in cash and used the funds to make debit card purchases for food and a car payment. See ECF No. [23-1], ¶ 19, Exh. D.

Client #3

52. Beginning in or about July 2019, Pulido offered to trade retail forex on behalf of another client (“Client #3”) who also was a subscriber. Client #3 was located in Michigan and Pulido guaranteed that Defendants would pay Client #3 monthly profits derived from Pulido using his discretion to trade retail forex on behalf of Client #3. Pulido directed Client #3 to transfer funds to account LOF 1228.

53. Defendants and Client #3 entered into a written contract signed by both Pulido and Client #3, bearing the same lion’s head image that appears on LOF’s website, and dated July 12, 2019 which contained the following terms:

- a. “[t]urning \$75,000 into a consistent \$2,000-\$10,000 **RESIDUAL** per month. Promised and delivered on the 1st of each month.” (emphasis in original);
- b. Over a period of 24 months;
- c. “[a]s an Extensive EXPERIENCED Trader we will use our skills to lower almost all risks involved in [forex] trading for assurance;” and

d. Client #3 would “be able to withdraw your funds with no issue if you decide too (sic) you will need to email me at InfoLionsOfForex@gmail.com”.

54. As a result of these representations, Client #3 wired \$75,000 to account LOF 1228 on July 15, 2019. *See* ECF No. [23-1], ¶ 19, Exh. D.

55. On July 15, 2019, the same day that Client #3 wired funds to Defendants, Client #3 changed his mind, decided not to invest with Defendants, and requested via email to InfoLionsOfForex@gmail.com that Defendants return his funds. Instead of returning Client #3’s funds as requested, the very next day—July 16, 2019—Pulido transferred \$70,000 from account LOF 1228 to account BDLLC 7182 and then used the funds from account BDLLC 7182 to make debit card purchases, a credit card payment, and to transfer funds to Pulido’s personal checking account. No funds were deposited into accounts LOF 1228 or BDLLC 7182 from any trading firms and no funds were transferred from these accounts to any trading firms. *See* ECF No. [23-1], ¶ 19, Exh. D.

56. Defendants have never paid Client #3 any guaranteed monthly profits. Nor have Defendants returned any of Client #3’s funds despite repeated requests by Client #3 to do so.

Client #4

57. After observing Pulido’s social media postings regarding his trading of retail forex, another client (“Client #4”) contacted Defendants to subscribe to LOF’s signals trading service. Beginning in or about March 2021, Pulido offered to trade

retail forex on behalf of Client #4 who was located in Arizona. Pulido promised that he would open up a trading account in the name of Client #4 at a brokerage where Pulido maintained an account and Client #4's account will be linked to Pulido's account. Pulido represented to Client #4 that by linking their accounts, Pulido would make the same retail forex trades in Client #4's account as Pulido was making in his own account.

58. Pulido guaranteed to Client #4 that he would make profits trading retail forex with Client #4's funds and represented that he would split those trading profits, with Client #4 receiving 50% and Pulido receiving 50% of the profits. Pulido further represented that he would give Client #4 access to view Client #4's trading account and that Client #4's guaranteed monthly profits would be paid in either bitcoin or through a bank to bank transfer service.

59. Pulido directed Client #4 to transfer his funds to account BDLLC 3618. As a result of Pulido's representations, on March 12, 2021, Client #4 transferred \$16,050 to BDLLC 3618. *See* ECF No. [23-1], ¶ 19, Exh. D.

60. Defendants never paid any guaranteed profits to Client #4 and Defendants never provided Client #4 access to Client #4's purported trading account records.

61. Defendants have not returned any of Client #4's funds in spite of requests by Client #4 to do so, including through a letter dated April 14, 2021 demanding the return of his funds sent by Client #4's counsel mailed via certified mail to Pulido.

62. Again, no funds were deposited into account BDLLC 3618 from any trading firms and no funds were transferred from this account to any trading firms. Instead, after Client #4 made the deposits into BDLLC 3618, Pulido withdrew a large portion of the funds in cash, wired a portion of the funds to a third party and used the remaining funds to make debit card purchases. *See* ECF No. [23-1], ¶ 19, Exh. D.

63. At least one of the four clients was not an Eligible Contract Participant (“ECP”)³. *See* ECF No. [23-1], ¶ 19(f), (g).

