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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

v.

LOUIS J. GIDDENS, JR., ANTHONY  
W. DUTTON, and MICHAEL  
GOMEZ,

Defendants.

FILED UNDER SEAL

WSD

CIVIL ACTION NO.:

1:11-CV-2038

**COMPLAINT FOR PERMANENT INJUNCTION, CIVIL MONETARY  
PENALTIES, AND OTHER EQUITABLE RELIEF**

Plaintiff, U.S. Commodity Futures Trading Commission ("Plaintiff",  
"Commission" or "CFTC"), by its attorneys, brings this action against defendants  
Louis J. Giddens, Jr. ("Giddens"), Anthony W. Dutton ("Dutton"), and Michael  
Gomez ("Gomez") (collectively "Defendants"), and alleges as follows:

**I. SUMMARY**

1. From at least January to October 2010 ("relevant period"), Giddens, a  
member and manager of Currency Management Group L.L.C. ("Currency  
Management"), a dissolved commodity pool, and Dutton, a member and manager

of Pinnacle Capital Partners L.L.C. (“Pinnacle Capital”), another dissolved commodity pool, fraudulently solicited and accepted funds from members of the general public (“pool participants”) for the purported purpose of pooling funds to trade off-exchange foreign currency (“forex”) transactions. Specifically, Giddens and Dutton fraudulently solicited pool participants located in Georgia, Florida, and elsewhere to invest at least \$600,000 and \$800,000, respectively, in Currency Management and Pinnacle Capital, and then transferred some, but not all, of those funds to another entity owned and operated by them, Pinnacle Trade Group L.L.C. (“Pinnacle Trade”), for the purpose of trading forex, all in violation of certain anti-fraud provisions of the Commodity Exchange Act (“CEA” or the “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 (“CRA”)), § 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.*

2. To induce pool participants to invest in their respective pools, Giddens and Dutton misrepresented to pool participants in direct face-to-face meetings, through telephone conversations, as well as through written promissory notes that they would provide a guaranteed monthly return of either five or ten percent on pool participants’ investments from trading forex in return for their

investments in the pools. These guarantees of returns on the pool participants' investments were false and misleading.

3. Additionally, in order to induce pool participants to remain invested in Currency Management and Pinnacle Capital, Giddens and Dutton, respectively, periodically prepared online account statements and made them available on the Internet to the pool participants that purported to demonstrate the profitability of the pool participants' investments. These account statements, however, misrepresented that the pool participants' investments were achieving substantial profits and, in particular, had achieved the guaranteed five or ten percent monthly return on their investment for each and every month that the pool participants were invested in the pools when, in fact, the pool participants' investments were not profitable and did not achieve the guaranteed monthly returns for the vast majority of months during the relevant period.

4. Furthermore, rather than use all of the pool participants' funds to trade forex, Dutton and Gomez, the individual hired by Giddens and Dutton to trade the funds of the pool participants on behalf of Currency Management and Pinnacle Capital through Pinnacle Trade, misappropriated a portion of the pool participants' funds and used the funds for their personal use.

5. As a result of these actions, Dutton and Giddens have violated Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C), for their fraudulent misrepresentations and false statements, and Dutton and Gomez have violated Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A), (C), for their misappropriations.

6. Accordingly, pursuant to Section 6c and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 13a-1 and 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act, as amended by the CRA, and as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, and to further enjoin Defendants from engaging in any commodity-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, permanent trading and registration bans, restitution to pool participants, disgorgement of Defendants' ill-gotten gains, rescission, pre- and

post-judgment interest, and such other relief as the Court may deem necessary or appropriate.

7. Unless enjoined by the Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

## **II. JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act, as amended by the CRA, or any rule, regulation, or order promulgated thereunder.

9. The Commission has jurisdiction over this matter as alleged herein pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 13a-1 and 2(c)(2).

10. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 13a-1(e), in that the Defendants are found in, inhabit, or transact business in this District, and the acts

and practices in violation of the Act, as amended by the CRA, have occurred, are occurring, or are about to occur within this District, among other places.

### III. PARTIES

11. **Plaintiff Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 1 *et seq.* and the regulations thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010). The Commission maintains its principal office at Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581.

