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2 **UNITED STATES DISTRICT COURT**
3 **NORTHERN DISTRICT OF CALIFORNIA**

4 U.S. COMMODITY FUTURES TRADING)
5 COMMISSION)

6 Plaintiff,)

7 vs.)

Case No.: 3:06cv2540-TEH

8 GILBERT PHILIP CASTILLO, JR.)
9 AND CASTLE ENTERPRISE)
10 CORPORATION, d/b/a/)
11 WALLSTREETWAR.com, d/b/a)
12 CASTILLORESEARCH.com.d/b/a)
13 NEVER-LOSE.com)

FINAL JUDGMENT BY DEFAULT,
PERMANENT INJUNCTION AND
ANCILLARY RELIEF

14 Defendants.)

15 Plaintiff, U.S. Commodity Futures Trading Commission, (“Commission or CFTC”) filed
16 this action in this Court on April 12, 2006, charging that Defendants Gilbert Philip Castillo, Jr.,
17 and Castle Enterprise Corporation d/b/a WallStreetWar.com, d/b/a CastilloResearch.com, d/b/a/
18 Never-Lose.com (“Defendants”) had engaged, are engaging, and may be about to engage in acts
19 and practices which constitute violations of Sections 4o(1)(A) and (B), 4k(3) and 4m(1) of the
20 Commodity Exchange Act (“CEA”), as amended, 7 U.S.C. §§ 6o (1) (A) & (B), 6k(3) and 6m(1)
21 (2002), and Sections 4.41(a)(1) and (2) and 4.41(b)(1) of the Commission Regulations
22 (“Regulations”), 17 C.F.R. §§ 4.41 (a)(1) and (2) and 4.41(b)(1) (2005), by committing fraud in
23 connection with unregistered commodity trading advisory activities. The complaint seeks a
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1 permanent injunction and disgorgement of ill-gotten gains, restitution, civil monetary penalties
2 and other ancillary relief.¹

3 The Commission has moved the Court for a Final Judgment by Default, Permanent
4 Injunction, and Ancillary Relief pursuant to 55(b) Fed. R. Civ.P., Section 6c(a) of the CEA, 7
5 U.S.C. §13a-1 (2002) and Rule 7.10 of the Civil Local Rules, seeking findings that the
6 Defendants committed the violations alleged in the Complaint and enjoining such conduct,
7 ordering disgorgement and restitution, assessing a civil monetary penalty, and granting further
8 ancillary relief. Based upon Plaintiff's Memorandum of Points and Authorities, as well as the
9 declarations and other exhibits attached thereto, the record in this case, and the Court being
10 otherwise advised in the premises, it is hereby
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12
13 ORDERED that Plaintiff's motion is granted and Judgment by Default and Order of
14 Permanent Injunction is entered against Defendants Gilbert Philip Castillo, Jr., and Castle
15 Enterprise Corporation d/b/a WallStreetWar.com, d/b/a CastilloResearch.com, d/b/a/ Never-
16 Lose.com; and the Court hereby enters the following findings of fact and conclusions of law
17 finding the Defendants liable as to all violations alleged in the Complaint. Accordingly, the
18 Court now issues the following Judgment by Default and Order of Permanent Injunction
19 ("Order") against the Defendants on issues of liability and injunctive relief, and disgorgement,
20 restitution and civil monetary penalties.
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27 ¹ After a number of unsuccessful efforts to effect personal service upon the Defendants, Plaintiff moved the Court
28 and obtained an "Order for Publication," on July 18, 2006. Service by publication was complete on August 19,
2006. After the time to plead or otherwise defend had run, upon application of the Plaintiff, the Clerk of Court
entered Default against both Defendants on September 18, 2006.

