

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

<b>United States Commodity Futures Trading Commission,</b>	)	<b>No. CV 12-02513-PHX-FJM</b>
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
v.	)	
	)	
<b>Ray Thomas Brown,</b>	)	
	)	
Defendant.	)	
_____	)	

Plaintiff United States Commodity Futures Trading Commission (“CFTC”) has filed a Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief (“Complaint”), and moved, pursuant to Section 6c of the Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. No. 111-203, §§ 701-774, 124 Stat. 1376, 1641 *et seq.* (effective July 16, 2011), 7 U.S.C. § 13a-1 (2006 & Supp. V 2011), for an *ex parte* statutory restraining order providing the CFTC with access to the books and records or other documents of Defendant and freezing Defendant’s assets. The Court has considered the pleadings,

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declarations, and attachments filed in support of the CFTC's motion, and all other evidence and arguments presented by the CFTC, and finds as follows:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1.
  2. Venue properly lies within this District pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-1(e).
  3. There is good cause to believe that Defendant Ray Thomas Brown has engaged, is engaging, or is about to engage in acts and practices constituting violations of the Act, as amended, 7 U.S.C. §§ 1.
  4. The CFTC has presented evidence that, since at least 2010, Defendant has fraudulently solicited members of the public to participate in a commodity pool and to authorize Defendant to trade commodity futures on their behalf. In undertaking these actions, Defendant has acted as an unregistered commodity pool operator and commodity trading advisor.
  5. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief to customers and pool participants in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendant of assets or records unless Defendant is immediately restrained and enjoined by order of the Court.
  6. There is good cause for the Court to freeze assets owned, controlled, managed, or held by or on behalf of, or for the benefit of Defendant.
  7. There is good cause for entry of an order prohibiting Defendant, his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant, including any successor thereof, from destroying records and/or denying agents of the CFTC access to inspect and copy records to ensure that CFTC agents have immediate and complete access to those books and records.
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8. Absent the entry of this statutory restraining order, Defendant is likely to dissipate or transfer assets and destroy business records.

9. Weighing the equities and considering the CFTC's likelihood of success on its claims for relief, the issuance of a statutory restraining order is in the public interest.

### **DEFINITIONS**

10. 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 writings, drawings, graphs, charts, photographs, audio and video recordings, electronic records, and other data compilations from which information can be obtained and translated through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

11. The term "assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, or swap contracts), insurance policies, and all cash, wherever located.

12. "Defendant" refers to Ray Thomas Brown and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of Ray Thomas Brown and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Ray Thomas Brown. "Defendant" also refers to any d/b/a, successor, affiliate, subsidiary, or other entity owned, controlled, managed, or held, on behalf of, or for the benefit of Ray Thomas Brown.

### **RELIEF GRANTED**

#### **I. ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS**

**IT IS HEREBY ORDERED** that:

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13. Defendant and his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, are 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 ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

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

**II. ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS**

**IT IS FURTHER ORDERED** that within three (3) business days following service of this Order, Defendant shall:

15. Provide the CFTC with a full accounting of all of Defendant's assets located within or outside the territorial United States from January 1, 2007 to the date of this Order;

16. Transfer all of Defendant's cash and other liquid assets outside the territorial United States to an account in Defendant's name at a Wells Fargo Bank in Phoenix, Arizona and provide the CFTC notice of the date and amount of such transfer; and

17. Provide the CFTC access to all records of Defendant held by financial institutions located within or outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

**III. DIRECTIVES TO FINANCIAL INSTITUTIONS AND OTHERS**

**IT IS FURTHER ORDERED** that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset of Defendant, or has held, controlled, or maintained custody of any account or asset of Defendant at any time, shall:

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

19. Deny Defendant and all other persons identified in this Order, access to any safe deposit box that is: (a) titled in the name of Defendant; or (b) otherwise subject to access by Defendant;

20. Provide counsel for the CFTC, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every such account or asset titled in the name of Defendant, or held on behalf of, or for the benefit of Defendant; (b) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and (c) the identification of any safe deposit box that is either titled in the name of Defendant or is otherwise subject to access by Defendant;

21. Upon request by the CFTC, promptly provide the CFTC with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, Internal Revenue Service 1099 forms, and safe deposit box logs; and

22. Cooperate with all reasonable requests of the CFTC relating to implementation of this Order, including transferring funds at the CFTC's direction and producing records related to Defendant's accounts.

