UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v. Case No. 8:23-cv-2174-KKM-SPF

PATRICK WONSEY, d/b/a
ONE BELL & ASSOCIATES,
INC.,

Defendant.
_____/

REPORT AND RECOMMENDATION

This cause comes before the Court on Plaintiff's Motion for Entry of Default Judgment and Permanent Injunction, Civil Monetary Penalties, and Other Equitable Relief against Defendant (Doc. 16). For the reasons set forth herein, the undersigned recommends the Motion be GRANTED.

I. BACKGROUND

On September 26, 2023, Plaintiff Commodity Futures Trading Commission ("Plaintiff") filed its Complaint against Defendant Patrick Wonsey, d/b/a One Bell & Associates ("Defendant") (Doc. 1). Plaintiff raised five claims for violations of the Commodity Exchange Act (the "Act") and related regulations. Defendant was properly served with the Complaint, but failed to respond (Docs. 8–9). On October 31, 2023, the Clerk of Court entered default against Defendant (Docs. 10–11). On December 5, 2023, Plaintiff moved for default judgment against Defendant (Doc. 16). Plaintiff served Defendant with a

copy of the Motion (*Id.* at 29), but he has not responded to it and the time to do so has passed. Accordingly, the matter is now ripe for consideration.

II. STANDARD OF REVIEW

A court may enter a default judgment against a party who has failed to respond to a complaint if the complaint provides a sufficient basis for the judgment. *See Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1245 (11th Cir. 2015). "A defendant, by his default, admits the plaintiff's well-pleaded allegations of fact" set forth in the operative complaint. *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009) (quotation omitted). As such, if well-pleaded, liability is established by virtue of a default. *See Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987).

Damages, however, are not admitted by virtue of default. *Miller v. Paradise of Port Richey, Inc.*, 75 F. Supp. 2d 1342, 1346 (M.D. Fla. 1999). "Rather, the Court determines the amount and character of damages to be awarded." *Id.* Damages to be awarded by default judgment may be assessed "without a hearing [if the] amount claimed is a liquidated sum or one capable of mathematical calculation," as long as "all essential evidence is already of record." *S.E.C. v. Smyth*, 420 F.3d 1225, 1231, 1232, 1233 n.13 (11th Cir. 2005) (quoting *Adolph Coors Co. v. Movement Against Racism & the Klan*, 777 F.2d 1538, 1544 (11th Cir. 1985)); *see also Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp.*, 109 F.3d 105, 111 (2d Cir. 1997) (a hearing is not necessary if sufficient evidence is submitted to support the request for damages).

III. FACTUAL ALLEGATIONS

A. *Summary*

Plaintiff is an independent federal agency charged with administering and enforcing the Act (Doc. 1 at ¶ 10). Defendant is a Riverview, Florida resident who has done business under the names of various corporate entities, including One Bell & Associates, Inc. ("OneBell"), which he incorporated on February 7, 2017 (*Id.* at ¶ 11). He has never been registered with Plaintiff in any capacity (*Id.*). The Florida Secretary of State administratively dissolved OneBell in September 2022 (*Id.* at ¶ 12).

From at least January 2017 to at least September 2022 (the "Relevant Period"), Defendant fraudulently solicited individuals ("pool participants") to trade margined or leveraged retail foreign currency transactions ("retail forex"), binary options, and other items on and off exchanges regulated by Plaintiff (*Id.* at ¶ 1). The solicitations included fraudulent misrepresentations of Defendant's "past trading success, chances of future profitability, frequency of payouts, and the lack of risk involved with trading retail forex, digital assets or binary options through him" (*Id.*). Many, if not all, pool participants were not Eligible Contract Participants ("ECP") under 7 U.S.C. §1a(18) (*Id.* at ¶ 36). Defendant placed the pool participants' money in trading accounts he controlled directly or through one of his entities, including OneBell (collectively, the "Pool") (*Id.* at ¶ 2). At least 50 pool participants sent Defendant a minimum of $3.4 million, collectively, during the Relevant Period (*Id.*). He misappropriated at least $2.7 million of these funds, using them to pay for personal expenses such as "an apartment lease, auto loan, boat coasts, diamonds, entertainment, travel, real estate and luxury goods and to make Ponzi-style payments to pool participants" (*Id.*).