1 **I. THE PARTIES**

2 **The Plaintiff**

3 **Commodity Futures Trading Commission** (“Commission or CFTC”) is an independent
4 federal regulatory agency that is charged with the responsibility for administering and enforcing
5 the provisions of the CEA, as amended, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated
6 thereunder, 17 C.F.R. §§ 1 *et seq.*

7
8 **The Defendants**

9 **Gilbert Philip Castillo, Jr.** (“Castillo”) resided at 1587 Springbrook Road, Walnut
10 Creek, CA 94597 and/or 125 Crosby Court #2, Walnut Creek, CA 94598. Castillo is the self-
11 stated sole owner and president of Castle Enterprises. Castillo conducted his business directly
12 and through Castle Enterprise, doing business as WallStreetWar.com (“WallStreetWar”),
13 CastilloResearch.com (CastilloResearch”) and Never-Lose.com (“Never-Lose”). Castillo has
14 never been registered with the Commission in any capacity, nor is he otherwise exempt from
15 registration with the Commission.
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18 **Castle Enterprise Corporation** (“Castle Enterprise”) according to Castillo is a Nevis
19 corporation that he founded in 1998 that has used the same address as Castillo: 1587
20 Springbrook Road, Walnut Creek, CA 94597 and/or 125 Crosby Court #2, Walnut Creek, CA
21 94598. Castillo is president of Castle Enterprise. Among other things, Castle Enterprise did
22 business as WallStreetWar.com (WallStreetWar”), CastilloResearch.com (“CastilloResearch”)
23 and Never-Lose.com (“Never-Lose”). Castle Enterprise has never been registered with the
24 Commission in any capacity.
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1 **II. FINDINGS OF FACT AND CONCLUSION OF LAW**

2 The Court, being fully advised in the premises, finds that there is good cause for the entry
3 of this Order and that there is no just reason for delay. The Court therefore, further directs the
4 entry of the following Findings of Fact and Conclusions of Law, pursuant to Section 6c of the
5 CEA, 7 U.S.C. § 13a-1 (2002), as set forth herein.
6

7 **A. JURISDICTION AND VENUE**

8 1. Section 1a(6) of the CEA defines a “commodity trading advisor” as any person who
9 “for compensation or profit ... advise[s] others, either directly or through publications, writings,
10 or electronic media, as to the value of or the advisability of trading in” commodity futures or
11 “issue(s) or promulgate(s) analyses or reports concerning” trading in commodity futures.
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13 2. Section 4o(1) of the CEA, 7 U.S.C. § 6o (2002), prohibits commodity trading advisers
14 (“CTA”) or associated persons (“AP”) of commodity trading advisers from directly or indirectly:
15 (1) employing any device, scheme, or artifice to defraud any client or participant or prospective
16 client or participant; or, (2) engaging in any transaction, practice, or course of business which
17 operates as a fraud or deceit upon any client or participant or prospective client or participant.
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19 3. Regulation 4.41(a)(1) and (2), 17 C.F.R. §§ 4.41(a)(1) and (2), makes it unlawful for a
20 CTA, or any principal thereof, to advertise in any manner which: “(1) employs any device,
21 scheme or artifice to defraud any participant or client or prospective participant or client; or (2)
22 involves any transaction, practice or course of business which operates as a fraud or deceit upon
23 any participant or client or any prospective participant or client.”
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25 4. Regulation 4.41(b)(1), 17 C.F.R. § 4.41(b)(1), makes it unlawful for any person to
26 present the performance of any simulated or hypothetical commodity interest account,
27 transaction in a commodity interest or series of transactions in a commodity interest of a
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1 commodity pool operator, CTA, or any principal thereof, unless such performance is
2 accompanied by a prescribed cautionary statement concerning the limitations of simulated or
3 hypothetical trading results.

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5 5. Section 4m(1) of the CEA, 7 U.S.C. § 6m(1), makes it unlawful to make use of the
6 mails or instrumentalities of interstate commerce to provide commodity trading advice to 15 or
7 more persons during the preceding 12-month period, or to hold oneself out generally to the
8 public as a CTA, unless registered as a CTA under the CEA. Section 4k(3) of the CEA, 7 U.S.C.
9 § 6k(3) makes it unlawful to be associated with a CTA as an officer, employee, consultant, or
10 agent in any capacity which involves the solicitation of a client's or prospective client's
11 discretionary account unless registered as an AP of a CTA under the CEA.

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

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19 7. Venue properly lies with the Court pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-
20 1(e), in that the defendants are found in, inhabit, or transact business in this district, or the acts
21 and practices in violation of the CEA have occurred, are occurring, or are about to occur within
22 this district.

