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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING
COMMISSION,

No. 2:20-cv-01184-TLN-AC

Plaintiff,

v.

ORDER

FINANCIAL TREE dba FINANCIAL
TREE TRUST; FINANCIAL SOLUTION
GROUP dba FINANCIAL SOLUTION
GROUP TRUST; NEW MONEY
ADVISORS, LLC; THE LAW FIRM OF
JOHN GLENN, P.C.; JOHN D. BLACK
aka JOHN BARNES; CHRISTOPHER
MANCUSO; JOSEPH TUFO; and JOHN
P. GLENN,

Defendants;

SUISSE GROUP (USA) LLC; JMC
INDUSTRIES LLC; LANDES CAPITAL
MANAGEMENT, LLC; KINGDOM
TRUST LLC; HERBERT CASWELL;
ANNE MANCUSO; and TYLER
MANCUSO,

Relief Defendants.

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1 Presently before the Court are Plaintiff Commodity Futures Trading Commission’s
2 (“CFTC”) multiple contempt motions filed against Defendants and Relief Defendants John D.
3 Black (“Black”) and the three entities under his control (Financial Tree, Financial Solution Group
4 (“Financial Solution”), and New Money Advisors, LLC (“New Money”) (collectively, the “Black
5 Entities”), Christopher Mancuso (“Mancuso”), Joseph Tufo (“Tufo”), Suisse Group (USA) LLC
6 (“Suisse Group”), JMC Industries LLC (“JMC”), Herbert Caswell (“Caswell”), Anne Mancuso,
7 and Tyler Mancuso (collectively, “Contempt Parties”) for failure to comply with the provisions of
8 this Court’s Statutory Restraining Order (“SRO”) (ECF No. 9) and Preliminary Injunction (“PI”)
9 (ECF No. 33).¹ None of the Contempt Parties have filed any response to CFTC’s motions.

10 For the reasons set forth below, CFTC’s contempt motions are GRANTED. (ECF Nos.
11 24, 29, 54, 66, 86, 94.)

12 I. FACTUAL AND PROCEDURAL BACKGROUND²

13 The parties are familiar with the facts of this case and only those relevant to the issues
14 currently before the Court will be reiterated here. On June 15, 2020, CFTC filed a Complaint
15 against the Contempt Parties as well as Defendants and Relief Defendants John P. Glenn
16 (“Glenn”), The Law Firm of John Glenn, P.C. (the “Glenn Law Firm”), Landes Capital
17 Management, LLC (“Landes”), and Kingdom Trust LLC (“Kingdom”). (ECF No. 1.) The
18 Complaint alleges Defendants violated multiple provisions of the Commodity Exchange Act
19 (“Act”) and Commission Regulations (“Regulations”) by engaging in a Ponzi scheme, whereby
20 they fraudulently solicited customers to invest in future trades, did not actually use the money to
21 trade on investors’ behalf, and paid the old investors “returns” from funds they obtained from
22 ///

23 ¹ On August 13, 2020, CFTC additionally filed a “Reply” with respect to its contempt
24 motion against Mancuso, which does not actually reply to any briefing filed by Mancuso but
25 instead supplements CFTC’s original motion by identifying additional and different violations of
26 the PI purportedly committed by Mancuso subsequent to the actions described herein. (ECF No.
27 54.) The Court construes this Reply briefing as an additional contempt motion against Mancuso.

28 ² Unless otherwise noted, the following facts are derived from CFTC’s briefs and its
supporting records and declarations. For ease of reference, the Court will refer to the ECF
pagination for the attached exhibits.

1 later, fraudulently-solicited investors. (*Id.*) CFTC maintains Defendants have defrauded their
2 investors of approximately \$14.32 million. (*Id.*)

3 On the same date that it filed its Complaint, CFTC also filed an *Ex Parte* Motion for SRO,
4 which the Court granted on July 2, 2020. (ECF Nos. 3, 9.) Pursuant to Section IV(A) of the
5 SRO, all Defendants and Relief Defendants were

6 immediately RESTRAINED AND ENJOINED, except as otherwise
7 ordered by this Court, from directly or indirectly withdrawing,
8 transferring, removing, dissipating, or otherwise disposing of any
Assets, wherever located, including Defendants' and Relief
Defendants' Assets³ held outside the United States.

9 (ECF No. 9 at 20–21.)

10 Section IV(B) of the SRO required Defendants and Relief Defendants to maintain their
11 Records⁴ and permit CFTC immediate access, specifically:

12 Defendants and Relief Defendants are hereby RESTRAINED from
13 directly or indirectly destroying, altering, or disposing of, in any
14 manner, any Records that relate or refer to the business activities or
business or personal finances of any Defendant or Relief Defendant.

15 Defendants and Relief Defendants are hereby ORDERED to
16 immediately allow representatives of CFTC to inspect any Records
17 relating or referring to the business activities or business or personal
finances of Defendants and Relief Defendants, . . . promptly identify
and provide CFTC's staff with the location of all Records . . . [and],

18 ³ As defined by the SRO and PI, "Assets" encompasses any legal or equitable interest in,
19 right to, or claim to any real or personal property, whether individually or jointly, or directly or
20 indirectly controlled, and wherever located, including but not limited to: chattels, goods,
21 instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries,
22 inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at
other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures,
options, or swaps contracts), insurance policies, retainers held by agents for the provision of
professional or other services, and all funds, wherever located, whether in the United States or
outside the United States. (*See* ECF No. 9 at 2 n.1.)

