UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

JAFIA LLC, SAM IKKURTY A/K/A SREENIVAS I RAO, AND RAVISHANKAR AVADHANAM,

Defendants,

IKKURTY CAPITAL, LLC D/B/A ROSE CITY INCOME FUND I, ROSE CITY INCOME FUND II LP, SENECA VENTURES, LLC,

Relief Defendants.

Case No.: 22-cv-2465

Hon. Mary M. Rowland

Magistrate Judge Jeffrey Cummings

CFTC'S MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT

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SUMMARY OF THE ARGUMENT

The CFTC hereby moves for summary judgment against Defendants Sam Ikkurty ("Ikkurty") and Jafia, LLC ("Jafia," and together with Ikkurty "Defendants"), and Relief Defendants Ikkurty Capital, LLC d/b/a Rose City Income Fund ("RCIF I"), Rose City Income Fund II ("RCIF II"), and Seneca Ventures, LLC ("Seneca Ventures," and together with RCIF I and RCIF II "Relief Defendants") on all claims set forth in the complaint, and seeks an order for restitution and disgorgement at this time.[1]

The factual record set forth in the concurrently-filed statement of undisputed facts ("SOF") confirms the allegations in the CFTC's complaint—Ikkurty and his companies cheated and defrauded their customers out of tens of millions of dollars. In the process, Ikkurty and his companies skirted registration and regulatory requirements.

Ikkurty and his companies defrauded their customers through a scheme that involved telling demonstrable lies about Ikkurty's background and expertise, the company's historical performance, how Ikkurty would deploy their money, and critically, the fact that Ikkurty was distributing "profits." It was all a lie. When Ikkurty's foolish "investment" scheme met its obvious conclusion, complete failure, he doubled down. He invented new products, called them "risk-free," and convinced his customers to give him more money—money he quickly gave to earlier customers to keep the scheme afloat.

In addition to Defendants' fraudulent behavior, they also failed to register with the CFTC—a requirement that underscores the critical role the regulatory scheme set forth by Congress in the Commodity Exchange Act ("Act" or "CEA"), 7 U.S.C. §§ 1-190, plays in

[1] The CFTC seeks summary judgment as to liability on all counts of the complaint; the CFTC will subsequently seek injunctive relief and the imposition of a civil monetary penalty, in a motion for a supplemental order.

maintaining integrity in the markets it governs. Defendants were commodity pool operators because they solicited, accepted and received funds for the purpose of trading in commodity interests. Defendants did not register with the CFTC.

Summary judgment is warranted here. The evidence that irrefutably establishes Defendants' violations of the CEA comes from their own testimony, their own writings, their own expert, and their own customers. There can be no genuine dispute as to the material facts and the CFTC is entitled to summary judgment on all counts of the complaint.

FACTUAL BACKGROUND

Defendant Ikkurty established, owned, and (until the filing of this case) controlled Defendant Jafia and Relief Defendants RCIF I, RCIF II, and is the co-owner of Seneca Ventures. SOF ¶ 1. RCIF I and RCIF II were limited partnerships formed for the purpose of investing in crypto and digital assets. SOF ¶ 2. Ikkurty described RCIF I and RCIF II as "crypto hedge funds." *Id.* Jafia is the Manager of RCIF I and the General Partner of RCIF II. *Id.* Prior to launching RCIF I, Ikkurty had no experience trading on behalf of others. SOF ¶ 3. Ikkurty had previously purchased bitcoins for himself, but he was hacked and lost all of them. SOF ¶ 4.

To launch RCIF II, Ikkurty retained a law firm to prepare a Private Placement Memorandum ("PPM"), Limited Partnership Agreement ("LPA"), Subscription Agreement ("SA") and Valuation Policy (together with the PPM, LPA and SA, the "Fund Documents."). SOF ¶ 6. The PPM, a marketing document intended to summarize material aspects of the fund, stated that it would make income distributions out of "net profits." SOF ¶ 7. Eventually, Ikkurty's lawyers revised the PPM to eliminate reference to "net profits" because it wasn't true—Ikkurty's lawyers knew it and Ikkurty knew it. SOF ¶¶ 7,8. Nevertheless, Ikkurty concealed the fact that he was not distributing net profits from prospective and actual fund participants. SOF ¶ 9.

Ikkurty did not just conceal the truth about the fund's distributions, he falsely and specifically promised prospective RCIF II participants that they would receive 15% annual income in the form of dividends from income earned through "proof-of-stake mining." SOF ¶¶ 22, 25. According to Ikkurty, proof-of-stake mining was a digital asset investment strategy whereby he earned rewards denominated in the same digital asset he purchased for the fund. In reality, Ikkurty never distributed any profits back to customers and never realized any RCIF II income from proof-of-stake mining, the sale of any digital asset, or any "investment" activity. SOF ¶¶ 28, 29. Instead, Ikkurty and Jafia used money received from later RCIF II participants to pay monthly "distributions" to earlier RCIF II participants. SOF ¶ 30.

Ikkurty also lied about the fund's historical performance. He conducted webinars in which he presented false data about the supposed historical success of RCIF I as the primary "investment thesis" for why participants should contribute to RCIF II. SOF ¶¶ 17, 31-40. Ikkurty boasted that $100 invested in RCIF I at fund inception would have grown to $1,181, an amount Ikkurty later updated to $2,808. SOF ¶¶ 33, 37. But the data Ikkurty used to calculate these numbers was fictitious. SOF ¶¶ 34, 38. He calculated the RCIF I historical returns by inflating the returns for many months, for example by claiming that returns were -7.5% in a month that statements reflected returns of -52.51%. SOF ¶ 34. When he updated the historical returns, he again used inflated returns, for example by claiming that returns were 224.39% in a month that statements reflected returns of only 16.1%. Further, Ikkurty omitted from his updated presentation the disastrous performance of RCIF I from November 2021 through March 2022, a period in which the fund lost nearly 99%. SOF ¶ 42. Using correct returns and full data, $100 "invested" in RCIF I at fund inception would not have grown in value to $2,088, as Ikkurty advertised, but instead would have fallen in value to $8.69. SOF ¶ 43.

