

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

Case No: 6:23-cv-01445-AGM-DCI

JUAN PABLO VALCARCE, BRIAN
EARLY, ALISHA ANN KINGREY,
FUNDSZ and RACHEL LARRALDE,

Defendants.

**ORDER GRANTING MOTION FOR FINAL JUDGMENT AFTER DEFAULT
AS TO DEFENDANTS BRIAN EARLY AND ALISHA ANN KINGREY**

THIS CAUSE comes before the Court on Plaintiff's Motion Requesting Order of Default Judgment, Permanent Injunctive Relief, Restitution, Civil Monetary Penalties, and Other Equitable Relief Against Defendants Brian Early and Alisha Ann Kingrey (the "Motion"; Doc. # 207). No party opposes the Motion and the time to file opposition has passed. On review of the Motion, it is due to be granted and final judgment is due to be granted in favor of Plaintiff Commodity Futures Trading Commission's ("CFTC" or "Commission") against Defendants Brian Early ("Early") and Alisha Ann Kingrey ("Kingrey") (collectively, "Defaulting Defendants"), permanently enjoining Defaulting Defendants from committing further violations of the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1-26, and Commission Regulations ("Regulations"), 17 C.F.R. pts. 1-190 (2026), imposing restitution, civil monetary penalties, and ordering other ancillary equitable relief.

Pursuant to the Court’s April 4, 2025 Order (Doc. # 153), Defaulting Defendants’ Answers to the CFTC’s Amended Complaint were stricken (Doc. # 153), and a Clerk’s Entry of Default was entered against Defaulting Defendants on April 7, 2025 (Doc. # 155).¹ The CFTC’s claims against Defaulting Defendants are the only remaining claims in this action following the voluntarily dismissal of Fundsz (Doc. # 186) and the recent entry of Consent Orders as to Defendants Larralde and Valcarce (Docs. # 205, 206).

I. Background

On July 31, 2023, the CFTC filed this action against Defaulting Defendants, individual defendants Rene Larralde and Juan Pablo Valcarce, and defendant unincorporated entity Fundsz. (Doc. # 1). The CFTC alleged that from at least October 2020 through August 8, 2023 (the “Relevant Period”), the defendants, individually and as principals and agents of Fundsz, fraudulently solicited, accepted, and pooled contributions from the general public to trade cryptocurrencies and precious metals in the Fundsz “passive income platform” that they operated. *See* Amended Complaint (Doc. # 57). Both Defendants Early and Kingrey were active participants in this fraud, which ultimately resulted in \$15,732,455.40 in investor losses. Accordingly, relying on the CFTC’s well-pleaded allegations and supported by the evidence submitted with this Motion, the CFTC sought a default judgment order permanently enjoining

¹ In the April 4, 2025 Order, the Court ordered the CFTC to move for default judgment against Defaulting Defendants within 21 days of the resolution of all claims in this case. (Doc. # 153).

Defaulting Defendants from engaging in these unlawful acts and practices and ordering restitution, civil monetary penalties, and other ancillary equitable relief.

II. Procedural History

On July 31, 2023, the CFTC also filed an emergency motion for an *ex parte* Statutory Restraining Order, preliminary injunction, and appointment of a temporary receiver. (Doc. # 5). The Court granted the CFTC's motion on August 2, 2023. (Doc. # 11). On August 23, 2023, a Consent Order for Preliminary Injunction was entered against all Defendants. (Doc. # 43).

As it relates to Defaulting Defendants specifically, the CFTC alleged that Early and Kingrey each committed fraud by material representations and omissions in violation of Section 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2026). Defaulting Defendants, appearing *pro se*, consented to the Preliminary Injunction and filed Answers in this action. (Docs.# 41-2, 41-3, 96, 97). However, when Defaulting Defendants subsequently failed to participate in this action and failed to make initial disclosures and respond to written discovery, the Court struck their Answers as a sanction and ordered the Clerk of the Court to enter default. (Doc. # 153). A Clerk's Entry of Default was entered on April 7, 2025. (Doc. # 155).

