

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

SCOTT ALLENSWORTH, individually
and d/b/a CAPITAL GROWTH GROUP
ASSOCIATES AND COBRA
DEVELOPMENT GROUP LLP, and
ROBERT J. FUSCO, DAVID WEDDLE,
and E-SLATE, INC. d/b/a COBRA
DEVELOPMENT GROUP LLP,

Defendants.

Civil Action No. 2:17-CV-07102-CBM (JPRx)

**ORDER RE: PLAINTIFF’S MOTION
FOR ENTRY OF DEFAULT
JUDGMENT, PERMANENT
INJUNCTION, AND OTHER
ANCILLARY EQUITABLE RELIEF**

1 This matter is before the Court on Plaintiff Commodity Futures Trading
2 Commission's ("Commission" or "CFTC") Motion for Entry of Default Judgment,
3 Permanent Injunction, and Other Ancillary Equitable Relief against Defendants Scott
4 Allensworth, individually and d/b/a Capital Growth Group Associates and Cobra
5 Development Group LLP ("Allensworth"); Robert J. Fusco ("Fusco"); David Weddle
6 ("Weddle"); and E-Slate, Inc. d/b/a Cobra Development Group LLP ("E-Slate"). (Dkt.
7 No. 63 (the "Motion").)

8 As set forth below, the Court grants the Motion, enters default judgment against all
9 Defendants, and orders the injunctive and monetary relief described below.

10 I. PROCEDURAL HISTORY

11 1. On September 26, 2017, Plaintiff CFTC lodged with the Court under seal a
12 Complaint for Injunctive and Other Equitable Relief and for Civil Monetary Penalties
13 Under the Commodity Exchange Act and Commission Regulations against Defendants
14 Allensworth, Fusco, Weddle, and E-Slate (Dkt. No. 1).

15 2. The Complaint was filed on the Civil Docket on October 2, 2017. (*Id.*)

16 3. The Commission's Complaint alleges that from at least December 2013
17 through filing on October 2, 2017 (the "Relevant Period"), Defendants defrauded
18 members of the public in connection with the alleged pooled investment of funds in
19 commodity futures contracts. The Complaint further alleges that Defendants
20 misappropriated customer funds for their own benefit, and issued false trading
21 statements in order to carry on and conceal their fraud. In addition, the Complaint
22 alleges that Defendants were required to be registered with the Commission as a
23 commodity pool operator ("CPO") or as an associated person ("AP") of a CPO, but
24 failed to do so. By virtue of this conduct, the Complaint alleges that all Defendants
25 violated Sections 4b(a)(1)(A)-(C) and 4o(1)(A)-(B) of the Commodity Exchange Act
26 ("Act"), 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6o(1)(A)-(B) (2012) (Count I and Count II);
27 Defendants Fusco and Weddle violated Commission Regulation ("Regulation") 4.20(b)
28 and (c), 17 C.F.R. § 4.20(b), (c) (2018) (Count III); Defendants Fusco and Weddle

1 violated 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012) (Count IV); and all Defendants
2 violated Section 4k(2)(i) of the Act, 7 U.S.C. § 6k(2)(i) (2012) and Regulation 3.12(a),
3 17 C.F.R. § 3.12(a) (2018) (Count V).

4 4. On October 3, 2017, the Court issued an *Ex Parte* Statutory Restraining
5 Order prohibiting Defendants Allensworth, E-Slate, and Fusco from dissipating or
6 disposing of any assets and refusing to permit representatives of the CFTC from
7 inspecting their books, records, and other documents. (Dkt. No. 15).

8 5. Defendants Allensworth and E-Slate were personally served with process
9 on October 4, 2017, by CFTC Futures Trading Investigator Elsie Robinson, who
10 personally delivered a copy of the Summons and Complaint to Allensworth. (Dkt. Nos.
11 30 & 32).

12 6. Defendant Fusco was personally served with process on October 5, 2017,
13 by Ms. Robinson, who personally delivered a copy of the Summons and Complaint to
14 Fusco. (Dkt. No. 31).

15 7. Defendant Weddle was personally served with process on October 11,
16 2017, by private process server. (Dkt. No. 37).