23
24 **B. FINDINGS OF FACT**

25 8. From at least February 1, 1999 through at least mid-2005, Castillo, and his company,
26 Castle Enterprise d/b/a WallStreetWar.com, CastilloResearch.com and Never-Lose.com (the
27 "Wall Street War websites"), made false and misleading representations to solicit members of
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1 the general public to purchase commodity trading advice and services related to the trading of
2 S&P 500 commodity futures and options contracts. During this time period, the Defendants
3 fraudulently solicited \$814,858.89 from clients.
4

5 9. Castle Enterprise, through the Wall Street War websites, acted as a CTA without being
6 registered as such with the Commission. Castillo, as an officer and agent of Castle Enterprise,
7 solicited clients' or prospective clients' discretionary accounts on behalf of Castle Enterprise and
8 offered to the public advisory services without being registered with the Commission as an AP of
9 a CTA.
10

11 10. While soliciting clients for managed accounts and marketing other advisory services,
12 Castillo and Castle Enterprise made misrepresentations of material fact and material omissions
13 regarding the profitability of their trading activities, trading advice, experience, and the Wall
14 Street War track record. Defendants also touted the purportedly highly profitable performance of
15 the managed account program and advisory services being offered without revealing that such
16 "performance" was based, at best, on hypothetical or simulated performance.
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18 A. The Wall Street War Websites

19 11. Castillo and Castle Enterprise marketed a number of commodity-related services
20 through the Wall Street War websites, including managed account programs, publicly offered
21 commodity futures and options advisory services, and training courses.
22

23 12. Castillo and Castle Enterprise state in the Wall Street War websites that Castillo
24 founded Castle Enterprise in 1994, and that "two more companies have begun" providing
25 commodity futures and options advisory services.
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27 13. One of these purported companies is CastilloResearch, which "primarily handles
28 institutional and managed funds."

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

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

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

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

15 18. The Wall Street War Advisory Service is touted by Defendants as “[p]roven to be the
16 most accurate and profitable advisory available!” and claims that the system has a track record of
17 90-96 % profitability. Defendants also claim that “[o]ur amazing Crystal ball method” allows
18 them to forecast market moves.

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

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4 20. Through the Wall Street War websites, Defendants represented the purportedly
5 highly profitable performance and near-perfect accuracy of the advisory services being offered
6 by the Defendants without revealing that it was based, at best, on hypothetical or simulated
7 performance, and without displaying the required statement prominently disclosing the inherent
8 limitations of hypothetical or simulated performance.

9
10 21. Castillo and Castle Enterprise, through the Wall Street War websites, call their
11 Managed Account Program the “backbone of everything we do.” The program consists of
12 “position trading [f]utures contracts, options on future[s] values and day trading futures,”
13 primarily in the S&P 500 futures contract. Castillo claims to be trading his own money
14 according to the methodology employed in the Managed Account Program.

15
16 22. Defendants, through the Wall Street War websites, also offered an Index Trading
17 Course, claiming that: “You can be amongst the top index traders in the world when I get done
18 with you.” These courses are offered on sale for “\$19,995 before the price jumps to \$50,000.”
19 Castillo states “I don’t apologize for the price of my system. Once you use it you will know why
20 I consider it an insult to take less than \$100,000 for it.” Profits are claimed to be “continuous
21 profits day after day & year after year as the mathematical perfection rakes in huge profits.”
22

23 B. Fraudulent Misrepresentations

24 23. Defendants, knowingly or with reckless disregard for the truth, made the following
25 false material representations, among others:

26 a) Castillo is considered “one of the most accurate & profitable stock and stock
27 index trader/advisors in the world today.”
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1 b) Castillo possesses “inside information” that produces a “near perfect record of
2 stock market index timing.”

3 c) Castillo is profitably trading his own money according to the trading
4 methodology employed in the Managed Account Program and that “[t]here is not another stock
5 index manager that does this.”
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7 d) The Wall Street War Advisory Service is “[p]roven to be the most accurate
8 and profitable advisory available,” with a track record of 90-96% accuracy and profitability, with
9 “tremendous returns in different market conditions for 6 years!” that ranged from “302%” to
10 “447%.”
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12 e) By purchasing the Index Trading Course: “[Y]ou can be amongst the top index
13 traders in the world when I get done with you.”

