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NORTHERN DISTRICT OF CALIFORNIA

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

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Case No. 06 2540

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COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

GILBERT PHILIP CASTILLO, JR.
AND CASTLE ENTERPRISE
CORPORATION, d/b/a/
WALLSTREETWAR.com, d/b/a
CASTILLORESEARCH.com, d/b/a
NEVER-LOSE.com

Defendants.

29 **COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**
30 **AND FOR CIVIL MONETARY PENALTIES UNDER THE**
31 **COMMODITY EXCHANGE ACT, AS AMENDED, 7 U.S.C. § 1 et seq.**

32 **I. SUMMARY**

33 1. From at least February 1, 1999 through at least mid-2005, Gilbert Philip Castillo,
34 Jr. ("Castillo"), and his company, Castle Enterprise Corporation ("Castle Enterprise") d/b/a

1 WallStreetWar.com, CastilloResearch.com and Never-Lose.com (the "Wall Street War
2 websites"), made false and misleading representations to solicit members of the general public to
3 purchase commodity trading advice and services related to the trading of S&P 500 commodity
4 futures and options contracts. During this time period, Castillo and Castle Enterprise
5 ("Defendants") fraudulently solicited over \$800,000 from clients.
6

7 2. Castle Enterprise, through the Wall Street War websites, acted as a Commodity
8 Trading Advisor ("CTA") without being registered as such with the Commodity Futures Trading
9 Commission ("Commission"). Castillo, as an officer and agent of Castle Enterprise, solicited
10 clients' or prospective clients' discretionary accounts on behalf of Castle Enterprise and offered
11 to the public advisory services without being registered with the Commission as an associated
12 person ("AP") of a CTA.
13

14 3. While soliciting clients for managed accounts and marketing other advisory
15 services, Castillo and Castle Enterprise made misrepresentations of material fact and material
16 omissions regarding the profitability of their trading activities, trading advice, experience, and
17 the Wall Street War track record. Defendants also touted the purportedly highly profitable
18 performance of the managed account program and advisory services being offered without
19 revealing that such "performance" was based, at best, on hypothetical or simulated performance.
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22 4. By dint of this conduct, Castillo and Castle Enterprise are directly liable for
23 violations of Sections 4o(1)(A) and (B), 4k(3) and 4m(1) of the Commodity Exchange Act, as
24 amended (2002) ("Act"), 7 U.S.C. §§ 6o(1)(A) & (B), 6k(3) and 6m(1), and for violations of
25 Sections 4.41(a)(1) and (2) and Section 4.41(b)(1) of the Commission's Regulations
26 ("Regulations"), 17 C.F.R. §§ 4.41(a)(1) and (2), and 4.41(b)(1) (2005).
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1 scheme or artifice to defraud any participant or client or prospective participant or client; or (2)
2 involves any transaction, practice or course of business which operates as a fraud or deceit upon
3 any participant or client or any prospective participant or client.”

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5 11. Regulation 4.41(b)(1), 17 C.F.R. § 4.41(b)(1), makes it unlawful for any person to
6 present the performance of any simulated or hypothetical commodity interest account,
7 transaction in a commodity interest or series of transactions in a commodity interest of a CTA, or
8 any principal thereof, unless such performance is accompanied by a prescribed cautionary
9 statement concerning the limitations of simulated or hypothetical trading results.

10
11 12. Section 4m(1) of the Act, 7 U.S.C. § 6m(1), makes it unlawful to make use of the
12 mails or instrumentalities of interstate commerce to provide commodity trading advice to 15 or
13 more persons during the preceding 12-month period, or to hold oneself out generally to the
14 public as a CTA, unless registered as a CTA under the Act. Section 4k(3) of the Act, 7 U.S.C. §
15 6k(3) makes it unlawful to be associated with a CTA as an officer, employee, consultant, or
16 agent in any capacity which involves the solicitation of a client's or prospective client's
17 discretionary account unless registered as an AP of a CTA under the Act.

18
19 13. This Court has jurisdiction over this action pursuant to Section 6c of the Act,
20 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person
21 whenever it shall appear to the Commission that such person has engaged, is engaging, or is
22 about to engage in any act or practice constituting a violation of any provision of the Act or any
23 rule, regulation or order thereunder.

