

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES COMMODITY)	
FUTURES TRADING COMMISSION,)	
)	No. 1:15-cv-201
Plaintiff,)	
)	HONORABLE PAUL L. MALONEY
v.)	
)	
JERRY STAUFFER,)	
)	
Defendant.)	

ORDER GRANTING PLAINTIFF'S *EX PARTE*
EMERGENCY MOTION FOR STATUTORY RESTRAINING ORDER, EXPEDITED
DISCOVERY, ORDER TO SHOW CAUSE REGARDING PRELIMINARY
INJUNCTION, AND OTHER EQUITABLE RELIEF

Plaintiff, the Commodity Futures Trading Commission ("Commission"), has filed a Complaint for Permanent Injunction and Other Relief and moved, pursuant to Section 6c(a) of the Commodity Exchange Act (the "Act"), for an *ex parte* statutory restraining order freezing assets, and ordering Defendant to show cause why a preliminary injunction should not be issued. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's for a statutory restraining order, and finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Sections 2(c)(2) and 6c of the Act, 7 U.S.C. §§ 2(c)(2) and 13a-1 (2012).
2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7 U.S.C. §13a-1(e) (2012).
3. There is good cause to believe that Jerry Stauffer ("Stauffer" or "Defendant"), has engaged in, is engaging in and is about to engage in acts in violation of Sections 4b(a)(2)(A)-

(C) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C), and 6o(1) (2012), and Regulations 4.20 and 5.2(b), 17 C.F.R. §§ 4.20 and 5.2(b), (2014).

4. From as early as June 2010 through the present, Stauffer defrauded at least 9 members of the public of at least \$968,000 in connection with pooled investments in retail off-exchange foreign currency contracts (“forex”). To entice members of the public to participate in the pool, Defendant guaranteed pool participants a monthly return on their investment based on profits purportedly earned from forex trading. In reality, Defendant never traded forex as he told pool participants; rather, of the approximately \$968,000 provided by pool participants to Defendant for forex trading, only \$200,000 was deposited into trading accounts, approximately \$144,000 was withdrawn, and approximately \$45,000 was lost trading. Defendant used pool participant funds to pay personal credit card bills and expenses, and transferred funds to his boat company, Atlantic Boat Brokers. To perpetuate his fraud, Defendant prepared and distributed to pool participants trading statements that indicated successful trading, but in fact, falsely represented that trading occurred and the purported amount of pool participant funds contained in the pool’s supposed trading account.

5. There is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for 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 Commission access to inspect and copy records to ensure that Commission representatives have immediate and complete access to those books and records.

8. There is good cause for the Plaintiff to conduct expedited discovery in order to determine the full extent of Defendant's alleged wrongdoing, locate Defendant's other pool participants, identify pool participant funds and other assets of Defendant and clarify the source and whereabouts of various funds.

9. Absent the entry of this statutory restraining order, Defendant is likely to dissipate or transfer assets and destroy business records.

10. This is a proper case for granting an *ex parte* statutory restraining order to preserve the status quo, protect public pool participants from loss and damage, and enable the Commission to fulfill its statutory duties, therefore the Court orders as follows:

DEFINITIONS

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

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 other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all cash, wherever located, whether in the United States or outside the United States.

12. The term, “document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 34(a), and includes, but is not limited to, all writings or printed matter of any kind, including without limitation: records, correspondence, memoranda, notes, rolodexes, address books, diaries, statistics, e-mail, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice or intra-office communications, telephone message slips, offers, notations of conversations, bulletins, drawings, plans, computer printouts, computer input or output, teletypes, facsimiles, invoices, worksheets, ledger books, books of accounts, and all drafts, alterations, modifications, changes and amendments of any of the foregoing. The term “document” also includes graphs, charts, photographs, phonographic record, audio and video recordings, computer records, and other data compilations from which information can be obtained or translated, if necessary, through detection devices into reasonable usable form. The term “document” also refers to each and every document in your actual or constructive possession, including but not limited to: (i) all documents within your custody or control of any of your present or former agents, employers, employees, partners, and (ii) all documents which you have a legal or equitable right to obtain from another person. A draft or non-identical copy is a separate document within the meaning of the term. A document also includes the file and folder tabs associated with each original and copy.