II. CONCLUSIONS OF LAW

Upon a defendant’s default, the well-pleaded factual allegations of the Complaint, except those relating to the amount of damages, will be taken as true for the purpose of establishing liability. *CFTC v. FX Prof'l Int'l Solutions, Inc.*, No. 1:10-CV-22311-PCH, 2010 WL 5541050, at *4 (S.D. Fla. Nov. 29, 2010); *see also Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987).

A. Jurisdiction and Venue

64. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (providing that district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). In addition, Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), provides that district courts have jurisdiction to

³ An Eligible Contract Participant is defined in Section 1a(18)(A)(xi) of the Act, 7 U.S.C. § 1a(18)(A)(xi), in relevant part, as an individual, acting for their own account, who has amounts invested on a discretionary basis, the aggregate of which is in excess of: (a) \$10,000,000 or (b) \$5,000,000 and who enters into the forex transaction in order to manage the risk associated with an asset owned or liability incurred by the individual.

hear actions brought by the Commission for injunctive and other relief or to enforce compliance with the Act whenever it shall appear to the Commission that 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 any rule, regulation, or order thereunder.

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

B. Defendants Violated Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C), and Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2022) (Retail Forex Fraud Violations)

66. 7 U.S.C. § 6b(a)(2)(A) and (C), in relevant part, makes 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 that is made, or to be made, other than on or subject to the rules of a designated contract market, for or on behalf of any other person: (A) to cheat or defraud or attempt to cheat or defraud such other person; or (C) willfully to deceive or attempt to deceive such 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.

67. Pursuant to Section 2(c)(2)(C)(ii)(I) of the Act, 7 U.S.C. § 2(c)(2)(C)(ii)(I), the retail forex transactions described herein are “subject to” Section 4b of the Act, 7 U.S.C. § 6b, and any exceptions noted in this section are not relevant here.

68. Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv), states in relevant part that Section 4b of the Act, 7 U.S.C. § 6b, applies to retail forex transactions described herein as if they were contracts of sale of a commodity for future delivery.

69. Section 2(c)(2)(C)(vii) of the Act, 7 U.S.C. § 2(c)(2)(C)(vii), states, in relevant part, that the Act “applies to, and the Commission shall have jurisdiction over, an account . . . that is offered for the purpose of trading . . . in foreign currency” described herein.

70. 17 C.F.R. § 5.2(b), makes it unlawful in relevant part:

[F]or 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; . . . or (3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

71. As described above, Pulido violated 7 U.S.C. § 6b(a)(2)(A) and (C) and 17 C.F.R. § 5.2(b)(1) and (3) during the Relevant Period by, among other things, falsely guaranteeing profits to clients from trading retail forex on their behalf and falsely representing to clients that they could withdraw their funds and have them returned at any time.

72. Pulido engaged in the acts and practices described above using instrumentalities of interstate commerce, including but not limited to: social media platforms, LOF’s website, texts and other forms of electronic and telephonic communications.

73. LOF willfully aided and abetted Pulido's retail forex fraud violations by: (1) using its own LOF website to tout the trading expertise of Berto Delvanicci and to enable Pulido to identify prospective clients to defraud; (2) using its own LOF bank accounts to receive client funds that were fraudulently solicited from clients by Pulido; (3) allowing Pulido to use the LOF bank accounts for Pulido's personal use; (4) listing its LOF email address in the contract with client #3 and using the same lion's head image that appears on LOF's website on the contract with client #3; and (5) using its LOF email address to communicate directly with clients who were defrauded. Further, LOF knew that Pulido's statements to clients guaranteeing profits and promising the return of their funds were false. By these acts, LOF knowingly associated itself with Pulido's retail forex fraud scheme and participated in it to make it succeed and thereby willfully aided and abetted Pulido in identifying, targeting and fraudulently inducing clients to invest their funds for the purported purpose of having Pulido use his discretion to trade retail forex on their behalf and providing a false sense of legitimacy to Pulido's scheme. LOF therefore is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b), for each separate and distinct occasion on which LOF aided and abetted Pulido in violating 7 U.S.C. § 6b(a)(2)(A) and (C) and 17 C.F.R. § 5.2(b)(1) and (3).