III. Legal Standard

Federal Rule of Civil Procedure 55 establishes a two-step process for obtaining a default judgment. First, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). Second, the party

must then apply to the court for a default judgment. Fed. R. Civ. P. 55(b). “Before entering default judgment, the court must ensure that it has jurisdiction over the claims and parties, and that the well-pled factual allegations of the complaint, which are assumed to be true, adequately state a claim for which relief may be granted.” *United States v. Shiffman*, No. 6:20-cv-1747-PGB-DCI, 2021 WL 4208698, at *2 (M.D. Fla. Aug. 23, 2021) (citing *Nishimatsu Constr. Co. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)) (recommending default judgment), *report and recommendation adopted*, 2021 WL 8201504 (M.D. Fla. Sept. 13, 2021).

“[A] defaulted defendant is deemed to admit the plaintiff’s well-pleaded allegations of fact, [but the defendant] is not held to admit facts that are not well-pleaded or to admit conclusions of law.” *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1245 (11th Cir. 2015) (per curiam) (citation omitted). Accordingly, entry of default judgment is “only warranted when there is ‘a sufficient basis in the pleadings for the judgment entered.’” *Id.* (quoting *Nishimatsu*, 515 F.2d at 1206). A “sufficient basis” for default judgment is “akin to that necessary to survive a motion to dismiss for failure to state a claim.” *Surtain*, 789 F.3d at 1245 (citation omitted); thus, conceptually a “motion for default judgment is like a reverse motion to dismiss for failure to state a claim.” *Id.* To survive a motion to dismiss for failure to state a claim, the “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

“In determining whether the pleadings stated a valid claim, we apply the same analysis used to evaluate Federal Rule of Civil Procedure 12(b)(6) motions to dismiss.” *Thornton v. Hosp. Mgmt. Associates, Inc.*, 787 F. App’x 634, 638 (11th Cir. 2019) (affirming entry of default

judgment) (citation omitted). The complaint “need not contain detailed factual allegations,” though a complaint that only offers “‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *CFTC v. US Coin Bullion LLC*, No. 6:20-cv-40-PGB-LRH, 2021 WL 8946141, at *4 (M.D. Fla. Dec. 29, 2021) (default judgment recommendation) (quoting *Iqbal*, 556 U.S. at 678), *report and recommendation adopted*, 2022 WL 2911768 (M.D. Fla. Jan. 19, 2022).

An evidentiary hearing to fix the amount of damages is ordinarily required unless, as here, the damages are “capable of mathematical calculation.” *See Cont’l Ins. Co. v. Randall Constr. Holdings, Inc.*, No. 6:24-cv-29-GAP-DCI, 2024 WL 4268076, at *4 (M.D. Fla. Sept. 6, 2024) (default judgment recommendation), *report and recommendation adopted*, 2024 WL 4264413 (M.D. Fla. Sept. 23, 2024). Indeed, no hearing is required “‘when the district court already has a wealth of evidence . . . such that any additional evidence would be truly unnecessary to a fully informed determination of damages.’” *Id.* (citations omitted). Further, an evidentiary hearing may be unnecessary where damage calculations are adequately reflected in a declaration filed under penalty of law. *Id.*

IV. Jurisdiction

The Court has “original jurisdiction of all civil actions arising under the . . . laws . . . of the United States.” 28 U.S.C. § 1331. It also has jurisdiction under 28 U.S.C. § 1345, which grants district courts “original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.” In addition, 7 U.S.C. § 13a-1(a) provides that U.S. district courts have jurisdiction to hear actions brought by the Commission for injunctive and other relief or to enforce

compliance with the CEA 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 CEA or any rule, regulation, or order thereunder. Further, the Court has previously found that Defaulting Defendants admitted the Court's jurisdiction over them when they consented to entry of the preliminary injunction. *See* Order (Doc. # 93, at p. 2) (denying Defaulting Defendants' personal jurisdiction challenges). Accordingly, the Court has jurisdiction over Defaulting Defendants and to grant the CFTC relief.