Ikkurty misrepresented how RCIF II funds would be deployed. For example, he told participants that 65% of the fund would be held in "stable proof-of-stake tokens," when in fact 90% of the money was placed in OHM, an extremely unstable digital asset that lost 95% of its value in three months. SOF ¶¶ 44, 45. He also told participants that RCIF II hedged risk by moving into stable coins "based on proprietary algorithms," when really Ikkurty decided what to buy and sell based only on his own judgment. SOF ¶ 46. He misrepresented his background and experience with cryptocurrency as well, stating that he had made so much money trading bitcoin that he was able to "retire from [his] job," when he had never actually realized any profit from trading bitcoin. SOF ¶¶ 5, 47. Participants believed these misrepresentations and found them to be important in deciding whether to contribute. SOF ¶¶ 50-58.

Ikkurty's fraudulent conduct was not limited to RCIF II. Ikkurty and Jafia also invented two financial products for participants to "invest" with them: the crypto savings note ("CSN") and carbon offset bond ("COB"). SOF ¶ 62. These were promissory notes between Jafia and participants in which Jafia was required to make monthly interest payments of 18% and then repay the full principal payment at the end of the term. SOF ¶¶ 62, 63.

Ikkurty advertised that 80% of CSN contributions would go into "stable proof of stake tokens," but he actually used the bulk of the CSN funds to purchase the volatile cryptocurrencies OHM and Klima. SOF ¶ 64. Ikkurty also advertised that he would use 8% of CSN funds to buy "put option protection," but he never bought any. SOF ¶ 65. Ikkurty falsely told CSN purchasers that their balances were "100% protected from any downside." SOF ¶ 66.

Ikkurty told COB customers that the COBs would be secured by collateral in the form of BCT tokens, but Ikkurty and Jafia just used the money customers deposited as they pleased. SOF ¶ 67. Each COB identified a digital wallet that supposedly held digital assets to

collateralize that COB, but in reality Ikkurty and Jafia secretly pledged that same collateral to every COB. SOF ¶ 68. Ikkurty also falsely described the COBs as "the most risk-free investment I can ever think of" and as a "risk free investment with zero volatility." SOF ¶ 69.

When it became undeniably clear that RCIF I had failed, Ikkurty and Jafia used their made-up financial products to keep the scheme afloat. In December 2021 and again in January 2022, Ikkurty offered RCIF I participants inflated "buyouts" for their RCIF I positions. SOF ¶ 70. Ikkurty used Jafia assets to pay these inflated buyouts. In total, Jafia paid $29,075,645 to participants for RCIF I stakes that would have been worth only $7,682,407 if the participants had received the prices at the end of the months in which the buyouts were offered. SOF ¶ 72. This led to a corresponding $20 million shortfall in Jafia assets. SOF ¶ 73. Though Jafia owed at least $6,036,500 million in CSNs and at least $20,080,255 million in COBs, when Jafia's accounts were frozen, the Receiver found that Jafia held only about $5.9 million in assets. *Id.*

LEGAL ARGUMENT

A. Legal Standard

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex v. Catrett*, 477 U.S. 317, 323 (1986); *see also* Fed. R. Civ. P. 56(c). Summary judgment is the "put up or shut up moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." *Weaver v. Champion Petfoods USA, Inc.*, 3 F.4th 927, 938 (7th Cir. 2021).

B. Summary Judgment Is Warranted on Count III Because Defendants Made Material Misrepresentations and Omissions and Misappropriated Participant Funds

The undisputed facts establish that Defendants (1) made untrue statements of material fact, and (2) engaged in a fraudulent scheme to misappropriate funds. Each of these is an independent basis for the Court to find that Defendants violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. §180.1(a) (2022).

a. Section 6c and Rule 180.1 Prohibit Material Misrepresentations and Omissions and Misappropriation of Commodities in Interstate Commerce

Through their misrepresentations and omissions of material information, and misappropriation of participant funds, Defendants committed fraud in violation Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), which in pertinent part makes it:

> [U]nlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate . . .

Pursuant to this authority, the Commission issued 17 C.F.R. § 180.1(a), which in pertinent part makes it unlawful for any person, in connection with any contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

> (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;
>
> (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading;
>
> (3) Engage, or attempt to engage, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

To establish a violation of Section 6(c)(1) of the Act and Regulation 180.1(a), the CFTC must establish that the Defendants engaged in prohibited conduct (i.e., employed a fraudulent

scheme; made a material misrepresentation, misleading statement or deceptive omission; ***or*** engaged in a business practice that operated as a fraud); with scienter; and in connection with a contract of sale of a commodity in interstate commerce. *See CFTC v. S. Tr. Metals, Inc*., 894 F.3d 1313, 1325 (11th Cir. 2018). Here, the CFTC has established each of these elements.

Defendants deliberately and knowingly made misrepresentations, misleading statements, and omissions as part of a scheme to defraud. Whether a misrepresentation has been made depends on the overall message and the common understanding of the information conveyed. *See CFTC v. R.J. Fitzgerald & Co*., 310 F.3d 1321, 1328 (11th Cir. 2002). The representations should be viewed through the eyes of an "objectively reasonable" person who would interpret the overall message. *Id*. at 1328-29. In clear violation of Section 6(c)(1) and Regulation 180.1(a), Defendants Ikkurty and Jafia made material misrepresentations and omissions in their solicitations concerning buying, selling and trading digital assets on behalf of pool participants. *See, e.g., CFTC v. McDonnell*, 332 F.Supp.3d 641, 718 (E.D.N.Y. 2018) (explaining that in connection with a scheme to defraud, defendants made misrepresentations in solicitations concerning trading virtual currencies, such as defendants falsely claimed they had a trading track record and exceptional performance.)

Defendants' representations implicate commodities and commodity interests. Defendants marketed their fund by purporting to trade in Bitcoin, Ethereum and other digital assets, which are commodities. *See CFTC v. Reynold*s, 2021 WL 796683, at *5 (S.D.N.Y. Mar. 2, 2021) ("[v]irtual currencies such as Bitcoin are encompassed in the definition of "commodity"). Also, Defendants solicited participants by marketing the downside protection they offered by trading commodity interests such as put options, as well as other commodity interests. *See* 7 U.S.C. § 1a(11)(A) (commodity interests include contracts for the purchase or sale of a commodity for

future delivery (or an option on such a contract), securities futures product, swaps, commodity options, foreign currency, and leveraged transactions.)

