

United States District Court  
for the  
Southern District of Florida

Commodity Futures Trading )  
Commission, Plaintiff, )  
 )  
v. ) Civil Action No. 23-21527-Civ-Scola  
 )  
Systematic Alpha Management, )  
LLC, and others, Defendants. )

**Order Granting Expedited Ex Parte Motion  
for Statutory Restraining Order and for Expedited Discovery**

This matter is before the Court upon the expedited ex parte motion for statutory restraining order and for expedited discovery filed by the Plaintiff, the Commodity Futures Trading Commission (the “Plaintiff” or “CFTC”). (Mot., ECF No. 5.) The CFTC has also filed a Complaint seeking a permanent injunction and other relief (Compl., ECF No. 1), and a memorandum of law in support of its motion (Memo., ECF No. 6). Pursuant to Section 6c(a) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 13a-1(a), and in accordance with Rule 65 of the Federal Rules of Civil Procedure (“Rule 65”), the CFTC moves for an ex parte statutory restraining order freezing assets and allowing inspection of records. Additionally, the CFTC has moved the Court for expedited discovery as provided for in Fed. R. Civ. P. 26(d). Having considered the pleadings, declarations, exhibits, and memorandum filed in support of the CFTC’s motion, and the relevant legal authorities, the Court **grants** the motion. (**ECF No. 5.**)

**1. Jurisdiction**

(a) This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1345 (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). 7 U.S.C. § 13a-1 authorizes the CFTC to seek injunctive relief against any person whenever it appears that such 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, regulations, or order thereunder.

(b) Venue lies properly within this District pursuant to 7 U.S.C. § 13a-1(e) and 28 U.S.C. § 1391(c)(3).

## **2. Ex Parte Statutory Restraining Order**

(a) The CFTC has made a prima facie showing that beginning as early as January 2019 and continuing at least through November 2021 (the “Relevant Period”), Defendants Systematic Alpha Management, LLC (“SAM”) and Peter Kambolin (“Kambolin”) (collectively, the “Defendants”) have defrauded pool participants and managed account customers by (1) placing trades collectively for both certain accounts belonging to commodity pools and managed account customers (the “Customer Accounts”) and accounts owned by the Relief Defendants and controlled by Defendant Kambolin or members of his family (the “Proprietary Accounts”); and (2) unfairly and inequitably allocating these trades between the Customer Accounts and the Proprietary Accounts by allocating profitable trades to the Proprietary Accounts and unprofitable or less profitable trades to the Customer Accounts. By allocating trades in this manner, the Defendants generated trading profits of more than \$1.4 million for the Proprietary Accounts, even though these accounts were very thinly capitalized; deprived customers of their fair share of the trading profits; and forced customers to bear over \$1.5 million in trading losses. The Defendants further defrauded these same customers by misrepresenting to them that the Defendants would allocate investment opportunities fairly and equitably and regarding the investment strategies the Defendants would pursue.

(b) Therefore, there is good cause to believe that Defendants Kambolin and SAM, by and through their agents, principals, and control person(s), including Defendant Kambolin, have engaged, are engaging in, or are about to engage in acts and practices that constitute violations of the Act and CFTC Regulations (“Regulations”), specifically in violation of Sections 4b(a)(1)(A)-(C) and 4o(1)(A)-(B) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) & 6o(1)(A)-(B), and Regulation 1.35(b)(5)(iv)(B), 17 C.F.R. §1.35(b)(5)(iv)(B) (2022).

(c) There is also good cause to believe that Defendants Jersey City Partners, LLC (“Jersey City”) and Thor Enterprises International, Inc. (“Thor”) (collectively, the “Relief Defendants”) have received, are receiving, and/or are about to receive funds, assets, or other property (“assets”) as a result of Defendants’ violative acts and practices. The Relief Defendants do not have any legitimate interest or entitlement to these assets received as a result of the Defendants’ violative conduct and have been unjustifiably enriched thereby.

(d) There is also good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for customers in the form of monetary or other redress will occur from the withdrawal, transfer, removal, dissipation, or other disposition of funds, assets, or other property (“assets”) and/or the destruction, alteration, or disposition of books and records

and other documents (“records”) by the Defendants and the Relief Defendants, unless the Defendants and the Relief Defendants are immediately restrained and enjoined by Order of this Court.