V. Facts

Fundsz began operating in October 2020. During the Relevant Period, Defaulting Defendants each served as members of the Fundsz Advisory Board and as moderators on Fundsz's Telegram group, which was Fundsz's primary method of communicating with participants. Fundsz operated out of the individual defendants' residences.

Defaulting Defendants each solicited prospective participants to contribute to Fundsz. In their solicitations, they represented that Fundsz had historically achieved average weekly returns of more than 3% by trading in digital asset commodities and precious metals. Defaulting Defendants further represented that these returns should be expected to continue and could balloon into huge gains, such as a 365% profit per year as represented by Early. These representations were false. The returns Defaulting Defendants reported to participants were fictional, and on average Fundsz did not obtain returns even close to 3% per week. In many weeks, no trading occurred at all.

In promoting Fundsz's purported more-than-3%-weekly average returns and touting its diversification into precious metals trading, Defaulting Defendants minimized Fundsz's

risk of loss to participants and potential participants. For example, Kingrey explained to a participants' Telegram group that Fundsz was purportedly able to payout 3% weekly returns because it did not rely solely on the cryptocurrency market due to its volatility and that it also bought precious metals while having multiple healthy and sustainable sources of income. These statements were false or misleading.

Defaulting Defendants each also falsely claimed that Fundsz traded using a "proprietary algorithm." Early described the purported proprietary algorithm as "[t]he secret to our sauce." But there was no algorithm or "sauce;" instead, any trading decisions were made by Rene Larralde.

Similarly, Defaulting Defendants each falsely represented that Fundsz had made "7 years of on time and accurate payments" even though Fundsz had been in existence for less than three years, the weekly reported returns were not "accurate," and Fundsz did not make "payments" but rather just adjusted participants' supposed account balances. Further, Early: (i) misrepresented to participants and potential participants the historical returns that Fundsz purportedly earned from digital assets such as bitcoin and ether; and (ii) falsely claimed that Fundsz traded forex, though it did not. Tellingly, when Defaulting Defendants learned of the CFTC's investigation, they walked back their claims regarding Fundsz's profitability along with beginning a campaign to eliminate Fundsz's presence on social media. Defaulting Defendants also falsely told participants that they would be able to withdraw their funds, with interest, after 180 days.

Defaulting Defendants made all these misrepresentations knowing they were false or with reckless disregard, without performing any investigation to determine whether they were

true. They made these statements to solicit participants to contribute to Funds and, because of these misrepresentations and omissions, thousands of participants contributed tens of millions of dollars to Funds.

In reality, Funds participants' funds were largely misappropriated by Rene Larralde. Of Funds's more than 10,000 participants, more than 9,000 deposited more money than they withdrew. Specifically, 9,138 participants suffered losses totaling \$15,732,455.40.

VI. Analysis

Pursuant to 7 U.S.C. § 9(1), it is unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance in contravention of any CFTC rule or regulation. In connection therewith, 17 C.F.R. § 180.1(a)(1)-(3) provides

- (a) It shall be unlawful for any person, directly or indirectly, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:
 - (1) use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;
 - (2) make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; [or]
 - (3) engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit on any person.

A violation is established when the CFTC has shown (1) material misrepresentations or materially misleading omissions; (2) made in connection with the purchase or sale of

[commodities]; and (3) with scienter. *See, e.g., US Coin Bullion LLC*, 2021 WL 8946141, at *7 (multiple citations omitted); *CFTC v. Hunter Wise Commodities*, 21 F. Supp. 3d 1317, 1347 (S.D. Fla. 2014); *see also Lorenzo v. SEC*, 587 U.S. 71, 78 (2019) (in analyzing analogous provisions under Rule 10(b) of the securities laws, the Supreme Court held that making false or misleading statements also constitutes employment of a device, scheme, and artifice to defraud and engaging in an act, practice, or course of business that operates as a fraud or deceit). The well-pleaded factual allegations in the Amended Complaint establish each of these elements and, thus, warrant a finding that Defaulting Defendants violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