Misappropriation of customer funds also constitutes fraud that violates Section 6(c)(1) of the Act and Regulation 180.1(a). *See McDonnell*, 332 F.Supp.3d at 719; *CFTC v. Global Precious Metals Trading Co.*, 2013 WL 5212237, at *4-5 (S.D. Fla. Sept. 12, 2013) (defendant violated Section 6(c)(1) and Regulations 180.1(a)(1) by misappropriating funds and making misrepresentations and omissions). Defendants misappropriated customer funds when they used new participants money to pay out dividends and inflated returns to old participants.

Defendants engaged in the above conduct with the requisite level of scienter. Regulation 180.1(a) explicitly provides that "intentional[] or reckless[]" conduct violates the law. 17 C.F.R. § 180.1(a). Moreover, the Seventh Circuit has held that scienter is satisfied where defendant "either knew that the representations [he] made to investors were false or [was] reckless in disregarding a substantial risk that they were false." *See SEC v. Lyttle*, 538 F.3d 601, 603 (7th Cir. 2008); *see also CFTC v. Kraft Foods Grp., Inc*., 153 F. Supp. 3d 996, 1014 (N.D. Ill. 2015) (adopting recklessness as the "scienter requirement supported by long-standing precedent under the commodities and securities laws"). The recklessness standard can be met by conduct showing "an extreme departure from the standards of ordinary care, and that present[s] a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the defendant must have been aware of it." *SEC v. Randy*, 38 F. Supp. 2d 657, 670 (N.D. Ill. 1999) (quoting *Meadows v. SEC*, 119 F.3d 1219, 1226 (5th Cir. 1997)); *see also Kraft*, 153 F. Supp. 3d at 1015 (citing *Sundstrand Corp. v. Sun Chem. Corp*., 553 F.2d 1033, 1045 (7th Cir. 1977)).

b. Defendants Made Material Misrepresentations and Omissions

Defendant Ikkurty admitted in his sworn testimony that he made misrepresentations and omissions to prospective pool participants related to the fund's historical returns, the nature of

the distributions Jafia made, what Defendants were doing with participants' money, and even about Ikkurty's expertise. Based on the undisputed evidence, the CFTC is entitled to summary judgment on Count III of the Complaint.

i. Ikkurty Solicited Participants By Marketing Mathematically False Historical Returns

Ikkurty lured prospective pool participants to RCIF II by presenting them with dazzling, but false, returns from his predecessor fund, RCIF I. There is no doubt that this happened. The documents—and math—establish it beyond refute and Ikkurty has admitted it.

The centerpiece of Defendants' marketing efforts for RCIF II were two versions of a PowerPoint presentation created by Ikkurty and presented by him to prospective RCIF II participants. SOF ¶ 17. Both versions of Ikkurty's presentation highlight the supposed historical success of RCIF I as the primary "investment thesis" for why participants should contribute money to RCIF II. SOF ¶ 31. The first version asserted that $100 invested in RCIF I in October 2017 would have grown to $1,181 by the third quarter of 2020. SOF ¶ 32. An updated version asserted that same investment would have grown even more—to $2,808—by the fourth quarter of 2021. SOF ¶ 37. Ikkurty manufactured these false historical returns in at least two ways: (1) he used false, wildly inflated returns for many months; and (2) he misleadingly omitted the returns from November 2021 and later, when RCIF I suffered massive losses.

First, the falsely inflated monthly returns: Instead of relying on the monthly account statements—which Ikkurty admits to be the most reliable source for RCIF I's actual returns—Ikkurty made up false returns for each month from July 2019 through January 2020 to calculate the supposed total returns from RCIF I. SOF ¶ 34. Ikkurty specifically admitted at his deposition that he claimed a return of -7.5% in July 2019, when the account statements showed returns of -52.51%; claimed a return of -5.25% in August 2019, when the statement return was

-33.84%; and claimed a return of -12.43% in September 2019, when the statement return was -38.45%. *Id.* In aggregate, Ikkurty's lies inflated the RCIF I returns by nearly 900 percentage points. SOF ¶ 35.

When Ikkurty updated his PowerPoint presentation he corrected some errors in the RCIF I historical returns but inserted new, larger errors. For example, in October 2019, RCIF I's statement returns were 16.1%, but in the updated presentation Ikkurty claimed the fund had made *224.39%* that month. SOF ¶ 38. And in this updated presentation, Ikkurty lied about returns for some months that had been accurate in the first version. For example, February 2020 statements showed that RCIF I returned 1.78% and Ikkurty correctly reported that return in the first presentation. *Id.* But in the updated presentation he falsely inflated the return to 20.63% for that month. *Id.* In aggregate, Ikkurty's lies in the amended PowerPoint presentation overstated RCIF's returns by nearly 2,000 percentage points. SOF ¶ 39.

Ikkurty has no explanation for how or why he presented the false, wildly-inflated returns to potential participants. When asked at his deposition how this had happened, he repeatedly said he had "no idea." SOF ¶ 40.

Things got even worse. In late 2021, the value of RCIF I collapsed and Ikkurty kept up his deception by omitting to disclose the fact that it lost nearly 99% of its value. The RCIF I returns for this time period were disastrous:

Month	**Monthly Return**	**Aggregate Return**
November 2021	-0.82%	-0.82%
December 2021	-53.94%	-54.32%
January 2022	-96.87%	-98.57%
February 2022	-35.12%	-99.07%
March 2022	9.06%	-98.99%

Though Ikkurty knew that RCIF I had collapsed, he continued to pitch to prospective participants on the false premise that $100 invested in RCIF I at fund inception had grown to

$2,808. SOF ¶ 42. If Ikkurty had disclosed the statement returns for each month through March 2022, he would have had to admit that $100 invested at fund inception would actually have *fallen* in value all the way to $8.69. SOF ¶ 43. In sum, Ikkurty told prospective participants that RCIF I had been a smashing success when it was really a colossal failure.