(e) Therefore, there is good cause for the Court to freeze assets owned, controlled, managed, or held by the Defendants and the Relief Defendants or in which they have any beneficial interest.

(f) There is also good cause for the Court to prohibit the Defendants and the Relief Defendants from destroying, altering, or disposing of records, and/or denying representatives of the CFTC access to inspect records, when and as requested, to ensure that CFTC representatives have immediate and complete access to those records.

(g) In summary, this is a proper case for granting a restraining order ex parte freezing assets and allowing inspection of records because there is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for Defendants’ violations of 7 U.S.C. §§ 6b(a)(1)(A)-(C) & 6o(1)(A)-(B) and 17 C.F.R. §1.35(b)(5)(iv)(B) (2022), in the form of monetary or other redress, will occur from the sale, transfer, assignment, or other disposition of assets and/or the destruction, alteration, or disposition of books and records and other documents by the Defendants or the Relief Defendants unless the Defendants and the Relief Defendants are immediately restrained and enjoined by Order of the Court.

### **3. Expedited Discovery**

(a) Fed. R. Civ. Procedure 26(d)(1) authorizes the Court to order expedited discovery. The CFTC requests leave to: (1) take the depositions of the Defendants, the Relief Defendants, and their representatives and employees upon two (2) calendar days’ notice pursuant to Fed. R. Civ. P. 30(a) and 45, with notice given personally, by facsimile or by electronic mail, and, if necessary, the deposition may last more than seven (7) hours; (2) request that the Defendants and the Relief Defendants produce, on an expedited basis, any relevant documents not otherwise required to be produced under the requested statutory restraining order; and, (3) issue subpoenas to third parties that are returnable within seven (7) calendar days and require the third party to submit to a deposition upon seven (7) days’ notice, in order to gain information about the Defendants’ customers who have been defrauded and to help locate the Defendants’ and the Relief Defendants’ assets.

(b) The CFTC represents that such discovery is necessary in advance of the hearing on its Motion for Preliminary Injunction. *See Raza v. City of New York*, 998 F. Supp. 2d 70, 75 (E.D.N.Y. 2013) (recognizing courts have broad discretion over the management of discovery, including the timing and scope of

discovery, as well as the power to expedite discovery); *see* Fed. R. Civ. P. 26(d) (Advisory Committee notes to 1993 amendment) (recognizing that expedited discovery will be “appropriate in some cases, such as those involving requests for preliminary injunction”). Specifically, the CFTC represents that such discovery is necessary due to the expedited nature of injunctive proceedings in order for the CFTC to obtain information, including possible testimony from the Defendants or the Relief Defendants, in advance of the hearing on the CFTC’s Motion for Preliminary Injunction.

(c) Upon review and consideration, the Court finds that expedited discovery is appropriate.

#### **4. Definitions**

For the purposes of this Order, the following definitions apply:

(a) The term “assets” encompasses any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all funds, wherever located, whether in the United States or outside the United States.

(b) The term “records” encompasses “documents” and “electronically stored information” as those terms are used in Fed. R. Civ. P. 34(a), and includes, but is not limited to, all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or other data compilations—stored in any medium from which information can be obtained or translated, if necessary, into reasonable usable form. The term “records” also refers to each and every such item in Defendants’ and Relief Defendants’ actual or constructive possession, including but not limited to: (i) all such items within the custody or control of any agents, employers, employees, or partners of the Defendants and Relief Defendants; and (ii) all items which Defendants and Relief Defendants have a legal or equitable right to obtain from another person. A draft or non-identical copy is a separate item within the meaning of the term. A record also includes the file and folder tabs associated with each original and copy.

(c) “Defendant(s)” means and refers to Systematic Alpha Management, LLC and Peter Kambolin.

(d) “Relief Defendant(s)” means and refers to Jersey City Partners, LLC and Thor Enterprises International, Inc.