A. Defaulting Defendants' Misrepresentations or Omissions Were Material.

Defaulting Defendants made numerous material misrepresentations and omissions in their statements to participants and prospective participants regarding Funds. Specifically, each Defaulting Defendant: (i) misrepresented the expected profits and risk of loss; (ii) misrepresented historical weekly trading profits; (iii) falsely told participants that their money would be traded according to a proprietary algorithm; (iv) misrepresented the length of Funds's history of making payments; and (v) falsely assured participants that they would be able to withdraw their contributions with interest after 180 days. Defaulting Defendants also failed to tell customers that they had not performed any investigation to confirm their representations were true. Each of these misrepresentations or omissions was material.

"A representation or omission is 'material' if a reasonable investor would consider it important in deciding whether to make an investment." *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328-29 (11th Cir. 2002) (citing *Affiliated Ute Citizens of Utah v. United States*, 406

U.S. 128, 153-54 (1972)). “Indeed, any fact that enables customers to independently assess the risk inherent in their investment, and the likelihood of profit, is a material fact.” *CFTC v. Omega Knight 2, LLC*, No. 18-22377, 2019 WL 6796128, at *7 (S.D. Fla. Sept. 16, 2019) (default judgment) (citing *CFTC v. Kratville*, 796 F.3d 873, 895 (8th Cir. 2015)).

Presenting fictitious trading returns to prospective investors is material. *See CFTC v. Ikkurty*, No. 22-cv-02465, 2024 WL 3251348, at *6 (N.D. Ill. July 1, 2024) (“inaccurate reporting” of customer returns can influence customers’ expectations of profits and is material); *CFTC v. PMC Strategy, LLC*, No. 3:11CV73, 2013 WL 1349177, at *6 (W.D.N.C. Apr. 3, 2013) (false information about profitability is material); *CFTC v. Next Fin. Servs. Unlimited*, No. 04-80562-CIVRYS, 2006 WL 889421, at *4 (S.D. Fla. Mar. 30, 2006) (“Misrepresentations as to the trading record and experience of a firm or broker are fraudulent because past success and experience are material factors to reasonable customers.”) (citation omitted); *see also CFTC v. Heffernan*, 245 F. Supp. 2d 1276, 1295-1296 (S.D. Ga. 2003) (presenting hypothetical results without disclosing them as such is material).

A reasonable investor would consider it material whether trading decisions were being made (1) using a proprietary algorithm, as Defaulting Defendants claimed, or (2) by an individual, which was the reality. A reasonable investor would also find a representation of a non-existent seven-year history of timely and accurate payments to be material. *See, e.g., Hunter Wise Commodities*, 21 F. Supp. 3d at 1345 (“Misleading information regarding the safety of the investment would be deemed material.”) (citation omitted).

B. Defaulting Defendants’ Misrepresentations and Omissions Were Made in Connection with the Purchase or Sale of Commodities.

Defaulting Defendants’ misrepresentations were made in connection with the purchase or sale of commodities. Defaulting Defendants each represented that Fundsz achieved its purported extraordinary returns by trading in digital asset commodities—referencing digital asset commodities such as bitcoin and ether—and precious metals. Precious metals are commodities under the CEA. 7 U.S.C. § 1a(9); *see US Coin Bullion LLC*, 2021 WL 8946141, at *8; *CFTC v. Int’l Monetary Metals, Inc.*, No. 14-62244, 2016 WL 8256852, at *4 (S.D. Fla. Aug. 1, 2016). Likewise, digital assets such as bitcoin and ether are commodities under the CEA. *See CFTC v. Mosaic Exch. Ltd.*, No. 23-81320, 2024 WL 5459421, at *1 (S.D. Fla. Dec. 23, 2024 (default judgment) (finding that bitcoin is a digital asset commodity); *see also Ikkurty*, 2024 WL 3251348, at *5 (noting that courts generally recognize “cryptocurrencies as falling under this broad definition [of a commodity]”) (citations omitted).