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25 14. Venue properly lies with the Court pursuant to Section 6c of the Act, 7 U.S.C.
26 § 13a-1(e), in that the Defendants are found in, inhabit, or transact business in this district, or the
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1 acts and practices in violation of the Act have occurred, are occurring, or are about to occur
2 within this district.

3 15. Intradistrict Assignment: Defendants transact business throughout this District.
4 This action arises from conduct that was initiated in Contra Costa County and further conducted
5 through business that was also transacted in San Francisco County. Pursuant to Civil L.R.
6 3-2(d), this case may be assigned to either the San Francisco Division or the Oakland Division.
7 Plaintiff requests that for the convenience of parties and witnesses, this case be assigned to the
8 San Francisco Division.
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11 **III. THE PARTIES**

12 16. Plaintiff Commodity Futures Trading Commission is an independent federal
13 regulatory agency charged with the responsibility for administering and enforcing the provisions
14 of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated under it, 17 C.F.R.
15 §§ 1 *et seq.* (2005).
16

17 17. Defendant Gilbert Philip Castillo, Jr. is an individual residing in Walnut Creek,
18 CA. Castillo is the sole owner and president of Castle Enterprise. Castillo conducted his
19 business through Castle Enterprise, doing business as WallStreetWar.com, CasilloResearch.com
20 and Never-Lose.com. In February 1999, Castillo applied to the National Futures Association
21 (“NFA”) for registration as a CTA. His application to NFA was withdrawn in January 2000.
22 Castillo has never been registered with the Commission in any capacity, nor is he otherwise
23 exempt from registration with the Commission.
24

25 18. Defendant Castle Enterprise Corporation is a Nevis corporation founded by
26 Castillo in 1994, with its principal place of business in Walnut Creek, CA. Castillo is President
27 of Castle Enterprise. Among other things, Castle Enterprise did business as WallStreetWar.com,
28

1 CastilloResearch.com and Never-Lose.com. Castle Enterprise has never been registered with the
2 Commission in any capacity.

3 4 **IV. FACTS**

5 **A. The Wall Street War Websites**

6 19. Castillo and Castle Enterprise marketed a number of commodity-related services
7 through the Wall Street War websites, including managed account programs, publicly offered
8 commodity futures and options advisory services, and training courses.

9 20. Castillo and Castle Enterprise state in the Wall Street War websites that Castillo
10 founded Castle Enterprise in 1994, and that “two more companies have begun” providing
11 commodity futures and options advisory services.

12 21. One of these purported companies is CastilloResearch, which “primarily handles
13 institutional and managed funds.”

14 22. Another Castillo company is Wall Street War, “which is designed to reap the
15 rewards... through an exciting nightly newsletter and day trading service.”

16 23. The Wall Street War websites portray Castillo as having “had an extensive career
17 in the investment field rising up from the 1980’s” and states that he is considered “one of the
18 most accurate & profitable stock and stock index trader/advisors in the world today,” who now
19 “spends his time managing money and/or consulting to institutions/individuals.”

20 24. Castillo and Castle Enterprise represent that “we have found our niche over the
21 years through experience” and have “pioneered the art of successful stock market index
22 timing/trading and applying ‘inside’ information.”

23 25. Castillo and Castle Enterprise, through the Wall Street War websites, display a
24 chart that shows an “incredible performance table” that represents that the Advisory Service
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1 offered to the public by Wall Street War has “maintained tremendous returns in different market
2 conditions for six years!” On this chart the purported returns for each year from 1998 through
3 2002 range from 302% to 447%.

4
5 26. The Wall Street War Advisory Service is touted by Defendants as “[p]roven to be
6 the most accurate and profitable advisory available!” and claims that the system has a track
7 record of 90-96 % profitability. Defendants also claim that “[o]ur amazing Crystal ball method”
8 allows them to forecast market moves.