13. “Defendant” refers to Jerry Stauffer and any person insofar as he is acting in the capacity of an officer, agent servant, employee, ~~or attorney~~ of Defendant 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 Defendant. Defendant also refers to any d/b/a, successor,

affiliate, subsidiary, or other entity owned, controlled, managed, or held by, on behalf of, or for the benefit of Jerry Stauffer.

RELIEF GRANTED

I.

Asset Freeze Order Prohibiting the Transfer, Removal, Dissipation and Disposal of Assets

14. **IT IS HEREBY ORDERED** that Defendant and his agents, servants, employees, assigns, ~~attorneys~~, and person in active concert or participation with him, including any successor thereof, and persons in active concert or participation with him, who receive actual notice of this Order by personal service or otherwise, are immediately restrained and enjoined, except as otherwise ordered by this Court, 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 Defendant's assets held outside the United States. **Prior to the hearing for a preliminary injunction, Defendant may write checks and withdraw cash from one personal account up to a total of \$1000 for general cost of living expenses. Defendant may also disburse funds from the same personal account for the purpose of hiring an attorney to defend against this lawsuit.**

15. 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.

16. The assets affected by this Order shall include both existing assets and assets acquired after the effective date of this Order.

II.

Directives to Financial Institutions and Others

17. **IT IS FURTHER ORDERED** that, pending further Order of this Court, that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset titled in the name of, held for the benefit of, or otherwise under the control of Defendant, or has held, controlled, or maintained custody of any such account or asset of Defendant at any time since February 1, 2010 shall:

- a. Prohibit Defendant and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of Defendant's assets, except as directed by further order of the Court. **In Section I, ¶ 14, the Court has provided an exception for general cost of living expenses and for attorney fees related to defending against this lawsuit;**
- b. Deny Defendant and all other persons access to any safe deposit box that is: (a) owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant, either individually or jointly; or (b) otherwise subject to access by Defendant;
- c. Provide the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant, either individually or jointly; (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 owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant, either individually or jointly, or is otherwise subject to access by any Defendant;

- d. Upon request by the Commission, promptly provide the Commission 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, 1099 forms, and safe deposit box logs; and
- c. Cooperate with all reasonable requests of the Commission relating to implementation of this Order, including ~~transferring funds at the Commission's direction and~~ producing records related to Defendant's accounts.

III.

Maintenance of and Access to Business Records

IT IS HEREBY ORDERED that:

18. Defendant and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained 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.

IV.

Bond Not Required of Plaintiff

IT IS FURTHER ORDERED that:

19. As Plaintiff Commission is an agency of the United States of America which has made a proper showing under Section 6c(b), 7 U.S.C. § 13a-1(b) (2012), this restraining order is granted without bond. Accordingly, the Commission need not post a bond.

V.

Inspection and Copying of Books and Records

IT IS FURTHER ORDERED that:

20. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Defendant and his agents including, but not limited to, paper documents, electronically stored information, tape recordings, and computer discs, 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 where they may be situated.

21. Defendant shall, within ~~24~~ **48** hours of the ~~issuance~~ **service** of this Order, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all passwords and identification (ID) numbers for all websites and all accounts at any bank, financial institution or brokerage firm (including any introducing broker or futures commission merchant) operated by or to which Defendant has access.

22. Defendant shall, within ~~24~~ **48** hours of the ~~issuance~~ **service** of this Order, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all desk top computers, laptop computers and or mobile devices owned and/or used by him in connection with his business. 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 mbile communication device, and all passwords necessary to access and use the software contained on the computer and/or mobile communication device. The Commission shall be authorized to make an electronic, digital or hard copy of all of the data contained on the computer(s) and/or mobile communication device(s).

VI.