Ikkurty's lies about RCIF I returns were obviously material. A representation or omission is material if a reasonable investor would consider it important in deciding whether to invest. *CFTC v. Kratville*, 796 F.3d 873, 895 (8th Cir. 2015). Presenting fictitious historical returns is material as a matter of law. *See CFTC v. Long Leaf Trading Group, Inc.*, No. 20 C 3758, 2022 WL 2967452, at *6 (N.D. Ill. July 27, 2022) (entering summary judgment for CFTC on fraud claim where defendant described subset of profitable trades while omitting larger universe of losing trades); *CFTC v. PMC Strategy, LLC*, No. 1 1CV 73, 2013 WL 1349177, at *6 (W.D.N.C. Apr. 3, 2013) (entering summary judgment for CFTC on fraud claim where defendant presented false information about profitability); *CFTC v. Highland Stone Cap. Mgmt., L.L.C.*, No. 11 C 5209, 2013 WL 4647191, at *15-16 (S.D.N.Y. Aug. 29, 2013) (same); *see also CFTC v. Hefferman*, 245 F. Supp. 2d 1276, 1294-1295 (S.D. Ga. 2003) (entering summary judgment for CFTC on fraud claim where defendant presented hypothetical results without disclosing them as such). Further, RCIF II participants testified that they considered these facts important, and Ikkurty *admitted* that participants "would want to know" them. SOF ¶ 58.

And this conduct easily meets the intentional or reckless standard for scienter. Ikkurty knew the returns actually reflected on customer statements, but instead of using those he used different—higher—returns not based in reality. And when he revised the chart he even inflated some monthly data that had previously been accurate. This conduct was almost certainly intentional, but it was reckless at a minimum.

ii. Ikkurty Marketed His Fund As Distributing Profits, Dividends and Income—But He Admits It Did Not

Not surprisingly, Ikkurty marketed his *income* fund as if it delivered *income* to participants. But instead of fulfilling his promise to produce and return profits, Ikkurty deployed the cliched Ponzi-like scam of taking money from new participants to pay "profits" to old ones. Ikkurty's expert confirmed it:

> Q: So money that came in from later investors was used to pay earlier investors?
>
> A: That's correct.

SOF ¶ 30. Ikkurty lied to participants when he told them RCIF II paid them net profits when he actually redistributed other participants' investments. This is fraud. *See, e.g.*, *Bosco v. Serhant*, 836 F.2d 271, 274 (7th Cir. 1987) ("As in a Ponzi scheme, Serhant was using newly invested money to make old investors think they were earning profits rather than losing their shirts.").

Ikkurty falsely promised prospective participants that they would receive 15% annual income in the form of dividends from their investment in RCIF II. SOF ¶ 22 ("Q: Did you have marketing materials that said you were giving a 15% dividend payment per year? A: I may have. Yes."). This promise of dividends was a prominent feature in his pitch materials. SOF ¶ 22 ("Steady 15% dividend in perpetuity"). Ikkurty repeatedly made this promise on his website, (SOF ¶ 23) ("Q: How do we make money for the investors at Rose City Income Fund? A: We run digital toll-booths, collect fees from our toll-booth operations and pass the fees generated to our investors"), during online webinars, at in-person conferences, (SOF ¶¶ 17, 18), in marketing materials and also in messages sent directly to prospective participants (SOF ¶¶ 16, 17, 19). In fact, from January 2021 through March 2021, Defendants memorialized this false promise as part of their PPM. SOF ¶ 15 ("Distributions: It is currently anticipated that the Fund will make periodic payments of ***net profit*** to each Limited Partner (a "Distribution").) (emphasis added).

Ikkurty elaborated on this lie by describing the manner in which he purportedly earned the 15% annual income for participants. According to Ikkurty, the 15% was a dividend earned through "proof of stake mining." SOF ¶ 25 (Q: And so what you're telling investors through this document is that the 15 percent per year dividend comes from the income from your proof of stake mining; right? A: Yes.) Ikkurty explained that he generated the dividend by operating a "digital toll booth" that collected transaction fees, and he "pass[ed] those fees to investors":

SOF ¶ 26.

But he didn't. Ikkurty did not pass fees from any "digital toll booth" on to participants in the form of a dividend. Ikkurty, and his expert, concede that Ikkurty never distributed profits, dividends, or earnings of any kind to RCIF participants. SOF ¶ 28 ("[distributions were] not made from net profit") and (Ikkurty admitting that "Defendant never returned profits to participants"). Ikkurty also *admits* that Defendants never passed on any "fees" generated from and "proof-of-stake mining" activity to fund participants. SOF ¶ 29. At best, Ikkurty's "proof-of-stake mining" created more of a digital asset he was already heavily invested in, left it in a digital wallet, and any potential value it may have had evaporated before he ever sold it. So, instead of realizing any gains and passing them onto participants, Ikkurty distributed new participants' money to old participants—in a manner akin to a Ponzi scheme. SOF ¶ 30; *see U.S.*

v. Masten, 170 F.3d 790, 797 (7th Cir. 1999) ("[i]t is a hallmark of a Ponzi scheme to convince potential investors that capital supplied by investments is in fact profit").

Ikkurty's misrepresentation that he was earning and distributing profits is material because a reasonable RCIF II participant would have considered it important in deciding whether to invest. *See R.J. Fitzgerald*, 310 F.3d at 1328-29 ("A representation or omission is 'material' if a reasonable investor would consider it important in deciding whether to make an investment."). These representations go directly to the heart of the investment decision. *See SEC v. Henderson*, 2022 WL 3135015, at *10 (N.D. Ill. Mar. 17, 2022) (granting summary judgment and explaining that "[t]hose misrepresentations and omissions were material because they go to the very heart of [victim's] investment: how the funds would be used to generate substantial profits that [defendant] promised."). In fact, RCIF II participants testified that they would not have invested in RCIF II without Ikkurty's promise of a 15% annual income payment. SOF ¶ 57 ("Q: Would you have invested in Rose City Income Fund II if there was no income returned to investors? Participant: No."); ("Q: All right. Would you have invested in this fund if there was no 15 percent dividend paid out on a monthly basis? Participant: I don't believe I would have.").

Ikkurty knew that he never distributed profits to participants that he had earned from any investment activity, and as such he clearly meets the requisite scienter standard. *See SEC v. Lyttle*, 538 F.3d 601, 603 (7th Cir. 2008) (he "either knew that the representations [he] made to investors were false or [was] reckless in disregarding a substantial risk that they were false."); *see also Kraft Foods Grp.*, 153 F. Supp. 3d at 1014 (adopting recklessness as the "scienter requirement supported by long-standing precedent under the commodities and securities laws").