74. Pulido directly or indirectly controls LOF, and did not act in good faith or knowingly induced, directly or indirectly, LOF's violations, and is thus liable for LOF's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

75. Pulido engaged in the acts and practices described above willfully or with reckless disregard for the truth.

76. Each act of misrepresenting and omitting material information, including, but not limited to, those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 6b(a)(2)(A) and (C).

C. Defendants Violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (CTA Fraud Violations)

77. Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B), in relevant part, makes it unlawful for a commodity trading advisor or associated person of a commodity trading advisor (“CTA”), “by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly” (A) “to employ any device, scheme or artifice to defraud any client or participant or prospective client or participant” or (B) “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.”

78. Pursuant to Section § 2(c)(2)(C)(ii)(I) of the Act, 7 U.S.C. § 2(c)(2)(C)(ii)(I), the retail forex transactions described herein are “subject to” Section 4o of the Act, 7 U.S.C. § 6o, and the exceptions listed in this section are not applicable here.

79. Section 2(c)(2)(C)(vii) of the Act, 7 U.S.C. § 2(c)(2)(C)(vii), states, in relevant part, that the Act “applies to, and the Commission shall have jurisdiction over, an account . . . that is offered for the purpose of trading . . . in foreign currency” described herein.

80. Section 1a(12)(A)(i) of the Act, 7 U.S.C. § 1a(12)(A)(i), provides, in relevant part, that “the term commodity trading advisor means any person who—for compensation or profit, engages 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—(I) any contract of sale of a commodity for future delivery, . . . any agreement, contract or transaction described in section 2(c)(2)(C)(i) of the Act.

81. Pulido was a CTA and violated 7 U.S.C. § 6o(1)(A) and (B), in that, for compensation or profit, and by using the mails or any means or instrumentality of interstate commerce (i.e., by the use of social media platforms, LOF’s website, texts and other forms of electronic and telephonic communications), and while engaging in the business of advising others about retail forex trading, he directly or indirectly employed a device, scheme or artifice to defraud clients, or engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon any clients, by among other things, falsely guaranteeing profits to clients from trading retail forex on their behalf and falsely representing to clients that they could withdraw their funds and have them returned at any time.

82. Pulido engaged in the acts and practices described above willfully or with reckless disregard for the truth.

83. LOF willfully aided and abetted Pulido’s CTA fraud violations by: (1) using its own LOF website to tout the trading expertise of Berto Delvanicci and to enable Pulido to identify prospective clients to defraud; (2) using its own LOF bank

accounts to receive client funds that were fraudulently solicited from clients by Pulido; (3) allowing Pulido to use the LOF bank accounts for Pulido's personal use; (4) listing its LOF email address in the contract with client #3 and using the same lion's head image that appears on LOF's website on the contract with client #3; and (5) using its LOF email address to communicate directly with clients who were defrauded. Further, LOF knew that Pulido's statements to clients guaranteeing profits and promising the return of their funds were false. By these acts, LOF knowingly associated itself with Pulido's retail forex fraud scheme and participated in it to make it succeed and thereby willfully aided and abetted Pulido in identifying, targeting and fraudulently inducing clients to invest their funds for the purported purpose of having Pulido use his discretion to trade retail forex on their behalf and providing a false sense of legitimacy to Pulido's scheme. LOF therefore is liable under 7 U.S.C. § 13c(b) for each separate and distinct occasion on which LOF aided and abetted Pulido in violating 7 U.S.C. § § 6o(1)(A) and (B)

84. As set forth in Paragraphs 2, 6, 7, 8-12, 19-20, 25, 27, 32, 47-49, 52-54, and 57-59 in the Findings of Fact above, Pulido directly or indirectly controls LOF, and did not act in good faith or knowingly induced, directly or indirectly, LOF's violations, and he is thus liable for LOF's CTA fraud violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

85. Each act of Defendants misrepresenting and omitting material information, including, but not limited to, those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 6o(1)(A) and (C).

III. REMEDIES

A. Permanent Injunction

86. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the CEA, as amended, 7 U.S.C. § 13a-1, Defendants are permanently restrained, enjoined and prohibited from directly or indirectly engaging in conduct in violation of Sections 4b(a)(2)(A) and (C) and 4o(1)(A), (B) of the Commodity Exchange Act (“Act), and Commission Regulation 5.2(b)(1) and (3).