23 ⁴ As defined by the SRO and PI, "Records" encompasses the terms "document" and
24 "electronically stored information" ("ESI") as those terms are used in Federal Rule of Civil
25 Procedure 34(a). The term "Records" also refers to each and every such item in Defendants' and
26 Relief Defendants' actual or constructive possession, including but not limited to: (i) all such
27 items within the custody or control of any agents, employers, employees, or partners of the
28 Defendants and Relief Defendants; and (ii) all items which Defendants and Relief Defendants
have a legal or equitable right to obtain from another person. A draft or non-identical copy is a
separate item within the meaning of the term. A Record also includes the file and folder tabs
associated with each original and copy. (*See id.* at 2 n.2.)

1 in light of the COVID-19 pandemic, . . . shall allow representatives
2 of CFTC to make copies of documents . . . on-site [or] off-site

3 (*Id.* at 21–22.) The SRO additionally instructed Defendants and Relief Defendants to:

4 promptly contact CFTC’s counsel to assert any claims of privilege or
5 other legal objections . . . and promptly cooperate with CFTC’s
6 counsel to develop reasonable protocols to isolate and prevent
disclosure of claimed privileged and/or other nonbusiness,
nonfinancial materials

7 (*Id.* at 21.) The SRO additionally contemplated that Defendants or Relief Defendants might raise
8 a “valid assertion of their respective rights against self-incrimination under the Fifth
9 Amendment.” (*Id.* at 22.) Nevertheless, absent a “valid assertion” of rights, the SRO noted that
10 “nothing herein shall excuse Defendants or Relief Defendants from full and immediate
11 compliance with this Court’s Order permitting CFTC to inspect the books and Records which
12 relate to Defendants’ or Relief Defendants’ business activities and their business and personal
13 finances.” (*Id.* at 21–22.)

14 On July 28, 2020, the Court issued a PI that continues the terms set forth in the SRO and
15 additionally prohibits Defendants from committing future violations of the Act and Regulations
16 or engaging in commodity-related activities. (ECF No. 33 at 17–20.) Specifically, under Section
17 IV(A) of the PI, Defendants are prohibited from directly or indirectly:

- 18 1. Trading on or subject to the rules of any registered entity (as that
19 term is defined by Section 1a(40) of the Act, 7 U.S.C. § 1a(40)
(2018));
- 20 2. Entering into any transactions involving “commodity interests”
21 (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)),
22 for accounts held in the name of any Defendant or for accounts in
23 which any Defendant has a direct or indirect interest;
- 24 3. Having any commodity interests traded on any Defendant’s
25 behalf;
- 26 4. Controlling or directing the trading for or on behalf of any other
27 person or entity, whether by power of attorney or otherwise, in any
28 account involving commodity interests;
5. Soliciting, receiving, or accepting any funds from any person for
the purpose of purchasing or selling of any commodity interests;
6. Applying for registration or claiming exemption from registration
with CFTC in any capacity, and engaging in any activity requiring

1 such registration or exemption from registration with CFTC except
2 as provided for in Regulation 4.14(a)(9) (17 C.F.R. § 4.14(a)(9)
(2019)); and

3 7. Acting as a “Principal” (as that term is defined in Regulation
4 3.1(a) (17 C.F.R. § 3.1(a) (2019))), agent, or any other officer or
5 employee of any “Person” (as that term is defined in Section 1a(38)
6 of the Act (7 U.S.C. § 1a(38) (2018))), that is registered, exempted
7 from registration, or required to be registered with CFTC, except as
8 provided for in 17 C.F.R. § 4.14(a)(9).

9 (ECF No. 33 at 17–18.)

10 Finally, Section IV(E) of the PI additionally requires “each Defendant and Relief
11 Defendant [to] file with the Court and serve upon CFTC a sworn statement and accounting, with
12 complete documentation, covering the period from January 1, 2015 to the present.” (*Id.* at 19.)
13 Defendants and Relief Defendants’ accountings were due by August 27, 2020. (*See id.*) A
14 review of the docket reflects that the only parties who have filed the required accounting and
15 sworn statement with the Court are Defendants Glenn and the Glenn Law Firm. (*See* ECF Nos.
16 71–72, 76.)

17 As of the filing date of this Order, default has been entered against Mancuso, the Black
18 Entities, Tufo, Kingdom, Landes, Anne Mancuso, Tyler Mancuso, Caswell, JMC, and Suisse
19 Group for their failure to timely respond to the Complaint.⁵ (ECF Nos. 49, 50, 58.) Following
20 issuance of the SRO and PI, CFTC has filed multiple motions seeking to hold nearly all of the
21 Defendants and Relief Defendants in civil contempt for their failure to comply with the
22 provisions of this Court’s SRO and PI. (ECF Nos. 24, 29, 54, 66, 86, 94.) No responses were
23 filed to CFTC’s motions, which have all been deemed submitted on the pleadings before this
24 Court. (*See* ECF Nos. 56, 87, 95, 98.)

