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NOTE CHANGES BY THE COURT

THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

U.S. COMMODITY FUTURES)	
TRADING COMMISSION,	)	Civil Action No:
)	
Plaintiff,	)	SA CV11-643-JST(FMOx)
)	
v.	)	STATUTORY
	)	RESTRAINING ORDER;
20/20 TRADING COMPANY, INC.,	)	SETTING HEARING ON
20/20 PRECIOUS METALS, INC.,	)	PLAINTIFF’S MOTION FOR
BHARAT ADATIA, SHARIEF D.	)	PRELIMINARY
McDOWELL, and TODD KREJCI,	)	INJUNCTION AND
	)	APPOINTING TEMPORARY
Defendants.	)	RECEIVER

Having read Plaintiff’s Complaint for Injunctive and Other Equitable Relief and for Civil Monetary Penalties Under the Commodity Exchange Act, Motion for a Statutory Restraining Order, Plaintiff’s Memorandum of Points and Authorities in Support of Its Motion (ex parte, but with notice) for Statutory Restraining Order and Motion for Order of Preliminary Injunction (“Memorandum”), Appendix to

1 Plaintiff's Memorandum of Points and Authorities in Support of Its Motion for
2 Statutory Restraining Order and Motion for Preliminary Injunction, and
3 Declaration regarding notice, and having not received any opposition as of the
4 issuance of this Order,
5

6 **THE COURT FINDS:**

7 1. This Court has jurisdiction over the parties and subject matter of this
8 action.
9

10 2. The Court is authorized by Section 6c(a) of the Commodity Exchange
11 Act (the "Act") as amended by the Food, Conservation and Energy Act of 2008,
12 Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")),
13 §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C.
14 § 13a-1(a), to issue a statutory restraining order against defendants 20/20 Precious
15 Metals, Inc. ("20/20 Metals"), Bharat Adatia, Sharief D. McDowell, and Todd
16 Krejci (collectively, "Defendants").
17

18 3. Venue properly lies with this Court pursuant to Section 6c(e) of the
19 Act, 7 U.S.C. § 13a-1(e).
20

21 4. It appears to the satisfaction of the Court that there is good cause to
22 believe that Defendants have engaged, are engaging, or are about to engage in
23 conduct in violation of the Act as amended by the CRA and the Commission
24 Regulations ("Regulations") promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.*
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1 (2010). Specifically, there is good cause to believe that Defendants have engaged,
2 are engaging, or are about to engage in conduct in violation of Section 19 of the
3 Act, 7 U.S.C. § 23, and Commission Regulation 31.3, 17 C.F.R. § 31.3.
4

5 5. It appears to the satisfaction of the Court that there is good cause to
6 believe 20/20 Metals customers may be cheated and defrauded and immediate and
7 irreparable damage will occur to the Court’s ability to grant effective final relief for
8 20/20 Metals customers in the form of monetary redress due to the dissipation of
9 customer assets and destruction of books and records unless Defendants are
10 immediately restrained and enjoined by order of the Court.
11

12 6. Consequently, the Court is satisfied that this is a proper case in which
13 to grant a statutory restraining order to preserve the status quo, protect public
14 customers from loss and damage, and enable the CFTC to fulfill its statutory
15 duties.
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18 **DEFINITIONS**

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

20 7. The term “assets” means any legal or equitable interest in, right to or
21 claim to any real or personal property, including, but not limited to, chattels, goods,
22 instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or
23 other deliveries, inventory, checks, notes, accounts, credits, receivables, lines of
24 credit, contracts, insurance policies and all cash, wherever located.
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1 service or otherwise, including email, facsimile, and UPS or other commercial
2 overnight service, are restrained from directly or indirectly withdrawing,
3 transferring, removing, dissipating, concealing, or disposing of, in any manner, any
4 funds, assets, or other property, wherever situated, including, but not limited to, all
5 funds, personal property, money, or securities held in safes or safety deposit boxes
6 and all funds on deposit in any financial or brokerage institution, futures
7 commission merchant, bank, or savings and loan account held by, under the actual
8 or constructive control of, or in the name of Adata, McDowell, Krejci and/or 20/20
9 Metals at any time since October 1, 2009. The assets affected by this paragraph
10 shall include both existing assets and assets acquired after the effective date of this
11 Order.
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15 **II. PROHIBITION ON DESTRUCTION OF BOOKS AND RECORDS**