9
10 27. Prospective clients are induced to subscribe to the Advisory Service by, among
11 other things, Defendants’ offer to provide a “free service that gives you 1-2 free stock and/or
12 stock index trades each month,” that yielded “12 winners (1 per month)” for each month in 2002
13 and with an overall “track record” of “17 winning trades with only 1 loss.” They further assert
14 that a “War Room” is also a part of the Wall Street War Advisory Service trading system that
15 charts and follows the S&P 500 futures markets and provides “EXACT trades! Entries, exits and
16 stops!”

17
18 28. Through the Wall Street War websites, Defendants presented the purportedly
19 highly profitable performance and near-perfect accuracy of the advisory services being offered
20 by the Defendants without revealing that they were based, at best, on hypothetical or simulated
21 performance, and without displaying the required statement prominently disclosing the inherent
22 limitations of hypothetical or simulated performance.

23
24 29. Castillo and Castle Enterprise, through the Wall Street War websites, call their
25 Managed Account Program the “backbone of everything we do.” The program consists of
26 “position trading [f]utures contracts, options on future[s]values and day trading futures.”
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1 primarily in the S&P 500 futures contract. Castillo claims to be trading his own money
2 according to the methodology employed in the Managed Account Program.

3 30. Defendants, through the Wall Street War websites, also offered an Index Trading
4 Course, claiming that: "You can be amongst the top index traders in the world when I get done
5 with you." These courses are offered on sale for "\$19,995 before the price jumps to \$50,000."
6 Castillo states "I don't apologize for the price of my system. Once you use it you will know why
7 I consider it an insult to take less than \$100,000 for it." Profits are claimed to be "continuous
8 profits day after day & year after year as the mathematical perfection rakes in huge profits."
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10 **B. Misrepresentations**

11 31. Defendants, knowingly or with reckless disregard for the truth, made the
12 following false material representations, among others:
13

14 a) Castillo is considered "one of the most accurate & profitable stock and stock
15 index trader/advisors in the world today."
16

17 b) Castillo possesses "inside information" that produces a "near perfect record of
18 stock market index timing."
19

20 c) Castillo is profitably trading his own money according to the trading
21 methodology employed in the Managed Account Program and that "[t]here is not another stock
22 index manager that does this."
23

24 d) The Wall Street War Advisory Service is "[p]roven to be the most accurate
25 and profitable advisory available," with a track record of 90-96% accuracy and profitability, with
26 "tremendous returns in different market conditions for 6 years!" that ranged from "302%" to
27 "447%."
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1 e) By purchasing the Index Trading Course: “[Y]ou can be amongst the top index
2 traders in the world when I get done with you.”

3 f) The Index Trading Course is promised to impart trading knowledge that will
4 result in “continuous profits day after day & year after year as the mathematical perfection rakes
5 in huge profits.”
6

7 32. In fact, many of the advisory services offered by Defendants to the public never
8 operated, and clients were abandoned after purchasing trading systems or training courses,
9 receiving little or nothing of value and losing their money. Clients lost approximately \$800,000
10 in fees on Defendants’ trading systems and over \$57,000 in trading accounts managed by
11 Defendants.
12

13 33. With regard to the “Managed Account Program,” the Wall Street War websites
14 stated that the program has “highly profitable results” from the “professional management of
15 your assets.” Castillo claimed to be successfully trading his own money according to the trading
16 methodology he uses in the Managed Account Program, stating that “[o]ur clients have the
17 comfort ... that there [sic] money is being treated the exact same way.” These claims are false
18 because (1) the seven accounts that Castillo directed for others under the “Managed Account
19 Program” all lost money, (2) Castillo has admitted that the claimed successful track record of the
20 “Managed Account Program” was not based on actual trading but was the result of purported
21 hypothetical trading, and (3) Castillo admitted that he was not trading his own funds.
22
23

24 C. Failure to Disclose Limitations of Hypothetical Trading

25 34. Through the Wall Street War websites, Defendants presented the purportedly
26 highly profitable performance and near-perfect accuracy of the advisory services being offered
27 without revealing that such “trading” was based on hypothetical or simulated performance by
28

1 displaying the required statement prominently disclosing the inherent limitations of hypothetical
2 or simulated performance.

3 **D. Unregistered CTA Activity**

4
5 35. Defendants have never been registered with the Commission in any capacity, nor
6 are they otherwise exempt from any registration requirements of the Act.

