

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 Commodity Futures Trading Commission,

Case No.: 2:19-cv-01697-JAD-DJA

4 Plaintiff

5 v.

**Final Judgment of Disgorgement, Civil
Penalty, Restitution, and Permanent
Injunction**

6 David Gilbert Saffron a/k/a David Gilbert and
Circle Society, Corp.,

7 Defendants
8

9 Plaintiff Commodity Futures Trading Commission filed a Complaint for Injunctive
10 Relief, Restitution, Disgorgement, and Civil Monetary Penalties against David Gilbert Saffron
11 a/k/a David Gilbert and his business entity, Circle Society, Corp., for violations of the
12 Commodity Exchange Act, 7 U.S.C. §§ 1–27f (2012), and Regulations promulgated thereunder,
13 17 C.F.R. pts. 1–190 (2019). The Commission has moved under Federal Civil Procedure Rule
14 55(b) for default judgment against Saffron and Circle Society; for grants of permanent injunctive
15 relief, restitution, disgorgement, and a civil monetary penalty; and for the related relief of
16 additional sanctions, a show-cause order, and to strike one of the defendants’ filings.¹ After a
17 hearing on the merits and having considered the pleadings, declarations, exhibits, and
18 memoranda filed by the parties, I granted the motion for default judgment, denied the motion to
19 strike, and denied as moot the motions for sanctions and for a show-cause order.² Because I
20 articulated my findings and conclusions on the record, the transcript of the hearing serves as the
21 record of my ruling. But I enter this order to memorialize the outcome of the hearing.
22

23 ¹ ECF Nos. 61, 95, 62, 98.

² ECF No. 107 (minutes of proceedings).

1 Whether to grant a motion for default judgment lies within the trial court's discretion,³
2 which is guided by the seven factors outlined by the Ninth Circuit in *Eitel v. McCool*.⁴ As I
3 found and concluded during the hearing, the Commission has demonstrated that every *Eitel*
4 factor weighs in favor of entering default judgment against Saffron and Circle Society. The
5 rehearsed excuses that the defendants offered during the hearing for their continued failure to
6 comply with this court's orders, and their ongoing failure to offer any colorable defense to the
7 Commission's claims, animate the Commission's default-judgment arguments and underlie my
8 conclusion that default judgment is warranted here.

9 The Commission has demonstrated that a permanent injunction under 7 U.S.C. § 13a-1(a)
10 should be entered against both defendants. The Commission's well-pled allegations and
11 evidence shows that Saffron and Circle Society violated:

- 12 a. 7 U.S.C. § 6o(1)(A)-(B) and 17 C.F.R. § 32.4;
- 13 b. 17 C.F.R. § 4.20(a)(1), (b), and (c); and
- 14 c. 7 U.S.C. § 6m(1).

15 The same allegations and evidence also demonstrate that Saffron violated 7 U.S.C. § 6k(2). The
16 Commission has further established that there is a reasonable likelihood that Saffron and Circle
17 Society will continue to violate the Act and Regulations unless they are permanently restrained
18 and enjoined by this court. I am satisfied that the intentional and egregious nature of Saffron's
19 and Circle Society's fraudulent conduct warrants permanent injunctive relief, including
20 registration and trading bans.

21
22
23 ³ *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).

⁴ *Id.* at 1471–72.

1 Finally, the Commission has demonstrated that awards of restitution in the amount of
 2 \$14,841,280, disgorgement in the amount of \$15,815,967, and a civil monetary penalty of
 3 \$1,484,128 are warranted under these circumstances. I find that the restitution award will make
 4 the victims of Saffron’s and Circle Society’s fraudulent scheme whole. The disgorgement award
 5 will allow the government to claw back any profits and gains that the defendants wrongfully
 6 obtained by their scheme. And the civil penalty is reasonable and appropriate given the gravity
 7 of the defendants’ violations.

8 IT IS THEREFORE ORDERED that the Commission’s motion for default judgment
 9 **[ECF No. 97] is GRANTED.** The **Clerk of Court** is directed to **ENTER JUDGMENT** in
 10 favor of the Commodity Futures Trading Commission and against David Gilbert Saffron a/k/a
 11 David Gilbert and Circle Society, Corp., jointly and severally, **in the total amount of**
 12 **\$32,141,375.** Post-judgment interest on the entire amount of the judgment will run at the rate of
 13 0.07%, compounded annually, from March 29, 2021, until satisfied.⁵

14 IT IS FURTHER ORDERED that:

15 **A. Restitution**

16 1. National Futures Association (NFA) is appointed to monitor and distribute
 17 payments made by the defendants against the \$14,841,280 restitution obligation that they owe to
 18 their participants. NFA must collect restitution payments from the defendants and make
 19

20 ⁵ Post-judgment interest is mandatory “on any money judgment in a civil case recovered in a
 21 district court.” 28 U.S.C. § 1961(a); *see Planned Parenthood of Columbia/Willamette Inc. v.*
 22 *Am. Coal. of Life Activities*, 518 F.3d 1013, 1017–18 (9th Cir. 2008). “[F]ederal law determines
 23 the rate of post-judgment interest[,]” and it “should be awarded on the entire amount of the
 judgment” *Lagstein v. Certain Underwriters at Lloyd’s of London*, 725 F.3d 1050, 1056
 (9th Cir. 2003). Applicable federal law provides that interest must “be calculated from the date
 of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity
 Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the
 calendar week preceding the date of the judgment.” 28 U.S.C. § (a) (period omitted).

1 distributions as set forth below. Because the NFA is acting as an officer of this court in
2 performing these services, it will not be liable for any action or inaction arising from its
3 appointment as monitor, other than for actions involving fraud.