12. **Defendant Louis J. Giddens, Jr.** is an individual who, at all times relevant to this Complaint, resided in Fayetteville, Georgia. Giddens was the sole member and manager of Currency Management. During the relevant period, Giddens controlled the day-to-day operations of Currency Management, including, but not limited to, opening bank accounts in the name of Currency Management, soliciting pool participants to invest in Currency Management, maintaining Currency Management's website at *www.currencymanagementgroup.com*, and preparing online account statements for and making them available to pool participants. Giddens was also a member and manager of Pinnacle Trade. During the relevant period, Giddens controlled the day-to-day operations of Pinnacle

Trade including, but not limited to: opening bank accounts in the name of Pinnacle Trade; opening trading accounts at a Swiss forex brokerage house, Dukascopy S.A. (“Dukascopy”), in the name of Pinnacle Trade to trade funds on behalf of the pool participants of Currency Management; and transferring pool participants’ funds from Currency Management to Pinnacle Trade. Giddens has never been registered with the Commission in any capacity.

13. **Defendant Anthony W. Dutton** is an individual who, at all times relevant to this Complaint, resided in Peachtree City, Georgia. Dutton was the sole member and manager of Pinnacle Capital. During the relevant period, Dutton controlled the day-to-day operations of Pinnacle Capital, including, but not limited to, opening bank accounts in the name of Pinnacle Capital, soliciting pool participants to invest in Pinnacle Capital, maintaining Pinnacle Capital’s website at *www.pinnaclecapitalpartnersllc.com*, and preparing online account statements for and making them available to pool participants. Dutton was also a member and manager of Pinnacle Trade. During the relevant period, Dutton controlled the day-to-day operations of Pinnacle Trade including, but not limited to, opening bank accounts in the name of Pinnacle Trade, opening trading accounts at Dukascopy in the name of Pinnacle Trade to trade funds on behalf of the pool participants of Pinnacle Capital, and transferring pool participants’ funds from Pinnacle Capital to

Pinnacle Trade. Dutton has never been registered with the Commission in any capacity.

14. **Defendant Michael Gomez** is an individual who, at all times relevant to this Complaint, resided in Valrico, Florida. Gomez was an agent of Currency Management, Pinnacle Capital and Pinnacle Trade and was hired by Giddens and Dutton to conduct forex trading with the funds from pool participants on behalf of Currency Management and Pinnacle Capital. Gomez conducted forex trading with some, but not all, of the pool participants' funds in forex trading accounts in the name of Pinnacle Trade, as well as in the name of Elyon L.L.C. ("Elyon"), an entity, as described below, that Gomez created. Gomez has never been registered with the Commission in any capacity.

#### IV. FACTS

##### A. Currency Management, Pinnacle Capital, Pinnacle Trade and Elyon

15. Currency Management was a Georgia limited liability company, created by Giddens on January 27, 2010, with its principal place of business located at 310 Rock Hill Drive, Fayetteville, Georgia 30215. Giddens dissolved Currency Management on December 30, 2010. Giddens created Currency Management as a commodity pool for the purpose, in part, of trading forex on behalf of pool participants. Specifically, once pool participants invested in



Currency Management, Giddens then transferred some, but not all, of pool participants' funds to bank accounts in the name of Pinnacle Trade. Currency Management has never been registered with the Commission in any capacity.

16. Pinnacle Capital was a Georgia limited liability company, created by Dutton on January 26, 2010, with its principal place of business located at 241 Smokerise Trace, Peachtree City, Georgia 30269. Dutton dissolved Pinnacle Capital on December 31, 2010. Dutton created Pinnacle Capital as a commodity pool for the purpose, in part, of trading forex on behalf of pool participants. Specifically, once pool participants invested in Pinnacle Capital, Dutton then transferred some, but not all, of pool participants' funds to bank accounts in the name of Pinnacle Trade. Pinnacle Capital has never been registered with the Commission in any capacity.

17. Pinnacle Trade was a Georgia limited liability company, created by Dutton and Giddens on November 13, 2009, with its principal place of business located at 241 Smokerise Trace, Peachtree City, Georgia 30269. Dutton and Giddens dissolved Pinnacle Trade on December 31, 2010. Dutton and Giddens created Pinnacle Trade for the purpose, in part, to trade forex on behalf of Currency Management and Pinnacle Capital. Specifically, once pool participants invested in Currency Management and Pinnacle Capital, Giddens and Dutton,

respectively, then transferred some, but not all, of pool participants' funds to bank accounts in the name of Pinnacle Trade. Pinnacle Trade then transferred some, but not all, of the funds to trading accounts in the name of Pinnacle Trade at Dukascopy. Pinnacle Trade has never been registered with the Commission in any capacity.

