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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

SYSTEM CAPITAL, LLC, AND JOSHUA
WALLACE,

Defendants.

Case No. 10 Civ. 8850 (KBF)

ECF Case

~~PROPOSED~~ ORDER FOR ENTRY
OF DEFAULT JUDGMENT,
PERMANENT INJUNCTION AND
ANCILLARY EQUITABLE RELIEF
AGAINST SYSTEM CAPITAL, LLC,
AND JOSHUA WALLACE

On November 23, 2010, Plaintiff U.S. Commodity Futures Trading Commission (the "Commission") filed a Complaint against Defendants System Capital, LLC ("System Capital"), and Joshua Wallace ("Wallace") (collectively, "Defendants") seeking injunctive and other equitable relief as well as the imposition of civil penalties for violations of the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.*, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act), §§ 13101-13204, 122 Stat. 1651 (effective June 18, 2008) (the "Act"), specifically, Sections 4b(a)(1)(A) and (C), 4o(1)(A)-(B), and 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6o(1)(A)-(B), and 13(a)(4).

Proper service of process has been affected on Defendants on December 4, 2010, by personal delivery of the Summons and Complaint to Wallace, and to System Capital through Wallace, the president of System Capital.

On February 2, 2011, the court entered a Consent Order of Preliminary Injunction which, *inter alia*, prohibited Defendants from violating Sections 4b(a)(1)(A) and (C), 4o(1)(A)-(B), and 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6o(1)(A)-(B),

and 13(a)(4), and stayed this matter, including the filing of an answer and all other filings, appearances and discovery, until a related criminal matter had been resolved.

On January 11, 2013, the Court issued an Order lifting the stay of proceedings and provided Defendants twenty-one (21) days from the date the order was signed to answer the complaint.

Defendants have failed to answer or otherwise defend this action and on February 5, 2013 the Clerk issued Certificates of Default. In addition, System Capital, a limited liability company, is unrepresented in this matter.

Upon application by the Commission (the "Application") on February 13, 2013, the Court issued an Order to Show Cause Why an Order of Default Judgment, Permanent Injunction and Ancillary Equitable Relief Should Not Be Entered against Defendants. The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Application, and other written submissions of the Commission filed with the Court, and being fully advised in the premises, pursuant to Fed. R. Civ. P. 55(b)(2), hereby:

GRANTS the Commission's application and enters findings of fact and conclusions of law finding System Capital and Wallace liable as to all violations as alleged in the Complaint. The Court further grants the Commission's request to assess monetary damages against System Capital and Wallace, including civil monetary penalties. Accordingly, the Court now issues the following Order for Default Judgment, Permanent Injunction and Ancillary Equitable Relief (the "Order") against Defendants System Capital and Wallace.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and Defendants pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear 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, regulation, or order thereunder.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Defendants transacted business in this district, and that certain transactions, acts, practices, and courses of business alleged in this Complaint occurred within this District.

B. Parties

1. Plaintiff, the United States Commodity Futures Trading Commission, is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (“Commission Regulations”).

2. Defendant Joshua Wallace is an individual who resides in Lake Oswego, Oregon. Wallace is the founder, sole owner, principal and president of Defendant System Capital. Wallace has been registered with the National Futures Association (“NFA”) as an Associated Person (“AP”), and listed as the principal and president, of System Capital since March 12, 2009. From August 20, 2008 to March 10, 2009, Wallace was registered as an AP, and listed as a principal of, Pacific Futures and Capital, LLC (“PFC”). PFC is registered with the NFA as an Introducing Broker (“IB”) and Commodity Pool Operator (“CPO”), and was formerly registered as a Commodity Trading Advisor (“CTA”).

3. Defendant System Capital, LLC is organized in the state of Oregon as a limited liability company with its principal place of business located in Lake Oswego, Oregon. System Capital has been registered with the NFA as a CTA since April 3, 2009, and was registered as a CPO from March 12, 2009 until February 24, 2010.

C. Findings of Fact

Fraudulent Solicitation of Clients

1. In or about the summer of 2009, Defendants began a business relationship with a consulting firm that helps CTAs sign-up clients for the purpose of raising money to trade commodity futures contracts on behalf of clients (the "Consulting Firm"). Through this relationship, the Consulting Firm solicited clients for Defendants' CTA business through direct contact with prospective clients, as well as by soliciting other businesses and Commission registrants, including Future Commission Merchants ("FCM"), IBs and CTAs, who would in turn solicit clients for Defendants' CTA business.