7 36. From at least February 1, 1999 through at least mid-2005, while unregistered,
8 Castle Enterprise, through the Wall Street War websites, held itself out to the general public as,
9 among other things, a manager of commodity interest accounts, where Castillo would
10 exclusively direct the trading in managed accounts for profit, and as a provider of other
11 commodity advisory services such as the Wall Street War Advisory Service. Castillo, as an
12 officer and agent of Castle Enterprise, solicited clients' or prospective clients' discretionary
13 accounts on behalf of Castle Enterprise.
14

15 **E. Acting as a Controlling Person**

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17 37. Castillo is the founder, President and only officer of Castle Enterprise. Castillo is
18 the sole signatory on the Castle Enterprise bank account. Castillo was solely responsible for the
19 content of the Wall Street War websites, including the fraudulent advertising that appeared on
20 those websites, as alleged above.

21 **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

22 **COUNT I**

23
24 **VIOLATIONS OF SECTIONS 4o(1)(A) and (B) OF THE ACT,**
25 **7 U.S.C. §§ 6o (1)(A) and (B) and Commission Regulations 4.41(a)(1) and (2),**
26 **17 C.F.R. §§ 4.41(a)(1) and (2).**
27 **FRAUD BY A COMMODITY TRADING ADVISOR**

28 38. Plaintiff re-alleges paragraphs 1 through 37 above and incorporates these
allegations by reference as if fully set forth herein.

1 39. By reason of their conduct, Defendants Castillo and Castle Enterprise, while
2 acting, respectively, as a CTA and an AP of a CTA, through the means or instrumentalities of
3 interstate commerce, employed devices, schemes or artifices to defraud clients or prospective
4 clients and engaged in transactions, practices or courses of business which operated as a fraud or
5 deceit upon clients or prospective clients, in violation of Section 4o(1)(A) and (B) of the Act, 7
6 U.S.C. §§ 6o(1)(A) and (B) and Commission Regulation 4.41(a)(1) and (2), 17 C.F.R. §§
7 4.41(a)(1) and (2).

8
9 40. Castillo was acting as an agent of Castle Enterprise, and Castle Enterprise
10 therefore is liable for Castillo's violations of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. §§
11 6o(1)(A) and (B) and Commission Regulation 4.41(a)(1) and (2), 17 C.F.R. §§ 4.41(a)(1) and
12 (2), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) and Regulation 1.2, 17
13 C.F.R. § 1.2.

14
15 41. Castillo directly or indirectly controlled Castle Enterprise and did not act in good
16 faith or knowingly induced, directly or indirectly, the acts constituting its violations of Sections
17 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) and Commission Regulations
18 4.41(a)(1) and (2), 17 C.F.R. §§ 4.41(a)(1) and (2), pursuant to Section 13(b) of the Act, 7 U.S.C.
19 § 13c(b).

20
21 42. Each fraudulent misrepresentation and omission by the Defendants, including
22 those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4o(1)
23 (A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B), and Commission Regulations 4.41(a)(1)
24 and (2), 17 C.F.R. §§ 4.41(a)(1) and (2).

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COUNT II

**VIOLATION OF COMMISSION REGULATION 4.41(b)(1), 17 C.F.R. § 4.41(b)(1)
FAILURE TO PROVIDE CAUTIONARY STATEMENT REGARDING
LIMITATIONS OF HYPOTHETICAL TRADING RESULTS**

43. Plaintiff re-alleges paragraphs 1 through 42 above and incorporates these allegations by reference as if fully set forth herein.

44. By virtue of their conduct, the Defendants are each directly liable for violations of Regulation 4.41(b)(1), 17 C.F.R. § 4.41(b)(1), by presenting the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest of a CTA not accompanied by the prescribed cautionary statement.

45. Castillo was acting as an agent of Castle Enterprise, therefore Castle Enterprise is liable for Castillo's violations of Regulation 4.41(b)(1), 17 C.F.R. § 4.41(b)(1), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) and Regulation 1.2, 17 C.F.R. § 1.2.