16 **IT IS FURTHER ORDERED** that Defendants, all persons insofar as they
17 are acting in the capacity of Defendants' agents, servants, successors, employees,
18 assigns, and attorneys, and all persons insofar as they are acting in active concert or
19 participation with Defendants who receive actual notice of this Order by personal
20 service or otherwise, including email, facsimile, and UPS or other commercial
21 overnight service, are restrained from directly or indirectly destroying, mutilating,
22 concealing, altering, or disposing of any documents that related to the business
23 practices or business or personal finances of the Defendants.
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1 **III. CFTC ACCESS TO AND INSPECTION OF BOOKS AND RECORDS**

2 **IT IS FURTHER ORDERED** that Defendants, all persons insofar as they
3 are acting in the capacity of Defendants' agents, servants, successors, employees,
4 assigns, and attorneys, and all persons insofar as they are acting in active concert or
5 participation with Defendants who receive actual notice of this Order by personal
6 service or otherwise, including email, facsimile, and UPS or other commercial
7 overnight service, are restrained from directly or indirectly refusing to permit
8 authorized representatives of the Commission to inspect, when and as requested,
9 any books and records, documents, correspondence, brochures, manuals,
10 electronically stored data, tape records, or other property of Defendants, wherever
11 located, including, but not limited to, all such records concerning Defendants'
12 business operations and Defendants' business or personal finances.
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16 **IV. BOND NOT REQUIRED OF PLAINTIFF**

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18 **IT IS FURTHER ORDERED** that pursuant to Section 6c(b) of the Act,
19 7 U.S.C. § 13a-1(b), no bond need be posted by the Commission, which is an
20 agency of the United States of America.
21

22 **V. SERVICE OF THE ORDER**

23 **IT IS FURTHER ORDERED** that this Order shall be served on Defendants
24 by personal service consistent with Federal Rule of Civil Procedure Rule 4(e), and
25 proof of service shall be filed promptly thereafter with the Court. Copies of this
26

1 Order may be served by personal service, UPS or other commercial overnight
2 service, email, facsimile or pursuant to Rule 5 of the Federal Rules of Civil
3 Procedure and Articles 2 through 10 of the Hague Convention, Service Abroad of
4 Judicial and Extrajudicial Documents, upon any financial or brokerage institution,
5 futures commission merchant, bank, savings and loan institution, other financial
6 institution, or any other person or entity that holds any accounts, funds, assets, or
7 other property of Defendants or that may have possession, custody, or control of
8 any documents of Defendants, or that may be subject to any provision of this
9 Order. Jennifer E. Smiley, Joseph Konizeski, Carlin Metzger, and Judith
10 McCorkle, all representatives of the Commission, are hereby specially appointed to
11 serve process and/or effectuate service of process, including of this Order and all
12 other papers in this action.

13 **IT IS FURTHER ORDERED** that the United States Marshals Service is
14 directed to assist the Commission with service of process, including of the
15 Complaint, summons, and all other papers in this case, as well as assist the
16 Commission with taking control and custody of the assets, books and records, and
17 business premises of Defendants.

18 **VI. ORDER APPOINTING RECEIVER**

19 **IT IS FURTHER ORDERED** that:
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1 Mr. Brick Kane of Robb Evans & Associates, LLC, 1140 Sheldon Street,
2 Sun Valley, CA 91352-1121, is appointed temporary Receiver for the Defendants'
3 assets and the assets of any affiliates or subsidiaries of any Defendant, with the full
4 powers of an equity receiver. The Receiver shall be the agent of this Court in
5 acting as Receiver under this Order;
6

7 **A. Powers of the Receiver**

8 **IT IS FURTHER ORDERED** that the Receiver is directed and authorized
9 to accomplish the following:
10

- 11 1. Take exclusive custody, control and possession of all funds, property,
12 and other assets in the possession of, or under the control of
13 Defendants, wherever situated that he has a reasonable basis to believe
14 is related to this action. The Receiver shall have full power to sue for,
15 collect, receive and take possession of all goods, chattels, rights,
16 credits, moneys, effects, land, leases, books, records, work papers, and
17 records of accounts, including computer-maintained information and
18 digital data and other papers and documents.
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- 20 2. The Receiver is authorized to enter and inspect the business premises
21 of Defendants and to take documents or other property related to
22 Defendants;
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3. Preserve, hold and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to customers or clients;
4. Prevent the withdrawal or misapplication of funds entrusted to 20/20 Metals, and otherwise protect the interests of customers or clients;
5. Collect all money owed to Defendants;
6. Initiate, defend, compromise, adjust, intervene in dispose of, or become a party to any actions or proceedings in state, federal or foreign jurisdictions necessary to preserve or increase the assets of Defendants necessary to carry out the duties pursuant to this Order;
7. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities upon obtaining leave of this Court and thereafter, only upon further order of this Court;
8. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;
9. Open one or more bank or securities accounts as designated depositories for funds of Defendants. The Receiver shall deposit all