18. Elyon was a Florida limited liability company, created by Gomez on January 19, 2010, with its principal place of business located at 3810 Hanover Hill Drive, Valrico, Florida 33596. Gomez dissolved Elyon on December 27, 2010. Gomez used Elyon, in part, to trade forex on behalf of Currency Management and Pinnacle Capital. Specifically, once pool participants invested in Currency Management and Pinnacle Capital, Giddens and Dutton, respectively, then transferred, some, but not all, of pool participants' funds to bank accounts in the name of Pinnacle Trade. Pinnacle Trade, in turn transferred some, but not all of pool participants' funds to a bank account in the name of Elyon. Elyon then transferred some, but not all, of the funds to a trading account in the name of Elyon at FXDirect Dealer L.L.C. ("FXDD"), a registered retail foreign exchange dealer. Elyon has never been registered with the Commission in any capacity.

**B. Giddens and Dutton Operated Currency Management and Pinnacle Capital, Respectively, as Commodity Pools**

19. In late 2008, Giddens, an air traffic controller (“ATC”) in Atlanta, Georgia, learned about a forex investment company, Botfly, Inc. (“Botfly”) that purportedly offered investors ten percent per month in earnings on their investments from trading forex. Giddens met with one of the principal of Botfly and invested funds in Botfly. Further, Giddens solicited co-workers at the Federal Aviation Administration (“FAA”) in Georgia to invest in Botfly as well. Some of Giddens’ ATC co-workers, including Dutton, invested in Botfly.

20. Thereafter, in April 2010, the State of Florida Attorney General sued Botfly and its principals, David Lewalski and Jon Hammill, for engaging in a “ponzi” scheme and froze Botfly’s assets. Nevertheless, using practically the exact same investment model as Botfly, beginning in January 2010, Giddens, through Currency Management, and Dutton, through Pinnacle Capital, received, accepted and pooled money from members of the general public to trade forex.

21. Specifically, Giddens solicited pool participants to write checks, wire monies, and/or transfer funds to Currency Management’s bank account at Wachovia Bank in Georgia, telling them that their money would be pooled with funds from other pool participants and that Giddens, through his trader, would use the money to trade, among other things, forex on behalf of all pool participants.

During the relevant period, Giddens solicited at least \$600,000 from pool participants to invest in Currency Management.

22. Similarly, Dutton solicited pool participants to write checks, wire monies, and/or transfer funds to Pinnacle Capital's bank account at Wachovia Bank in Georgia, telling them that their money would be pooled with funds from other pool participants and that Dutton, through his trader, would use the money to trade, among other things, forex on behalf of all pool participants. During the relevant period, Dutton solicited at least \$800,000 from pool participants to invest in Pinnacle Capital.

**C. Giddens And Dutton Made False and Misleading Statements For Solicitation Purposes**

23. To induce pool participants to invest in Currency Management, Giddens misrepresented to them that in return for their investment in the pool, the pool participants would receive, depending on how much they invested, a guaranteed five or ten percent monthly return on their investment which would be achieved by Currency Management's forex trading.

24. Likewise, in order to induce pool participants to invest in Pinnacle Capital, Dutton misrepresented to pool participants that in return for their investment in the pool, the pool participants would receive, depending on how

much they invested, a guaranteed five or ten percent monthly return on their investment which would be achieved by Pinnacle Capital's forex trading.

25. Indeed, at or about the same time that a pool participant invested in Currency Management or Pinnacle Capital, Giddens, on behalf of Currency Management, and Dutton, on behalf of Pinnacle Capital, sent the pool participant a promissory note ("Note"). The Note stated that in return for the pool participant's investment in Currency Management or Pinnacle Capital, the respective pool promised to pay the pool participant the principal investment along with interest on the unpaid principal at the rate of either five or ten percent per month and would pay the principal balance of the Note within 30 days of written demand by the pool participant.