87. Defendants Pulido and LOF are also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2022)) for his/her/their/its own personal account or for any account in which he/she/they/it has/have a direct or indirect interest;
- c. Having any commodity interests traded on his/her/their/its behalf;
- d. 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 interests;
- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- f. 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) (2022); and/or

- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2022)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38)) 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) (2022).

B. Restitution

88. Defendants shall pay, jointly and severally, restitution in the amount of \$172,097.50 **no later than November 25, 2024**, (the “Restitution Obligation”).⁴ If the Restitution Obligation is not paid in full by **November 25, 2024**, Defendants shall pay, jointly and severally, post-judgment interest which shall accrue on the Restitution Obligation beginning on the date of entry of this Order and shall be

⁴ With respect to restitution, joint and several liability is appropriate because Pulido controlled LOF and also engaged in illegal conduct. *Cf. SEC v. Monterosso*, 756 F.3d 1326, 1337 (11th Cir. 2014) (“It is a well settled principle that joint and several liability is appropriate in securities laws cases where two or more individuals or entities have close relationships in engaging in illegal conduct.”) (citation omitted); *CFTC v. Hunter Wise Commodities, LLC*, 21 F.Supp.3d 1317, 1350-53 (S.D. Fla. May 16, 2014) (imposing joint and several liability for restitution, disgorgement and civil monetary penalty on corporate entity and two individual defendants who were controlling persons); *CFTC v. Omega Knight 2, LLC*, 18-CV-22377, 2019 WL 6796128 at * 11 (S.D.Fla. Sept. 16, 2019) (individual defendant was a controlling person of corporate defendant and therefore jointly and severally liable for violations of the Act); *see also* Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (controlling persons may be held liable “to the same extent” as the controlled person).

determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

89. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants' clients, 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.

90. Defendants shall make Restitution Obligation payments under this Order to the Monitor in the name "Roberto Pulido – 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.

91. 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' clients 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 clients 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 Part B below.

92. Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's clients 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.

93. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' clients 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.

94. The amounts payable to each client shall not limit the ability of any client 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 client that exist under state or common law.

95. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each client of Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order 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 Order and to hold Defendants in contempt for any violations of any provision of this Order.

96. 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.

C. Civil Monetary Penalty

97. Defendants shall, jointly and severally, pay a civil monetary penalty in the amount of \$516,292.50, which represents triple the Defendants' gain of \$172,097.50, **no later than November 25, 2024**, (the "CMP Obligation").⁵ If the CMP Obligation is not paid in full by **November 25, 2024**, then Defendants shall pay, jointly and severally, post-judgment interest which shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2006). Defendants shall pay their CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified

⁵ For the same reasons noted above with respect to restitution, joint and several liability as to a civil monetary penalty is likewise appropriate.

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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Defendants shall contact the Federal Aviation Authority at the above email address 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.

D. Provisions Related to Monetary Sanctions

98. Partial Satisfaction: Acceptance by the Commission or the Monitor of any 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 Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

E. Miscellaneous Provisions

99. Order of Payments: 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 CMP Obligation.

100. Prohibition on Transfer of Funds: Defendant 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.

101. Equitable Relief: 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.

102. Notice: All notices required to be given by any provision in this Order 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
290 Broadway, 6th Floor
New York, NY 10007

Notice to Monitor:

Executive Vice President, Compliance
National Futures Association
300 South Riverside Plaza, Suite 1800
Chicago, Illinois 60606

All such notices to the Commission or the Monitor shall reference the name and docket number of this action.

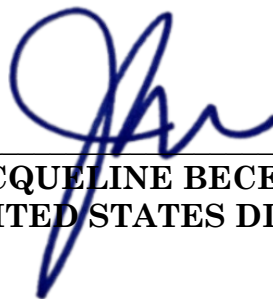
103. Change of Address/Phone: Until such time as Defendants satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Order, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

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

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

The Clerk is **DIRECTED TO CLOSE** this case. The Court will separately enter an order of Final Default Judgment.

DONE AND ORDERED, at Miami, Florida on this 13th day of November, 2024.

A handwritten signature in blue ink, appearing to read 'JB', is written over a horizontal line.

JACQUELINE BECERRA
UNITED STATES DISTRICT JUDGE