Defendant also did not register as a Commodity Pool Operator ("CPO"), failed to set up the Pool as required, and commingled pool participants' funds with his own (*Id.* at ¶ 3). Plaintiff's allegations are supported by a declaration of Kevin Samuel, a U.S. Commodity Futures Trading Commission Futures Trading Investigator (Doc. 16-1).

B. *Banking and Trading Accounts*

In February 2017, Defendant opened a JPMorgan Chase bank account in OneBell's name (Doc 1. at ¶ 13). In January 2019, he established another bank account under OneBell's name at Bank of America (*Id.*). From January 2017 to March 2017, Defendant set up a trading account under his own name for digital asset transactions with online platform Coinbase, an account with futures commission merchant Interactive Brokers LLC, and a corporate account with TD Ameritrade in OneBell's name (*Id.* at ¶¶ 14–15, 17). According to Defendant, he held 70% of the TD Ameritrade account while another OneBell employee owned the remaining 30% (*Id.* at ¶ 14). Defendant had traded with TD Ameritrade Futures & Forex under his own name since 2013 (*Id.*). He also established trading accounts in his own name through Hugosway, an exchange not directly regulated by Plaintiff, to trade binary options on primarily retail forex and digital assets (*Id.* at ¶ 18). In January 2018, Defendant opened yet another trading account, under his own name, with the North American Derivatives Exchange, Inc. ("Nadex"), a designated contract market regulated by Plaintiff, and used this account to trade in binary options (*Id.* at ¶ 16). The terms of Defendant's membership with Nadex restricted him from trading on behalf of other entities, but an investigation by Nadex's compliance department found he had violated the membership terms by "soliciting customer funds for trading at Nadex through his association with OneBell

and another Wonsey-controlled entity named TradeDow LLC" (*Id.*). Nadex revoked his membership, terminated his account as of May 25, 2021, and permanently barred him from trading on its markets (*Id.*).

IV. DISCUSSION

A. Liability

1. Count I

In Count I of the Complaint, Plaintiff alleges Defendant is liable for "Retail Forex Fraud by Misappropriation, Misrepresentations and Omission" in violation of 7 U.S.C. § 6b(a)(2)(A), (C), and 17 C.F.R. § 5.2(b)(1), (3) (*Id.* at ¶¶ 51–58). Section 6b(a)(2)(A), (C) makes it unlawful for any person to "to cheat or defraud or attempt to cheat or defraud the other person" or "willfully to deceive or attempt to deceive the other person by any means whatsoever" in regard to any futures or forex contracts. 7 U.S.C. § 6b(a)(2)(A), (C). The corresponding regulation makes it "unlawful for any person by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction" to "cheat or defraud or attempt to cheat or defraud any person" or "[w]illfully [] deceive or attempt to deceive any person by any means whatsoever." 17 C.F.R. § 5.2(b)(1), (3).

Plaintiff has jurisdiction over these matters. Under 7 U.S.C. § 2(c)(2)(C)(i)(I), Plaintiff has domain over "any agreement, contract, or transaction in foreign currency" if the customers are not ECPs and the agreement, contract, or transaction is offered on a leveraged basis. Here, both requirements are met (Doc. 1 at ¶¶ 1, 36). Further, 7 U.S.C. § 2(c)(2)(C)(ii)(I) makes the foreign currency agreements, contracts or transactions described in

Section 2(c)(2)(C)(i) subject to Section 6b(a)(2)(A), (C). Plaintiff alleges Defendant violated Section 6b(a)(2)(A), (C), and Regulation 5.2(b)(1), (3), by misappropriating customer funds and making material misrepresentations to current and prospective pool participants in connection with purported futures, forex, and options trading (Doc. 16 at 13).

a. Misappropriation of Customer Funds

Misappropriation of customer funds constitutes "'willful and blatant fraudulent activity' in violation of [Section 6b(a)(2)(A), (C)]." *U.S. Commodity Futures Trading Comm'n v. Machado*, No. 11-22275-CIV, 2012 WL 2994396, at *5 (S.D. Fla. Apr. 20, 2012) (quoting *U.S. Commodity Futures Trading Comm'n v. Noble Wealth Data Info. Serv., Inc.*, 90 F. Supp. 2d 676, 687 (D. Md. 2000)). Plaintiff has established violations of Section 6b(a)(2)(A), (C) and Regulation 5.2(b)(1), (3), by showing Defendant "misappropriated at least $2.7 million of pool participant funds" and "used these funds to pay for personal expenses . . . and make Ponzi-style payments to pool participants" (Doc. 1 at ¶ 2).