26. Thus, for example, in late March 2010, one pool participant invested in Currency Management because Giddens said that he (Giddens) had a trader that had expertise in trading forex, and Giddens promised the pool participant that he would receive a guaranteed ten percent monthly return on his investment from trading forex. Thereafter, the pool participant wired \$10,000 to Currency Management's bank account at Wachovia Bank. Further, at or about the same time that the pool participant wired his money to Currency Management, Giddens sent him a Note executed by Currency Management on March 25, 2010. The Note

stated that Currency Management promised to pay the pool participant his \$10,000 investment along with interest at the rate of ten percent per month. The Note also provided that the interest would be paid on the 25th day of each month commencing in April and that Currency Management would pay the principal balance within 30 days of a written demand by the pool participant.

27. These statements made by Giddens and Dutton to the pool participants of Currency Management and Pinnacle Capital that the pool participants would receive a guaranteed five or ten percent monthly return on their investment from trading forex are materially false and misleading.

28. Giddens and Dutton made the representations set forth in paragraphs 23 through 26 above knowing them to be false or with reckless disregard as to their truth.

**D. Giddens and Dutton Prepared and Distributed False and Fictitious Account Statements**

29. Once pool participants invested in Currency Management, Giddens provided them with access to Currency Management's website, *www.currencymanagementgroup.com*, on which pool participants could access and view via the Internet electronic account statements prepared by Giddens that purported to show the net value of their interest in Currency Management, as well as the profit or loss on their investment.

30. Beginning in at least February 2010 through September 2010, the account statements for pool participants in Currency Management consistently reflected that the pool participants' interests in Currency Management profited at a rate of either five or ten percent per month depending on which rate Giddens promised that particular participant. For example, the online account statements for one pool participant in Currency Management reflected that after his initial investment of \$15,000 on April 14, 2010, he earned a return of ten percent, compounded monthly, on the 24<sup>th</sup> of each month thereafter until October 24, 2010.

31. Similarly, once pool participants invested in Pinnacle Capital, Dutton provided them with access to Pinnacle Capital's website, *www.pinnaclecapitalpartnersllc.com*, on which pool participants could access and view via the internet electronic account statements prepared by Dutton that purported to show the net value of their interest in Pinnacle Capital, as well as the profit or loss on their investment.

32. Beginning in at least February 2010 through September 2010, the account statements for pool participants in Pinnacle Capital consistently reflected that the pool participants' interests in Pinnacle Capital profited at a rate of either five or ten percent per month depending on which rate Dutton promised that particular participant. For example, the online account statements for one pool

participant in Pinnacle Capital reflected that after his initial investment of \$150,000 on April 2, 2010, he earned a return of ten percent, compounded monthly, on the 24<sup>th</sup> of each month thereafter until October 24, 2010.

33. These electronic account statements for Currency Management and Pinnacle Capital, however, are false because seven of the nine months that the pool participants' funds were traded in forex, Currency Management and Pinnacle Capital suffered trading losses and, accordingly, failed to profit at a rate of either five or ten percent per month.

34. In particular, as the following table demonstrates, from February to March 2010 and then from June to October 2010, the forex trading accounts in the name of Pinnacle Trade at Dukascopy and the forex trading account in the name of Elyon at FXDD, which collectively held some, but not all, of the pool participants' funds, suffered significant monthly losses:

ACTIVITY DATE	TOTAL MONTHLY PERFORMANCE GAIN (LOSS)	CUMULATIVE PERFORMANCE
FEB 2010	(\$5,312.85)	(\$5,312.85)
MAR 2010	(\$8,454.40)	(\$13,767.25)
APR 2010	\$13,387.36	(\$379.89)
MAY 2010	\$184,083.81	\$183,703.92



JUN 2010	(\$227,481.57)	(\$43,777.65)
JUL 2010	(\$430,781.95)	(\$474,559.60)
AUG 2010	(\$74,782.47)	(\$549,342.07)
SEP 2010	(\$220,844.06)	(\$770,186.13)
OCT 2010	(\$33,104.64)	(\$803,290.77)

35. Thus, for the two months that these forex trading accounts were profitable, April and May 2010, they only earned profits of \$13,387.36 and \$184,083.81, respectively, and the total monthly losses in the accounts well exceeded the profits earned in these accounts. Indeed, the total monthly losses, less the profits, in the accounts were \$803,290.77.

36. Giddens and Dutton made the representations in the account statements knowing them to be false or with reckless disregard as to their truth.