17 8. Pursuant to Federal Rules of Civil Procedure 6(a)(1)(C) and 12(a)(1)(A)(i),
18 Defendants Weddle and E-Slate were required to answer or otherwise respond to the
19 Complaint within 21 days of service, or by October 25, 2017, for E-Slate, and
20 November 6, 2017, for Weddle.

21 9. On November 21, 2017, Plaintiff CFTC filed a Motion for Entry of
22 Default against Defendants Weddle and E-Slate (Dkt. No. 51) pursuant to Rule 55(a) of
23 the Federal Rules of Civil Procedure. The Clerk of Court granted the motion and
24 entered default against Defendants Weddle and E-Slate on November 27, 2017.

25 10. On October 17, 2017, and based on a joint motion (Dkt. No. 34), the Court
26 entered Consent Orders of Preliminary Injunction and Other Equitable Relief against
27 Defendants Allensworth (Dkt. No. 41) and Fusco (Dkt. No. 42), and removed the
28 scheduled preliminary injunction hearing from the Court's Docket (Dkt. No. 40).

1 11. The CFTC and Defendants Allensworth and Fusco requested that the
2 responsive pleading deadline for Defendants Allensworth and Fusco to respond to the
3 CFTC's Complaint be extended on two separate occasions (Dkt. Nos. 43 & 54). The
4 Court granted the first request (Dkt. No. 50), and denied the second but nevertheless
5 extended the responsive pleading deadline by an additional period of time the Court
6 found appropriate under the circumstances (Dkt. No. 56).

7 12. The Court thereafter entered an Order granting Defendants Allensworth
8 and Fusco an extension of time up to and including February 15, 2018, to file a
9 responsive pleading so that they could explore the retention of legal counsel to represent
10 them in the action or else appear *pro se*. (Dkt. No. 58).

11 13. Neither Defendant Allensworth nor Defendant Fusco served or filed a
12 responsive pleading to the CFTC's Complaint by the February 15, 2018, Court-ordered
13 deadline. Defendants Allensworth and Fusco also failed to serve or file a responsive
14 pleading, or otherwise appear in the lawsuit, for over a month after the February 15,
15 2018, Court-ordered deadline. In response, and on March 23, 2018, Plaintiff CFTC
16 filed a Motion for Entry of Default against Defendants Allensworth and Fusco (Dkt.
17 No. 59), pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

18 14. On March 26, 2018, the Clerk of Court granted the CFTC's motion and
19 entered default against Defendants Allensworth and Fusco (Dkt. No. 60).

20 15. The only pleadings filed by or on behalf of any Defendant involve the Joint
21 Motion for Entry of Consent Orders of Preliminary Injunction and Other Equitable
22 Relief and memorandum in support (Dkt. Nos. 34 & 35), Joint Motion for Extension of
23 Time for Defendants Allensworth and Fusco to File Responsive Pleadings (Dkt. No.
24 43), Second Request and Stipulation for Extension of Time for Defendants Allensworth
25 and Fusco to File Responsive Pleadings (Dkt. No. 54), and Third Request and
26 Stipulation for Extension of Time for Defendants Allensworth and Fusco to File
27 Responsive Pleadings (Dkt. No. 57).

28 16. Plaintiff's Motion was heard on October 9, 2018. Defendants Allensworth

1 and Fusco appeared at the hearing. Allensworth and Fusco represented to the Court that
2 they did not oppose entry of default judgment or the amount of restitution as indicated
3 in Plaintiff's proposed default judgment, but objected to the proposed amount regarding
4 civil penalties. After meeting and conferring, the parties were unable to agree on an
5 amount regarding civil penalties. Allensworth requested that the Court impose civil
6 penalties equal to half of Plaintiff's proposed amount, and Fusco requested that the
7 Court impose civil penalties equal to the amount for restitution.

8 17. As of the date of this Order, Defendants Allensworth, Fusco, Weddle, and
9 E-Slate have failed to file an answer or response to the Complaint.

10 **II. JURISDICTION AND VENUE**

11 18. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012)
12 (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original
13 jurisdiction over civil actions commenced by the United States or by any agency
14 expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. §
15 13a-1(a) (2012), authorizes the Commission to seek injunctive and other relief against
16 any person whenever it appears to the Commission that such person has engaged, is
17 engaging, or is about to engage in any act or practice constituting a violation of any
18 provision of the Act or any rule, regulation, or order thereunder.