Defendant received at least $3.4 million in pool participant funds but deposited only about $2.2 million into trading accounts in his own name or in the name of OneBell (*Id.* at ¶ 38). He told the pool participants he would trade commodity futures, retail forex, precious metals, and binary options, but he only traded retail forex and binary options on retail forex and digital assets at Nadex, TD Ameritrade, Interactive Brokers LLC, and Hugosway (*Id.* at ¶ 40). Defendant lost at least $300,000 in trading, commissions, and fees, and transferred the remaining $1.9 million of pool participant funds to bank accounts under his control (*Id.* at ¶ 41).

In total, of the $3.4 million received by Defendant, he misappropriated approximately $700,000 of the funds by using newer pool participant funds to make Ponzi-style payments to older pool participants (*Id.* at ¶¶ 42–43). Defendant misappropriated the remaining funds, including by transferring about $1.9 million to his personal bank accounts, spending $420,000 on personal expenses, and withdrawing over $340,000 in cash (*Id.* at ¶ 45). Accordingly, the Court finds Defendant misappropriated funds and, in doing so, willfully and blatantly engaged in fraud in violation of Section 6b(a)(2)(A), (C), and Regulation 5.2(b)(1), (3).

b. Material Misrepresentations with Scienter

Plaintiff also alleges Defendant violated these provisions through material misrepresentations with scienter (*Id.* at ¶¶ 56–58). To establish liability for fraud, Plaintiff must show "(1) the making of a misrepresentation, misleading statement, or a deceptive omission; (2) scienter; and (3) materiality." *Commodity Futures Trading Comm'n v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328 (11th Cir. 2002) (citations omitted).

"Whether a misrepresentation has been made depends on the 'overall message' and the 'common understanding of the information conveyed.'" (*Id.*) (citation omitted). Plaintiff has established Defendant made misrepresentations about his trading history, ability to earn future returns, frequency of payouts, and ability to limit risk for current and prospective pool participants. Regarding Defendant's trading history, Plaintiff notes that Defendant's claim that he "operate[d] a fund that started at 'just $10,000,' but had generated over $1 million in profits for family and friends" is belied by his "overall unsuccessful trading" (Doc. 1 at ¶¶ 21, 27). Plaintiff also shows Defendant misrepresented his ability to earn future revenue for customers when he "told pool participants and prospective pool participants that he would make them into millionaires, and that they would be in the position to pay off their homes,

and buy new vehicles, within a short period, such as six months" (*Id.* at ¶ 22). In terms of the frequency of Defendant's payouts to customers, he "falsely represented to pool participants that he would make regular 'dividend' payments, typically around 10% of the pool participant's investment in the Pool, on a monthly basis to many of the pool participants" (*Id.* at ¶ 25). Finally, Defendant misrepresented the risks of trading, stating they "were so low as to be 'nothing' and that he had 'measures in place' that would mitigate the risk of loss to the point that he could 'stop' it" (*Id.* at ¶ 26). As the "overall message is clearly and objectively misleading or deceptive," Plaintiff has established misrepresentation. *R.J. Fitzgerald & Co.*, 310 F.3d at 1330.

"[S]cienter is established if Defendant intended to defraud, manipulate, or deceive, or if Defendant's conduct represents an extreme departure from the standards of ordinary care." *Id.* at 1328 (citation omitted). This threshold can be met by a showing of recklessness. *Id.* at 1330. As discussed above, Defendant made false or misleading claims about his prior trading success, future trading gains, frequency of payouts, and ability to control losses (Doc. 1 at ¶¶ 22–23, 28). He "failed to tell pool participants that he was running a Ponzi scheme and that he was stealing their funds to pay for his personal expenses" (*Id.* at ¶ 28). These facts establish that Defendant's misrepresentations were made recklessly, at a minimum, and in contravention of the standards of ordinary care.