1 funds of Defendants in such designated accounts and shall make all
2 payments and disbursements from the receivership estate from such
3 accounts. The Receiver is authorized to invest receivership funds in
4 U.S. Treasury securities, money market funds or other interest-bearing
5 accounts as appropriate in the Receiver's judgment;
6

7 10. Make payments and disbursements from the receivership estate that
8 are necessary or advisable for carrying out the directions of, or
9 exercising the authority granted by, this Order. The Receiver shall
10 apply to the Court for prior approval of any payment of any debt or
11 obligation incurred by Defendants prior to the date of entry of this
12 Order, except for payments that the Receiver deems necessary or
13 advisable to secure assets; and
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15 11. Close out all commodity futures positions or other outstanding
16 positions and/or hold such assets without further court order.
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19 **B. Delivery to Receiver**

20 **IT IS FURTHER ORDERED** that, immediately upon service of this Order
21 upon them, Defendants and any other person or entity served with a copy of this
22 order shall, immediately or within such time as permitted by the Receiver in
23 writing, deliver over to the Receiver;
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- 1 1. Possession and custody of all funds and all other assets, belonging to
2 Defendants;
- 3 2. Possession and custody of documents of Defendants, including, but
4 not limited to, all books and records of accounts, all financial and
5 accounting records, balance sheets, income statements, bank records
6 (including monthly statements, canceled checks, records of wire
7 transfers, and check registers), client lists, title documents and other
8 papers;
9 3. All keys, computer passwords, entry codes, PIN numbers and
10 combinations to locks necessary to gain or to secure access to any of
11 the assets or documents of Defendants, including but not limited to,
12 access to business premises, means of communication, accounts,
13 computer systems, or other property; and
14 4. Information identifying the accounts, employees, properties or other
15 assets or obligations of Defendants.

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21 **C. Cooperation with Receiver**

22 **IT IS FURTHER ORDERED** that Defendants, their agents and
23 representatives, and all other persons or entities served with a copy of this Order
24 shall cooperate fully with and assist the Receiver in the performance of his duties.
25 This cooperation and assistance shall include, but not be limited to, providing any
26

1 information to the Receiver that the Receiver deems necessary to exercising the
2 authority and discharging the responsibilities of the Receiver under this Order;
3 providing all keys, entry codes, PIN numbers, and combinations to locks necessary
4 to gain or secure access to any of the assets or documents of Defendants, and any
5 password required to access any computer or electronic files in any medium of
6 Defendants; and advising all persons who owe money to Defendants that all debts
7 should be paid directly to the Receiver. However, this requirement does not
8 impinge on any person's right to assert applicable privileges.
9

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11 **D. Stay**

12 **IT IS FURTHER ORDERED** that except by leave of the Court, during the
13 pendency of the receivership ordered herein, Defendants and all other persons and
14 entities be and hereby are stayed from taking any action to establish or enforce any
15 claim, right or interest for, against, on behalf of, or in the name of Defendant, the
16 Receiver, receivership assets, or the Receiver's duly authorized agents acting in
17 their capacities as such, including but not limited to, the following actions:
18

- 19 1. Commencing, prosecuting, litigating or enforcing any civil suit,
20 except that actions may be filed to toll any applicable statute of
21 limitations;
22
- 23 2. Accelerating the due date of any obligation or claimed obligation,
24 enforcing any lien upon, or taking or attempting to take possession of,
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1 or retaining possession of, property of Defendant or any property
2 claimed by Defendant, or attempting to foreclose, forfeit, alter or
3 terminate any of Defendants' interests in property, whether such acts
4 are part of a judicial proceeding or otherwise;
5

6 3. Using self-help or executing or issuing, or causing the execution or
7 issuance of any court attachment, subpoena, replevin, execution, right
8 of offset, or other process for the purpose of impounding or taking
9 possession of or interfering with, or creating or enforcing a lien upon
10 any property, wherever located, owned by or in the possession of
11 Defendant or the Receiver or any agent of the Receiver; and
12