19 19. Venue properly lies in this District pursuant to 7 U.S.C. § 13a-1(e),
20 because Defendants transacted business in this District, and certain of the acts and
21 practices in violation of the Act and Regulations occurred, are occurring, or are about to
22 occur within this District, among other places.

23 **III. DISCUSSION**

24 20. The Complaint pleads sufficient facts to state claims for each of the
25 violations of the Act and Regulations set forth therein. Therefore, the merits of
26 Plaintiff's claims and sufficiency of the Complaint weighs in favor of default judgment.

27 21. Plaintiff CFTC has established that it will be prejudiced if default
28 judgment is not entered because it will be impeded from fulfilling its congressional

1 mandate to enforce the Act.

2 22. The relief Plaintiff CFTC seeks is reasonable, is authorized by the Act and
3 Regulations, and is consistent with awards in similar CFTC enforcement actions.

4 23. Defendants have not answered the Complaint, contested the facts alleged
5 in the Complaint, nor filed an opposition to the Motion for Default Judgment.
6 Accordingly, no dispute of material fact exists that would preclude entry of default
7 judgment.

8 24. There is no evidence before the Court demonstrating Defendants' default
9 resulted from excusable neglect.

10 25. Accordingly, the CFTC's Motion for Entry of Default Judgment,
11 Permanent Injunction, and Other Ancillary Equitable Relief against Defendants
12 Allensworth, E-Slate, Fusco, and Weddle is **GRANTED**. *See Eitel v. McCool*, 782
13 F.2d 1470 (9th Cir. 1986).

14
15 **IT IS HEREBY ORDERED THAT:**

16 **A. Permanent Injunction**

17 26. The CFTC is authorized to seek, and the Court to impose, injunctive relief.
18 *See* 7 U.S.C. § 13a-1(a); *U.S. Commodity Futures Trading Comm'n v. Driver*, 877 F.
19 Supp. 2d 968, 981 (C.D. Cal. 2012), *aff'd sub nom. Commodity Futures Trading*
20 *Comm'n v. Driver*, 585 F. App'x 366 (9th Cir. 2014).

21 27. The well-pleaded facts of the CFTC's Complaint, and the evidence
22 submitted through declarations, establish that Defendants' unlawful conduct makes it
23 highly likely that they will be repeat violators of the Act and Regulations unless
24 permanently restrained and enjoined by the Court.

25 28. Defendants' fraudulent schemes spanned over four years and deprived at
26 least seventy-six victims of almost \$3 million. Most of the victims were tax and
27 retirement planning clients, who believed they had a relationship of trust as to their
28 intimate financial details. Those victims and details were instead exploited.

1 29. Unless enjoined, Defendants remain in a position to commit further
2 violations of the Act and Regulations. Defendants have no known lawful employment
3 outside of the commodity futures industry.

4 30. Based upon and in connection with the foregoing conduct, pursuant to
5 7 U.S.C. § 13a-1, Defendants Fusco and Weddle, and any other person or entity in
6 active concert with them, are permanently restrained, enjoined, and prohibited from
7 directly or indirectly engaging in conduct in violation of Sections 4b(a)(1)(A)-(C),
8 4k(2), 4m(1), 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1),
9 6o(1)(A), (B) (2012), and Regulations 3.12(a) and 4.20(b) and (c), 17 C.F.R. §§ 3.12(a)
10 and 4.20(b), (c) (2018), including:

- 11 i. Cheating or defrauding, or attempting to cheat or defraud, any person,
12 willfully making or causing to be made any false report or statement to any
13 person, willfully deceiving or attempting to deceive any person, in or in
14 connection with any order to make, or the making of, a futures contract;
- 15 ii. acting as a CPO or an AP of a CPO and employing any device, scheme, or
16 artifice to defraud any client or participant, existing or prospective, or
17 engaging in any transaction which operates as a fraud or deceit on any
18 client or participant, existing or prospective;
- 19 iii. acting as an AP of a CPO without being registered with the CFTC;
- 20 iv. acting as a CPO without being registered with the CFTC; and
- 21 v. failing to properly operate any commodity pool in compliance with the Act
22 and Regulations, including but not limited to 17 C.F.R. §§ 3.12 and 4.20
23 (2018).