**E. Dutton and Gomez Misappropriated Pool Participants' Funds**

37. Dutton solicited pool participants to invest in Pinnacle Capital telling them that their money would be pooled with funds from other pool participants and that their trader would use the money to trade, among other things, forex on behalf of all pool participants and achieve the guaranteed monthly returns for the pool participants.

38. However, rather than use all of the pool participants' funds to trade forex, and achieve the guaranteed monthly returns for the pool participants, Dutton and Gomez misappropriated a portion of the pool participants' funds and used the funds for their personal use.

39. For example, it appears that more than \$800,000 of the pool participants' funds from Currency Management and Pinnacle Capital was transferred from Pinnacle Trade's bank accounts to the bank account in the name of Elyon. However, not all of these funds were transferred to Elyon's trading account at FXDD to be used to trade forex for the pools. Instead, some of the funds were misappropriated by Gomez for his personal use, including, but not limited to, purchasing a Mustang automobile, dining at restaurants, grocery shopping, hotel suites as well as transferring large sums to his and his wife's money market and personal bank accounts.

40. Similarly, it appears that Dutton misappropriated some of the pool participants' funds deposited at Pinnacle Capital's and Pinnacle Trade's bank accounts for his personal use, including, but not limited to, purchasing an automobile, forex trading programs, healthcare office technology and services, and dining at restaurants.

**F. The Forex Transactions**

41. Neither Defendants ,FXDD, nor Dukascopy that were the counterparties to the forex transactions conducted by Defendants were financial institutions, registered broker dealers, insurance companies, bank holding companies, or investment bank holding companies, or the associated persons of such entities.

42. Neither Defendants nor the customers who provided funds to the Defendants were “eligible contract participants” as that term is defined in the Act. *See* Section 1a(12)(A)(v), and (xi) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 1a(12)(A)(v), and (xi) (an “eligible contract participant,” as relevant here, is an individual with total assets in excess of \$10 million).

43. The forex transactions conducted by Defendants on behalf of the customers were entered into on a margined or leveraged basis. Defendants were required to provide only a percentage of the value of the forex contracts that they purchased.

44. The forex transactions conducted by Defendants neither resulted in delivery of actual currency within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these

forex contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

## **V. VIOLATIONS OF THE ACT AND REGULATIONS**

### **COUNT ONE**

#### **Fraud In Connection With Forex – Misrepresentations to Pool Participants**

**(Violations of Section 4b(a)(2)(A)-(C) of the Act, as Amended by the CRA,  
to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C))  
(Against Defendants Giddens and Dutton)**

45. Paragraphs 1 through 44 are realleged and incorporated herein by reference.

46. Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C), makes it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery . . . that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, applies to Giddens' and Dutton's forex transactions "as if" they were a contract of sale of a commodity for future delivery. Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

47. As set forth above in Paragraphs 1 to 3 and 5 to 36, during the relevant period, in or in connection with forex contracts, made, or to be made, for or on behalf of, or with, other persons, Giddens and Dutton cheated or defrauded or attempted to cheat or defraud pool participants; made or caused to be made false reports or statements to pool participants; and deceived or attempted to deceive pool participants by, among other things, knowingly or recklessly: (i) promising pool participants that they would receive a guaranteed monthly return of either five or ten percent on their investment from trading forex; (ii) misrepresenting forex trading activity that purportedly occurred on behalf of pool participants, as well as purported returns pool participants would and did receive on their forex investments; and (iii) making, causing to be made, and distributing reports and statements to pool participants that contained false account values, false returns on investment, and other misinformation, all in violation of Section 4b(a)(2)(A)-(C), of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C).

48. Giddens and Dutton engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

49. Each misrepresentation, omission, and/or false report, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A)-(C).

## COUNT TWO

### Fraud In Connection With Forex – Misappropriation of Pool Participants’ Funds

**(Violations of Section 4b(a)(2)(A), (C) of the Act, as Amended by the CRA,  
to be codified at 7 U.S.C. § 6b(a)(2)(A), (C))  
(Against Defendants Dutton and Gomez)**

50. Paragraphs 1 through 44 are realleged and incorporated herein by reference.

51. Section 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A) and (C), makes it unlawful:

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery . . . that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or] (C) willfully to deceive or attempt to deceive the other person by any means

whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Section 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, applies to Dutton's and Gomez's forex transactions "as if" they were a contract of sale of a commodity for future delivery. Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

52. As set forth above in Paragraphs 4 and 37 to 40, during the relevant period, in or in connection with forex contracts, made, or to be made, for or on behalf of, or with, other persons, Dutton and Gomez cheated or defrauded or attempted to cheat or defraud pool participants and deceived or attempted to deceive pool participants by, among other things, knowingly and recklessly misappropriating pool participants' funds that purportedly were to be used to trade forex, in violation of Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A), (C).