“The ‘in connection with’ requirement is construed broadly; that is, courts are inclined to consider fraudulent acts precipitating the purchases of commodities as connected.” *Omega Knight 2 LLC*, 2019 WL 6796128, at *8 (citation omitted). False statements made to induce customers to enter into commodity transactions meet this requirement. *Id.*; *see also Hunter Wise Commodities*, 21 F. Supp. 3d at 1347-48. The defendants need not even actually trade the commodities represented for this requirement to be satisfied. *US Coin Bullion LLC*, 2021 WL 8946141, at *5 (finding violation of CEA where despite defendants’ assertions to the contrary, defendants “never purchased or held any precious metals” for their customers). Rather, statements soliciting funds for the purpose of trading in commodities are sufficient. *Id.* Accordingly, the second element, *i.e.* the “in connection with” requirement, is also satisfied.

C. Defaulting Defendants Acted with the Requisite Scierter.

Scierter requires a showing that Defaulting Defendants “committed the alleged wrongful acts ‘intentionally or with reckless disregard for [their] duties under the [CEA].’” *Next Fin. Servs. Unlimited*, 2006 WL 889421, at *4 (citation omitted). The Eleventh Circuit has stated that scierter is shown when a defendant’s conduct involves “‘highly unreasonable omissions or misrepresentations . . . that present a danger of misleading [customers] which is either known to the Defendant or so obvious that Defendant must have been aware of it.’” *CFTC v. S. Trust Metals, Inc.*, 894 F.3d 1313, 1327 (11th Cir. 2018) (citation omitted) (alterations in original). “Relying without thorough investigation on information provided by corporate representatives is . . . reckless conduct sufficient to establish scierter.” *CFTC v. Complete Developments, LLC*, No. 10 CV 2287, 2014 WL 794181, at *15 (N.D. Ohio Feb. 26, 2014) (granting CFTC motion for summary judgment) (citations omitted). “A subjective belief based on a reckless inquiry cannot be considered a ‘good faith’ belief, and ignorance does not negate recklessness ‘where a reasonable investigation would have revealed the truth.’” *Id.* at 16 (quoting *SEC v. Infinity Grp. Co.*, 212 F.3d 180, 193 (3d Cir. 2000)).

Defaulting Defendants made misrepresentations willfully or with reckless disregard for their truth. Defaulting Defendants’ misrepresentations of Fundsz’s historic and projected profits, including weekly returns of more than 3%, were wildly unrealistic. Similarly, Defaulting Defendants’ statements regarding Fundsz’s purported algorithmic strategy and history of making customer payments were false. Defaulting Defendants either knew the aforementioned statements were false or recklessly made them having failed to perform any investigation as to their veracity. Accordingly, scierter—the final element of the CFTC’s

claims against each Defaulting Defendant—is established.

VII. Relief

A. Defaulting Defendants Should Be Permanently Enjoined from Violating 7 U.S.C. § 9(1) and Regulation 180.1(a)(1)-(3), Trading and Soliciting for Trading Any Commodity Interests, and Registering with the CFTC.

A permanent injunction is appropriate “[w]hensoever 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 this chapter or any rule, regulation, or order thereunder.” 7 U.S.C. § 13a-1(a). A court may issue a statutory injunction without considering traditional equitable factors such as inadequacy of other remedies or irreparable harm. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978). In granting “an injunction ‘the ultimate test is . . . whether the defendant’s past conduct indicates that there is a reasonable likelihood of further violations in the future.’” *CFTC v. Wilsbire Inv. Mgmt. Corp.*, 531 F.3d 1339, 1346 (11th Cir. 2008) (quoting *SEC v. Caterinichia*, 613 F.2d 102, 105 (5th Cir. 1980)). “Whether a likelihood of future violations exists depends on the totality of the circumstances.” *CFTC v. Altamont Global Partners, LLC*, No. 6:12-cv-1095-Orl-31TBS, 2014 WL 644693, at *10 (M.D. Fla. Feb. 19, 2014) (default judgment) (citing *CFTC v. Gutterman*, No. 12–21047–CIV., 2012 WL 2413082, at *7 (S.D. Fla. June 26, 2012)).