46. Castillo directly or indirectly controlled Castle Enterprise and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting its violations of Regulation 4.41(b)(1), 17 C.F.R. § 4.41(b)(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

47. Each presentation by the Defendants of the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest of a CTA not accompanied by the prescribed cautionary statement, including those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.41(b)(1), 17 C.F.R. § 4.41(b)(1).

1 **COUNT III**

2 **VIOLATION OF SECTION 4m(1) OF THE ACT, 7 U.S.C. § 6m(1)**
3 **FAILURE TO REGISTER AS A COMMODITY TRADING ADVISOR**

4 48. Plaintiff re-alleges paragraphs 1 through 47 above and incorporates these
5 allegations by reference as if fully set forth herein.

6
7 49. By reason of its conduct, Castle Enterprise acted as a CTA without being
8 registered with the Commission, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

9 50. Castillo directly or indirectly controlled Castle Enterprise and did not act in good
10 faith or knowingly induced, directly or indirectly, the acts constituting its violations of Section
11 4m(1) of the Act, 7 U.S.C. § 6m(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

12 **COUNT IV**

13 **VIOLATION OF SECTION 4k(3) OF THE ACT, 7 U.S.C. § 6k(3)**
14 **FAILURE TO REGISTER AS AN ASSOCIATED PERSON OF A**
15 **COMMODITY TRADING ADVISOR**

16 51. Plaintiff re-alleges paragraphs 1 through 50 above and incorporates these
17 allegations by reference as if fully set forth herein.

18
19 52. By reason of his conduct, Castillo acted as an associated person of a CTA without
20 being registered with the Commission, in violation of Section 4k(3) of the Act, 7 U.S.C. § 6k(3).

21 53. Castle Enterprise, through its agent Castillo, violated Section 4k(3) of the Act, 7
22 U.S.C. § 6k(3), by knowingly permitting Castillo to act as an AP without registering with the
23 Commission.

24 **VI. RELIEF REQUESTED**

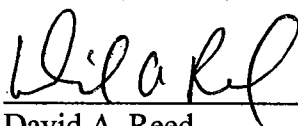
25
26 WHEREFORE, plaintiff respectfully requests that this Court, as authorized by Section
27 6c(a) of the Act, 7 U.S.C. § 13a-1, and pursuant to its equitable powers:
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- A. Find Defendants liable for violating Sections 4o (1) (A) and (B), 4k(3) and 4m(1) of the Commodity Exchange Act, as amended, 7 U.S.C. §§ 6o(1) (A) & (B), 6k(3) and 6m(1), and for violations of Sections 4.41(a) (1) and (2) and 4.41(b)(1) of the Commission's Regulations, 17 C.F.R. §§ 4.41 (a) (1) and (2) and 4.41(b)(1);
- B. Enter a permanent injunction prohibiting the Defendants and any other person or entity associated with them, or any successor thereof, from engaging in conduct violative of the provisions of the Act and Regulations as alleged in this Complaint, and from engaging in any activity relating to commodity interest trading, including but not limited to, soliciting, accepting or receiving funds, revenue or other property from any person, giving advice for compensation, or soliciting prospective clients, participants or customers, related to the purchase and sale of any commodity futures or options on commodity futures contracts;
- C. Enter an order directing the Defendants and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;
- D. Enter an order directing the Defendants to make full restitution to every client, participant or customer whose funds were received by them as a result of acts and practices which constituted violations of the Act, as described herein, and interest thereon from the date of such violations;

- 1 E. Enter an order directing the Defendants to pay a civil monetary penalty in the
2 amount of not more than the higher of (i) triple the monetary gain to Defendants
3 for each violation of the Act and Regulations or (ii) \$120,000 for each violation of
4 the Act and Regulations prior to October 23, 2004, or \$130,000 for violations
5 occurring after October 23, 2004;
6
7
8 F. Enter an order requiring Defendants to pay costs and fees as permitted by
9 28 U.S.C. §§ 1920 and 2412(a)(2); and
10
11 G. Enter an order providing such other and further remedial ancillary relief as the
12 Court may deem just and appropriate.
13
14

15 Date: April 11, 2006

Respectfully submitted,

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