Service of Order and Assistance of Grand Traverse County Sheriff's Office

IT IS FURTHER ORDERED that:

23. Copies of this Order may be served by any means, ~~including facsimile transmission,~~ **consistent with the Federal Rules of Civil Procedure** upon any financial institution or other 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.

24. Commission representatives Eugenia Vroustouris, Michelle Bougas, Rick Glaser and representatives of the Grand Traverse County Sheriff's Office are specially appointed by the Court to effect service.

25. The Grand Traverse County Sheriff's Office is authorized to accompany and assist the Commission's representatives outside and inside the premises, as well as secure the premises, in the service and execution of this Order and to undertake such efforts as are reasonably necessary to ensure that the Commission's representatives have an unimpeded right to inspect and copy books, records and documents as set forth above.

VII.

Expedited Discovery

IT IS FURTHER ORDERED that:

26. Notwithstanding the prohibition upon discovery before the early meeting of counsel pursuant to Fed. R. Civ. P. 26(f), in accordance with Fed. R. Civ. P. 26(d), the Commission is granted leave to conduct expedited discovery, at any time after service of this Order, to take the deposition of and demand the production of documents from any person or entity for the purpose of discovering the nature, location, status, and extent of assets of Defendant, and the location of documents reflecting the business transactions of Defendant; ~~forty-eight (48)~~ **seventy-two (72)** hours notice, ~~personally, by facsimile or by electronic mail, by~~ **means authorized by the Federal Rules of Civil Procedure**, shall be deemed sufficient for any such deposition and five (5) days' notice, ~~personally, by facsimile or by electronic mail, by~~ **means authorized by the Federal Rules of Civil Procedure**, shall be deemed sufficient for the production of any such documents.

27. The Commission may conduct expedited discovery to enable the Commission to fulfill its statutory duties and protect investors from further loss or damage. This expedited discovery will allow the Commission to determine the full extent of Defendant's alleged wrongdoing (including, but not limited to, the possible involvement of others), locate Defendant's other pool participants, identify pool participant funds and other of the Assets, and clarify the sources of various funds.

~~28. No deposition taken pursuant to this section shall count towards the ten-deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A)(i).~~

VIII.

Service on the Commission

IT IS FURTHER ORDERED that:

29. Defendant, if represented by counsel, shall comply with all electronic filing rules and requirements of the U.S. District Court of the Western District of Michigan and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by **filing the documents in the Court's electronic file. If not represented by counsel, Defendant will deliver copies of all pleadings, correspondence and notices to** Eugenia Vroustouris, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, by e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

IX.

Order to Show Cause

IT IS FURTHER ORDERED that:

30. Defendant shall appear before this Court on **Thursday, March 5, 2015, at 9:00 a.m., at 174 Federal Building, in the United States Courthouse for the Western District of Michigan located at 410 W. Michigan Ave., Kalamazoo, Michigan**, to show cause why an Order for Preliminary Injunction should not be granted to prohibit further violations of the Act.

31. Should any party wish to file a memorandum of law or other papers in opposition to Plaintiff's Motion for a Preliminary Injunction, all papers shall be **electronically filed by 12:00 p.m. (noon) on Tuesday, March 3, 2015**. ~~Any reply papers shall be served and filed on or before _____, 2015. Service of all papers shall be by electronic mail, facsimile, or personal service. If Defendant is not represented by counsel, Defendant must send any memorandum of law or other papers in opposition to the motion for a preliminary injunction to the Court by personal delivery, regular mail, or overnight courier.~~

32. **Proof of service on Defendant of the summons and complaint, the ex parte motion for statutory restraining order, and this Order must be filed in the Court's electronic case file after the case is unsealed and before the hearing for a preliminary injunction.**

X.

Force and Effect

IT IS FURTHER ORDERED that:

33. This Order shall remain in full force and effect until ~~further order of this Court,~~
the hearing for the preliminary injunction, and that this Court retains jurisdiction of this matter for all purposes.

IT SO ORDERED.

Wednesday, February 25, 2015

/s/ Paul L. Maloney
Chief Judge United States District Court
Western District of Michigan