There is no question that Ikkurty knew he was not distributing profits to participants; he admitted it. SOF ¶ 60 ("[distributions were] not made from net profit"). There is also no

question that Ikkurty was well aware he had falsely *told* participants that the distributions *were* net profits. *See, e.g.*, SOF ¶ 60 ("Q: Are you aware that some participants, investors in Fund II signed an earlier version of this PPM that said the distributions were net profit? A: Yes, I realize that.") Further evidencing his mental state, when Ikkurty revised his Fund Documents to reflect the fact that he was not actually distributing profits, Ikkurty made the decision to conceal this change from participants. SOF ¶ 61 ("Q: Who made the decision [not to tell participants] on behalf of Jafia? A: I made the decision.") Compounding his deceitful behavior, Ikkurty admits that he continued misrepresenting to prospective and actual participants that he was earning and distributing profits to them even after he surreptitiously revised the PPM. SOF ¶ 61.

Ikkurty knew his statements regarding profit distributions were false and he therefore meets the scienter standard. *See CFTC v. Noble Wealth*, 90 F.Supp.2d 676, 686 (D. Md. 2000) (finding scienter on summary judgment where the defendants knew the falsity of their statements regarding, among other things, profit and risk).

iii. Ikkurty Solicited Participants By Marketing An Investment Methodology He Did Not Follow

Ikkurty also lied to participants in RCIF II, the CSNs, and the COBs about how he was deploying their money. He repeatedly told RCIF II participants that he would invest 65% of the fund in "stable proof-of stake tokens." SOF ¶ 44. Instead, he put nearly 90% of the fund in OHM, an extremely volatile cryptocurrency. SOF¶ 45. During the period in which Ikkurty claimed to be investing in "stable" tokens OHM's price fluctuated from $235 up to $1,250 and then fell to $62, a 95% loss in three months. *Id.* Even Ikkurty agrees that it "is not stable." *Id.* Ikkurty also told RCIF II participants that "[t]he fund hedges risk by moving into stable coins based on proprietary algorithms," but in reality Ikkurty decided what to buy and sell based on his own "qualitative judgment" and the fund had no trading algorithm at all. SOF ¶ 46.

Ikkurty's lies to CSN customers were just as egregious. He advertised that 80% of the CSN money would go into "stable proof-of-stake tokens," but again he put almost all of the money in volatile cryptocurrencies like OHM. SOF ¶ 64. And Ikkurty claimed that he would use an additional 8% of the CSN funds to buy put options—an investment that would increase in value if crypto prices declined—for "protection," but instead he never bought a single put option. SOF ¶ 65. Despite holding exceptionally risky assets, Ikkurty falsely told participants that their balances were "100% protected from any downside," that their "principal is protected, no matter what happens in the market," and that their "downside is zero." SOF¶ 66. All of these were lies.

Ikkurty lied to COB customers too. In his pitch to customers about COBs, Ikkurty falsely claimed that the COBs were secured by collateral in the form of BCT tokens, and the COBs themselves each identified a wallet address that supposedly held BCT tokens as collateral. SOF ¶ 67. But this was all a lie—Ikkurty admitted that he did "not necessarily" buy BCT with the COB money (instead he used it to buy "anything that we choose"). *Id.* And he secretly identified the exact same wallet as supposed "collateral" for every COB to give the impression that each COB was actually backed by collateral, when in reality the wallet was woefully insufficient to collateralize *all* of the COBs, even though it looked to each participant like the wallet held enough BCT to cover *their* COB. SOF ¶ 68. Further, Ikkurty also described the COBs to potential purchasers as "the most risk-free investment I can ever think of" and pitched them as a "risk free investment with zero volatility." SOF ¶ 69. Of course that was also false—Ikkurty admitted at his deposition that the COBs were *not* risk free, explaining that "I would never say anything is risk free. I don't know whether there's any such thing as a risk-free investment." *Id.* Ikkurty's candor about the riskiness of the COBs came far too late for the customers, who relied on his lies and then lost their money.

All of these false statements were material because it is important for any reasonable investor to know how their money was being invested and how much risk was being borne. *See, e.g., CFTC v. Premium Income Corp.*, No. 05 C 416, 2007 WL 4563469, at *4 (N.D. Tex. Dec. 28, 2007) (misrepresentation about what investor funds would be used for is material); *Brofman v. Fundamental Portfolio Advisors, Inc.*, 167 Fed. App'x 836, 838 (2d Cir. 2006) ("misrepresentations regarding the safety and relative stability" of the fund are material); *SEC v. Live Ventures Inc.*, No. 21 CV 1433 (D. Nev. Nov. 28, 2022) ("Misrepresentations about the safety of an investment are material."). And participants testified that Ikkurty's statements were important to their investing decisions. SOF ¶¶ 44, 46.

Ikkurty made these false statements intentionally or recklessly. He was personally responsible for making investments, so he knew what he was *actually* buying. And he knew or should have known that what he *told* participants he was doing with their money was not true.

iv. Ikkurty Solicited Participants With False Information About His Background, Experience and Competence

Ikkurty also falsely touted himself as an experienced and successful trader in the cryptocurrency market. He bragged that he "was one of those OGs" who bought Bitcoin early and profited so spectacularly that he could retire, and that he started RCIF thereafter. SOF ¶ 47. Ikkurty appeared on FinTech TV to promote RCIF and explained:

> I kept buying bitcoin in 2013 and later in 2014 as well. Then I kept buying more, and then in 2017, late 2017, is when based on my models, I felt like it was very old valued. At that time so I sold a lot of it. So that helped me retire from my job at Nike.

SOF ¶ 47.

None of this is true. In reality, Ikkurty bought 25-50 Bitcoins in 2014, held them for three years, and then in 2017 fell for a scam in which hackers stole all his Bitcoin. SOF ¶ 4. He never sold any Bitcoin. SOF ¶ 5 ("Q: Did you ever sell Bitcoin? A: No.") He never sold any

Bitcoin for profit. *Id.* ("Q: Did you ever realize any profit from buying and selling Bitcoin? A: No.") And he most certainly did not make enough profit from selling Bitcoin to retire. *Id.*

Yet he repeated this false narrative in which he cast himself as a savant trader who had crossed the financial threshold into retirement and now sought to share his specialized knowledge. SOF ¶ 47. In reality, prior to launching RCIF, Ikkurty had no experience trading on behalf of others, had never worked at a hedge fund, never worked at a financial institution, and the only preparation he did to invest others' money through RCIF was "consulting" with a few friends who had never themselves operated a hedge fund or invested money for others. SOF ¶ 3.

