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FILED
 CLERK, U.S. DISTRICT COURT
 MAR 12 2002
 CENTRAL DISTRICT OF CALIFORNIA
 BY DEPUTY

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DUPLICATE

11 Agents for Plaintiff
 12 Commodity Futures Trading Commission

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MAR 12 2 22 PM '02
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 BY

UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

RSWL

02-02094 (RNB)

16 Commodity Futures Trading Commission,

17 Plaintiff,

18 v.

19 Mark Weinberg

20 Defendant.

) Case No. 02-02094 (RNB)
) ~~(Proposed)~~
) Ex Parte Statutory Restraining
) Order, Order Permitting
) Expedited Discovery and
) Order to Show Cause
) Re Preliminary Injunction:
)
)

22 This matter came on for hearing on March 12, 2002 on the Application without notice
 23 of Plaintiff Commodity Futures Trading Commission (the "Commission" or "Plaintiff") for an *ex*
 24 *parte*: (1) Statutory Restraining Order; (2) Order Permitting Immediate Expedited Discovery; and
 25 (3) Order to Show Cause re: Preliminary Injunction (the "Application"). The Court, having
 26 considered the Commission's Complaint, Application, Memorandum of Points and Authorities,
 27
 28

1 Exhibits, other materials, all other evidence presented by Plaintiff filed herein, and having heard the
2 arguments of Plaintiff's counsel, finds that:

3 1. This Court has jurisdiction over the parties and over the subject matter of this action
4 pursuant to Section 6c of the Commodity Exchange Act, as amended (the "Act") 7 U.S.C. § 13a-1
5 (1994).
6

7 2. Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7
8 U.S.C. § 13a-1(e) (1994). There is good cause to believe that Mark Weinberg ("Weinberg" or
9 "Defendant") has engaged, is engaging and is about to engage in acts and practices constituting
10 violations of the Act, 7 U.S.C. §§ 1, et seq. (1994).
11

12 3. There is good cause to believe that immediate and irreparable damage to the Court's
13 ability to grant effective final relief for investors in the form of monetary redress will occur from the
14 sale, transfer, assignment, or other disposition by Defendant of assets or records unless Defendant is
15 immediately restrained and enjoined by Order of this Court.
16

17 4. Good cause exists for the freezing of Defendant's assets and for entry of an order
18 prohibiting Defendant from destroying records and denying agents of the Commission access to
19 inspect and copy records.
20

21 5. Good cause exists to permit discovery before the early meeting of counsel
22 pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

23 6. Pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure, immediate
24 depositions are consistent with the principles of Rule 26(b)(2) of the Federal Rules of Civil
25 Procedure.
26

27 7. Weighing the equities and considering the Commission's likelihood of success in its
28 claims for relief, the issuance of a statutory restraining order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions apply:

9. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

10. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts including bank accounts and accounts at financial institutions, credits, receivables, lines of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

11. "Defendant" means Mark Weinberg, currently residing at Los Angeles, California.

RELIEF GRANTED

I.

ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS

IT IS HEREBY ORDERED that

12. Defendant is restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including assets held outside the United States, except as provided in Paragraph III of this Order,

1 or as otherwise ordered by the Court. The assets affected by this paragraph shall include both
2 existing assets and assets acquired after the effective date of this Order.

3 13. Defendant, and his agents, servants, employees, attorneys, and persons in active
4 concert or participation with him who receive actual notice of this Order by personal service except
5 as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly
6 transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning,
7 concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever
8 located, including assets held outside the United States, except as provided in Paragraph III of
9 this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall
10 include both existing assets and assets acquired after the effective date of this Order.
11
12

13 14. Defendant is restrained and enjoined from directly or indirectly opening or
14 causing to be opened any safe deposit boxes titled in the name or subject to access by the
15 Defendant.
16

17 **II.**

18 *Directives to Financial Institutions and Others*

19 **IT IS FURTHER ORDERED**, pending further Order of this Court, that any financial or
20 brokerage institution, business entity, or person that holds, controls, or maintains custody of any
21 account or asset of the Defendant, or has held, controlled, or maintained custody of any account
22 or asset of the defendant at any time since January 1, 1998, shall:
23

