

VINCENT J. FIRTH, *Pro se*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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COMMODITY FUTURES TRADING :  
COMMISSION, :  
:

Hon. Robert B. Kugler

Plaintiff,

vs.

**Civil Action No. 04-1512**

EQUITY FINANCIAL GROUP LLC, TECH  
TRADERS, INC., TECH TRADER, LTD.,  
MAGNUM CAPITAL INVESTMENTS, LTD.,  
VINCENT J. FIRTH, ROBERT W. SHIMER,  
COYT E. MURRAY, & J. VERNON ABERNETHY

Notice of Motion To Dismiss Pursuant  
To Fed Rules Of Procedure  
12(b)1 and 12(b)6 &  
Notice of Motion For Summary  
Judgment Pursuant To Federal Rule  
Of Procedure 56(b)

Defendants.

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VINCENT J. FIRTH, ROBERT W. SHIMER,  
COYT E. MURRAY, & J. VERNON ABERNETHY

Motion to Dismiss For Lack Of  
Subject Matter Jurisdiction

Defendants.

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Pursuant to Federal Civil Procedure Rule 12(b)(1) defendant Vincent J. Firth, *pro se* respectfully moves the Court to dismiss for Lack of Subject Matter Jurisdiction with respect to himself for four of the Five Counts of Plaintiff's First Amended Complaint For Injunctive and Other Equitable Relief And Civil Monetary Penalties Under the Commodity Exchange Act, 7 U.S.C. §§ 1 *et se*. More specifically, Vincent J. Firth separately moves to dismiss for lack of subject matter jurisdiction with respect to each of the following:

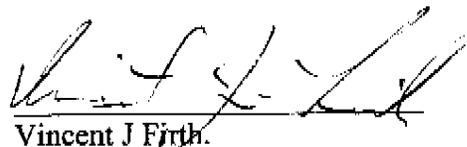
- 1) Plaintiff's claim that defendant Firth violated Section 4b(a)(2) of the Commodity Exchange Act 7 U.S.C. §§ 6b(a)(2). Plaintiff's allegation of violation of Section 4b(a)(2) by Defendant Firth is dependent upon and requires a finding by this Court that Shasta Capital Associates, LLC ("Shasta") was a "commodity pool" and that Defendant Firth's company Equity Financial Group, LLC ("Equity") acted as a commodity pool operator (CPO) with respect to Shasta. The controlling case law authority cited by Plaintiff does not support Plaintiff's characterization of Shasta as a "commodity pool" and specifically

requires just the opposite conclusion based upon the four part test laid down by the Ninth Circuit Court of Appeals in the case of *Lopez v. Dean Witter Reynolds, Inc.* In support of defendant's Motion, Defendant Firth respectfully refers the Court to Defendant Robert W. Shimer's Brief filed with Shimer's separate similar motion.

- 2) Plaintiff's claim that defendant Firth violated Section 13(b) of the Commodity Exchange Act, 7 U.S.C. §13c(b). Plaintiff's allegation of violations of Section 13(b) by Defendant Firth are dependent upon and require a finding by this Court that Shasta was a "commodity pool" and that Defendant Firth's company Equity acted as a commodity pool operator (CPO) with respect to Shasta. The controlling case law authority (cited by Plaintiff) does not support Plaintiff's characterization of Shasta as a "commodity pool" and specifically requires just the opposite conclusion based upon the four part test laid down by the Ninth Circuit Court of Appeals in the case of *Lopez v. Dean Witter Reynolds, Inc.* In support of defendant's Motion, Defendant Firth respectfully refers the Court to Defendant Robert W. Shimer's Brief filed with Shimer's separate similar motion.
  
- 3) Plaintiff's claim that defendant Firth violated Section 4o(1) of the Commodity Exchange Act, 7 U.S.C. §6o(1). Plaintiff's allegation of violation of Section 4o(1) by Defendant Firth is dependent upon and requires a finding by this Court that Shasta was a "commodity pool" and that Defendant Firth's company Equity acted as a commodity pool operator (CPO) with respect to Shasta. The controlling case law authority cited by Plaintiff does not support Plaintiff's characterization of Shasta as a "commodity pool" and specifically requires just the opposite conclusion based upon the four part test laid down by the Ninth Circuit Court of Appeals in the case of *Lopez v. Dean Witter Reynolds, Inc.* In support of defendant's Motion, Defendant Firth respectfully refers the Court to Defendant Robert W. Shimer's Brief filed with Shimer's separate similar motion.
  