Falsely holding oneself out as an experienced, qualified and successful investment professional is fraudulent as a matter of law. *See CFTC v. Next Fin. Servs. Unlimited*, No. 04-80562, 2006 WL 889421, at *2 (S.D. Fla. Mar. 30, 2006) (entering summary judgment for CFTC on fraud where defendant misrepresented profitable trading experience); *CFTC v. McLaurin*, No. 95 C 285, 1996 WL 385334, at *3 (N.D. Ill. July 3, 1996) (granting summary judgment for CFTC on fraud claim where defendant misrepresented his qualifications and trading experience). Ikkurty obviously knew his own background, so his false statements were intentional or reckless.

c. Defendants Misappropriated Participant Funds

i. Defendants Misappropriated Participant Funds In a Manner Akin to a Ponzi Scheme

Ikkurty and Jafia misappropriated participants' funds by taking money contributed by later participants and giving it to earlier ones as "dividends," in a manner akin to a Ponzi scheme. A Ponzi scheme is "a fraudulent investment scheme in which money contributed by later investors generates artificially high dividends or returns for the original investors, whose example attracts even larger investments." (Black's Law Dictionary) (11th ed. 2019); *see In re Slatkin*, 525 F.3d 805, 809 n.1 (9th Cir. 2008) (defining Ponzi scheme as "a phony investment

plan in which monies paid by later investors are used to pay artificially high returns to the initial investors, with the goal of attracting more investors"); *In re M&L Bus. Mach. Co., Inc*., 84 F.3d 1330, 1332, n. 1 (10th Cir. 1996) (a Ponzi scheme is "an investment scheme in which returns to investors are not financed through the success of the underlying business venture, but are taken from principal sums of newly attracted investments"); *see also Masten*, 170 F.3d at 797 ("[i]t is a hallmark of a Ponzi scheme to convince potential investors that capital supplied by investments is in fact profit").

Defendants admit that they took new participants funds and paid it out as "dividends" to old participants. SOF ¶¶ 28-30. They admit that they did not realize profits through the success of any underlying investment. SOF ¶¶ 28-29. Even their own expert confirmed this. SOF ¶ 30. And, Ikkurty made these Ponzi-like distributions for the express purpose of attracting more investment. He said so in WhatsApp chats to Avadhanam:

> We should ask [current participant] to keep announcing in the whatsapp group how much they raised. That will create social proof for others who did not add money . . . it just pushes them over . . . herd mentality.
>
> You can even create fomo
>
> We need to create a sense of urgency

SOF ¶ 26. Defendants committed fraud by misappropriating participant funds in a manner akin to a Ponzi scheme.

ii. Defendants Misappropriated Participant Funds Through Their Carbon Offset Bond Product

Defendants also engaged in a Ponzi-like scheme by using funds from CSN and COB participants to pay inflated returns to participants in RCIF I. *See* SOF ¶ 74. CSNs and COBs were agreements between Jafia and participants. SOF ¶ 62. Pursuant to the agreements, participants paid for the CSN or COB up front and Jafia promised to pay interest—typically

18%—for a period of years, at which point Jafia would repay the principal. SOF ¶¶ 62, 63. Thus, Jafia received cash for the CSNs and COBs and needed to put it to good use in order to return the principal plus 18% interest. Ikkurty *said* that Jafia would use the money to buy BCT tokens; instead he gave it away to RCIF I participants in the form of inflated returns. SOF ¶ 67.

Here's how: Beginning in November 2021, the value of RCIF I collapsed by 99% within four months, with especially massive losses of nearly 54% in December 2021 and 97% in January 2022. SOF ¶ 41. Rather than requiring the RCIF I participants to bear the losses he had incurred—which could have led to a panic as everyone in RCIF I would have been essentially wiped out—Ikkurty offered RCIF I participants "buyouts" from Jafia at the pre-crash values for their RCIF I investments, or alternatively, offered to give them COBs in those same pre-crash values. SOF ¶ 70. These buyouts happened *after* the RCIF I losses had already occurred but before Defendants issued updated monthly statements. Jafia bought out RCIF I participants during the months of December 2021 and January 2022 but agreed to pay the much higher prices reflected on participants' October and November 2021 statements. SOF ¶¶ 70, 71.

The evidence on this point is clear. For example, Ikkurty emailed an RCIF I participant on January 13, 2022 and admitted that "December was very bad where RCIF 1 dropped by more than 45%," and offered the opportunity to "cash out [his] position on a high note" based on the much higher values reflected on the November 30 statement. SOF ¶ 70. This was great for that particular participant. Instead of his RCIF I stake suffering a large loss—nearly 99% if he had been required to stay in the fund through January—Ikkurty used Jafia funds to give him the full November price,[2] essentially paying the participant 100x the value of his RCIF holdings. But the

[2] Actually, Ikkurty "rounded up" this particular investor's balance to $100,000, giving him an extra $5,500 *on top of* the paying the inflated November balance. SOF ¶ 70. That money should have been used to back the CSNs and COBs, not given away for no reason to this early investor.

CSN and COB participants relied on those same Jafia funds—which they had contributed—to be available to repay the CSNs and COBs. Instead, Defendants threw the money away by paying $29 million to RCIF I participants for stakes that were worth only $7.7 million. SOF ¶ 72.

The inevitable result is that Jafia was left with woefully insufficient funds to have ever paid back the CSN and COB participants. Defendants sold at least $26 million in CSNs and COBs, and owed that full amount *plus* 18% interest to CSN and COB participants. SOF ¶ 73. But when the CFTC brought suit and put an end to Defendants' fraud, Jafia only had $5.9 million in total assets.[3] SOF ¶ 73.