24 15. Prohibit Defendant and all other persons from withdrawing, removing, assigning,
25 transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise
26 disposing of any such asset except as directed by further order of the Court;
27
28

1 19. Provide the Commission with a full accounting of all funds, documents, and
2 assets outside of the United States that is held by him, for his benefit, or under his direct or
3 indirect control, whether jointly or singly;

4 20. Transfer to the territory of the United States all funds, documents, and assets
5 located in foreign countries which are held by him, for his benefit, or under his direct or indirect
6 control, whether jointly or singly; and

7 21. Provide the Commission access to all records of the defendant held by financial
8 institutions located outside the territorial United States by signing the Consent to Release of
9 Financial Records attached to this Order.
10

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12 IV.

13 *Maintenance of Business Records*

14 IT IS FURTHER ORDERED that:

15 22. Defendant and all persons or entities who receive notice of this Order by personal
16 service or otherwise, are restrained and enjoined from directly or indirectly destroying,
17 mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly,
18 any documents that relate to the business practices or business or personal finances of defendant.
19

20 V.

21 *Inspection and Copying of Books and Records*

22 IT IS FURTHER ORDERED that:

23 23. Representatives of the Commission be immediately allowed to inspect the books,
24 records, and other documents of the Defendant and his agents including, but not limited to,
25 electronically stored data, tape recordings, and computer discs, wherever they may be situated
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1 and whether they are in the person of the Defendant or others, and to copy said documents, data
2 and records, either on or off the premises where they may be situated; and

3 24. Defendant and his agents, servants, employees, attorneys, and persons in active
4 concert or participation with him who receive actual notice of this Order by personal service or
5 otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and
6 provide to representatives of the Commission all books and records of Defendant, wherever such
7 books and records may be situated.
8

9
10 VI.

11 **BOND NOT REQUIRED OF PLAINTIFF**

12 IT IS FURTHER ORDERED that:

13 25. Plaintiff Commission is an agency of the United States of America and, accordingly,
14 no bond need be posted by the Commission.

15 VII.

16 **ORDER TO SHOW CAUSE**

17 IT IS FURTHER ORDERED that:

18 26. Defendant shall appear before this Court on the 25th day of March,
19 2002, at 9 a.m., before the Honorable Ronald S.W. Lew at the United States
20 Courthouse for the Central District of California at 312 N. Spring Street, Los Angeles, California
21 90012 to show cause, if there be any, why an Order for Preliminary Injunction should not be
22 granted to prohibit further violations of the Act and why the other relief requested should not be
23 granted pending trial on the merits of this action.
24
25
26
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1 - 27. Should any party wish to file a memorandum of law or other papers in opposition
 2 to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed on or before
 3 March 18, 2002 and served no later than March 18.

VIII.

ORDER PERMITTING EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that:

8 28. The prohibition upon discovery before the early meeting of counsel is removed
 9 pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

11 29. The prohibition upon the immediate commencement of depositions is removed
 12 pursuant to Rule 30(a)(2)(C) of the Federal Rules of Civil Procedure.

13 30. The parties may proceed to take the oral deposition of any person upon three
 14 calendar days actual notice if the notice is served upon the parties personally or by telecopier to
 15 the party's last known business telecopier number.

17 31. The parties may also commence discovering documents from third parties under
 18 normal discovery procedures.

IX.

Service of Order

IT IS FURTHER ORDERED that:

21 32. This Order shall be served on Defendant by personal service consistent with
 22 Federal Rule of Civil Procedure Rule 4(e). All subsequent pleadings, correspondence, notices
 23 required by this Order, and other materials be served consistent with Federal Rule of Civil
 24 Procedure Rule 4.
 25
 26
 27
 28

X.

Force and Effect

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, at Los Angeles, California on this 12th day of March, 2002 at

4 p.m.

RONALD S. W LEW

UNITED STATES DISTRICT JUDGE

Presented by:



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