**IV. MAINTENANCE OF BUSINESS RECORDS**

**IT IS FURTHER ORDERED** that:

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23. Defendant and his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, and all other persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of Defendant.

**V. INSPECTION AND COPYING OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED** that:

24. Representatives of the CFTC shall be immediately allowed to inspect the books, records, and other documents of Defendant and his agents, including, but not limited to, electronically stored information, tape recordings, and computer disks, wherever they may be situated and whether they are in the possession of Defendant, or others, and to copy said documents, data and records, either on or off the premises.

25. Defendant shall, within twenty-four (24) hours of the service of this Order, cause to be prepared and delivered to the CFTC a detailed and complete schedule of all passwords and identification (ID) numbers for all websites, electronic mail accounts, videophone accounts and all accounts at any bank, financial institution or brokerage firm (including any introducing broker or futures commission merchant) operated by Defendant or to which Defendant has access.

26. Defendant shall, within twenty-four (24) hours of the service of this Order, cause to be prepared and delivered to the CFTC a detailed and complete schedule of all desktop computers, laptop computers, and/or electronic devices owned and/or used by Defendant. The schedules required by this section shall include, at a minimum, the make, model and description of each, along with the location, the name of the person primarily assigned to use the computer and/or electronic device, and all passwords necessary to access and use the software contained on the computer and/or electronic device. The CFTC shall be

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authorized make an electronic, digital or hard copy of all of the data contained on the computer(s) and/or electronic device(s).

27. Defendant and his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant, including any successor thereof, who receives actual notice of this Order by personal service or other means, including facsimile or electronic transmission, shall cooperate fully with the CFTC to locate and provide to CFTC agents all books and records of Defendant, wherever such books and records may be located.

28. The CFTC is authorized to have continuing access to inspect and/or copy any or all of Defendant's documents, wherever located.

#### **VI. SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that:

29. Copies of this order may be served by any means, including facsimile or electronic transmission, upon any entity or person that may have possession, custody, or control of any documents or assets of Defendant or that may be subject to any provision of this Order;

30. Representatives of the CFTC and the United States Marshals Service are specially appointed by the Court to effect service of the Order.

31. The United States Marshals Service is hereby directed to assist the CFTC in the service on Defendant of the Summons, Complaint, along with supporting motions, memoranda, and orders filed simultaneously with the Order.

#### **VII. ASSISTANCE OF THE U.S. MARSHALS SERVICE**

**IT IS FURTHER ORDERED** that:

32. The U.S. Marshals Service is authorized and directed to accompany and to assist CFTC representatives in the service and execution of this Order and to undertake such efforts as are reasonably necessary to ensure that CFTC representatives have an unimpeded right to inspect and to copy documents as provided in this Order;

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33. The U.S. Marshals Service is authorized and directed to assist the CFTC to take all necessary steps to inspect and copy documents as provided in this Order, including removing documents from their location and placing the documents with an appropriate storage facility for inspection and copying; and

34. Anyone interfering with the execution of this Order is subject to arrest by the United States Marshals Service.

**VIII. BOND NOT REQUIRED OF PLAINTIFF**

35. The CFTC is an agency of the United States of America and, accordingly, need not post a bond.

**IX. FORCE AND EFFECT**

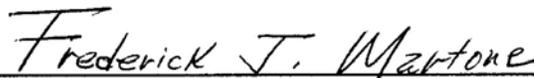
**IT IS FURTHER ORDERED** that:

36. This order shall remain in full force and effect through December 11, 2012 or pursuant to further order of the Court.

37. This Court shall retain jurisdiction over this matter for all purposes.

38. A hearing on Plaintiff's motion for preliminary injunction is set for December 11, 2012 at 1:30 P.M. This order shall be served on Defendant no later than ten (10) days before the hearing. Defendant may file a written response no later than five (5) days before the hearing. Plaintiff may file a reply no later than two (2) days before the hearing. Unless defendant files a response the hearing will be vacated and this order shall remain in full force and effect beyond December 11, 2012.

Dated this 27th day of November, 2012.



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Frederick J. Martone  
United States District Judge

(cc: Plaintiff's Counsel Only)

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