This is misappropriation. Defendants took money being held for CSN and COB participants, misappropriated it, and gave it to RCIF I participants. This is also a Ponzi scheme.[4] When an operator uses "newly invested money to make old investors think they were earning profits rather than losing their shirts," *Bosco*, 836 F.2d at 274, that is a Ponzi scheme. *See also In re M&L Bus. Mach.*, 84 F.3d at 1332, n. 1 (defining a Ponzi scheme as "an investment scheme in which returns to investors are not financed through the success of the underlying business venture, but are taken from principal sums of newly attracted investments"); *United States v. Miller*, No. 20 CR 48, 2023 WL 4573479, at *11 (N.D. Ind. July 18, 2023) ("occasionally transferring money from new investors to pay older investors . . . are the same maneuvers by

[3] Ikkurty may argue that this insolvency was immaterial because the CSN and COB principal payments had not come due before the CFTC shut Defendants down. But the misappropriation occurred when Ikkurty secretly gave CSN and COB money away to earlier participants. It is no defense to say that Jafia still had *some* money and Ikkurty had an (unfounded) hope that he would be able to make back the missing $20 million. Even Bernie Madoff did not *completely* run out of money before his fraud was discovered.

[4] The CFTC does not need to prove that Defendants operated a Ponzi scheme in order to prevail on this motion and in this lawsuit. Ikkurty's material misrepresentations and omissions and misappropriation of customer funds would constitute fraud in violation of Section 6(c) and Regulation 180.1 even if this were not a Ponzi scheme, and summary judgment would be warranted. *Cf. Cohen v. Feiner*, No. 17 C 7328, 2019 WL 1787527, at *4 (N.D. Ill. Apr. 24, 2019) ("Regardless of whether the alleged wrongful behavior is classified as a Ponzi scheme, claims alleging fraudulently marketed investments followed by the improper management and sale of investment assets squarely sound in securities fraud.") But Ikkurty has repeatedly claimed that the CFTC has "no evidence" that he ran a Ponzi scheme, so the CFTC is presenting its evidence to set the record straight.

which a Ponzi scheme operates"). And that is exactly what Ikkurty did; when his RCIF I "investing" strategy turned out to be an utter failure, he used Jafia's money—much of which came from CSN and COB participants—to bail out his early investors. Perhaps Ikkurty did not initially set out to run a Ponzi scheme, but when he transferred new CSN and COB money to his older RCIF I participants he converted his enterprise into a Ponzi scheme. *See PLB Investments LLC v. Heartland Bank and Trust Co.*, No. 20 C 1021, 2021 WL 492901, at *2 (N.D. Ill. Feb. 9, 2021) (finding that enterprise "turned to a Ponzi scheme" by "paying early investors with money . . . raised from later investors" after the original "business model proved unsuccessful").

C. Summary Judgment Should Be Entered on Count I Because Defendants Acted As Commodity Pool Operators

Defendants Ikkurty and Jafia acted as commodity pool operators ("CPOs") by soliciting and accepting funds for the purpose of trading commodity interests. Section 4m(1) of the Act prohibits any person from acting as a CPO without the benefit of registration with the Commission. 7 U.S.C. § 6(m)(1). A CPO is defined as any person who is engaged in a business that is of the nature of an investment trust, syndicate or similar form of enterprise, who, in connection therewith, solicits accepts or receives funds, securities or property, for the purpose of trading in commodity interests. 7 U.S.C. § 1a(11). Commodity interests include contracts for the purchase or sale of a commodity for future delivery (or an option on such a contract), securities futures product, swaps, commodity options, foreign currency, and leveraged transactions. 7 U.S.C. § 1a(11)(A).

Under the Act, a person qualifies as a CPO if he solicited investments "for the purpose of trading" in commodity interests, regardless of whether the person *actually* traded in commodity interests. *U.S. v. Wilkinson*, 986 F.3d 740, 745 (7th Cir. 2021) (rejecting defendant's argument that because "he did not actually trade the commodities that the private placement memoranda

said would be traded" he was not a CPO); *see also CFTC v. Equity Fin. Grp. LLC*, 572 F.3d 150, 158 (3d Cir. 2009) (holding that "the actual trading of commodity futures is not required" for a person to be deemed a CPO). In *Wilkinson*, the defendant distributed a private placement memorandum to investors that detailed the products his fund intended to trade and was authorized to trade on behalf of fund participants, and those products included "futures and options on futures." *Wilkinson*, 986 F.3d at 744. As the Seventh Circuit explained, "[g]iven what [the defendant] said in soliciting investments, it does not matter whether he actually traded those commodities." *Wilkinson*, 986 F.3d at 745.

To begin, acknowledging the requirement that they register as CPOs, Defendants Ikkurty and Jafia falsely represented to participants that they would file an exemption from registration as a CPO with the CFTC. In the Fund Documents, Defendants state that:

> THE GENERAL PARTNER WILL FILE A CLAIM OF EXEMPTION FROM REGISTRATION AS A COMMODITY POOL OPERATOR ("CPO") WITH THE UNITED STATES COMMODITY FUTURES TRADING COMMISSION ("CFTC") …

SOF ¶ 77. Defendants never filed any exemption with the CFTC, nevertheless they continued to act as CPOs. SOF ¶ 77.

And Defendants Ikkurty and Jafia indisputably solicited, accepted and received funds for the purpose of trading commodity interests. Defendants solicited funds through their webinar presentations, website, in-person conferences, email communications and through the Fund Documents. SOF ¶¶ 15-18. In fact, it is undisputed "that Mr. Ikkurty accepted over forty-four million dollars from investors" to invest in RCIF II during the Relevant Period. SOF ¶ 49. Defendants solicited and accepted these funds for, among other things, the purpose of trading commodity interests: they said so in the Fund Documents. SOF ¶¶ 10-12. The LPA expressly authorized Jafia, as General Partner, to "purchase, hold, sell, sell short and otherwise deal in commodities, commodity contracts, commodity futures, financial futures (including index

futures) and options . . . forward foreign currency exchange contracts, . . . derivatives, swap contracts" and also to "conduct margin accounts with brokers." SOF ¶ 11. These products are commodity interests. *See* 7 U.S.C. §1a(11)(A) (commodity interests include contracts for the purchase or sale of a commodity for future delivery (or an option on such a contract), securities futures product, swaps, commodity options, foreign currency, and leveraged transactions.). As a result, Defendants acted as CPOs without registration and the CFTC is therefore entitled to summary judgment on Count I.