Lastly, these misrepresentations are material. "A representation or omission is 'material' if a reasonable investor would consider it important in deciding whether to make an investment." *R.J. Fitzgerald & Co.*, 310 F.3d at 1328–29 (citations omitted). Here, Defendant misrepresented facts including his trading history, future profitability, and the risk

involved in dealing with him (Doc. 1 at ¶¶ 22–28). As "misrepresentations concerning profit and risk go to the heart of a customer's investment decision and are therefore material as a matter of law," the Court finds Plaintiff has satisfied the materiality requirement. *Noble Wealth*, 90 F. Supp. 2d at 686 (citations omitted).

Accordingly, the well-pleaded allegations in the Complaint, which Defendant is deemed to have admitted, establish each of the elements of (1) misappropriation of customer funds and (2) material misrepresentations with scienter, in violation of Section 6b(a)(1)(A), (C) and Regulation 5.2(b)(1), (3).

2. Count II

In Count II, Plaintiff alleges Defendant is liable for fraud and deceit by a CPO, in violation of 7 U.S.C. § 6o(1)(A)-(B). Under 7 U.S.C. § 1a(11), a CPO includes any person "who is registered with the Commission as a commodity pool operator" or who is "engaged in a business that is of the nature of a commodity pool . . . and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests." Section 6o(1)(A)-(B) makes it unlawful for a CPO "by use of the mails or any means or instrumentality of interstate commerce," to defraud a client or prospective client.

Defendant meets the Section 1a(11) standard for classification as a CPO because he engaged in a business of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise—he solicited, accepted, and received funds from pool participants for the purported purpose of trading in retail forex interests and binary options (Doc. 1 at ¶¶

1–2). As to Defendant's liability under this provision, Plaintiff correctly notes "[t]he same conduct that violates [Section 6b(a)] also violates [Section 6o(1)]." *Commodity Futures Trading Comm'n v. Weinberg*, 287 F. Supp. 2d 1100, 1108 (C.D. Cal. 2003); *see also U.S. Commodity Futures Trading Comm'n v. Allied Markets LLC*, 371 F. Supp. 3d 1035, 1051 (M.D. Fla. 2019) ("Defendants' fraudulent conduct that violated [Section 6b(a)] of the CEA, as discussed above, also violates [Section 6o(1)]."). Accordingly, for the reasons set forth above with respect to Count I, the Court finds Defendant violated Section 6o(1)(A)-(B) by fraudulently soliciting, receiving, and spending pool participant funds.

3. Count III

In Count III, Plaintiff alleges Defendant is liable for options fraud, in violation of 7 U.S.C. § 6c(b), and 17 C.F.R. § 32.4(a), (c). Section 6c(b) provides the following:

> No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an 'option', . . . 'bid', 'offer', 'put', [or] 'call', . . . contrary to any rule, regulation, or order of the Commission . . .

7 U.S.C. § 6c(b). Regulation 32.4(a), (c), promulgated under Section 6c(b), provides the following:

> In or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, it shall be unlawful for any person directly or indirectly . . . [t]o cheat or defraud or attempt to cheat or defraud any other person . . . [or] [t]o deceive or attempt to deceive any other person by any means whatsoever.

17 C.F.R. § 32.4(a), (c). The same elements are needed to find traditional commodity fraud under Section 6b(a), which the Court discussed in relation to Count I, as are needed for options fraud under Section 6c(b). *U.S. Commodity Futures Trading Comm'n v. Arrington*, 998

F. Supp. 2d 847, 871 (D. Neb. 2014), *aff'd sub nom. U.S. Commodity Futures Trading Comm'n v. Kratville*, 796 F.3d 873 (8th Cir. 2015) (citing *R.J. Fitzgerald*, 310 F.3d at 1328). Accordingly, the Court's Section 6b(a) analysis regarding Count I is applicable here, too. Plaintiff has shown Defendant violated Section 6c(b) and Regulation 32.4(a), (c).

4. Count IV

In Count IV, Plaintiff argues Defendant is liable for failing to register as a CPO, in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6m(1), and 17 C.F.R § 5.3(a)(2)(i). Section 2(c)(2)(C)(iii)(I)(cc) makes it unlawful for a person who is not registered with Plaintiff to operate or solicit funds, securities, or property for any pooled investment vehicle that is not an ECP in connection with agreements, contracts, or transactions in foreign currency described in 7 U.S.C. § 2(c)(2)(C)(i). Under Section 6m(1), except for certain exceptions inapplicable here, it is unlawful for a CPO, unless registered with Plaintiff, "to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such . . . commodity pool operator." As noted above, Defendant is a CPO under 7 U.S.C. § 1a(11) because he engaged in a business of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise and solicited, accepted, and received funds from pool participants for the purported purpose of trading in retail forex interests and binary options (Doc. 1 at ¶¶ 1–2). And under Regulation 5.3(a)(2)(i), any person who is a CPO as defined in 17 C.F.R § 5.1(d)(1) is required to register as a CPO. Section 5.1(d)(1) defines a CPO as "any person who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an eligible contract participant as defined in section 1a(18) of the Act, and that engages in retail forex transactions."