53. Dutton and Gomez engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

54. Each incident that Dutton and Gomez misappropriated pool participants' funds, including but not limited to those specifically alleged herein, is

alleged as a separate and distinct violation of Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A), (C).

## **VI. RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

- a) An order finding that Defendants violated Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A) and (C).
- b) An order finding that Giddens and Dutton violated Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(B).
- c) Orders of preliminary and permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, from engaging, directly or indirectly in conduct in violation of Section 4b(a)(2)(A), (C) of the Act, as amended by the CRA and the Dodd-Frank Act , to be codified at 7 U.S.C. § 6b(a)(2)(A), (C);
- d) Orders of preliminary and permanent injunction prohibiting Giddens and Dutton and any of their agents, servants, employees, assigns, attorneys, and



persons in active concert or participation with Giddens and Dutton, including any successor thereof, from engaging, directly or indirectly in conduct in violation of Section 4b(a)(2)(B) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 6b(a)(2)(B);

e) Orders of preliminary and permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, from directly or indirectly:

- (i) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified 7 U.S.C. § 1a );
- (ii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Commission Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011) (“commodity options”)), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA and Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (“forex contracts”)) for their

- own personal or proprietary account or for any account in which they have a direct or indirect interest;
- (iii) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
  - (iv) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
  - (v) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
  - (vi) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and
  - (vii) acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other

officer or employee of any person (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

f) An order directing Defendants, as well as any successors and/or agents of Defendants, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices that constitute violations of the Act, as described herein, and pre- and post-judgment interest thereon;

g) An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest;

h) An order directing Defendants and any successor thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the pool participants whose funds were received by Defendants as a result of the acts and

practices that constitute violations of the Act, as amended by the CRA, as described herein;

i) An order directing Defendants to pay a civil monetary penalty for each violation of the Act, as amended by the CRA, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendants for each violation of the Act, as amended by the CRA; or (2) \$140,000 for each violation of the Act, as amended by the CRA, occurring on or after October 23, 2008;

j) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

k) Such other and further relief as the Court deems just and appropriate.

June 22, 2011


SALLY QUILLIAN YATES  
UNITES STATES ATTORNEY



Daniel A. Caldwell  
Assistant U.S. Attorney  
Northern District of Georgia  
Georgia Bar No. 102510  
Dan.Caldwell@usdoj.gov  
600 Richard B. Russell Bldg.  
75 Spring Street SW  
Atlanta, Georgia 30303  
Telephone: (404) 581-6224  
Facsimile: (404) 581-6181

Respectfully submitted,

PLAINTIFF UNITED STATES  
COMMODITY FUTURES TRADING  
COMMISSION



Kathleen M. Banar, Chief Trial Attorney  
(Ill. Bar No. 6200597, *pro hac vice* pending)  
*kbanar@cftc.gov*

Kim G. Bruno, Senior Trial Attorney  
(D.C. Bar No. 389899, *pro hac vice*  
pending)  
*kbruno@cftc.gov*

James W. Deacon, Senior Trial Attorney  
(Va. Bar No. 43984, *pro hac vice* pending)  
*jdeacon@cftc.gov*

Amanda L. Harding, Trial Attorney  
(Ill. Bar No. 6299967, *pro hac vice* pending)  
*aharding@cftc.gov*

United States Commodity Futures Trading  
Commission

Division of Enforcement  
1155 21<sup>st</sup> Street, NW,  
Washington, D.C. 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5531

ORIGINAL CIVIL COVER SHEET 11-CV-2038

JS44 (Rev. 1/08 NDGA)

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

U.S. COMMODITY FUTURES TRADING COMMISSION

DEFENDANT(S)

LOUIS J. GIDDENS, JR., ANTHONY W. DUTTON, and MICHAEL GOMEZ

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

Clayton (IN U.S. PLAINTIFF CASES ONLY)

WSD

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Daniel A. Caldwell
Assistant U.S. Attorney, Northern District of Georgia
600 Richard B. Russell Federal Bldg.
75 Spring Street, SW
Atlanta, Georgia 30303
Telephone: (404) 581-6224 - Email: dan.caldwell@usdoj.gov

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
2 U.S. GOVERNMENT DEFENDANT
3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

Table with columns for PLF and DEF, and rows for citizenship categories: 1 CITIZEN OF THIS STATE, 2 CITIZEN OF ANOTHER STATE, 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY, 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE, 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE, 6 FOREIGN NATION.