2. From about August 2009 until May 2010, Wallace, acting on behalf of Defendants, provided the Consulting Firm with false information regarding Defendants' trading history and the amount of assets Defendants had under management. The Consulting Firm used this false information to create a number of versions of a promotional document known in the industry as a "Tear Sheet" that was used to solicit clients.

3. In addition, Wallace created a number of other documents that he used to fraudulently solicit clients, including: (a) a PowerPoint presentation regarding System Capital that included a false performance history; (b) a document purportedly authored by a major accounting firm verifying the trading performance of Defendants for the period June 1, 1999 to December 31, 2009 – the accounting firm had never been retained and the document was entirely forged; (c) a

spread sheet indicating Defendants' assets under management ("AUM") for the period June 1999 (\$15,705.00) to January 2010 (over \$29 million); (d) a document purporting to be monthly account statements for a trading account in the name of Wallace for the period August 2007 to July 2008 that did not actually exist; and (e) a "Due Diligence Questionnaire" ("DDQ") falsely claiming that System Capital had over \$33 million AUM, including institutional assets of \$9.2 million and commodity pool assets of \$8 million, and that System Capital managed 28 separate accounts, including an account with assets of between \$5 million and \$10 million, and another account with assets of between \$10 million and \$20 million.

4. From about November 2009 until April 2010, Wallace and the Consulting Firm sent various versions of the Tear Sheet and other solicitation materials to at least 15 entities registered with the Commission, including FCMs, IBs and CTAs, as well as other entities, for the purpose of having these entities solicit clients for Defendants' CTA business. A number of these entities marketed Defendants to their clients and opened client accounts that Defendants managed. During this time, Wallace also spoke with a number of these entities and provided false information regarding Defendants.

5. In addition, from about November 2009 until May 2010, Wallace and the Consulting Firm, based on false information provided by Defendants, on at least five occasions provided false information to prospective clients, who then became clients of Defendants. Defendants traded commodity futures contracts on behalf of most of these clients.

6. In or about February 2010, Wallace and the Consulting Firm, based on false information provided to it by Defendants, provided various versions of the Tear Sheet and other fraudulent documents to a FCM registered with the Commission. As a result of the false information and fraudulent documents sent it, the registered FCM opened an execution account

in the name of Defendants, and Defendants used that account from about April to May 2010 to trade commodity futures contracts on behalf of the clients they had fraudulently obtained.

7. As a result of these fraudulent solicitations, Defendants retained at least seventeen (17) clients, directed the trading of these clients' commodity futures accounts, and managed approximately \$3.5 million of client funds.

Misrepresentations to the NFA

8. From about April to May 2010, Wallace, on behalf of Defendants, made numerous misrepresentations to the NFA. In April or May 2010, Wallace sent to the NFA, as required by NFA rules for CTAs, a Disclosure Document ("DD") dated April 30, 2010 containing the following misrepresentations: (a) that as of March 2010, System Capital had 29 accounts under management; and (b) that as of March 2010, System Capital had \$18.9 million AUM.

9. On or about May 11, 2010, the NFA received from the registered FCM where Defendants had their execution account, a System Capital Tear Sheet and other fraudulent documents the FCM had received from Wallace and the Consulting Firm. Due to discrepancies between information in these documents and information the NFA received from Wallace, the NFA, as part of its official duties under the Act, commenced an audit of Defendants. Auditors from the NFA interviewed Wallace on or about May 13, 2010, and again on or about May 18, 2010. During the first interview, Wallace made numerous misrepresentations to the NFA.