24 31. Based upon and in connection with the foregoing conduct, pursuant to
25 7 U.S.C. § 13a-1, Defendants Allensworth and E-Slate, and any other person or entity in
26 active concert with them, are permanently restrained, enjoined, and prohibited from
27 directly or indirectly engaging in conduct in violation of 7 U.S.C. §§ 6b(a)(1)(A)-(C),
28 6k(2), 6o(1)(A), (B) and 17 C.F.R. §§ 3.12(a) and 4.20(b), (c) (2018), including:

- i. Cheating or defrauding, or attempting to cheat or defraud, any person, willfully making or causing to be made any false report or statement to any person, willfully deceiving or attempting to deceive any person, in or in connection with any order to make, or the making of, a futures contract;
- ii. acting as a CPO or an AP of a CPO and employing any device, scheme, or artifice to defraud any client or participant, existing or prospective, or engaging in any transaction which operates as a fraud or deceit on any client or participant, existing or prospective;
- iii. acting as an AP of a CPO without being registered with the CFTC;
- iv. acting as a CPO without being registered with the CFTC; and
- v. failing to properly operate any commodity pool in compliance with the Act and Regulations, including but not limited to 17 C.F.R. §§ 3.12 and 4.20 (2018).

32. Defendants Allensworth, E-Slate, Fusco, and Weddle, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successors thereof, who receive actual notice of this Order by personal service or otherwise, are also permanently restrained, enjoined, and prohibited from, directly or indirectly:

- i. 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) (2012));
- ii. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)) for their own personal account or for any account in which they have a direct or indirect interest;
- iii. Having any commodity interests traded on their behalf;
- iv. 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;

- 1 v. Soliciting, receiving, or accepting any funds from any person for the
2 purpose of purchasing or selling any commodity interests;
- 3 vi. Applying for registration or claiming exemption from registration with the
4 Commission in any capacity, and engaging in any activity requiring such
5 registration or exemption from registration with the Commission, except as
6 provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2018);
7 and/or
- 8 vii. Acting as a principal (as that term is defined in Regulation 3.1(a), 17
9 C.F.R. § 3.1(a) (2018)), agent or any other officer or employee of any
10 person (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted
11 from registration, or required to be registered with the Commission except
12 as provided for in 17 C.F.R. § 4.14(a)(9).

13 **B. Restitution**

14 33. The CFTC is authorized to seek, and the Court to impose, equitable
15 remedies for violations of the Act. 7 U.S.C. § 13a-1(d)(3)(A). Those equitable
16 remedies include “restitution to persons who have sustained losses proximately caused
17 by such violation (in the amount of such losses).” *Id.*

18 34. Defendants Allensworth, E-Slate, and Fusco’s illegal conduct caused DTG
19 pool participants to incur net losses totaling \$268,000.00, which reflects the total funds
20 Allensworth, E-Slate, and Fusco fraudulently solicited (\$360,500.00), minus the funds
21 returned to pool participants in order to conceal and prolong the scheme, or to induce
22 additional investments in the nature of a Ponzi scheme (\$92,500.00). *See* Declaration of
23 Elsie Robinson (“Robinson Decl.”), dated August 1, 2018 (Dkt. No. 64).

24 35. Defendants Allensworth, E-Slate, and Fusco shall pay, jointly and
25 severally, restitution in the amount of two hundred sixty eight thousand dollars
26 (\$268,000) (“Restitution Obligation I”), plus post-judgment interest. If Restitution
27 Obligation I is not paid immediately, post-judgment interest shall accrue on Restitution
28 Obligation I beginning on the date of entry of this Order and shall be determined by

1 using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to
2 28 U.S.C. § 1961 (2012).

3 36. Defendants Allensworth, E-Slate, and Weddle’s illegal conduct caused
4 JustInfo pool participants to incur net losses totaling \$2,527,874.44, which reflects the
5 total funds Allensworth, E-Slate, and Weddle fraudulently solicited (\$2,803,129.28),
6 minus the funds returned to pool participants in order to conceal and prolong the
7 scheme, or to induce additional investments in the nature of a Ponzi scheme
8 (\$275,254.84). *See* Robinson Decl.