14 f) The Index Trading Course is promised to impart trading knowledge that will
15 result in “continuous profits day after day & year after year as the mathematical perfection rakes
16 in huge profits.”
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18 24. In fact, many of the advisory services offered by Defendants to the public never
19 operated, and clients were abandoned after purchasing trading systems or training courses,
20 receiving little or nothing of value and losing their money. Clients lost \$814,858.89 through
21 purchasing Defendants’ trading systems and training courses ,and in trading accounts managed
22 by Defendants.
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24 25. With regard to the “Managed Account Program,” the Wall Street War websites stated
25 that the program has “highly profitable results” from the “professional management of your
26 assets.” Castillo claimed to be successfully trading his own money according to the trading
27 methodology he uses in the managed account program, stating that “[o]ur clients have the
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1 comfort ... that there [sic] money is being treated the exact same way.” These claims are false
2 because (1) the seven accounts that Castillo directed for others under the “Managed Account
3 Program” all lost money, (2) Castillo has admitted that the claimed successful track record of the
4 “Managed Account Program” was not based on actual trading but was the result of purported
5 hypothetical trading, and (3) Castillo admitted that he was not trading his own funds.
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7 C. Failure to Disclose Limitations of Hypothetical Trading

8 26. Through the Wall Street War websites, Defendants represented the purportedly
9 highly profitable performance and near-perfect accuracy of the advisory services being offered
10 without revealing that such “trading” was based on hypothetical or simulated performance by
11 displaying the required statement prominently disclosing the inherent limitations of hypothetical
12 or simulated performance.
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14 D. Unregistered CTA Activities

15 27. Defendants have never been registered with the Commission in any capacity, nor are
16 they otherwise exempt from any registration requirements of the CEA.
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18 28. From at least February 1, 1999 through at least mid-2005, while unregistered, Castle
19 Enterprise, through the Wall Street War websites and others, held itself out to the general public
20 as, among other things, a manager of commodity interest accounts, where Castillo would
21 exclusively direct the trading in managed accounts for profit, and as a provider of other
22 commodity advisory services such as the Wall Street War Advisory Service. Castillo, as an
23 officer and agent of Castle Enterprise, solicited clients’ or prospective clients’ discretionary
24 accounts on behalf of Castle Enterprise, and thereby acted as an AP of Castle Enterprise.
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1 E. Acting as a Controlling Person

2 29. Castillo is the founder, President and only officer of Castle Enterprise. Castillo is the
3 sole signatory of the Castle Enterprise bank account. Castillo was solely responsible for the
4 content of the Wall Street War websites, including the fraudulent advertising that appeared on
5 those websites, as alleged above.
6

7 C. CONCLUSIONS OF LAW

8 A. Fraud by a Commodity Trading Advisor

9 30. By reason of their conduct, Defendants Castillo and Castle Enterprise, while acting,
10 respectively, as a CTA and an AP of a CTA, through the means or instrumentalities of interstate
11 commerce, employed devices, schemes or artifices to defraud clients or prospective clients and
12 engaged in transactions, practices or courses of business which operated as a fraud or deceit upon
13 clients or prospective clients, in violation of Section 4o(1)(A) and (B) of the CEA, 7 U.S.C.
14 §§ 6o(1)(A) and (B) and Commission Regulation 4.41(a)(1) and (2), 17 C.F.R. §§ 4.41(a)(1) and
15 (2).
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18 31. Castillo was acting as an agent of Castle Enterprise, and Castle Enterprise therefore
19 is liable for Castillo's violations of Section 4o(1)(A) and (B) of the CEA, 7 U.S.C. §§ 6o(1)(A)
20 and (B) and Commission Regulation 4.41(a)(1) and (2), 17 C.F.R. §§ 4.41(a)(1) and (2),
21 pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) and Regulation 1.2, 17 C.F.R.
22 § 1.2.
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24 32. Castillo directly or indirectly controlled Castle Enterprise and did not act in good
25 faith or knowingly induced, directly or indirectly, the acts constituting its violations of Sections
26 4o(1)(A) and (B) of the CEA, 7 U.S.C. §§ 6o(1)(A) and (B) and Commission Regulations
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1 4.41(a)(1) and (2), 17 C.F.R. §§ 4.41(a)(1) and (2), pursuant to Section 13(b) of the CEA,
2 7 U.S.C. § 13c(b).