25 **II. LEGAL STANDARD**

26 “[C]ourts have inherent power to enforce compliance with their lawful orders through
27 civil contempt.” *Shillitani v. U.S.*, 384 U.S. 364, 370 (1966). Civil contempt sanctions serve “to
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⁵ The Clerk additionally entered default against Black on August 5, 2020. (ECF No. 50.)
However, Black subsequently moved for an order setting aside the default and the Court granted
the motion. (ECF Nos. 77, 96.)

1 coerce obedience to a court order, or to compensate the party pursuing the contempt action for
2 injuries resulting from the contemptuous behavior.” *Commodity Futures Trading Comm’n. v.*
3 *Emerald Worldwide Holdings, Inc. (Emerald)*, No. CV03-8339AHM, 2004 WL 3186580, at *2
4 (C.D. Cal. Jul. 29, 2004) (quoting *Gen. Signal v. Donallco, Inc.*, 787 F.2d 1376, 1380 (9th Cir.
5 1986)).

6 In order to obtain contempt sanctions, the moving party must demonstrate by clear and
7 convincing evidence that the other party violated “a specific and definite court order by failure to
8 take all reasonable steps within the party’s power to comply.” *In re Dual-Deck Video Cassette*
9 *Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). The moving party need not establish
10 the violations were willful or intentional. *See id.* Once the moving party establishes the
11 violation, the burden shifts to the alleged contemnor to produce evidence justifying his non-
12 compliance. *Emerald*, 2004 WL 3186580, at *2. Recognized defenses to civil contempt include
13 (1) substantial compliance, and (2) an inability to comply. *Id.*; *U.S. v. Ayres*, 166 F.3d 991, 994
14 (9th Cir. 1999); *Fed. Trade Comm’n v. Gill (Gill)*, 183 F. Supp. 2d 1171, 1183 (C.D. Cal. 2001).
15 Good faith or intent in attempting to comply is immaterial. *Pac. Coast Surgical Ctr., L.P. v.*
16 *Scottsdale Ins. Co.*, 2:18-cv-3904, 2019 WL 4267764, at *5 (C.D. Cal. July 31, 2019). With
17 respect to the second defense, the alleged contemnor bears the burden of making “a categorical,
18 detailed showing” of his inability to comply. *S.E.C. v. Bankers All. Corp. (Bankers)*, 881 F.
19 Supp. 673, 683 (D.D.C. 1995); *Nat’l Lab. Rel. Bd. v. Trans Ocean Export Packing, Inc.*, 473 F.2d
20 612, 616 (9th Cir. 1973).

21 Once the Court determines a violation has occurred, it has broad authority in fashioning
22 appropriate relief that is reasonably calculated to compel obedience with the prior court order.
23 *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 193 (1949) (“The measure of the court’s
24 power in civil contempt proceedings is determined by the requirements of full remedial relief.”).
25 This includes per diem fines, compensatory damages, conditional incarceration, and reasonable
26 attorneys’ fees and expenses. *See Bankers*, 881 F. Supp. at 684 (issuing graduated schedule of
27 daily fines and ordering conditional incarceration to gain compliance); *Shillitani*, 384 U.S. at
28 370–71 (upholding order of conditional incarceration); *Perry v. O’Donnell*, 759 F.2d 702, 704–06

1 (9th Cir. 1985) (affirming award of attorneys’ fees and costs). The district court “should apply
2 the least coercive sanction (e.g., a monetary penalty) reasonably calculated to win compliance
3 with its orders.” *U.S. v. Flores*, 628 F.2d 521, 527 (9th Cir. 1980). Nevertheless, the Ninth
4 Circuit “defer[s] considerably to the judgment of the district court in fashioning the appropriate
5 sentence because of its proximity to the events out of which the contempt springs,” and will only
6 disturb the district court’s judgment if it has abused its discretion. *Id.*

7 **III. ANALYSIS**

8 CFTC argues the Contempt Defendants have violated the SRO and PI by: (1) refusing to
9 permit CFTC to inspect their Records (ECF Nos. 24, 29, 66); (2) violating the Act and
10 Regulations (ECF No. 54); (3) failing to submit the required sworn statement and accounting
11 (ECF Nos. 66, 94); and (4) dissipating assets (ECF No. 86). As a result of Contempt Defendants’
12 conduct, CFTC seeks an order to show cause as to why each Contempt Defendant should not be
13 held in civil contempt and subject to appropriate sanctions. (*See* ECF No. 24 at 1–2; ECF No. 29
14 at 1; ECF No. 54 at 2; ECF No. 66 at 1–2; ECF No. 86 at 1; ECF No. 94 at 1.) The Court will
15 address each of these contentions and the evidence proffered by CFTC in turn, as they pertain to
16 each Contempt Defendant.

17 **A. Black and the Black Entities**

18 CFTC asserts it emailed Black and the Black Entities (through Black, in his capacity as
19 the controlling person and representative of the Black Entities) copies of the SRO and related
20 documents on July 7, 2020, and effected formal service on Black and the Black Entities on July 8,
21 2020. (ECF No. 24 at 3; ECF No. 24-1 at 5–6; ECF Nos. 19–22.) CFTC also provided Black and
22 the Black Entities additional notice via email on July 30 and August 28, 2020, that the sworn
23 statements and accountings were due pursuant to the terms of the PI. (ECF No. 66 at 5; ECF No.
24 66-2 at 2; ECF No. 66-9.) Thus, Black and the Black Entities received timely actual notice and
25 were aware of the requirements set forth in the SRO and PI. Yet Black and the Black entities
26 nevertheless violated the SRO and PI when they refused to permit CFTC to inspect documents
27 (ECF No. 24) and failed to provide a sworn statement and accounting (ECF No. 66). CFTC
28 further maintains Black dissipated assets in violation of the PI. (ECF No. 86).

