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10  
11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 **COMMODITY FUTURES**  
14 **TRADING COMMISSION,**

15 **Plaintiff,**

16 **v.**

17 **CHARLES A. DEFAZIO, and**

18 **GALAXY RESOURCES 2000, LLC,**

19 **Defendants.**

20 '06CV 0020

21 BEN WIVIC

22 CIVIL ACTION NO \_\_\_\_\_

23 **AGREED ORDER OF PRELIMINARY INJUNCTION**  
24 **AND OTHER ANCILLARY RELIEF**

25 Plaintiff, Commodity Futures Trading Commission ("Commission"), has filed a  
26 Complaint against Defendants Charles A. DeFazio ("DeFazio") and Galaxy Resources 2000  
27 LLC ("Galaxy"), seeking injunctive and other equitable relief for violations of the Commodity  
28 Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 et seq. (2002), and Regulations promulgated  
thereunder, 17 C.F.R. §§ 1 et seq. (2005).

1 Defendants, without admitting or denying the allegations of the Complaint, except those  
2 allegations regarding jurisdiction and venue, which they admit, consent to the entry of this  
3 Agreed Order of Preliminary Injunction and Other Ancillary Relief ("Order") and state that their  
4 consent is entered into voluntarily and that no promise or threat has been made by the  
5 Commission or any member, officer, agent or representative thereof, to induce them to consent  
6 to this Order.  
7

8  
9 **THE PARTIES AGREE AND THE COURT FINDS THAT:**

10 1. This Court has jurisdiction over the subject matter of this action and all parties  
11 hereto pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission  
12 to seek injunctive relief against any person whenever it shall appear that such person has  
13 engaged, is engaging or is about to engage in any act or practice constituting a violation of any  
14 provision of the Act or any rule, regulation or order thereunder.  
15

16 2. Venue properly lies with this Court pursuant to Section 6c of the Act,  
17 7 U.S.C. § 13a-1, in that the Defendants are found in, inhabit, or transact business in this  
18 district, and the acts and practices in violation of the Act have occurred, are occurring, or are  
19 about to occur within this district, among other places.  
20

21 3. Defendants waive the entry of findings of facts and conclusions of law for  
22 purposes of this Order pursuant to Rule 52 of the Federal Rules of Civil Procedure.  
23

24 **IT IS THEREFORE ORDERED THAT:**

25 1. Defendants are restrained, enjoined and prohibited, until further order of the  
26 Court, from directly or indirectly:  
27  
28

- 1 A. Cheating or defrauding, or attempting to cheat, or defraud other persons in or in  
2 connection with an offer to enter into, the entry into, the confirmation of the  
3 execution of, or the maintenance of, any commodity futures transaction, in  
4 violation of Section 4b(a)(2)(i) of the Act, 7 U.S.C. § 6b(a)(2)(i);
- 5 B. Making or causing to be made to any other person any false report or statement  
6 thereof or causing to be entered for any person any false record thereof, in  
7 violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii);
- 8 C. Willfully deceiving or attempting to deceive by any means whatsoever other  
9 persons by any means whatsoever in regard to any order or contract, or in regard  
10 to any act of agency performed with respect to any order or contract, in violation  
11 of Section 4b(a)(2)(iii) of the Act, 7 U.S.C. § 6b(a)(2)(iii);
- 12 D. Employing any device, scheme, or artifice to defraud any participant or  
13 prospective participant, or engaging in any transaction, practice, or course of  
14 business which operates as a fraud or deceit upon any participant or prospective  
15 participant, by use of the mails or any means or instrumentality of interstate  
16 commerce, in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C.  
17 §§ 6o(1)(A) and (B);
- 18 E. Commingling the property of any pool that they operate or that they intend to  
19 operate with the property of any other person in violation of Regulation 4.20(c),  
20 17 C.F.R §4.20(c); and
- 21 F. Engaging in a business that is of the nature of an investment trust, syndicate, or  
22 similar form of enterprise and in connection therewith soliciting, accepting or  
23 receiving funds, securities or property from others for the purpose of trading in  
24 commodities for future delivery on or subject to the rules of contract markets or  
25 derivatives transaction execution facilities in violation of Section 4m(1) of the  
26 Act, 7 U.S.C. § 6m(1).

27 2. Defendant DeFazio is further restrained, enjoined and prohibited, until further  
28 order of the Court, from directly or indirectly acting as an associated person ("AP") of a  
commodity pool operator ("CPO") by associating with a CPO as a partner, officer, employee,  
consultant, or agent (or as a person occupying a similar status or performing similar functions),  
in a capacity that involves (i) the solicitation of funds, securities, or property for a participation  
in a commodity pool or (ii) the supervision of any person or persons so engaged, without being

1 registered with the Commission as an AP of such CPO in violation of Section 4k(2) of the Act,  
2  
3 7 U.S.C. § 6k(2).

4 3. Defendants are further restrained, enjoined and prohibited, until further order of  
5 the Court, from directly or indirectly:

- 6 A. Engaging in, controlling or directing the trading for any commodity futures or  
7 options accounts for or on behalf of any other person or entity, whether by power  
8 of attorney or otherwise;
- 9 B. Entering into any commodity futures or options transactions for their own  
10 accounts, for any accounts in which they have a direct or indirect interest, and/or  
11 having any commodity futures or options traded on their behalf; and
- 12 C. Applying for registration or claiming exemption from registration with the  
13 Commission in any capacity, and engaging in any activity requiring such  
14 registration, or exemption from registration, except as provided for in Section  
15 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9), or acting,  
16 directly or indirectly, as a principal, agent, or any other officer, agent or employee  
17 of any person registered, required to be registered, or exempted from registration  
18 with the Commission, unless such exemption is pursuant to Section 4.14(a)(9) of  
19 the Commission's Regulations, 17 C.F.R. §4.14(a)(9).

