

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**U.S. COMMODITY FUTURES  
TRADING COMMISSION,**

**Plaintiff,**

**vs.**

**HIGHLAND STONE CAPITAL  
MANAGEMENT, L.L.C., FOREX  
CAPITAL TRADING GROUP, INC.,  
FOREX CAPITAL TRADING  
PARTNERS, INC., JOSEPH BURGOS,  
SUSAN G. DAVIS and DAVID E.  
HOWARD II**

**Defendants.**

Civil Action No.: 11 CIV 05209 KBF

Judge Katherine B. Forrest

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: FEB 26 2014
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**SUPPLEMENTAL ORDER ASSESSING RESTITUTION AND A CIVIL MONETARY  
PENALTY AGAINST DEFENDANT JOSEPH BURGOS**

**I. INTRODUCTION**

On July 27, 2011, Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a five-count Complaint against Defendants Highland Stone Capital Management, L.L.C. ("Highland Stone"), Forex Capital Trading Group, Inc. ("Forex Group" or "FCG"), Forex Capital Trading Partners, Inc. ("Forex Partners" or "FCP"), Joseph Burgos ("Burgos"), Susan G. Davis ("Davis") and David E. Howard ("Howard") (collectively "Defendants") seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (the "Act" or "CEA"), 7 U.S.C. §§ 1 *et seq.* (2012), and the Commission's Regulations ("Regulations") promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* (2013).

On April 16, 2012, this Court entered an order for preliminary injunction and other ancillary relief against each of the Defendants. A final order of Default Judgment was entered against Forex Group, Forex Partners and Highland Stone on November 30, 2012. On August 29, 2013, the Court entered an order granting summary judgment against Defendant Burgos after making specific Fact and Conclusions of Law against him. ("SJ Order") On October 29, 2013, the Court entered an order of Permanent Injunction against Defendant Burgos ("Permanent Injunction").

## II. CONSENTS AND AGREEMENTS

To resolve the remaining issues of the amounts of restitution and civil monetary penalty against Defendant Joseph Burgos, (as provided in the Permanent Injunction, without any further judicial proceedings, Defendant Joseph Burgos:

1. Consents to the entry of this Supplemental Consent Order Assessing Restitution and a Civil Monetary Penalty Against Defendant Joseph Burgos ("Burgos Supplemental Consent Order");
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the CFTC or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service of the summons and Complaint;
4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1;
5. Admits the jurisdiction of the CFTC over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;

6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e);

7. Waives:

(a) any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2011), relating to, or arising from, this action;

(b) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Defendant Burgos now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the CFTC is not a party. Defendant Burgos shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement; and

11. Admits to all of the findings made in this Supplemental Consent Order and all of the allegations in the Complaint. Further, Defendant Burgos agrees and intends that the allegations in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Supplemental Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Defendant Burgos; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2011); and/or (c) any proceeding to enforce the terms of this Supplemental Consent Order.

12. Agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 27 of Part IV of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States.

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendant Burgos in any other proceeding.

14. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following civil monetary penalty and equitable relief pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, as set forth herein.

### III. FINDINGS AND CONCLUSIONS

15. The Findings of Fact and Conclusions of Law contained in the SJ Order and the Permanent Injunction are incorporated herein by reference and given preclusive effect as provided in the SJ Order and the Permanent Injunction.

### IV. RESTITUTION AND CIVIL MONETARY PENALTY

IT IS HEREBY ORDERED that Defendant Burgos shall comply fully with the following terms, conditions, and obligations relating to the payment of restitution and a civil monetary penalty.

#### **Restitution**

16. Defendant Burgos shall pay restitution in the amount of Four hundred and seven-thousand five-hundred and ninety-nine dollars and eighty-seven cents (\$407, 599.87) ("Restitution Obligation"), plus post-judgment interest, within thirty (30) days of the date of the entry of this Consent Order. Burgos' liability shall be joint and several with Defendants Davis and Howard if they are also ordered to pay restitution. Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

17. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendant Burgos's customers, the Court appoints the NFA as Monitor

(“Monitor”). The Monitor shall collect restitution payments from Defendant Burgos and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA’s appointment as Monitor, other than actions involving fraud.