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14 4. Doing any act or thing to interfere with the Receiver taking control,
15 possession or management of the property subject to the receivership,
16 or to in any way interfere with the Receiver or the duties of the
17 Receiver, or to interfere with the exclusive jurisdiction of this Court
18 over the property and assets of Defendants. This paragraph does not
19 stay the commencement or continuation of an action or proceeding by
20 a governmental or regulatory unit, such as the National Futures
21 Association ("NFA"), to enforce such governmental or regulatory
22 unit's police or regulatory power.
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1 **E. Receiver's Report to the Court and Compensation**

2 **IT IS FURTHER ORDERED** that the Receiver maintain written accounts,
3 itemizing receipts and expenditures, describing properties held or managed, and
4 naming the depositories of receivership funds; make such written accounts and
5 supporting documentation available to the Commission for inspection, and, within
6 ninety (90) days of being appointed and periodically thereafter, as directed by the
7 Court, file with the Court and serve on the parties a report summarizing efforts to
8 marshal and collect assets, administer the receivership estate, and otherwise
9 perform the duties mandated by this Order.
10

11 **IT IS FURTHER ORDERED** that the Receiver and all personnel hired by
12 the Receiver as herein authorized, including counsel to the Receiver, are entitled to
13 reasonable compensation for the performance of duties pursuant to this Order and
14 for the cost of actual out-of-pocket expenses incurred by them for those services
15 authorized by this Order that when rendered were (1) reasonably likely to benefit
16 the receivership estate or (2) necessary to the administration of the estate. The
17 Receiver and all personnel hired by the Receiver shall be compensated solely out
18 of funds now held by or in the possession or control of or which may in the future
19 be received by Defendants, or from proceeds of the sale of Defendants' assets, and
20 shall not be entitled to any compensation from the Commission. The compensation
21 of the Receiver and his professionals shall be entitled to priority as administrative
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1 expenses. The Receiver shall file with the Court and serve on the parties periodic
2 requests for the payment of such reasonable compensation, with the first such
3 request filed no more than ninety (90) days after the date of this Order and
4 subsequent requests filed quarterly thereafter. The requests for compensation shall
5 itemize the time and nature of services rendered by the Receiver and all personnel
6 hired by the Receiver. The Receiver shall not increase the hourly rates used as the
7 bases for such fee applications without prior approval of the Court.
8
9

10 **F. No Bond**

11 **IT IS FURTHER ORDERED** that the Receiver is appointed without bond.

12 **VII. SERVICE ON THE COMMISSION**

13
14 **IT IS FURTHER ORDERED THAT** Defendants shall file with the Court
15 and serve all pleadings, correspondence, notices and other materials required by
16 this Order on the Plaintiff, by delivering a copy to Jennifer E. Smiley, Senior Trial
17 Attorney, or Joseph Konizeski, Chief Trial Attorney, Division of Enforcement,
18 Commodity Futures Trading Commission, 525 W. Monroe St., Suite 1100,
19 Chicago, Illinois 60661.
20
21

22 **VIII. FORCE AND EFFECT**

23 **IT IS FURTHER ORDERED THAT** this Order shall remain in full force
24 and effect until further Order of this Court upon application, notice, and an
25 opportunity to be heard, and that this Court shall retain jurisdiction over this action
26

1 to ensure compliance with this Order and for all other purposes related to this
2 action.

3 **IX. FURTHER COURT HEARINGS**

4 **IT IS FURTHER ORDERED THAT** should any party wish to file a
5 memorandum of law or other papers in opposition to Plaintiff’s Motion for a
6 Preliminary Injunction, all papers shall be filed and served on or before May 16,
7 2011. Any reply by Plaintiff shall be filed and served on or before May 23, 2011.
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10 **IT IS FURTHER ORDERED THAT** Plaintiff’s Motion for a Preliminary
11 Injunction is set for hearing on June 6, 2011 at 10:00 o’clock a.m., in Courtroom
12 10A, Ronald Reagan Federal Building and U.S. Courthouse, 411 West Fourth
13 Street, Santa Ana, California.
14

15 **IT IS SO ORDERED.**

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17 DATED: April 27, 2011



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20 _____
21 JOSEPHINE STATON TUCKER
22 UNITED STATES DISTRICT JUDGE
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