The Court may infer a likelihood of future violations based on Defaulting Defendants’ past illegal conduct. *See CFTC v. Am. Bd. of Trade, Inc.*, 803 F.2d 1242, 1250-51 (2d Cir. 1986); *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11th Cir. 1982). Such an inference is appropriate because “past illegal conduct is highly suggestive of the likelihood of future violations.”

CFTC v. Crown Colony Commodity Options, Ltd., 434 F. Supp. 911, 919 (S.D.N.Y. 1977) (citations omitted); *see CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979), *cert. denied*, 442 U.S. 921 (1979).

Other factors the Court may consider include:

[T]he egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of his conduct, and the likelihood that the defendant’s occupation will present opportunities for future violations.

Wilshire Inv. Mgmt. Corp., 531 F.3d at 1346 (quoting *Carriba Air, Inc.*, 681 F.2d at 1322).

The scope of the injunctive relief can be tailored to meet the circumstances of the violations shown. *See, e.g., Wilshire Inv. Mgmt. Corp.*, 531 F.3d at 1346 (upholding district court’s permanent injunction prohibiting defendants from “engaging in any commodity-related activity”); *see also CFTC v. Noble Wealth Data Info. Servs.*, 90 F. Supp. 2d 676, 692 (D. Md. 2000) (holding that “[t]he pervasiveness and seriousness of [defendant’s] violations justify the issuance of a permanent injunction prohibiting him from violating the [CEA] and from engaging in any commodity-related activity, including soliciting customers and funds”), *aff’d in relevant part, vacated in part, sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002). Under these standards, permanent injunctive relief, including comprehensive trading and registration bans, is warranted against each of the Defaulting Defendants.

Defaulting Defendants’ misrepresentations were pervasive, having been made on multiple occasions and through multiple channels for more than two and a half years. Their misrepresentations were serious and material (relating to profitability and risk)—resulting in 9,138 participants suffering net losses of over \$15 million.

Based on the egregiousness of the conduct in this matter, unless restrained and enjoined by this Court, there is a reasonable likelihood that Defaulting Defendants will continue to engage in the acts and practices alleged in the Amended Complaint and in similar acts and practices in violation of the CEA and Regulations.

Here, the CFTC has made a showing that each Defaulting Defendant engaged in fraudulent acts and practices in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3) (2026).

B. Defaulting Defendants Should Be Ordered to Pay \$15,732,455.40 in Restitution.

Pursuant to 7 U.S.C. § 13a-1(d)(3)(A), “the Commission may seek, and the court may impose, on a proper showing, on any person found in the action to have committed any violation, equitable remedies including . . . restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses.”). *See CFTC v. Smithers*, No. 12-CV-81165-KAM, 2013 WL 4851684, at *10–11 (S.D. Fla. July 31, 2013) (noting the statutory amendment to 7 U.S.C. § 13a-1(d) to measure restitution by the “amount of customer losses”).

The return of all funds is appropriate in cases where, as here, systematic fraudulent conduct is demonstrated. *See Hunter Wise Commodities*, 21 F. Supp. 3d at 1352 (“The systematic and pervasive nature of Hunter Wise’s fraud necessitates restitution not only for the retail customers who testified to the losses they sustained due to Hunter Wise’s scheme, but for all of Hunter Wise’s customers as well.”); *see also CFTC v. British Am. Options Corp.*, 788 F.2d 92, 93-94 (2d Cir. 1986) (per curiam) (holding that the CFTC need not show that every dollar flowed from fraudulent conduct because fraud was systematic and pervasive). Further,

“[e]vidence of full restitution may be demonstrated by the pervasive nature of the unlawful conduct and testimony from all defrauded customers is not required.” *CFTC v. Butler*, No. 3:19-cv-1792-LCB, 2021 WL 2366109, at *8 (N.D. Ala. Mar. 31, 2021) (default judgment) (citing *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595 (9th Cir. 1993)).