3 33. Each fraudulent misrepresentation and omission by the Defendants, is a separate and
4 distinct violation of Sections 4o(1) (A) and (B) of the CEA, 7 U.S.C. §§ 6o(1)(A) and (B).

5
6 B. Failure to Provide Cautionary Statement Regarding Limitations of Hypothetical
7 Trading Results

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

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

16 36. Castillo directly or indirectly controlled Castle Enterprise and did not act in good
17 faith or knowingly induced, directly or indirectly, the acts constituting its violations of
18 Regulation 4.41(b)(1), 17 C.F.R. § 4.41(b)(1), pursuant to Section 13(b) of the CEA, 7 U.S.C. §
19 13c(b).
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21 37. Each presentation by the defendants of the performance of any simulated or
22 hypothetical commodity interest account, transaction in a commodity interest or series of
23 transactions in a commodity interest of a CTA not accompanied by the prescribed cautionary
24 statement is a separate and distinct violation of Regulation 4.41(b)(1), 17 C.F.R. § 4.41(b)(1).
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1 C. Failure to Register as a Commodity Trading Advisor

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

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

7 D. Failure to Register as an Associated Person of a Commodity Trading Advisor

8 40. By reason of his conduct, Castillo acted as an AP of a CTA without being registered
9 with the Commission, in violation of Section 4k(3) of the CEA, 7 U.S.C. § 6k(3).

10 41. Castillo was acting as an agent of Castle Enterprise, and Castle Enterprise therefore
11 is liable for Castillo's violations of Section 4k(3) of the CEA, 7 U.S.C. § 6k(3), pursuant to
12 Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) and Regulation 1.2, 17 C.F.R. § 1.2.

13 E. Controlling Person

14 42. Castillo directly or indirectly controlled Castle Enterprise and did not act in good
15 faith or knowingly induced, directly or indirectly, the acts constituting its violations of the CEA.
16 and Regulations pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b).

17 F. Principal-Agent

18 43. Castillo was acting as an agent of Castle Enterprise. Therefore, Castle Enterprise is
19 liable for Castillo's violations of the CEA and Regulations pursuant to Section 2(a)(1)(B) of the
20 CEA, 7 U.S.C. § 2(a)(1)(B) and Regulation 1.2, 17 C.F.R. § 1.2 (2005).

21 G. Permanent Injunction

22 44. Section 6c of the CEA, 7 U.S.C. § 13a-1 (2002), authorizes and directs the
23 Commission to enforce the CEA and Regulations. In an action for permanent injunctive relief,
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1 the Commission is not required to make a specific showing of irreparable injury or inadequacy of
2 other remedies, which private litigants must make. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th
3 Cir. 1978); *United States v. Quadro Corp.*, 928 F.Supp. 688, 697 (E.D. Tex. 1996) (citations
4 omitted), *aff'd*, *U.S. v. Quadro Corp.*, 127 F.3d 34 (5th Cir, 1997); *CFTC v. British Am.*
5 *Commodity Options Corp.*, 560 F.2d 135, 141-42 (2nd Cir. 1977), *cert. denied* 438 U.S. 905
6 (1978). Rather, the Commission makes the requisite showing for issuance of injunctive relief
7 when it presents a *prima facie* case that the defendant has engaged, or is engaging, in illegal
8 conduct, and that there is a likelihood of future violations. *CFTC v. American Bd. of Trade, Inc.*,
9 803 F.2d 1242, 1250-51 (2d Cir. 1986); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979), *cert.*
10 *denied*, 442 U.S. 921 (1979).