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
2 REMOVED FROM STATE COURT
3 REMANDED FROM APPELLATE COURT
4 REINSTATED OR REOPENED
5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
6 MULTIDISTRICT LITIGATION
7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

V. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Pursuant to 7 U.S.C. §§ 13a-1 and 2(c)(2), the Commodity Futures Trading Commission brings this action to enjoin Defendants' unlawful acts and practices, to compel their compliance with the Commodity Exchange Act and to further enjoin Defendants from engaging in any commodity-related activity.

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex.
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence.
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT \$, APPLYING IFP, MAG. JUDGE (IFP), JUDGE, MAG. JUDGE (Referral), NATURE OF SUIT, CAUSE OF ACTION

WSD 850 07:00139

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
120 MARINE
130 MILLER ACT
140 NEGOTIABLE INSTRUMENT
151 MEDICARE ACT
160 STOCKHOLDERS' SUITS
190 OTHER CONTRACT
195 CONTRACT PRODUCT LIABILITY
196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
220 FORECLOSURE
230 RENT LEASE & EJECTMENT
240 TORTS TO LAND
245 TORT PRODUCT LIABILITY
290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
315 AIRPLANE PRODUCT LIABILITY
320 ASSAULT, LIBEL & SLANDER
330 FEDERAL EMPLOYERS' LIABILITY
340 MARINE
345 MARINE PRODUCT LIABILITY
350 MOTOR VEHICLE
355 MOTOR VEHICLE PRODUCT LIABILITY
360 OTHER PERSONAL INJURY
362 PERSONAL INJURY - MEDICAL MALPRACTICE
365 PERSONAL INJURY - PRODUCT LIABILITY
368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
371 TRUTH IN LENDING
380 OTHER PERSONAL PROPERTY DAMAGE
385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
442 EMPLOYMENT
443 HOUSING/ACCOMMODATIONS
444 WELFARE
440 OTHER CIVIL RIGHTS
445 AMERICANS with DISABILITIES - Employment
446 AMERICANS with DISABILITIES - Other

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
463 HABEAS CORPUS- Alien Detainee
465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 510 MOTIONS TO VACATE SENTENCE
530 HABEAS CORPUS
535 HABEAS CORPUS DEATH PENALTY
540 MANDAMUS & OTHER
550 CIVIL RIGHTS - Filed Pro se
555 PRISON CONDITION(S) - Filed Pro se

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 610 AGRICULTURE
620 FOOD & DRUG
625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
630 LIQUOR LAWS
640 R.R. & TRUCK
650 AIRLINE REGS.
660 OCCUPATIONAL SAFETY / HEALTH
690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
720 LABOR/MGMT. RELATIONS
730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
740 RAILWAY LABOR ACT
790 OTHER LABOR LITIGATION
791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
862 BLACK LUNG (923)
863 DIWC (405(g))
863 DIWV (405(g))
864 SSID TITLE XVI
865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 400 STATE REAPPORTIONMENT
430 BANKS AND BANKING
450 COMMERCE/ICC RATES/ETC.
460 DEPORTATION
470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
480 CONSUMER CREDIT
490 CABLE/SATELLITE TV
810 SELECTIVE SERVICE
875 CUSTOMER CHALLENGE 12 USC 3410
891 AGRICULTURAL ACTS
892 ECONOMIC STABILIZATION ACT
893 ENVIRONMENTAL MATTERS
894 ENERGY ALLOCATION ACT
895 FREEDOM OF INFORMATION ACT
900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
950 CONSTITUTIONALITY OF STATE STATUTES
890 OTHER STATUTORY ACTIONS

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTITRUST
850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- ARBITRATION (Confirm / Vacate / Order / Modify)

(Note: Mark underlying Nature of Suit as well)

\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE DOCKET NO.

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. , WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

SIGNATURE OF ATTORNEY OF RECORD

DATE 06/22/2011