In this matter, Defaulting Defendants engaged in a pervasive pattern of deceit by fraudulently soliciting members of the general public to contribute to Fundsz. Defaulting Defendants were members of the Fundsz Advisory Board and moderators on Fundsz’s Telegram group—its primary method of communicating with participants. In these roles, Defaulting Defendants advanced the fraud through misrepresenting the expected profits and risk of loss, misrepresenting false historical weekly trading profits, and falsely telling participants that their deposits would be traded according to a proprietary algorithm. Similarly, Defaulting Defendants misrepresented Fundsz’s history of making payments and falsely assured participants that they would be able to withdraw their contributions with interest after 180 days. As a result of this systematic fraudulent conduct, 9,138 customers suffered net losses totaling \$15,732,455.40. Accordingly, the Court orders Defaulting Defendants to pay, jointly and severally, \$15,732,455.40, plus post-judgment interest, to be reduced by any amounts approved for distribution by the Receiver in this action to victims.²

C. Defaulting Defendants Should Be Ordered to Pay a \$15,732,455.40 Civil Monetary Penalty.

Section 6c(d)(1) of the CEA, 7 U.S.C. § 13a-1(d)(1), further authorizes the Court to

² The Receiver’s Motion to Approve Proposed Allowed Claim Amounts and Distribution Plan (Docs. # 201, 204) is currently pending before the Court. The Receiver has proposed distribution of \$4,001,588.96, approximately 95% of the cash on hand after setting aside funds for payment of outstanding and anticipated administrative expenses.

order a civil monetary penalty (“CMP”) against Defaulting Defendants. The amount of the CMP cannot be more than the greater of \$227,220 for each violation or triple the monetary gain to the defendant. 7 U.S.C. § 13a-1(d)(1)(A); *Adjustment of Civil Monetary Penalties for Inflation-2025*, 90 Fed. Reg. 15,8111 (Jan. 24, 2025) (codified at 17 C.F.R. § 143.8). A district court has broad discretion to impose a CMP, which need only be “rationally related to the offense charged or the need for deterrence.” *CFTC v. Levy*, 541 F.3d 1102, 1112 (11th Cir. 2008).

“In determining how extensive the fine for violations of the [CEA] ought to be, courts and the Commission have focused upon the nature of the violations.” *Noble Wealth*, 90 F. Supp. 2d at 694. Conduct that violates the CEA’s core provisions, such as Defaulting Defendants’ fraud, should be considered very serious. *See JCC, Inc. v. CFTC*, 63 F.3d 1557, 1571 (11th Cir. 1995). Further, CMPs should “reflect both the ‘abstract or general seriousness of each violation’” and “should be sufficiently high to deter future violations,” meaning that CMPs should make it financially detrimental to a defendant to fail to comply with the CEA and Regulations so that the defendant would rather comply than risk a violation. *In re Grossfeld*, CFTC No. 89-23, 1996 WL 709219, at *12 (Dec. 10, 1996) (citations omitted), *aff’d*, 137 F.3d 1300 (11th Cir. 1998).

Here, it is appropriate to order the Defaulting Defendants to pay, jointly and severally, a CMP of \$15,752,455.40. This amount is equivalent to one times participants’ net losses. Violations of the CEA and Regulations occurred in connection with Defaulting Defendants’ solicitation of each of the more than 9,100 participants. Defaulting Defendants’ solicitation of each participant could be construed as a separate violation subject to the maximum penalty of \$227,220 per participant (*i.e.*, over \$2 billion) (*see, e.g., Gutterman*, 2012 WL 2413082, at *11).