4 2. The NFA must oversee the defendants' restitution obligation and has the
5 discretion to determine the manner of distribution of the funds paid in a manner that is equitable
6 to the defendants' participants as identified by the Commission. The NFA may defer distribution
7 until such time as it deems appropriate. If the amount of restitution payments are so *de minimis*
8 that the NFA determines that the administrative cost of making a distribution to eligible
9 participants is impractical, the NFA may, in its discretion, treat the restitution payments as civil
10 monetary penalty payments.

11 3. At the beginning of each calendar year, the NFA must provide the Commission
12 with a report detailing the disbursement of funds to the defendants' participants during the
13 previous year. The NFA must transmit this report, along with a cover letter identifying the name
14 and docket number of this case, to:

15 Chief Financial Officer, Commodity Futures Trading Commission
16 Three Lafayette Center, 1155 21st Street, N.W.
17 Washington, D.C. 20581

18 4. The defendants must pay their restitution obligation under this order to the NFA
19 in the name of "David Saffron Restitution Fund" and must send their payments by electronic
20 funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank
21 money order to:

22 Office of Administration, National Futures Association
23 300 South Riverside Plaza, Suite 1800
 Chicago, Illinois 60606

1 Payment must be accompanied by a cover letter identifying the defendants and the name and
2 docket number of this case. The defendants must simultaneously transmit copies of the cover
3 letter and the form of payment to:

4 Chief Financial Officer, Commodity Futures Trading Commission
5 Three Lafayette Center, 1155 21st Street, N.W.
6 Washington, D.C. 20581

7 5. The defendants must cooperate with the NFA as appropriate to provide it with
8 information that it deems necessary and appropriate to identify the defendants' participants to
9 whom the NFA, in its sole discretion, may determine to include in any plan for distribution of
10 any restitution payments. The defendants must execute any documents necessary to release
11 funds that they hold in any repository, bank, investment, or other financial institution, wherever
12 located, to make partial or total payment toward their restitution obligation.

13 6. The amount paid to each participant in restitution will not limit the ability of any
14 participant to prove that a greater amount is owed from the defendants or any other person or
15 entity, and nothing in this order should be construed to in any way limit or abridge the rights of
16 any participant that exist under state or common law.

17 7. If any funds accrue to the U.S. Treasury for the satisfaction of the defendants'
18 restitution obligation, those funds must be transferred to the NFA for disbursement consistent
19 with the procedures set forth above.

20 **B. Civil monetary penalty**

21 1. The defendants must pay their civil monetary penalty obligation by electronic
22 funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money
23 order. If payment is to be made other than by electronic funds transfer, then the payment must
be made payable to the Commodity Futures Trading Commission and sent to:

1 MMAC/ESC/AMK326
2 Commodity Futures Trading Commission, Division of Enforcement
3 6500 S. MacArthur Blvd.
4 Oklahoma City, OK 73169
5 (405) 954-6569 (phone)
6 (405) 954-1620 fax
7 9-AMC-AR-CFTC@faa.gov

8 2. If the defendants elect to make payments by electronic funds transfer, the
9 defendants must contact Marie Thorne or her successor at the address above to receive payment
10 instructions and must fully comply with those instructions. Any payment must be accompanied
11 by a cover letter identifying the defendants and the name and docket number of this case. The
12 defendants must simultaneously transmit copies of the cover letter and the form of payment to:

13 Chief Financial Officer, Commodity Futures Trading Commission
14 Three Lafayette Center, 1155 21st Street, N.W.
15 Washington, D.C. 20581

16 **C. Permanent injunction**

17 IT IS FURTHER ORDERED that David Gilbert Saffron a/k/a David Gilbert and Circle
18 Society, Corp. and their agents, holding companies, alter egos, including any of their successors,
19 and those persons in active concert or participation with them who receive actual notice of this
20 order by personal service or otherwise, are **permanently restrained, enjoined, and prohibited**
21 **from** directly or indirectly:

22 1. Engaging in conduct that violates 7 U.S.C. §§ 6c(b), 6k(2), 6m(1), or 6o(1)(A)–
23 (B) or 17 C.F.R. §§ 4.20(a)(1), (b), or (c) or 32.4;

2. Trading on or subject to the rules of any registered entity, as that term is defined
in 7 U.S.C. § 1a(40);

1 3. Entering into any transaction involving “commodity interests,” as that term is
2 defined in 17 C.F.R. § 1.3(yy), for their own personal account or for any account in which they
3 have a direct or indirect interest;

4 4. Having any commodity interests traded on their behalf;

5 5. Controlling or directing trading for or on behalf of any other person or entity,
6 whether by power of attorney or otherwise, in any account involving commodity interests;

7 6. Soliciting, receiving, or accepting any funds from any person for the purpose of
8 purchasing or selling any commodity interests;

9 7. Applying for registration or claiming exemption from registration with the
10 Commission in any capacity, or engaging in any activity that requires registration or exemption
11 from registration with the Commission, except as provided for in 17 C.F.R. § 4.14(a)(9);

12 8. Acting as a principal, as that term is defined in 17 C.F.R. § 3.1(a), agent, or any
13 other officer or employee of any person registered, exempted from registration, or required to be
14 registered with the Commission, except as provided for in 17 C.F.R. § 4.14(a)(9); and

15 9. Engaging in any business activities related to commodity interests.

16 IT IS FURTHER ORDERED that the Commission’s motion to strike notice [ECF
17 No. 95] is DENIED and the Commission’s motions for additional sanctions [ECF No. 62] and
18 for an order to show cause [ECF No. 98] are DENIED as moot.

19 This court shall retain jurisdiction of this action to ensure compliance with this order and
20 for all other purposes related to this action, including any motion by the defendants to modify, or
21 from relief from, the terms of this order.

22 
23 U.S. District Judge Jennifer A. Dorsey
March 29, 2021