- 4) Plaintiff's claim that defendant Firth violated Section 4k(2) of the Commodity Exchange Act, 7 U.S.C. §6k(2). Plaintiff's allegation of violation of Section 4k(2) by Defendant

Firth is dependent upon and requires a finding by this Court that Shasta was a "commodity pool" and that Defendant Firth's company Equity acted as a commodity pool operator (CPO) with respect to Shasta. The controlling case law authority cited by Plaintiff does not support Plaintiff's characterization of Shasta as a "commodity pool" and specifically requires just the opposite conclusion based upon the four part test laid down by the Ninth Circuit Court of Appeals in the case of *Lopez v. Dean Witter Reynolds, Inc.* In support of defendant's Motion, Defendant Firth respectfully refers the Court to defendant Robert W. Shimer's Brief filed with Shimer's separate similar motion.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Vincent J. Firth", written over a horizontal line.

Vincent J Firth.  
3 Aster Court  
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(609) 714-1981  
(609) 714-1980 (fax)

VINCENT J. Firth, *Pro se*

**UNITED STATES DISTRICT COURT  
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VINCENT J. FIRTH, ROBERT W. SHIMER,  
COYT E. MURRAY, & J. VERNON ABERNETHY

Motion to Dismiss For Failure To  
State A Claim Upon Which Relief  
Can Be Granted

Defendants.

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Pursuant to Federal Civil Procedure Rule 12(b)(6) defendant Vincent J. Firth *pro se* respectfully moves the Court to dismiss for Failure To State A Claim Upon Which Relief Can Be Granted with respect to himself for Four of the Five Counts of Plaintiff's First Amended Complaint For Injunctive and Other Equitable Relief And Civil Monetary Penalties Under the Commodity Exchange Act, 7 U.S.C. §§ 1 *et se*. More specifically, Vincent J. Firth separately moves to dismiss pursuant to Federal Rule 12(b)6 with respect to each of the following:

- 1) Plaintiff's claim that defendant Firth violated Section 4b(a)(2) of the Commodity Exchange Act 7 U.S.C. §§ 6b(a)(2). Plaintiff's allegation of violation(s) of Section 4b(a)(2) by Defendant Firth is dependent upon and requires a finding by this Court that Shasta Capital Associates, LLC ("Shasta") was a "commodity pool" and that Defendant Firth's company Equity Financial Group, LLC ("Equity") acted as a commodity pool operator (CPO) with respect to Shasta. The controlling case law authority cited by Plaintiff does not support Plaintiff's characterization of Shasta as a "commodity pool"

and specifically requires just the opposite conclusion based upon the four part test laid down by the Ninth Circuit Court of Appeals in the case of *Lopez v. Dean Witter Reynolds, Inc.* There being no basis for the relief requested by Plaintiff's First Amended Complaint against defendant Firth with respect to this specific alleged violation of the Commodity Exchange Act, Defendant's Motion should be granted. In support Defendant Firth respectfully refers the Court to Defendant Robert W. Shimer's Brief filed with Shimer's similar separate motion.

- 2) Plaintiff's claim that defendant Firth violated Section 13(b) of the Commodity Exchange Act, 7 U.S.C. §13c(b). Plaintiff's allegation of violations of Section 13(b) by Defendant Firth are all dependent upon and require a finding by this Court that Shasta was a "commodity pool" and that Defendant Firth's company Equity acted as a commodity pool operator (CPO) with respect to Shasta. The controlling case law authority (cited by Plaintiff) does not support Plaintiff's characterization of Shasta as a "commodity pool" and specifically requires just the opposite conclusion based upon the four part test laid down by the Ninth Circuit Court of Appeals in the case of *Lopez v. Dean Witter Reynolds, Inc.* There being no basis for the relief requested by Plaintiff's First Amended Complaint against defendant Firth with respect to this specific alleged violation of the Commodity Exchange Act, Defendant's Motion should be granted. In support Defendant Firth respectfully refers the Court to defendant Robert W. Shimer's Brief filed with Shimer's similar separate motion.
- 3) Plaintiff's claim that defendant Firth violated Section 4o(1) of the Commodity Exchange Act, 7 U.S.C. §6o(1). Plaintiff's allegation of violation of Section 4o(1) by Defendant Firth is dependent upon and requires a finding by this Court that Shasta was a "commodity pool" and that Defendant Firth's company Equity acted as a commodity pool operator (CPO) with respect to Shasta. The controlling case law authority (cited by Plaintiff) does not support Plaintiff's characterization of Shasta as a "commodity pool" and specifically requires just the opposite conclusion based upon the four part test laid down by the Ninth Circuit Court of Appeals in the case of *Lopez v. Dean Witter Reynolds,*

*Inc.* There being no basis for the relief requested by Plaintiff's First Amended Complaint against defendant Firth with respect to this specific alleged violation of the Commodity Exchange Act, Defendant's Motion should be granted. In support Defendant Firth respectfully refers the Court to defendant Robert W. Shimer's Brief filed with Shimer's separate similar motion.