1 *i. Refusal to Permit Inspection of Documents (ECF No. 24)*

2 CFTC claims Black and the Black Entities violated Section IV(B) of the SRO and Section
3 IV(C) of the PI, which require all Defendants and Relief Defendants to produce documents or
4 electronic equipment to CFTC for inspection and permit CFTC to inspect relevant documents.
5 (ECF No. 24; *see also* ECF No. 9 at 21–24; ECF No. 33 at 18.)

6 On July 8, 2020, following receipt of the SRO and related documents, Black sent CFTC a
7 reply email, acknowledging receipt of the documents and stating, “I will respond with legal
8 counsel.” (ECF No. 24 at 3; ECF No. 24-1 at 4.) However, the attorney previously in discussions
9 to represent Black confirmed to CFTC that he will not represent Black. (ECF No. 24 at 3; ECF
10 No. 24-2 at 2.) Thereafter, Black refused to respond to CFTC’s attempts to discuss document
11 collection. (*See* ECF No. 24 at 3–4; ECF No. 24-1 at 2–4.)

12 CFTC maintains that, to date, Black and the Black Entities have refused to participate in
13 any calls with CFTC regarding document collection, have not produced any documents or
14 electronic equipment to CFTC for inspection, and have not provided any other information to
15 CFTC to facilitate inspection. (ECF No. 24 at 4–5; ECF No. 66 at 4.) Black and the Black
16 Entities have not submitted any opposition to CFTC’s motion and therefore fail to rebut its
17 claims. For these reasons, the Court finds that CFTC has provided clear and convincing evidence
18 that Black and the Black Entities violated Section IV(B) of the SRO and Section IV(C) of the PI.

19 *ii. Failure to Submit a Sworn Statement and Accounting (ECF No. 66)*

20 CFTC claims Black and the Black Entities violated Section IV(E) of the PI, which
21 requires all Defendants and Relief Defendants to file with the Court and serve on CFTC a sworn
22 statement and accounting related to their financial records by August 27, 2020. (*See* ECF No. 66;
23 ECF No. 33 at 19–20.)

24 On September 1, 2020, Black’s criminal counsel informed CFTC she had advised Black
25 that he had a Fifth Amendment right “not to incriminate himself through a sworn declaration and
26 accounting that could possibly be inculpatory.” (ECF No. 66 at 5; ECF No. 66-4 at 4.) To date,
27 Black and the Black Entities have not provided the sworn statements and accountings required by
28 the PI. (ECF No. 66 at 5, 7.) Nor have they filed these documents with the Court. (*See generally*

1 docket, 2:20-cv-01184.) These facts alone establish a violation of the PI. *See Bankers*, 881 F.
2 Supp. at 679 (citing *S.E.C. v. Current Fin. Services, Inc.*, 798 F. Supp. 802, 808 (1992)) (“Failure
3 to comply fully with an order to provide an accounting is itself a valid basis for a finding of
4 contempt.”).

5 Further, CFTC argues the declaration of Black’s criminal counsel is insufficient to excuse
6 him from compliance with the PI because: (1) Black has not moved to amend the PI to seek relief
7 from the Order; and (2) a mere blanket assertion of Fifth Amendment protections is insufficient.
8 (ECF No. 66 at 7–8.) The Court agrees that Black’s attempt to avoid the entirety of the
9 production requirements set forth under the PI by way of a blanket invocation of the Fifth
10 Amendment is unavailing.

11 The Court must construe the privilege against self-incrimination broadly and must sustain
12 it if it is “evident from the implications of the question, in the setting in which it is asked, that a
13 responsive answer . . . might be dangerous because injurious disclosure could result.” *Hoffman v.*
14 *U.S.*, 341 U.S. 479, 486–87 (1951). Nevertheless, where the incriminating nature of the response
15 is not readily apparent to the court, the party invoking the Fifth Amendment is not excused from
16 answering “merely because he declares that in so doing he would incriminate himself.” *Id.* at
17 486; *see also Ueckert v. C.I.R.*, 721 F.2d 248, 250 (8th Cir. 1983) (“[T]he claimant cannot be the
18 sole arbiter of whether the information sought would tend to incriminate. The court must decide
19 whether his silence is justified.”). Rather, the party invoking the Fifth Amendment must have
20 “reasonable cause to apprehend a real danger of incrimination” and must specify with “clear,
21 credible reasons” how he would be injured by any specific question or answer. *See Steinbrecher*
22 *v. C.I.R.*, 712 F.2d 195, 198 (5th Cir. 1983) (party must indicate the issues from which he fears
23 prosecution); *see also Bankers*, 881 F. Supp. at 680 (citing *In re Morganroth*, 718 F.2d 161, 167
24 (6th Cir. 1983)). A blanket assertion of the privilege is therefore insufficient. *See Steinbrecher*,
25 712 F.2d at 197–98 (rejecting defendants’ bald assertion that, if they answered any questions or
26 produced any evidence, the information thereby revealed might be used against them);
27 *Morganroth*, 718 F.2d at 167.