Considering the relevant factors, including sufficient deterrent effect, the CFTC's request is reasonable. *See CFTC v. Allied Markets, LLC*, No. 3:15-cv-5, 2019 WL 4921125, at *9 (M.D. Fla. June 28, 2019) (default judgment recommendation proposing for the remaining defendant a CMP one times the amount of restitution) *report and recommendation adopted*, 2019 WL 4918433 (M.D. Fla. Oct. 4, 2019); *see also CFTC v. Mirror Trading Int'l*, No. 1:22-cv-635, 2023 WL 3190336 (N.D. Tex. Apr. 24, 2023) (default judgment) (in fraud action resulting in default judgment of over \$1.7 billion in restitution, CMP equal to this amount, one time the funds fraudulently solicited and obtained, was ordered); *CFTC v. Gold Chasers, Inc.*, No. 6:17-cv-256, 2019 WL 442460 (M.D. Fla. Feb. 5, 2019) (default judgment) (ordering CMPs equating triple the amount of investor losses). The requested CMP is within the Court's statutory authority, while also protecting market integrity and sending a clear message to deter others from engaging in similar schemes. *Id.*

VIII. CONCLUSION

For the reasons stated above, the Court, as authorized by Section 6c(a) of the CEA, 7 U.S.C. § 13a-1(a), and pursuant to its equitable powers, grants the CFTC's Motion and enters a final judgment of default against Defaulting Defendants.

Accordingly, it is now

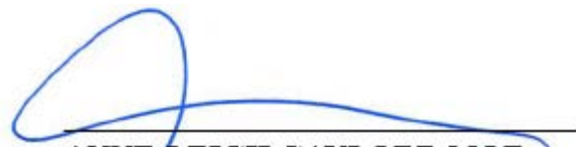
ORDERED and **ADJUDGED** that:

1. The Plaintiff's Motion for Default Judgment (Doc. # 207) is **GRANTED**;
2. Defendants Brian Early ("Early") and Alisha Ann Kingrey ("Kingrey") are **PERMANENTLY ENJOINED, RESTRAINED, and PROHIBITED** from directly or indirectly:

- a. In connection with any contract of sale of any commodity in interstate commerce: (1) using or employing, or attempting to use or employ, any manipulative device, scheme, or artifice to defraud; (2) making, or attempting to make, any untrue or misleading statement of a material fact or omitting to state a material fact necessary in order to make statements made not untrue or misleading; or (3) engaging, or attempting to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person, in violation of 7 U.S.C. § 9(1) and Regulation 180.1(a)(1)-(3);
- b. Trading on or subject to the rules of any registered entity (as that term is defined by Section 1a(40) of the CEA, 7 U.S.C. § 1a(40));
- c. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2026)) or precious metals that are commodities for accounts held in the name of any Defaulting Defendant or for accounts in which any Defaulting Defendant has a direct or indirect interest;
- d. Having any commodity interests or precious metals that are commodities traded on any Defaulting Defendants’ behalf;
- e. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests, digital asset commodities, or precious metals that are commodities;

- f. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity interests, digital asset commodities, or precious metals that are commodities;
 - g. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in 17 C.F.R. § 4.14(a)(9) (2026); and
 - h. Acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2026)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC, except as provided for in 17 C.F.R. § 4.14(a)(9) (2026);
3. Defendants Early and Kingrey are ordered to pay restitution in the amount of \$15,732,455.40, jointly and severally, plus post-judgment interest. This amount is to be reduced by any amounts approved for distribution by the Receiver to victims;
4. Defendants Early and Kingrey are ordered to pay, jointly and severally, a civil monetary penalty in the amount of \$15,752,455.40, plus post-judgment interest;
5. The Clerk is directed to enter judgment accordingly and close this file.

DONE and **ORDERED** in Chambers in Orlando, Florida this September 15, 2026.



ANNE LEIGH GAYLORD MOE
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record