Defendant operated or solicited funds, securities, or property for a pooled investment vehicle from non-ECP pool participants in connection with retail forex and binary option transactions. He did so by mail or other means or instrumentalities of interstate commerce in connection with his business as a CPO—without being registered with Plaintiff (Doc. 1 at ¶¶ 75–82). Accordingly, Defendant is liable for violating Section 2(c)(2)(C)(iii)(I)(cc), Section 6m(1), and Regulation 5.3(a)(2)(i).

5. Count V

Finally, Plaintiff alleges Defendant failed to operate the Pool as a separate entity and commingled Pool funds, in violation of 17 C.F.R § 4.20(a)(1), (c), and 5.4. Regulation 5.4 states Part 4 of the Regulations, 17 C.F.R pt. 4, applies to any person required to register as a CPO under Part 5, 17 C.F.R pt. 5. And as discussed in relation to Count IV, Defendant was required under Part 5 to register with Plaintiff as a CPO. He is therefore subject to Regulation 4.20(a)(1), (c).

Under 17 C.F.R. § 4.20(a), (c), "a commodity pool operator must operate its pool as an entity cognizable as a legal entity separate from that of the pool operator" and must not "commingle the property of any pool that it operates or that it intends to operate with the property of any other person." Plaintiff has established Defendant violated Regulation 4.20(a)(1), (c) by "fail[ing] to operate the Pool as a legal entity separate from himself or OneBell" and "routinely commingl[ing] pool participant funds with his own personal funds belonging to others" (Doc. 1 at ¶ 87).

B. Remedies

1. Injunctive Relief

7 U.S.C. § 13a-1(b) empowers the Court, "upon a proper showing," to grant a permanent injunction. In seeking a statutory injunction, Plaintiff is not required to prove irreparable injury or the inadequacy of other remedies. *Commodity Futures Trading Comm'n v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978). Instead, "[i]n reviewing the grant of an injunction, 'the ultimate test . . . is whether the defendant's past conduct indicates that there is a reasonable likelihood of further violations in the future.'" *Commodity Futures Trading Comm'n v. Wilshire Inv. Mgmt. Corp.*, 531 F.3d 1339, 1346 (11th Cir. 2008) (quoting *SEC v. Caterinicchia*, 613 F.2d 102, 105 (5th Cir.1980)). "Foremost among these circumstances is the past illegal conduct of the defendant, from which courts may infer a likelihood of future violations." *U.S. Commodity Futures Trading Comm'n v. Gutterman*, No. 12-21047-CIV, 2012 WL 2413082, at *7 (S.D. Fla. June 26, 2012). The Eleventh Circuit has stated the following factors should be considered in this analysis:

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

SEC v. Carriba Air, Inc., 681 F.2d 1318, 1322 (11th Cir. 1982).

Defendant engaged in flagrant violations of the Act: he fraudulently solicited at least $3.4 million of pool participant funds by misrepresenting, among other facts, his past trading success, chances of future profitability, and the lack of risk involved in trading with him (Doc. 1 at ¶ 1). As discussed above, these misrepresentations were material and made with a high

degree of scienter. Defendant commingled pool participant funds with his own and misappropriated at least $2.7 million of the funds toward personal expenses, including diamonds, entertainment, and travel (*Id.* at ¶¶ 2–3). These actions spanned at least five years (*Id.* at ¶ 1). He has failed to respond to the suit and has provided no indications he will cease violating the Act or show remorse for his conduct. Given this past illegal conduct, the Court infers a likelihood of future violations. The Court finds a permanent injunction against Defendant is warranted and should read as follows:

Defendant, Patrick Wonsey, d/b/a One Bell & Associates, Inc., individually and his agents, employees, and all persons acting under his permission or authority shall be permanently enjoined and restrained from directly or indirectly:

1. Violating 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, swap data repository, or futures association (designated or registered under the Commodity Exchange Act) acting in furtherance of its official duties;
2. Trading on or subject to the rules of any registered entity (as that term is defined in 7 U.S.C. § 1a(40));
3. Entering into any transactions involving "commodity interests" (as that term is defined in 17 C.F.R. § 1.3), for his own account or for any account in which he has a direct or indirect interest;

4. Having any commodity interests traded on his behalf;

5. 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;

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

7. 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 Commodity Futures Trading Commission, except as provided for in 17 C.F.R. § 4.14(a)(9); and,

8. Acting as a principal (as that term is defined in 17 C.F.R. § 3.1(a) (2022)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from registration, or required to be registered with the Commodity Futures Trading Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

(Doc. 16 at 25).

2. Restitution

The Act permits the Court to impose, on a proper showing, restitution "to persons who have sustained losses proximately caused" by a person found to have committed violations of the Act. 7 U.S.C. § 13a-1(d)(3)(A). "The proper measurement [of restitution] is the amount that [Defendant] wrongfully gained." *Wilshire*, 531 F.3d at 1345. As set forth in the declaration of Kevin Samuel (Doc. 16-1), "through fraudulent solicitations Wonsey

collected $3,419,974 from the pool participants. He returned $719,543 to pool participants. Wonsey misappropriated the remaining approximately $2,700,431[.]" (Doc. 16-1 at ¶ 49). The Court, therefore, recommends that restitution be imposed in the amount of $2,700,431.00.

3. Civil Monetary Penalty

Under 7 U.S.C. § 13a-1(d)(1)(A) and 17 C.F.R. § 143.8(b)(1), its associated regulation, the Court may impose a civil monetary penalty of no more than $221,466 per violation, or triple the monetary gain to a defendant. In determining whether such a penalty is appropriate, the Court must analyze "the general seriousness of the violation" and "any particular mitigating or aggravating circumstances." *Wilshire*, 531 F.3d at 1346 (citing *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1571 (11th Cir. 1995)). Violations of "core provisions of the [Act]," including the defrauding of customers, "should be considered very serious." *Id.* (quoting *JCC*, 63 F.3d at 1571). In *Wilshire*, the Eleventh Circuit found a district court did not abuse its discretion in imposing the maximum civil penalty where the defendants defrauded customers, knowingly and repeatedly committed violations of the Act, and "made no attempt to cure the past violations or provide restitution to the defrauded customers." *Id.*

Similarly, Defendant has violated multiple provisions of the Act and regulations promulgated thereunder by defrauding customers through misappropriation of customer funds, fraudulent solicitation, failure to register with Plaintiff, and commingling funds of pool participants with his own. The record reflects no expressions of remorse, promises to avoid future violations, or definitive attempts by Defendant to cure his violations. Defendant's violations, as outlined in the Motion (Doc. 16) and the declaration of Kevin Samuel (Doc.

16-1), are very serious and warrant a commensurate penalty. Accordingly, the Court recommends Defendant be ordered to pay the maximum civil penalty of $8,101,293.00, which represents treble of the $2,700,431.00 sum of pool participant funds that Defendant misappropriated.

Accordingly, it is hereby

RECOMMENDED:

1. Plaintiff's Motion for Entry of Default Judgment and Permanent Injunction, Civil Monetary Penalties, and Other Equitable Relief against Patrick Wonsey d/b/a One Bell & Associates, Inc. (Doc. 16) be GRANTED.
2. The Court direct the Clerk to enter a final default judgment in favor of the Plaintiff on the Complaint.
3. Plaintiff's request for a permanent injunction be granted as outlined above.
4. Defendant be ordered to pay $2,700,431.00 in restitution.
5. Defendant be ordered to pay a civil monetary penalty of $8,101,293.00.
6. Post-judgment interest accrue pursuant to 28 U.S.C. § 1961.
7. The Court direct the Clerk to close the case.

IT IS SO REPORTED in Tampa, Florida, on April 22, 2024.

SEAN P. FLYNN
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

Within fourteen days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to the proposed findings and recommendations or request an extension of time to do so. 28 U.S.C. § 636(b)(1); 11th Cir. R. 3-1. Failure of any party to timely object in accordance with the provisions of § 636(b)(1) waives that party's right to challenge on appeal the district court's order based on the unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3-1.