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13 45. In a Commission enforcement case, it has held that the district court's finding that
14 there was the likelihood of future violations supported its entry of a permanent injunction, *CFTC*
15 *v. Sidoti*, 178 F.3d 1132 (11th Cir. 1999). In *Sidoti*, the 11th Circuit stated: "In light of the
16 likelihood of future violations, the district court did not abuse its discretion in enjoining further
17 violations of the CEA." *See SEC v. Carriba Air, Inc.* 681f.2d 1381, 1322 (11th Cir.1982); *SEC v.*
18 *Blatt* 583 F.2d 1325, 1334 (5th Cir. 1978)." *Sidoti* at 1137. Whether such a likelihood of future
19 violations exists depends on the "totality of the circumstances." *SEC v. Management Dynamics,*
20 *Inc.*, 515 F.2d 801, 807 (2d Cir. 1975); *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F.Supp. 669,
21 676 (S.D.N.Y. 1979). Foremost among these circumstances is the past illegal conduct of the
22 defendants, from which courts may infer a likelihood of future violations. *CFTC. v. British Am.*
23 *Commodity Options Corp.*, 560 F.2d at 142; *SEC v. Management Dynamics, Ltd.*, 515 F.2d at
24 807; *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11th Cir. 1982).

1 46. The scope of the injunctive relief can be tailored to meet the circumstances of the
2 violations shown. For example, courts have entered permanent injunctions against future
3 violations of the CEA upon the Commission's showing of a violation and likelihood of future
4 violations. *See, e.g., CFTC v. U.S. Metals Depository Co.*, 468 F.Supp.1149 (S.D.N.Y. 1979).
5 Other courts have issued broader injunctions prohibiting trading activity. *CFTC v. Noble Wealth*
6 *Data Information Services, Inc.*, 90 F.Supp.2d 676, 692 (D.Md. 2000) (“[t]he pervasiveness and
7 seriousness of [the defendant’s] violation justify the issuance of a permanent injunction
8 prohibiting him from violating the CEA and from engaging in any commodity-related activity,
9 including soliciting customers and funds”); *see also, CFTC v. Rosenberg*, 85 F.Supp.2d 424,
10 454-55 (D.N.J. 2000) (permanently enjoining defendant from trading commodities on behalf of
11 others). Under these standards, permanent injunctive relief is clearly warranted against the
12 Defendants.
13

14 H. Disgorgement and Restitution by Defendants

15 47. Equitable remedies, including disgorgement of ill-gotten gains, are remedies for
16 violations of the Commodity Exchange Act. *See CFTC v. American Metals Exch. Corp.*, 991
17 F.2d 71, 76 (3rd Cir. 1993) (“A number of courts have held that district courts have the power to
18 order disgorgement as a remedy for violations of the Commodity Exchange Act for the purpose
19 of depriving the wrongdoer of his ill-gotten gains and deterring violations of the law.”)
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22 48. Section 6c of the CEA, 7 U.S.C. § 13a-1 (2002), allows the Commission to seek and
23 the Court to issue all forms of ancillary equitable relief, including monetary restitution and
24 disgorgement. Courts consistently have held that in order to adequately and fully enforce the
25 Act, relief in a Commission action must require a defendant to return both investor funds
26 (restitution) as well as any and all funds that constitute ill-gotten gains (disgorgement). *See*
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1 *CFTC v. Midland Rare Coin Exchange, Inc.*, No. 97-7422-Civ, 1999 U.S. Dist. LEXIS 20977 at
2 *28-29 (S.D. Fla. Oct. 20, 1999); *CFTC v. Wellington Precious Metals, Inc.*, 1988 U.S. Distr.
3 LEXIS 17381 (S.D. Fla. July 15, 1988).

4
5 J. Civil Monetary Penalty

6 49. Under Section 6c(d)(1) of the CEA, 7 U.S.C. 13a-1(d)(1) (2002), “the Commission
7 may seek and the Court shall have jurisdiction to impose, ... on any person found in the action to
8 have committed any violation, a civil penalty in the amount of not more than the higher of
9 \$100,000 or triple the monetary gain to the person for each violation.” 7 U.S.C. §13a-1(d)(1)
10 (2002). The CEA defines the term “person” to include individuals, associations, partnerships,
11 corporations and trusts. 7 U.S.C. § 1a(28). Specifically, 7 U.S.C. 13a-1(d) (1) (2002) and 17
12 C.F.R. § 143.8(a)(ii)(2005) provides for fines of not more than the higher of \$120,000 for each
13 violation on or after October 23, 2000.