10. When asked by the NFA at the first interview to explain the discrepancy between the \$18.9 million AUM reported to the NFA in the April 30, 2010 DD and the \$30 million AUM appearing on the Tear Sheet submitted to the registered FCM, Wallace falsely stated that the \$30 million AUM reported on the Tear Sheet was accurate at the time the Tear Sheet was distributed but had since fallen to about \$19 million. Wallace further stated that the majority of the \$19

million reported in the DD was proprietary funds, which included money traded on behalf of family and friends. In the second interview, Wallace admitted that he had lied to the NFA in the first interview, and that the AUM reported in the Tear Sheet as well as in the DD submitted to the NFA were inflated and that he had made them up. Wallace further admitted that Defendants had never had a proprietary account, and that none of his family had ever opened an account to be traded by Defendants. Wallace also admitted that the performance history presented in the Tear Sheet was not actual performance as the Tear Sheet claimed. Wallace stated that the reason for these misrepresentations was to attract more clients by making Defendants' program appear to have a greater track record and to be larger than it actually was.

11. When asked by the NFA at the first interview about the statement in the DDQ that System Capital was the general partner in a private CPO with assets of \$8 million, Wallace stated that "he did not believe he wrote that." In the second interview, Wallace admitted that he had authored the DDQ, and that he had fabricated the claim that System Capital was a general partner in a private CPO with assets of \$8 million, as well as the claim that it managed \$9.2 million in institutional accounts, in order to boost Defendants' profile.

12. When asked by the NFA in the first interview about the purported verification of Defendants' proprietary trading authored by a major accounting firm, Wallace claimed that he had entered into a relationship with the accounting firm through a friend at the firm, and that this friend had authored the report without the sanction of the firm. Wallace further stated that he was unaware of this until the week prior to the interview. At the second interview, Wallace admitted that he had never had a relationship with the accounting firm and that he, and not his friend, had authored the report.

Controlling Person/Principal-Agent

13. Wallace is the founder, sole owner, principal, president and only officer of Defendant System Capital. Wallace was solely responsible for the content and distribution of System Capital's promotional materials and other documents and statements containing misrepresentations.

14. Wallace, acting as System Capital's agent, officer and/or employee committed these fraudulent acts within the course and scope of his agency office and/or employment with System Capital.

B. Conclusions of Law

1. Defendants are Liable for Fraud in Connection with Sale or Purchase of Futures Contracts in Violation of Sections 4b(a)(1)(A) and (C) of the Act.

By the conduct described in paragraphs 1 through 14 above, Defendants System Capital and Wallace in or in connection with an order to make, or the making of, contracts of sale of a commodity in interstate commerce or for future delivery that was made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of other persons, cheated or defrauded or attempted to cheat or defraud, and willfully deceived or attempted to deceive the other persons by, among other things, knowingly or recklessly delivering, or causing to be delivered, documents containing false trading information, and making statements, or causing statements to be made, containing false trading information to prospective clients and actual clients, and to others for the purpose of having them solicit clients for Defendants. By this conduct, System Capital and Wallace violated Sections 4b(a)(1)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C).

Wallace directly or indirectly controlled System Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting System Capital's violations of

Sections 4b(a)(1)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A) and (C), and is therefore liable for System Capital's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

Wallace was acting as an agent and/or employee of System Capital when these misrepresentations were made, and System Capital is therefore liable as a principal for Wallace's acts in violation of Sections 4b(a)(1)(A) and (C), of the Act, as amended, to be codified at 7 U.S.C. § 6b(a)(1)(A) and (C), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

2. Defendants are Liable for Fraud and Deceit by a Commodity Trading Advisor or Associated Person of a Commodity Trading Advisor in violation of Section 4o(1)(A)-(B) of the Act.

By the conduct described in paragraphs 1 through 14 above, Defendant System Capital, acting as a commodity trading advisor, and Defendant Wallace, acting as an associated person of a commodity trading advisor, by use of the mails or other means or instrumentality of interstate commerce, directly or indirectly, employed a device, scheme or artifice to defraud clients and/or prospective clients, and engaged in transactions, practices or courses of business which operated as a fraud or deceit upon clients and/or potential clients by, among other things, knowingly or recklessly delivering or causing to be delivered documents containing false trading information and by making or causing to be made false representations regarding Defendants' trading history and AUM to prospective clients and actual clients. By this conduct, System Capital and Wallace violated Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B) (2006).

Wallace directly or indirectly controlled System Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting System Capital's violations of Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B) (2006), and is therefore liable for System Capital's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

Wallace was acting as an agent and/or employee of System Capital when he engaged in the acts constituting the violations of Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B) (2006), and System Capital is therefore liable as a principal for Wallace's violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

3. Defendants are Liable for Providing False Information and Documents to the NFA in violation of Section 9(a)(4) of the Act.