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1 Here, the Court acknowledges it may be possible, given Black’s current status as a
2 defendant in the parallel criminal matter, to properly invoke Fifth Amendment protection against
3 providing certain responses to CFTC. However, that matter is not currently before the Court
4 because Black has not submitted any motion seeking relief from the requirements of the PI, let
5 alone any other filing asserting a Fifth Amendment privilege with respect to the production
6 requirements set forth in the PI. *See U.S. Sec. & Exch. Comm’n v. Collector’s Coffee Inc.*, 464 F.
7 Supp. 3d 665, 668–69 (S.D.N.Y. 2020) (party was required to affirmatively seek modification of
8 the at-issue portion of the TRO with the court rather than merely decline to comply with that
9 provision). Indeed, Black did not file any opposition to CFTC’s initial motions seeking a TRO or
10 PI, nor has he opposed CFTC’s instant contempt motions. The Court construes such silence as a
11 statement of non-opposition. *See S.E.C. v. Colello*, 139 F.3d 674, 677 (9th Cir. 1998) (“a district
12 court has discretion in its response to a party’s invocation of the Fifth.”) Further, Black’s blanket
13 assertion of Fifth Amendment protections is insufficient because he must articulate which portion
14 of the PI he refuses to comply with, and the precise factual and legal bases for the refusal to
15 comply. *Steinbrecher*, 712 F.2d at 198; *Bankers*, 881 F. Supp. at 680; *Morganroth*, 718 F.2d at
16 167.

17 Finally, to the extent Black seeks to invoke Fifth Amendment protection on behalf of the
18 Black Entities, his assertion is unavailing because corporate and entity defendants may not refuse
19 to provide an accounting on Fifth Amendment grounds. *Bellis v. U.S.*, 417 U.S. 85, 89– 90
20 (1974) (collective entities may not invoke the Fifth Amendment because they are legal entities
21 distinct from their members); *Braswell v. U.S.*, 487 U.S. 99, 118–19 (1988) (an individual cannot
22 rely upon the privilege to avoid producing the records of a collective entity which are in his
23 possession in a representative capacity, even if these records might incriminate him personally);
24 *see also U.S. v. Feng Juan Lu*, 248 F. App’x 806, 807–08 (9th Cir. 2007) (Fifth Amendment
25 protection does not apply to production of business records, even when business has only a single
26 employee who also serves as the sole officer).

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1 For these reasons, the Court finds that CFTC has provided clear and convincing evidence
2 that Black and the Black Entities violated Section IV(E) of the PI and Black’s blanket assertion of
3 Fifth Amendment privilege is unavailing.

4 *iii. Dissipation of Assets (Black only) (ECF No. 86)*

5 CFTC claims Black violated Section IV(A) of the SRO (incorporated by Section IV(B) of
6 the PI) prohibiting the withdrawal, transfer, removal, dissipation, or other disposal of assets.
7 (ECF No. 86; *see also* ECF No. 9 at 20–21; ECF No. 33 at 18.) Specifically, CFTC contends
8 Black acted in violation of the prohibition against dissipating assets: (1) on July 14, 2020, when
9 he mailed a \$2,936.60 check to pay an insurance premium on a whole life insurance policy for
10 which he is the beneficiary; (2) on July 21, 2020, when he issued a \$5,000 check to an attorney
11 who was considering representing him at the time; and (3) on July 28, 2020, when Black’s
12 alleged daughter wired \$14,600 on his behalf to the same attorney.⁶ (*See* ECF No. 86 at 3–4;
13 ECF No. 86-1 at 2–3; ECF Nos. 86-2, 86-3.)

14 The SRO restrained Black “from directly or indirectly” dissipating assets, including “bank
15 accounts” and “funds” that Black “directly or indirectly controlled.” (ECF No. 9 at 2 n.1, 20–21.)
16 The Court is satisfied that CFTC has sufficiently established Black exercised control over the
17 identified accounts and indirectly dissipated assets from them. (*See* ECF No. 86-1 at 2–3; ECF
18 Nos. 86-2, 86-3.) Black has not submitted any opposition to CFTC’s motion and therefore fails
19 to rebut its claims. For these reasons, the Court finds CFTC has provided clear and convincing
20 evidence that Black violated Section IV(A) of the SRO.

21 **B. Mancuso**

22 Mancuso had sufficient notice of the requirements of the SRO because CFTC emailed
23 copies of the SRO and related documents on July 7, 2020, and effected service on Mancuso on
24 July 12. (*See* ECF No. 29 at 3; ECF 29-1 at 10–13.) Further, CFTC emailed courtesy copies of
25 the PI to Mancuso on July 30. (ECF No. 54 at 3; ECF No. 54-3.) Yet Mancuso nevertheless

26 _____
27 ⁶ CFTC additionally submits evidence that Black wired \$57,000 with the memo line
28 “FROM JOHN BLACK” to an account controlled by Mancuso on June 26, 2020, but
acknowledges this transaction occurred before the Court issued the SRO and therefore does not
directly constitute a violation of the SRO. (*See* ECF No. 86 at 3; ECF No. 86-1 at 2.)

1 violated the SRO and PI when he refused to permit CFTC to inspect documents (ECF No. 29),
2 committed continuing violations of the Act and Regulations (ECF No. 54), and failed to provide a
3 sworn statement and accounting (ECF No. 66).