## **5. Relief Granted**

Accordingly, it is **Ordered and Adjudged** as follows:

### **A. Asset Freeze Order Prohibiting the Withdrawal, Transfer, Removal, Dissipation, and Disposal of Assets**

(1) The Defendants and the Relief Defendants are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly: withdrawing, transferring, removing, dissipating, or otherwise disposing of any assets, wherever located, including the Defendants' and the Relief Defendants' assets held outside the United States; and

(2) The assets affected by this Order shall include existing assets and assets acquired after the effective date of this Order.

### **B. Maintenance of and Access to All Records Relating to the Business Activities and Business and Personal Finances**

(3) The Defendants and the Relief Defendants are restrained from directly or indirectly destroying, altering, or disposing of, in any manner, any records that relate or refer to the business activities or business or personal finances of any Defendant or Relief Defendant.

(4) Representatives of the CFTC shall be immediately allowed to inspect any records that, in part or in whole, contain, relate, or refer to the business activities or business or personal finances of the Defendants and Relief Defendants, including, but not limited to, both hard-copy documents and electronically stored information, wherever they may be situated and whether they are in the possession of the Defendants, Relief Defendants, or others. To ensure preservation and facilitate meaningful inspection and review of these records, the Defendants and the Relief Defendants shall allow representatives of the CFTC to make copies of these records, including complete forensic images of any devices containing any such records, and if on-site copying of these records and/or forensic imaging of devices is not practicable, representatives may make such copies and/or forensic images off-site. After any such off-site copying and/or forensic imaging, the CFTC shall promptly return the original documents and devices upon which electronic information is stored.

(5) To further facilitate meaningful inspection and review, the Defendants and the Relief Defendants shall, absent a valid assertion of their respective rights against self-incrimination under the Fifth Amendment, promptly provide CFTC staff with:

a. the location of all records relating or referring to the business activities and business and personal finances of the Defendants and the Relief Defendants;

b. all identification numbers and other identifying information for websites, cloud storage services, email and smartphone accounts, online chat and messaging services, and all accounts at any bank, financial institution, or brokerage firm (including any introducing broker or futures commission merchant) owned, controlled or operated by any Defendant or Relief Defendant, or to which any Defendant and Relief Defendant has access; and

c. all passwords to, and the location, make and model of, all computers and/or mobile electronic devices owned and/or used by any Defendant or Relief Defendant in connection with their business activities and business and personal finances.

(6) When inspecting and reviewing records and/or contents of forensic images that are subject to this Order, including those contained on computers and/or other devices, the CFTC should undertake reasonable measures to prevent review of the Defendants' or Relief Defendants' privileged communications and other nonbusiness, nonfinancial materials by the CFTC's attorneys and other staff who are part of the litigation team in this matter. Moreover, Defendants and Relief Defendants (or their counsel) shall promptly contact the CFTC's attorneys to assert any claims of privilege or other legal objections relating to the inspection and review of any records or contents of forensic images that are subject to this Order and promptly cooperate with the CFTC's attorneys to develop reasonable protocols to isolate and prevent disclosure of claimed privileged and other nonbusiness, nonfinancial materials to the CFTC's attorneys and other staff who are part of the litigation team in this matter. However, nothing herein shall excuse Defendants or Relief Defendants from full and immediate compliance with this Court's Order permitting the CFTC to inspect and review records and contents of forensic images which relate to Defendants' or Relief Defendants' business activities and their business and personal finances.

**C. Notice to Financial Institutions and Others that Hold or Control Assets or Records**

(7) To ensure the effectiveness of the asset freeze and pending further Order of this Court, any financial or brokerage institution, business entity, or person that receives actual notice of this Order and holds, controls, or maintains custody of any asset or other property of the Defendants or the Relief Defendants shall not, in active concert or participation with the Defendants or the Relief

Defendants, permit the Defendants, the Relief Defendants, or other person(s) to withdraw, transfer, remove, dissipate, or otherwise dispose of any of the Defendants' or the Relief Defendants' assets, except as directed by further order of the Court.

(8) Any financial or brokerage institution, business entity, or person that receives notice of this Order by personal service or otherwise shall not, in active concert or participation with any Defendant or Relief Defendant, directly or indirectly destroy, alter or dispose of, in any manner, any records relating to the business activities and business and personal finances of any Defendant or Relief Defendant.