D. Summary Judgment Should Be Entered on Count II Because Defendants Also Committed CPO Fraud

Section 4*o*(1) of the Act, prohibits any CPO from using the mails or any other means of interstate commerce to: (A) employ any device, scheme or artifice to defraud any client or participant or prospective client or participant; or, (B) engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective participant. 7 U.S.C. §6*o*(1). The elements of Section 4*o*(1)(A) are the same as the elements of Section 4*o*(1)(B), but 4*o*(1)(A) also requires proof of scienter. *See Commodity Trend Serv., Inc., v. CFTC*, 233 F.3d 981, 993 (7th Cir. 2000) (explaining that Section 4*o*(1)(A) "requires that a CTA act with scienter," as opposed to 4*o*(1)(B), which "focuses upon the effect a CTA's conduct has on its investing customers . . . and so does not require a showing of scienter"). It is a violation of section 4*o*(1) when a CPO (1) misappropriates participant funds for either personal use or for the use by companies owned and controlled by the CPO, and (2) makes material misrepresentations and omits material facts to prospective and actual participants. *CFTC v. Magee*, 2016 WL 5231834, at *3 (N.D. Ill. June 15, 2016).

The elements of Section 4*o*(1)(A) are coextensive with the elements of Section 6(c)(1) and Regulation 180.1(a). All require the same three elements of proof: (1) a misrepresentation

that is (2) material and (3) made with scienter. *See Kraft Foods*, 153 F. Supp. 3d at 1014 ("Under Regulation 180.1, the level of scienter required to plead a cause of action for manipulation is 'intentionally or recklessly.'"); *see CFTC v. Driver*, 877 F. Supp. 2d 968, 978 (C.D. Cal. 2012) ("The same intentional or reckless misappropriations, misrepresentations, and omissions of material fact . . . violate section 4*o*(1)(A)-(B) of the Act."); *CFTC v. Emini Experts, LLC*, No. 614CV1766, 2016 WL 7666148, at *4 (M.D. Fla. Mar. 29, 2016), report and recommendation adopted, No. 614CV1766, 2016 WL 3098199 (M.D. Fla. June 3, 2016) (evaluating the same elements for sections 4b, 4*o*(1)(A), and 6(c)(1) and Regulation 180.1)).

The CFTC has already established that summary judgment against Defendants is appropriate with respect to each element of Section 6(c)(1) and Regulation 180.1, and therefore summary judgment is likewise appropriate on Count II.

E. Restitution and Disgorgement Should be Awarded

Pursuant to 7 U.S.C. § 13a-1(d)(3), the CFTC may seek, and the Court may impose, on any person found to have committed a violation of the Act or Regulations, equitable remedies including: (A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses); and (B) disgorgement of gains received in connection with such violation.

Participants in Ikkurty's various schemes lost at least the following amounts:

Product	**Total Amount Lost**
RCIF I	$9,573,705
RCIF II	$48,066,789
CSN	$6,036,500
COB	$20,080,255
Total	**$83,757,249**

SOF ¶¶ 73, 75. These amounts are conservatively calculated by considering the total amounts contributed to each scheme by the participants who remained in the scheme until the accounts

were frozen, less any distributions or withdrawals made by those RCIF I and RCIF II participants. *Id.* The entire amount of these unwithdrawn contributions are customer losses due to fraud because of all of Defendants' misrepresentations and omissions in marketing these products to the customers, as discussed above, and because Defendants misappropriated amounts that otherwise could have been used to reimburse these customers, keeping these misappropriated funds for themselves or paying them to earlier investors, as discussed above.

Proof of participant reliance is ordinarily required to obtain restitution, but "the Court may presume reliance by customers if the violations involve 'material omissions in the context of a fraudulent scheme' or 'pervasive or widespread misrepresentation.'" *Long Leaf Trading Group, Inc.*, 2022 WL 2967452, at *9 (internal citations omitted).

Further, $36,967,285 lost by customers consisted of commissions Jafia charged to RCIF I and RCIF II participants. SOF ¶ 76. These commissions are ill-gotten gains that Jafia must disgorge. *See CFTC v. Escobio*, 833 F. App'x 768, 772 (11th Cir. 2020) (affirming award of restitution and disgorgement in the amount of commissions charged to the customers). Jafia's fees were based on participant contributions made pursuant to the material misrepresentations and omissions discussed above, and therefore those fees are the proceeds of fraud.

F. CFTC Is Entitled To Summary Judgment Against Relief Defendants

The Commodity Exchange Act authorizes equitable relief in the form of disgorgement from a "relief defendant." *See CFTC v. Gresham*, No. 12-10040, 2012 WL 1606037, at *2 (N.D. Ga. May 7, 2012). Federal courts order equitable relief against a relief defendant where the individual or entity: (1) receives ill-gotten funds; and (2) does not have a legitimate claim to the funds. *Id*; *see also SEC v. George*, 426 F.3d 786, 798 (6th Cir. 2005); *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 192 (4th Cir. 2002). For example, relief defendants are required to disgorge profits they receive from defendants' unlawful activity. *See FTC v.*

Cleverlink Trading Ltd., 519 F.Supp.2d 784, 787 (N.D. Ill. 2007) (ordering relief defendants to disgorge profits from defendants' unlawful activity); *see also, e.g., SEC v. Egan*, 856 F. Supp. 401, 402 (N.D. Ill. 1993) ("To be sure, Relief Defendants may not have been directly culpable in the securities violations, but what the SEC seeks to have them disgorge are the benefits that they derived from the violations by the culpable defendants.")

RCIF I, RCIF II and Seneca Ventures (the Relief Defendants) all possess ill-gotten gains—participants' money—to which they have no legitimate claim. They possess funds obtained through Defendants Ikkurty and Jafia's fraudulent misrepresentations and misappropriation. Here, all the funds frozen in the Relief Defendants' account must be disgorged because the funds in "Relief Defendants' frozen accounts are less than their ill-gotten gains." *Gresham*, 2012 WL 1606037, at *3. The disgorgement amount requested in the section above should be joint and several with respect to Defendants Ikkurty and Jafia and the Relief Defendants.

CONCLUSION

The CFTC respectfully asks the Court to deny grant summary judgment in its favor on all counts and to order restitution in the total amount of $83,757,249 and disgorgement from Jafia in the amount of $36,967,285.

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