4 *i. Refusal to Permit Inspection of Documents (ECF No. 29)*

5 CFTC claims Mancuso violated the requirements of Section IV(B) of the SRO and
6 Section IV(C) of the PI that all Defendants and Relief Defendants produce documents or
7 electronic equipment to CFTC for inspection and permit CFTC to inspect relevant documents.
8 (ECF No. 29; *see also* ECF No. 9 at 21–24; ECF No. 33 at 18.)

9 On July 8, 2020, Mancuso sent CFTC an email stating that he was attempting to find an
10 attorney and would “be in touch soon,” but refused to communicate with CFTC in the meantime.
11 (ECF No. 29 at 3; ECF 29-1 at 9–10.) On July 15, Mancuso and attorneys not yet engaged to
12 represent him joined CFTC on a preliminary document collection call. (ECF No. 29 at 3; ECF
13 No. 29-3 at 2.) At that time, Mancuso invoked the Fifth Amendment and refused to provide any
14 devices or documents to CFTC, on the basis that the “act of production” doctrine shielded all
15 devices and documents from surrender.⁷ (*Id.*) CFTC maintains that, to date, Mancuso has
16 refused to produce any documents or electronic equipment to CFTC for inspection. (ECF No. 29
17 at 5; ECF No. 29-3 at 2; ECF No. 54 at 2; ECF No. 54-1 at 3; ECF No. 66 at 4.)

18 The Court finds CFTC has met its initial burden and Mancuso’s refusal to produce any
19 devices or documents based on a blanket assertion of Fifth Amendment protections is invalid for
20 several reasons. First, as previously discussed, blanket assertions of Fifth Amendment
21 protections are insufficient. *Steinbrecher*, 712 F.2d at 198; *Morganroth*, 718 F.2d at 167; *see also*
22 *SEC v. Caramadre*, 717 F. Supp. 2d 217, 224 (D.R.I. 2010) (requiring “act of production”
23 objections to be raised with respect to each responsive document, as in a privilege log). Second,
24 as the conduct alleged against Mancuso in the Complaint applies to his actions as agent of the
25 Black Entities (*see generally* ECF No. 1; ECF No. 29 at 5–6), CFTC is seeking production of
26

27 ⁷ On July 16, the attorneys informed CFTC they would not be representing Mancuso. (*Id.*)
28 Thereafter, Mancuso refused to respond to CFTC’s attempts to communicate. (ECF No. 29 at 4;
see also ECF No. 29-3 at 2 (citing ECF No. 29-2).)

1 business records which are not entitled to Fifth Amendment protections. *Braswell*, 487 U.S. at
2 108–09; *Bellis*, 417 U.S. at 88, 90; *see also U.S. v. Hubbell*, 530 U.S. 27, 35–36 (2000) (Fifth
3 Amendment does not apply to the contents of voluntarily prepared and previously generated
4 documents — such as tax documents and business records prepared in compliance with
5 regulatory requirements — even though they may contain incriminating information). Third, the
6 Fifth Amendment does not apply to electronic devices. *See F.T.C. v. PointBreak Media, LLC*,
7 343 F. Supp. 3d 1282, 1286 (S.D. Fla. 2018) (surrender of electronic devices is not a testimonial
8 communication for which defendants can invoke a Fifth Amendment objection) (citing *Hubbell*,
9 530 U.S. at 35).

10 Mancuso has not submitted any opposition to CFTC’s motion and therefore fails to rebut
11 its claims. For these reasons, the Court finds that CFTC has provided clear and convincing
12 evidence that Mancuso violated Section IV(B) of the SRO and Section IV(C) of the PI.

13 *ii. Continued Violation of the Act and Regulations (ECF No. 54)*

14 CFTC claims Mancuso violated Section IV(A) of the PI, which prohibits Defendants from
15 violating the Act and Regulations or engaging in any commodity-related activities. (ECF No. 54;
16 ECF No. 33 at 17–18.)

17 CFTC has submitted evidence that, as recently as August 9, 2020, Mancuso is continuing
18 to: (1) make new, fraudulent excuses for failure to repay funds; and (2) promise that Defendants
19 will repay principal plus profits by September 15, 2020. (ECF No. 54 at 1–3; ECF No. 54-1 at 2–
20 3 (describing Aug. 4, 2020 recording of telephone call between Mancuso and pool participant);
21 ECF No. 54-2 (emails between Mancuso and pool participants dated May 19, 2020–July 17,
22 2020).) Moreover, Mancuso is discouraging pool participants from providing documents to
23 CFTC and threatening that pool participants will not be repaid if they speak to CFTC. (ECF No.
24 54 at 2.)

25 Based on this record, CFTC maintains Mancuso’s actions occurring after July 28, 2020,
26 violate Section IV(A) of the PI. (*See generally id.*; *see also* ECF No. 33 at 17–18.) The Court
27 agrees. Moreover, Mancuso has not submitted any opposition to CFTC’s motion and therefore

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1 fails to rebut its claims. For these reasons, the Court finds that CFTC has provided clear and
2 convincing evidence that Mancuso has violated Section IV(A) of the PI.

3 *iii. Failure to Submit a Sworn Statement and Accounting (ECF No. 66)*

4 CFTC claims Mancuso violated Section IV(E) of the PI, which requires all Defendants
5 and Relief Defendants to file with the Court and serve on CFTC a sworn statement and account
6 related to their financial records by August 27, 2020. (ECF No. 66; ECF No. 33 at 19–20.)