9 37. Defendants Allensworth, E-Slate, and Weddle shall, jointly and severally,
10 pay restitution in the amount of two million, five hundred twenty seven thousand eight
11 hundred seventy four dollars and forty four cents (\$2,527,874.44) (“Restitution
12 Obligation II”), plus post-judgment interest. If Restitution Obligation II is not paid
13 immediately, post-judgment interest shall accrue on Restitution Obligation II beginning
14 on the date of entry of this Order and shall be determined by using the Treasury Bill rate
15 prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

16 38. To effect payment of Restitution Obligation I and Restitution Obligation II
17 and the distribution of any restitution payments to the defrauded DTG Pool participants
18 or JustInfo Pool participants, the Court appoints the National Futures Association
19 (“NFA”) as Monitor (“Monitor”). The Monitor shall collect restitution payments from
20 Defendants Allensworth, E-Slate, Fusco, and Weddle and make distributions as set forth
21 below. Because the Monitor is acting as an officer of this Court in performing these
22 services, the NFA shall not be liable for any action or inaction arising from NFA’s
23 appointment as Monitor, other than actions involving fraud.

24 39. Defendants Allensworth, E-Slate, and Fusco shall make DTG Pool
25 participant Restitution Obligation I payments under this Order to the Monitor in the
26 name “DTG Pool/Allensworth, Fusco Restitution Fund.” Defendants Allensworth, E-
27 Slate, and Weddle shall make JustInfo Pool participant Restitution Obligation II
28 payments under this Order to the Monitor in the name “JustInfo Pool/Allensworth,

1 Weddle Restitution Fund.” All such Restitution Obligation I and II payments shall be
2 sent by electronic funds transfer, or by U.S. postal money order, certified check, bank
3 cashier’s check, or bank money order, to the Office of Administration, National Futures
4 Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under
5 cover letter that identifies the paying Defendant and the name and docket number of this
6 proceeding. The paying Defendant shall simultaneously transmit copies of the cover
7 letter and the form of payment to the Chief Financial Officer, Commodity Futures
8 Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington D.C.
9 20581.

10 40. The Monitor shall oversee Restitution Obligation I and Restitution
11 Obligation II and shall have the discretion to determine the manner of distribution of
12 such funds in an equitable fashion to Defendants’ pool participants identified by the
13 CFTC, or may defer distribution until such time as the Monitor deems appropriate. In
14 the event that the amount of Restitution Obligation I and II payments to the Monitor are
15 of a *de minimis* nature such that the Monitor determines that the administrative cost of
16 making a distribution to eligible pool participants is impractical, the Monitor may, in its
17 discretion, treat such restitution payments as civil monetary penalty payments, which
18 the Monitor shall forward to the CFTC pursuant to the instructions for civil monetary
19 penalty payments set forth below.

20 41. Defendants shall cooperate with the Monitor as appropriate to provide such
21 information as the Monitor deems necessary and appropriate to identify Defendants’
22 pool participants to whom the Monitor, in its sole discretion, may determine to include
23 in any plan for distribution of any Restitution Obligation I and Restitution Obligation II
24 payments. Defendants shall execute any documents necessary to release funds that they
25 hold in any repository, bank, investment, or other financial institution, wherever
26 located, in order to make partial or total payment toward Restitution Obligation I or
27 Restitution Obligation II.

28 42. The Monitor shall provide the CFTC at the beginning of each calendar year

1 with a report detailing the disbursement of funds to Defendants' pool participants
2 during the previous year. The Monitor shall transmit this report accompanied by a
3 cover letter identifying the name and docket number of this proceeding to the Chief
4 Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre,
5 1155 21st Street, NW, Washington, D.C. 20581.

6 43. The amounts payable to each pool participant shall not limit the ability of
7 any pool participant to prove that a greater amount is owed from Defendants or any
8 other person or entity, and nothing herein shall be construed in any way to limit or
9 abridge the rights of any pool participant that exist under state or common law.

10 44. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool
11 participant of Defendants who suffered a loss is explicitly made an intended third-party
12 beneficiary of this Order and may seek to enforce this Order to obtain satisfaction of
13 any portion of Restitution Obligation I and Restitution Obligation II that has not been
14 paid by Defendants, to ensure continued compliance with any provision of this Order,
15 and to hold Defendants in contempt for any violations of any provision of this Order.