18. Defendant Burgos shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “Defendant Burgos – SETTLEMENT Fund” and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendant Burgos and the name and docket number of this proceeding. Defendant Burgos shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581 and shall send copies to Susan Padove, Senior Trial Attorney, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, Illinois 60661.

19. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendant Burgos’s customers identified by the CFTC or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible customers is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the

Monitor shall forward to the CFTC following the instructions for civil monetary penalty payments set forth in Part IV B below.

20. Defendant Burgos shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's customers to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendant Burgos shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

21. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendant Burgos's customers during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

22. The amounts payable to each customer shall not limit the ability of any customer from proving that a greater amount is owed from Defendant Burgos or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law.

23. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Defendant Burgos who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendant Burgos to ensure

continued compliance with any provision of this Consent Order and to hold Defendant Burgos in contempt for any violations of any provision of this Consent Order.

24. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendant Burgos's Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

**B. Civil Monetary Penalty**

25. Defendant Burgos shall pay a civil monetary penalty in the amount of Five-hundred thousand dollars (\$500,000) ("CMP Obligation"), plus post-judgment interest, within thirty (30) days of the date of the entry of this Consent Order. Burgos' liability shall be joint and several with Defendants Davis and Howard if they are also ordered to pay a civil monetary penalty. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

26. Defendant Burgos shall pay his CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables – AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Defendant Burgos shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant Burgos shall accompany payment of the CMP Obligation with a cover letter that identifies Defendant Burgos and the name and docket number of this proceeding. Defendant Burgos shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. A copy shall also be sent to: Rosemary Hollinger, Deputy Director, 525 W. Monroe Street, Suite 1100, Chicago, Illinois 60661.

#### **Provisions Related to Monetary Sanctions**

27. **Partial Satisfaction:** Any acceptance by the Commission/CFTC or the Monitor of partial payment of Defendant Burgos's Restitution Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission/CFTC's right to seek to compel payment of any remaining balance.

#### **IV. MISCELLANEOUS PROVISIONS**

28. **Notice:** All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows, to the CFTC:

Rosemary Hollinger  
Deputy Director  
525 W. Monroe Street  
Suite 1100  
Chicago, Illinois 60661

All notices required to be given by any provision of this Consent Order, as follows, to Defendant Joseph Burgos:  
Joseph Burgos, *pro se*

31 E Erie Avenue  
Rutherford, NJ 07070

And Via email: [josephburgos@hotmail.com](mailto:josephburgos@hotmail.com)

All such notices to the CFTC shall reference the name and docket number of this action.

29. **Change of Address/Phone:** Until such time as Defendant Burgos satisfies in full his Restitution Obligation and CMP Obligation as set forth in this Consent Order, Defendant Burgos shall provide written notice to the Commission by certified mail of any change to his telephone number and e-mail address within ten (10) calendar days of the change.

30. **Entire Agreement and Amendments:** This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

31. **Invalidation:** If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

32. **Waiver:** The failure of any party to this Consent Order or of any customer at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or customer at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

33. **Acknowledgements:** Upon being served with copies of this Consent Order after entry by the Court, Defendant Burgos shall sign acknowledgements of such service and serve such acknowledgements on the Court and the Commission within ten (10) calendar days.

34. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Defendant Burgos to modify or for relief from the terms of this Consent Order.

35. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendant Burgos, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendant Burgos.

36. **Counterparts and Facsimile Execution:** This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

37. Defendant Burgos understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *Consent Order for Civil Monetary Penalty and other Equitable Relief against Defendant Joseph Burgos.*

IT IS SO ORDERED on this 13 day of December 2013.



Katherine B. Forrest  
UNITED STATES DISTRICT JUDGE  
2/26/14

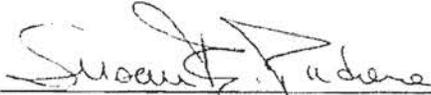
CONSENTED TO AND APPROVED BY:



Defendant Joseph Burgos, pro se  
31 E Erie Avenue  
Rutherford, NJ 07070

Email: [josephburgos@hotmail.com](mailto:josephburgos@hotmail.com)

Date: Dec. 13, 2013



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Date 2-25-14