7 CFTC asserts it provided Mancuso additional notice via email on July 30, 2020, and
8 August 28, 2020, that his sworn statement and accounting was due pursuant to Section IV(E) of
9 the July 28, 2020 PI. (ECF No. 66 at 5; ECF No. 66-2 at 2; ECF No. 66-5.) However, to date,
10 Mancuso has failed to serve the required documents on CFTC or file them with the Court. (*See*
11 ECF No. 66 at 5, 7; ECF No. 66-2 at 2.) Moreover, Mancuso has not submitted any opposition to
12 CFTC’s motion and therefore fails to rebut its claims. For these reasons, the Court finds that
13 CFTC has provided clear and convincing evidence that Mancuso has violated Section IV(E) of
14 the PI.

15 C. Tufo

16 *i. Failure to Submit a Sworn Statement and Accounting (ECF No. 94)*

17 CFTC claims Tufo violated Section IV(E) of the PI, which requires all Defendants and
18 Relief Defendants file with the Court and serve on CFTC a sworn statement and account related
19 to their financial records by August 27, 2020. (ECF No. 94; ECF No. 33 at 19–20.) Specifically,
20 CFTC asserts Tufo has refused to provide: (1) certain information relating to a currently open
21 account; (2) a sworn statement regarding the information he did provide; and (3) any required
22 supporting documents. (ECF No. 94 at 6.)

23 Tufo received actual notice of his obligations under the SRO and PI when CFTC served
24 Tufo with the Complaint, SRO, and related papers on July 8, 2020 (ECF No. 16), and emailed a
25 reminder to Tufo of the requirement to provide a sworn statement and accounting on July 30,
26 2020. (ECF No. 94 at 3; ECF No. 94-1 at 2.) Between August 28 and September 23, 2020,
27 CFTC exchanged multiple communications with Tufo to discuss and summarize certain
28 accounting-related information Tufo provided orally and in writing. (*Id.*; *see also* ECF No. 94-2.)

1 However, Tufo provided inconsistent information and was evasive during calls. (*See* ECF No. 94
2 at 3; ECF No. 94-2.) CFTC submits evidence demonstrating this inconsistent information on two
3 occasions:

4 1) During a call on September 2, 2020, Tufo initially repeated, multiple times, that he
5 had no accounts other than one business account which CFTC froze and two other
6 long-closed business accounts, and no personal bank accounts. When asked how
7 he buys food, Tufo attempted to change the subject several times, but eventually
8 stated he uses cash. When asked what cash he uses, Tufo initially stated he used
9 money from a safe containing \$16,000; however, the California DOJ seized that
10 cash in a related criminal matter. Tufo next stated he used money from a wallet
11 containing several hundred dollars; however, this was inconsistent with Tufo’s
12 prior statement to CFTC that he had no assets and relied only on Social Security to
13 live. When asked where he deposits his Social Security checks, Tufo attempted to
14 change the subject multiple times but ultimately stated he did not know.

15 Thereafter, Tufo admitted he received a physical check that he cashed, and that he
16 maintains an account at Bluebird (by American Express). Thereafter, Tufo
17 additionally admitted he had also recently opened a Patelco Credit Union account.
18 (*See* ECF No. 94 at 3–4; ECF No. 94-1 at 2–3; *see also* ECF No. 94-2.)

19 2) During a communication with Tufo on September 23, 2020, Tufo refused to call
20 Bluebird or Patelco Credit Union to obtain relevant bank statements for CFTC, on
21 the basis that he would be forced to speak to someone “in the Philippines whose
22 accent you can’t understand” and spend too much time on the phone. Tufo further
23 refused to provide CFTC the account number, current balance, or account
24 statements for his Bluebird account or Patelco Credit Union account. And Tufo
25 refused to confirm the accuracy of CFTC’s summary of the information Tufo
26 previously conveyed. Thereafter, Tufo refused to provide CFTC any information,
27 “on the advice of his criminal attorney.” (*See* ECF No. 94 at 4–5; ECF No. 94-1 at
28 3–4; *see also* ECF No. 94-2 at 2–4.)

1 To date, Tufo has failed to serve the required documents on CFTC or file them with the
2 Court. (*See* ECF No. 94 at 6; *see also* ECF No. 94-1 at 3–4; ECF No. 94-2 at 2.) On this basis
3 alone, he has violated Section IV(E) of the PI. *See Bankers*, 881 F. Supp. at 679 (citing *Current*
4 *Fin. Services, Inc.*, 798 F. Supp. at 808) (“Failure to comply fully with an order to provide an
5 accounting is itself a valid basis for a finding of contempt.”).