16 45. To the extent that any funds accrue to the U.S. Treasury for satisfaction of
17 a Defendant's Restitution Obligation I or Restitution Obligation II, as applicable, such
18 funds shall be transferred to the Monitor for disbursement in accordance with the
19 procedures set forth above.

20 **C. Civil Monetary Penalty**

21 46. Under 7 U.S.C. § 13a-1(d)(1), and Regulation 143.8(a)(4)(ii)(D), 17 C.F.R.
22 § 143.8(a)(4)(ii)(D) (2018), the CFTC is authorized to seek a civil monetary penalty
23 equal to the higher of triple Defendants' monetary gain from each violation of the Act
24 or Regulations, or \$177,501¹ per violation.

25 47. Based on the allegations in the Complaint and evidence before the Court,
26

27 ¹ The civil monetary penalty amount is adjusted annually for inflation. The annual
28 inflation adjustment for 2018 resulted in the applicable civil monetary penalty of
\$177,501. *See* 17 C.F.R. § 143.8.

1 the Court finds Defendants Allensworth, E-Slate, and Fusco, acting intentionally and
2 with scienter, fraudulently solicited and misappropriated \$360,500.00 during the
3 Relevant Period and attempted to conceal their fraud by providing fabricated trading
4 statements to participants showing profitable trading activity.

5 48. Based on the allegations in the Complaint and evidence before the Court,
6 the Court finds Defendants Allensworth, E-Slate, and Weddle, acting intentionally and
7 with scienter, fraudulently solicited and misappropriated \$2,803,129.28 during the
8 Relevant Period and attempted to conceal their fraud by preparing and distributing
9 fabricated statements reflecting trading profits and avoiding pool participant withdrawal
10 demands by falsely claiming that the FCM holding the trading accounts was performing
11 an audit and/or compliance review.

12 49. As a result of Defendants' illegal conduct, DTG and JustInfo pool
13 participants incurred significant losses as Defendants enriched themselves. The Court
14 finds that these circumstances warrant imposition of a significant monetary penalty,
15 both as to the DTG Pool and the JustInfo Pool.

16 50. Based on Defendants' intentional and egregious conduct, the Court finds
17 that civil monetary penalties reflecting three times the monetary net gain from the DTG
18 Pool fraud as to Defendants Allensworth, E-Slate, and Fusco, and reflecting three times
19 the monetary net gain from the JustInfo Pool fraud as to Defendants Allensworth, E-
20 Slate, and Weddle, are appropriate under the circumstances involved in each fraud.
21 This penalty is authorized by 7 U.S.C. § 13a-1(d)(1), and 17 C.F.R.
22 § 143.8(a)(4)(iii)(B).

23 51. Defendants Allensworth, E-Slate, and Fusco reaped net gains from their
24 fraud in the amount of \$268,000.00, which reflects the total amount of funds they
25 fraudulently solicited during the Relevant Period (\$360,500.00) minus the funds they
26 returned to DTG pool participants (\$92,500.00).

27 52. Defendants Allensworth, E-Slate, and Weddle reaped net gains from their
28 fraud in the amount of \$2,527,874.44, which reflects the total amount of funds they

1 fraudulently solicited during the Relevant Period (\$2,803,129.28) minus the funds they
2 returned to DTG pool participants (\$275,254.84).

3 53. Accordingly, Defendants Allensworth, E-Slate, and Fusco are ordered to
4 pay, jointly and severally, a civil monetary penalty in the amount of eight hundred and
5 four thousand dollars (\$804,000) (“CMP Obligation I”), plus post-judgment interest
6 thereon. If CMP Obligation I is not paid immediately, then post-judgment interest shall
7 accrue on CMP Obligation I beginning on the date of entry of this Order and shall be
8 determined by using the Treasury Bill rate prevailing on the date of entry of this Order
9 pursuant to 28 U.S.C. § 1961 (2012).

