U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

RECEIVED
C.F.T.C.
'00 MAR 7 PM 1 00
OFFICE OF PROCEEDINGS
PROCEEDINGS CLERK

OFFICE OF
PROCEEDINGS

CARLOS F. PEREZ, Complainant v. CONCORDE TRADING GROUP, INC., and ROBERT ANTONIO ROCA, Respondents	)	CFTC Docket No. 99-R185

ORDER OF DISMISSAL FOR CAUSE

As discussed in the Notice dated February 17, 2000, complainant was admonished by the undersigned on February 16 regarding his statements (mailed February 8) indicating he would not be answering respondents' discovery requests, and he was instructed to read the January 11 discovery order carefully. He was also instructed to file "complete and detailed replies to respondents' requests" by February 29. The Notice also explained that respondents' attorney had been notified that no motion to compel would be necessary.

Today, complainant was again contacted by the undersigned and asked whether he had filed his discovery replies. He stated that he had not done so because his documents had been stolen when his girlfriend's car was broken into. Asked why he had not notified this Office of any difficulty in providing the information we, and respondents, are waiting for, complainant stated that he had been too busy with many "problems" involving other lawsuits, a pending IRS claim, and his efforts to pay back money he owes. He claimed he would have notified us this week. At another point, however, he indicated that when the documents were stolen he had decided to just give up on this case because of comments allegedly made by the undersigned in our prior conversations telling him he would lose anyway. It was pointed out to complainant that in fact he had only been told what the two prior orders to him in this case (January 11, 2000, and December 10, 1999) already had informed all parties – *i.e.*, that the odds were against him on the statute of limitations issue unless he could provide sufficient information as to justifiable reasons for his delay in filing his complaint. Complainant kept trying to say that he already had provided all the information the CFTC wanted and has done so for two years in his contacts with Terry Montgomery of the Division of Enforcement, and he was informed that any conversations with Mr. Montgomery did not substitute for his failures to provide information in response to this Court's orders. Based on this latest (and third) instance of failure to provide information as

directed, complainant was informed that the case cannot continue without his cooperation and submission of all relevant evidence, and therefore it would be dismissed. He was informed he would have the right to appeal this determination.

For the reasons discussed in the December 10, 1999 and January 11, 2000 Orders, the February 17, 2000 Notice, and above, it is determined that complainant has failed to provide appropriate responses to this Court's Orders and has failed to comply with explicit instructions. It is also determined that complainant's proffered reason for not complying with the instruction to submit his discovery responses is inadequate in light of his unjustifiable failure to notify this Office or the opposing parties of any difficulties. Under the circumstances, complainant's repeated conduct prevents both the respondents from obtaining evidence necessary to defend themselves and thereby prevents the Judgment Officer from being able to conduct the proceeding fairly with consideration of all evidence. Dismissal is warranted.

To ensure that a dismissal of the complaint as a sanction will not result in an unduly harsh or unjust result, a review has been made of the merits of complainant's contention that he was never notified of the reparations program by Mr. Montgomery during their many months of contact, and that he "never knew that CFTC had different departments like the office of proceedings" (February 8, 2000 submission). Documents attached to his own submission, however, demonstrate that in fact complainant was provided a separate sheet when the original Enforcement questionnaire was sent to him that explained in all capital letters "THIS IS NOT A REPARATIONS COMPLAINT FORM." That attachment also provided an address for requesting a reparations complaint form and a copy of the rules from the "Complaints Section" of the Commission (*see* page following Page 8 of Carlos Perez questionnaire dated March 9, 1998). In addition, as the parties were informed in the February 17 Notice, an affidavit of Mr. Montgomery has now been received. Nothing in the affidavit (a copy of which is attached to the parties' copies of this Order) suggests that complainant was ever informed that he would not have to do anything more than cooperate with the Division of Enforcement in order to recover his funds. Any failure to file the complaint, more likely than not, was due to complainant's inattention to information he had been provided at least as early as March of 1998 – just as he has failed to pay attention to the Orders, Notices, and instructions in this matter.

Accordingly, the complaint in this matter is DISMISSED WITH PREJUDICE.

Dated: March 7, 2000.

Joel R. Maillie

JOEL R. MAILLIE
Judgment Officer