(9) Further, any such financial or brokerage institution, business entity, or person that receives actual notice of this Order and holds, controls, or maintains custody of any account or asset of any Defendant or Relief Defendant, or has held, controlled, or maintained custody of any such account or asset of any Defendant or Relief Defendant at any time since January 2019 shall not, in active concert or participation with the Defendants or the Relief Defendants, deny a request by the CFTC to inspect all records pertaining to every account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of any Defendant or Relief Defendant, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. As an alternative to allowing inspection of records, a financial or brokerage institution, business entity, or other person may provide copies of records requested by the CFTC.

**D. Persons Bound by this Order**

(10) This Order is binding on any person who receives actual notice of this Order by personal service or otherwise and is acting in the capacity of an officer, agent, servant, employee, or attorney of any Defendant or Relief Defendant, or is in active concert or participation with any Defendant or Relief Defendant.

**E. Bond Not Required of CFTC**

(11) As the CFTC has made a proper showing under Section 6c(b) of the Act, 7 U.S.C. § 13a-1(b), it is not required to post any bond in connection with this Order.

**F. Service of Order and Assistance of United States Marshal Service and/or Other Law Enforcement Personnel**

(12) Copies of this Order may be served by any means, including via email or facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any records or assets of any Defendant or Relief Defendant, or that may be the subject of this Order.

(13) Thomas Simek, Rebecca Jelinek, Lauren Fulks, Christopher Beatty, representatives of the United States Marshal Service, and representatives of the Federal Deposit Insurance Corporation-Office of Inspector General (“FDIC-OIG”) are specially appointed by the Court to effect service.

(14) The United States Marshals Service and representatives of FDIC-OIG are authorized to: a) accompany and assist the CFTC’s representatives in the service and execution of the Summons, Complaint, and this Order on the Defendants and the Relief Defendants; and b) help maintain lawful order while CFTC representatives inspect records as provided in this Order.

**G. Service on the CFTC**

(15) The Defendants and the Relief Defendants shall comply with all electronic filing rules and requirements of the U.S. District Court for the Southern District of Florida and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the CFTC by delivering a copy to Thomas Simek, Division of Enforcement, Commodity Futures Trading Commission, 2600 Grand Blvd., Suite 210, Kansas City, Missouri 64108 ([tsimek@cftc.gov](mailto:tsimek@cftc.gov)), by electronic filing, e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the CFTC’s regular mail.

**H. Further Proceedings**

(16) The CFTC’s Motion for Preliminary Injunction is set for a hearing before this Court in the United States Courthouse located at the Wilkie D. Ferguson, Jr., U.S. Courthouse, 400 North Miami Avenue, Miami, Florida, 33128, Courtroom 12-3, on **May 8, 2023, at 8:30 A.M.** Should any party wish to file a memorandum of law or other papers concerning the issuance of a preliminary injunction against the Defendants or the Relief Defendants, such materials shall be filed, served, and received by all parties at least two days before the hearing ordered above.



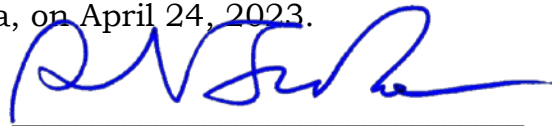
**I. Expedited Discovery**

(17) The CFTC is hereby granted leave to: (1) take the depositions of the Defendants, the Relief Defendants, and their representatives and employees upon two (2) calendar days' notice pursuant to Fed. R. Civ. P. 30(a) and 45, with notice given personally, by facsimile or by electronic mail, and, if necessary, the deposition may last more than seven (7) hours; (2) request that the Defendants and the Relief Defendants produce, on an expedited basis, any relevant documents not otherwise required to be produced under the requested statutory restraining order; and, (3) issue subpoenas to third parties that are returnable within seven (7) calendar days and require the third party to submit to a deposition upon seven (7) days' notice, in order to gain information about the Defendants' customers who have been defrauded and to help locate the Defendants' and the Relief Defendants' assets.

**J. Force and Effect**

(18) This Order shall remain in full force and effect until **May 8, 2023**, unless extended further by order of this Court pursuant to Rule 65(b)(2), and this Court retains jurisdiction of this matter for all purposes.

**Done and ordered** in Miami, Florida, on April 24, 2023.



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Robert N. Scola, Jr.  
United States District Judge