10 54. In addition, Defendants Allensworth, E-Slate, and Weddle are ordered to
11 pay, on a joint and several basis, a civil monetary penalty in the amount of seven
12 million, five hundred eighty three thousand, six hundred and twenty three dollars and
13 thirty two cents (\$7,583,623.32), plus post-judgment interest thereon (“CMP Obligation
14 II”). If CMP Obligation II is not paid immediately, then post-judgment interest shall
15 accrue on CMP Obligation II beginning on the date of entry of this Order and shall be
16 determined pursuant to 28 U.S.C. § 1961 (2012).

17 55. Defendants shall pay their CMP Obligation I or CPM Obligation II, as
18 applicable, and any post-judgment interest, by electronic funds transfer, U.S. postal
19 money order, certified check, bank cashier’s check, or bank money order. If payment is
20 to be made other than by electronic funds transfer, then the payment shall be made
21 payable to the Commodity Futures Trading Commission and sent to the address below:

22 MMAC/ESC/AMK326
23 Commodity Futures Trading Commission
24 Division of Enforcement
25 6500 S. MacArthur Blvd.
26 HQ Room 181
27 Oklahoma City, OK 73169
28 (405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

56. If payment by electronic funds transfer is chosen, Defendants shall contact

1 Marie Thorne or her successor at the address above to receive payment instructions and
2 shall fully comply with those instructions. Defendants shall accompany payment of
3 CMP Obligation I and CMP Obligation II, as applicable, with a cover letter identifying
4 the paying Defendant and the name and docket number of this proceeding. Defendants
5 shall simultaneously transmit copies of the cover letter and the form of payment to the
6 Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette
7 Centre, 1155 21st Street, NW, Washington D.C. 20581.

8 **D. Miscellaneous Provisions**

9 57. Partial Satisfaction: Acceptance by the CFTC or the Monitor of any partial
10 payment of any Restitution Obligation (I and II) or CMP Obligation (I and II) shall not
11 be deemed a waiver of Defendants' obligation to make further payments pursuant to
12 this Order, or a waiver of the CFTC's right to seek to compel payment of any remaining
13 balance.

14 58. Asset Freeze: On October 3, 2017 (Dkt. No. 15), this Court entered an
15 asset freeze order prohibiting the transfer, removal, dissipation, and disposal of
16 Defendants Allensworth, Fusco, and E-Slate's assets ("Asset Freeze Order"). On
17 October 17, 2017, the Court extended the asset freeze order ("Asset Freeze Order
18 Continuation") through Consent Orders of Preliminary Injunction and Other Equitable
19 Relief against Defendants Allensworth and Fusco (Dkt. Nos. 41 & 42). The Monitor
20 shall ensure that any assets that are frozen under the Asset Freeze Order and Asset
21 Freeze Order Continuation are collected and applied toward Restitution Obligation I, set
22 out above. *See Driver*, 877 F. Supp. 2d at 981. Once the Monitor completes the
23 collection process, and notifies the CFTC accordingly pursuant to Part 95 below, the
24 Asset Freeze Order and Asset Freeze Order Continuation shall be deemed lifted
25 pursuant to the terms of this Order.

26 59. Notice: All notices required to be given to the CFTC by any provision in
27 this Order shall be sent certified mail, return receipt requested, as follows:

28 Charles Marvine

1 Deputy Director, Division of Enforcement
2 Commodity Futures Trading Commission
3 4900 Main Street, Suite 500
4 Kansas City, Missouri 64112
5 (816) 960-7700

6 All such notices to the CFTC shall reference the name and docket number of this action.

7 60. Change of Address/Phone: Until such time as Defendants satisfy in full
8 their Restitution Obligation (I and II, as applicable) and CMP Obligation (I and II, as
9 applicable), as set forth in this Order, Defendants shall provide written notice to the
10 CFTC by certified mail of any change to his telephone number and mailing address
11 within ten (10) calendar days of the change.

12 61. Injunctive and Equitable Relief Provisions: The injunctive and equitable
13 relief provisions of this Order shall be binding upon Defendants and upon any person
14 under their authority or control, and upon any person who receives actual notice of this
15 Order, by personal service, email, facsimile or otherwise insofar as he or she is acting in
16 active concert or participation with any Defendant.

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

21 **IT IS SO ORDERED**, at Los Angeles, California, on this 26th day of
22 October 2018.

23
24 

25 HON. CONSUELO MARSHALL
26 UNITED STATES DISTRICT JUDGE
27
28