- 4) Plaintiff's claim that defendant Firth violated Section 4k(2) of the Commodity Exchange Act, 7 U.S.C. §6k(2). Plaintiff's allegation of violation of Section 4k(2) by Defendant Firth is dependent upon and requires a finding by this Court that Shasta was a "commodity pool" and that Defendant Firth's company Equity acted as a commodity pool operator (CPO) with respect to Shasta. The controlling case law authority cited by Plaintiff does not support Plaintiff's characterization of Shasta as a "commodity pool" and specifically requires just the opposite conclusion based upon the four part test laid down by the Ninth Circuit Court of Appeals in the case of *Lopez v. Dean Witter Reynolds, Inc.* There being no basis for the relief requested by Plaintiff's First Amended Complaint against defendant Firth with respect to this specific alleged violation of the Commodity Exchange Act, Defendant's Motion should be granted. In support Defendant Firth respectfully refers the Court to defendant Robert W. Shimer's Brief filed with Shimer's separate similar motion.

Respectfully submitted,



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(609) 714-1980 (fax)

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MAGNUM CAPITAL INVESTMENTS, I.TD.,  
VINCENT J. FIRTH, ROBERT W. SHIMER,  
COYT E. MURRAY, & J. VERNON ABERNETHY

Motion For Summary Judgment

Defendants.

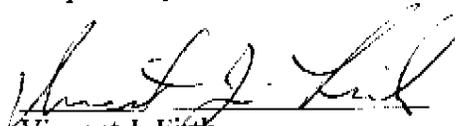
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Pursuant to Federal Civil Procedure Rule 56(b) defendant Vincent J. Firth *pro se* respectfully moves the Court for Summary Judgment for himself with respect to Counts I and II of Plaintiff's First Amended Complaint For Injunctive and Other Equitable Relief And Civil Monetary Penalties Under the Commodity Exchange Act, 7 U.S.C. §§ 1 *et se*. More specifically, Vincent J. Firth separately moves for Summary Judgment with respect to each of the following:

- 1) Plaintiff's claim that defendant Firth violated Section 4b(a)(2) of the Commodity Exchange Act 7 U.S.C. §§ 6b(a)(2) and in support of Defendant's Motion For Summary Judgment with respect to said alleged violation, Defendant Firth respectfully refers the Court to Defendant Robert W. Shimer's separately filed Brief in this matter and to defendant Firth's signed, Sworn Statement and Statement of Uncontested Facts also submitted in support thereof;

- 2) Plaintiff's claim that defendant Firth violated Section 13(b) of the Commodity Exchange Act, 7 U.S.C. §13c(b) by knowingly inducing Defendant Equity's alleged violation of Section 4(b)(2)(i)-(iii) of the Commodity Exchange Act 7 U.S.C. §§ 6b(a)(2)(i)-(iii) and in support of Defendant's Motion For Summary Judgment with respect to said alleged violation by Firth, Defendant respectfully refers the Court to defendant Robert W. Shimer's separately filed Brief in this matter and also to defendant Firth's signed, Sworn Statement and Statement of Uncontested Facts also submitted in support thereof;
  
- 3) Plaintiff's claim that defendant Firth violated Section 4o(1) of the Commodity Exchange Act, 7 U.S.C. §6o(1) and in support of Defendant's Motion For Summary Judgment with respect to said alleged violation, Defendant Firth respectfully refers the Court to defendant Robert W. Shimer's separately filed Brief in this matter and also to Defendant Firth's signed, Sworn Statement and Statement of Uncontested Facts also submitted in support thereof;
  
- 4) Plaintiff's claim that defendant Firth violated Section 13(b) of the Commodity Exchange Act, 7 U.S.C. §13c(b) by knowingly inducing Defendant Equity's alleged violation of Section 4o(1) of the Commodity Exchange Act, 7 U.S.C. §6o(1) and in support of defendant's Motion For Summary Judgment with respect to said alleged violation by Firth, Defendant respectfully refers the Court to defendant Robert W. Shimer's separately filed Brief in this matter and defendant Firth's signed Sworn Statement and Statement of Uncontested Facts also submitted in support thereof;

Respectfully submitted,



Vincent J. Firth.

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