By the conduct described in paragraphs 1 through 14 above, Defendants System Capital and Wallace willfully falsified, concealed, or covered up by trick, scheme, or artifice material facts, made false, fictitious, or fraudulent statements or representations, and made or used a false writing or document knowing the same to contain false, fictitious, or fraudulent statements or entries to the NFA, a registered entity, designated or registered under the Act acting in furtherance of its official duties under the Act by, among other things, willfully making false or fraudulent statements or representations to the NFA during NFA's audit on or about May 13, 2010, and by willfully submitting the fraudulent DD dated April 30, 2010 to the NFA. By this conduct, System Capital and Wallace violated Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4).

Wallace directly or indirectly controlled System Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting System Capital's violations of Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4), and is therefore liable for these acts pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

Wallace was acting as an agent and/or employee of System Capital when he engaged in the acts constituting the violations of Section 9(a)(4) of the Act, as amended, to be codified at 7 U.S.C. § 13(a)(4), and System Capital is therefore liable as a principal for Wallace's violations, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2010).

Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

II. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), Defendants System Capital and Wallace are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. violating Section 4b(a)(1)(A) and (C) of the Act, as amended, 7 U.S.C. § 6b(a)(1)(A) and (C), by cheating or defrauding or attempting to cheat or defraud any other person, or by willfully deceiving or attempting to deceive any other person by any means whatsoever, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or

for future delivery that is made, or to be made, on or subject to the rules of a designated contract market for or on behalf of any other person.

- b. violating Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B) by employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or by engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant by use of the mails or any means or instrumentality of interstate commerce, while acting as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator.
- c. violating Section 9(a)(4) of the Act, as amended, 7 U.S.C. § 13(a)(4) by willfully falsifying, concealing, or covering up by any trick, scheme, or artifice a material fact, making any false, fictitious, or fraudulent statements or representations, or making or using any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade or futures association designated or registered under the Act acting in furtherance of its official duties under the Act.

Defendants System Capital and Wallace are also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a);
- b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Commission Regulation 1.3

- (hh), 17 C.F.R. § 1.3 (hh) (2012)) (“commodity options”), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, and as further defined by Commission Regulation 1.3 (xxx) (“swaps”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded on their behalf;
 - d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
 - e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
 - f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and/or
 - g. Acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any person (as

that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

The injunctive provisions of this Order shall be binding upon any of the following persons who receive actual notice of this Order, by personal service, first-class mail, email, facsimile or otherwise: Defendants System Capital and Wallace, any officer, agent, servant or employee of Defendants System Capital or Wallace, and any person who is acting in active concert or participation with Defendants System Capital or Wallace.

III. CIVIL MONETARY PENALTY AND RESTITUTION

A. Civil Monetary Penalty

IT IS FURTHER ORDERED that Defendants System Capital and Wallace shall each pay a civil monetary penalty in the amount of **four hundred twenty thousand dollars (\$420,000)** (“CMP Obligation”), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Defendants shall pay their CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Defendants shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

B. Partial Satisfaction

Any acceptance by the Commission of partial payment of Defendants' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

C. Restitution

IT IS FURTHER ORDERED that because the issue of the amount of restitution against Defendants is still unresolved pending the resolution of the related criminal matter against Wallace in the Southern District of New York (U.S. v. Joshua Wallace, 11 Cr 124 (LTS)), it is hereby reserved for further proceedings before this Court.

IV. MISCELLANEOUS PROVISIONS

A. Prohibition on Transfer of Funds

Defendants shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Commission, or any officer that may be appointed by the Court.

B. Notice

All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, as follows:

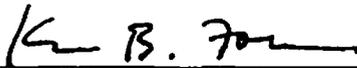
Notice to Commission: Stephen J. Obie, Regional Counsel
U.S. Commodity Futures Trading Commission
Division of Enforcement - Eastern Regional Office
140 Broadway, 19th floor
New York, New York 10005

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

C. Continuing Jurisdiction of this Court

This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action.

IT IS SO ORDERED on this 13th day of March, 2013.



Honorable Katherine B. Forrest
UNITED STATES DISTRICT JUDGE