6 Further, the scant, unverified information Tufo has provided — which can fairly be
7 described as inconsistent, incomplete, and at times incredible (*see generally* ECF No. 94-2) — is
8 insufficient to be deemed “substantial compliance” with the PI’s requirement of a sworn
9 statement and accounting. *See Gill*, 183 F. Supp. 2d at 1183. To the extent Tufo’s refusal to
10 respond to CFTC on the basis that “[his] attorney advises against it” (*see* ECF No. 94-2 at 2) may
11 be construed as an invocation of his Fifth Amendment privilege, the Court finds Tufo’s blanket
12 invocation is unavailing. *See Steinbrecher*, 712 F.2d at 198; *Morganroth*, 718 F.2d at 167; *see*
13 *also S.E.C. v. Parkersburg Wireless Ltd. Liab. Co.*, 156 F.R.D. 529, 535 (1994) (citing *Rogers v.*
14 *U.S.*, 340 U.S. 367, 373 (1951) (where incriminating facts have been voluntarily revealed, the
15 privilege has been lost by waiver and cannot be invoked to avoid disclosure of the details)).
16 Finally, the Court notes Tufo has not submitted any opposition to CFTC’s motion and therefore
17 fails to rebut its claims.

18 For these reasons, the Court finds CFTC has provided clear and convincing evidence that
19 Tufo violated Section IV(E) of the PI.

20 D. Suisse Group, JMC, Caswell, Anne Mancuso, and Tyler Mancuso (ECF
21 No. 66)

22 CFTC claims Relief Defendants Suisse Group, JMC, Caswell, Anne Mancuso, and Tyler
23 Mancuso violated the requirements of Section IV(B) of the SRO and Section IV(C) of the PI that
24 all Defendants and Relief Defendants produce documents or electronic equipment to CFTC for
25 inspection and permit CFTC to inspect relevant documents. (ECF No. 66; *see also* ECF No. 9 at
26 21–24; ECF No. 33 at 18.) Additionally, CFTC claims these Contempt Defendants violated
27 Section IV(E) of the PI, requiring a sworn statement and accounting be served on CFTC and filed
28 with the Court by August 27, 2020. (ECF No. 66; ECF No. 33 at 19–20.)

1 CFTC maintains it engaged in extensive correspondence with these Contempt Defendants
2 with respect to the requirements of the SRO and PI to produce and permit inspection of
3 documents and records, as well as the requirement to submit a sworn statement and accounting.
4 (ECF No. 66 at 4–5; *see* ECF No. 66-1 at 2; ECF No. 66-2 at 2; ECF Nos. 66-6, 66-7, 66-8.)
5 CFTC additionally reiterated Tyler’s obligations to comply with the Court’s Orders during a
6 phone call with him on July 30, 2020. (*See* ECF No. 66-3 at 2.) Yet, to date, these Contempt
7 Defendants have all refused to permit inspection of relevant records by CFTC. (ECF No. 66 at 4,
8 7; *see also* ECF No. 66-2 at 2.) Further, they have all failed to file or serve the required sworn
9 statement and accounting pursuant to Section IV(E) of the PI. (*See id.*)

10 None of these Contempt Defendants has submitted any opposition to CFTC’s motion and
11 therefore each fails to rebut CFTC’s claims. For these reasons, the Court finds CFTC has
12 provided clear and convincing evidence that Suisse Group, JMC, Caswell, Anne Mancuso, and
13 Tyler Mancuso have violated Section IV(B) of the SRO and Sections IV(C) and (E) of the PI.

14 **IV. CONCLUSION**

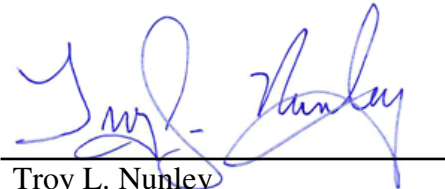
15 Based on the record and the evidence submitted in support of each of CFTC’s contempt
16 motions, the Court finds CFTC has provided clear and convincing evidence that each of the
17 Contempt Defendants violated provisions of the SRO and PI as detailed herein. The burden now
18 lies with each Contempt Defendant to produce evidence justifying his non-compliance. *Emerald*,
19 2004 WL 3186580, at *2.

20 Accordingly, it is hereby ordered that CFTC’s contempt motions (ECF Nos. 24, 29, 54,
21 66, 86, 94) are GRANTED. Contempt Defendants John D. Black, Financial Tree, Financial
22 Solution Group, New Money Advisors, LLC, Christopher Mancuso, Joseph Tufo, Suisse Group
23 (USA) LLC, JMC Industries LLC, Herbert Caswell, Anne Mancuso, and Tyler Mancuso are
24 ORDERED to show cause in writing not later than March 15, 2021, as to why they should not be
25 held in civil contempt for their violations of the SRO and PI and why the Court should not order
26 appropriate contempt sanctions, including paying CFTC’s attorneys’ fees and costs related to the
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1 expenses of bringing these contempt motions, daily coercive fines, or coercive confinement.⁸
2 Such briefings shall be filed and served by the aforementioned date. The CFTC may file and
3 serve a reply not later than March 22, 2021.

4 IT IS SO ORDERED.

5 DATED: February 24, 2021

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9 Troy L. Nunley
10 United States District Judge
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24 _____
25 ⁸ Even though the Clerk of the Court has entered default against Mancuso, the Black
26 Entities, Tufo, Anne Mancuso, Tyler Mancuso, Caswell, JMC, and Suisse Group, the Court
27 acknowledges these Contempt Defendants may make a limited appearance on the instant matter,
28 pursuant to the terms of this Order. The Court additionally reminds the parties that only a
practicing attorney may represent a corporation or other entity (such as Financial Tree, Financial
Solution, or New Money). Thus, any response to the Order to Show Cause filed on behalf of a
corporate entity by a *pro se* party will be stricken from the record. E.D. Cal. L.R. 183(a).