14
15 **III. ORDER OF PERMANENT INJUNCTION AND OTHER RELIEF**

16
17 It is hereby ORDERED, pursuant to Section 6c(a) of the CEA, 7 U.S.C. § 13a-1, and the
18 Court’s equitable powers that:

- 19
20 A. Each Defendant is liable for violating Sections 4o(1)(A) and (B), 4k(3) and
21 Section 4m(1) of the Commodity Exchange Act, as amended, 7 U.S.C. §§
22 6o(1)(A) & (B), 6k(3) and 6m(1), and for violations of Sections 4.41(a)(1) and (2)
23 and Section 4.41(b)(1) of the Commission’s Regulations, 17 C.F.R. §§ 4.41(a)(1)
24 and (2), and 4.41(b)(1);
- 25
26 B. Defendants, and any other person or entity associated with them, or any successor
27 thereof, are permanently enjoined and prohibited from engaging in conduct that
28 violates any of the provisions of the CEA and Regulations as alleged in the

1 Complaint or set forth in this Order, and is further enjoined and prohibited from
2 engaging in any activity relating to commodity interest trading, including but not
3 limited to, soliciting, accepting or receiving funds, revenue or other property from
4 any person, giving advice for compensation, or soliciting prospective clients,
5 participants or customers, related to the purchase and sale of any commodity
6 futures or options on commodity futures contracts;

7
8 C. Defendants are hereby ordered to disgorge all benefits received from the acts or
9 practices which constituted violations of the CEA, as described herein, to wit,
10 \$814,858.89 plus pre-judgment and post-judgment interest, to the National
11 Futures Association which will serve as monitor. Pre-judgment interest from
12 February 1, 1999, the date such violations commenced, to the date of this Order
13 shall be determined by using the underpayment rate established quarterly by the
14 Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). Post-judgment
15 interest shall accrue beginning on the date of entry of this Order and shall be
16 determined by using the Treasury Bill rate prevailing on the date of this Order
17 pursuant to 28 U.S.C. § 1961. Each Defendant shall be jointly and severally
18 liable for full payment of these amounts. These disgorged funds totaling
19 \$814,858.89 shall be used first to make any restitution payments under this Order
20 and shall be made in the name of the "Castle Enterprise Corporation Settlement
21 Fund" and sent by electronic funds transfer, or by U.S. postal money order,
22 certified check, bank cashier's check, or bank money order, to
23
24
25
26

27 Daniel Driscoll, Monitor
28 National Futures Association
200 W. Madison St., #1600
Chicago, IL 60606-3447

1
2 with any remaining disgorged funds being paid over by NFA to the
3 U.S. Treasury, and;

- 4
5 D. Defendants are assessed and shall pay within ten (10) days a civil monetary
6 penalty in the amount of \$480,000, consisting of \$120,000 for each violation
7 alleged in the Complaint, plus post-judgment interest. Post-judgment interest
8 shall be determined by using the Treasury Bill rate prevailing on the date of this
9 Order pursuant to 28 U.S.C. § 1961. Post-judgment interest shall accrue
10 beginning on the date of entry of this Order. Each Defendant is jointly and
11 severally liable for the civil monetary penalty. Payment of the civil monetary
12 penalty shall be made to the Commodity Futures Trading Commission, Division
13 of Enforcement, ATTN: Marie Bateman – AMZ-300, DOT/FAA/MMAC, 6500
14 S. Macarthur Blvd., Oklahoma City, OK 73169. Payment must be made by
15 electronic funds transfer, U.S. postal money order, certified check, bank cashier's
16 check, or bank money order, made payable to the Commodity Futures Trading
17 Commission. If payment by electronic transfer is chosen, contact Marie Bateman
18 at 405-954-6569 for instructions. The payment(s) shall include a cover letter that
19 identifies the payee and the name and docket number of this proceeding.
20 Defendants shall simultaneously transmit a copy of the cover letter and the form
21 of payment to the Director, Division of Enforcement, Commodity Futures Trading
22 Commission, 1155 21st Street, N.W., Washington, D.C. 20581;
23
24
25
26
27 E. Defendants are ordered to pay costs and fees as permitted by 28 U.S.C. §§ 1920
28 and 2412(a)(2); and

1 F. The Court shall retain jurisdiction over this matter to provide such other and
2 further relief as the Court may deem just and appropriate.
3
4

5
6 IT IS SO ORDERED.

7
8 Dated: 02/05/07

9 THELTON E. HENDERSON, JUDGE
10 UNITED STATES DISTRICT COURT