20 4. Defendants are further restrained, enjoined and prohibited, until further order of the  
21 Court, from directly or indirectly:

- 22 A. Dissipating, withdrawing, transferring, removing, concealing or disposing of cash,  
23 cashiers checks, funds, assets or other property of, or within the custody, control  
24 or possession of, Defendants, including, but not limited to, all funds, personal  
25 property, money or securities held in safes, safety deposit boxes and all funds on  
26 deposit in any financial institution, bank or savings and loan account, including  
27 funds or property of investors, wherever located, whether held in the name of any  
28 Defendant or otherwise, and the assets affected by this paragraph shall include  
both existing assets and income and assets acquired after the effective date of this  
Order; except that Defendant DeFazio is allowed to draw upon and/or use existing  
funds in Washington Mutual Account No. 877-185861-7 in the name of the  
DeFazio Family Trust and Downey Savings Account No. 43-0000094-6 in his  
name to satisfy reasonable, ordinary and necessary living expenses up to a  
maximum of \$5,000 per calendar month.

1 B. Destroying, mutilating, concealing, altering or disposing of, in any manner, any of  
2 the books and records, documents, correspondence, brochures, manuals,  
3 electronically stored data, tape records or other property of defendants, wherever  
4 located, including all such records concerning defendants' business operations, until  
further order of the Court; and

5 C. Denying Commission representatives access to Defendants' books and records.

6 5. Until further order of this Court, Defendants and each firm, corporation,  
7 partnership, association or other person or entity which holds or is a depository of their funds,  
8 securities, assets or other property of any kind, are prohibited from directly or indirectly  
9 transferring, withdrawing, removing or disposing of any such funds, securities, assets or other  
10 property.  
11

12 6. The injunctive provisions of this Order shall be binding on Defendants, upon any  
13 person insofar as he or she is acting in the capacity of officer, agent, servant, employee or  
14 attorney of Defendants, and upon any person who receives actual notice of this Order by  
15 personal service, facsimile or otherwise insofar as he or she is acting in active concert or  
16 participation with Defendants.  
17

18 7. Defendants shall prepare, sign and file with the Court, within 45 days of this Order,  
19 a complete and accurate accounting for the period of January 1, 2001 to the date of such accounting,  
20 which shall be no earlier than the date of this Order. Such accounting shall include, without  
21 limitation, the identification of:  
22

23 A. The names and last known addresses, phone numbers, and e-mail addresses of all  
24 pool participants and other investors;

25 B. All funds, securities, commodity interests, assets and other property currently  
26 owned or controlled (legally, equitably or otherwise) directly or indirectly by  
27 Defendants;  
28

1 C. All funds, securities, commodity interests, assets and other property received  
2 directly or indirectly by defendants, whether individually or jointly, describing the  
3 source, amount, disposition, and current location of each listed item;

4 D. All funds, securities, commodity interests, assets and other property transferred or  
5 otherwise disposed of directly or indirectly by Defendants describing the source,  
6 amount, disposition, and current location of each listed item, including accounts  
7 or assets of Defendants held by financial institutions located outside the territorial  
8 United States; and

9 E. The name and last known address of each bailee, debtor or other person or entity  
10 currently holding any funds, securities, commodity interests, assets or other  
11 property owned or controlled (legally, equitably or otherwise) by Defendants,  
12 either individually or jointly.

13 8. It is further ordered that representatives of the plaintiff Commission upon  
14 reasonable notice, be allowed to inspect the books, records and other electronically stored data,  
15 tape recordings, and other documents of Defendants and their agents, including all such records  
16 of their business operations, wherever they are situated and whether they are in the hands of  
17 Defendants or others and to copy said documents, data, and records either on or off the premises  
18 where they may be situated.

19 9. It is further ordered that Defendants shall immediately take all steps within their  
20 power to repatriate all funds, assets and property held by, under the control of, or in the name of  
21 the Defendants, whether jointly or otherwise, outside the United States, including but not limited  
22 to all funds on deposit in any banks, brokerage houses or other financial institution, by paying  
23 them to the Clerk of Court or as otherwise ordered by the Court, for further disposition in this  
24 case.

25 10. It is further ordered that the Plaintiff Commission is granted limited immediate  
26 discovery. The Commission is authorized to issue subpoenas for documents to third parties for  
27 the purpose of identifying customers of Defendants in connection with their futures trading  
28

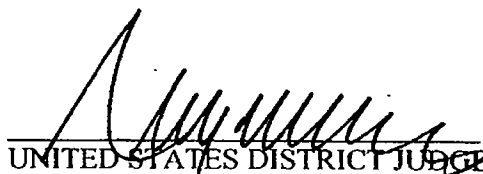
1 activities, and to brokerage and financial institutions to determine where DeFazio deposited  
2 money that he received from others and the amount of such funds. The Commission is also  
3 authorized to take the depositions of DeFazio and other third parties who solicited or referred  
4 others to the Defendants. By agreeing to this provision, DeFazio is not waiving his right to  
5 assert his Fifth Amendment privileges at his deposition.  
6

7 11. This Order may be served by on any third party by facsimile transmission.  
8

9 12. This Order shall remain in effect until further order of the Court and the Court  
10 shall retain jurisdiction over this action to ensure compliance with this Order and for all other  
11 purposes related to this action.  
12

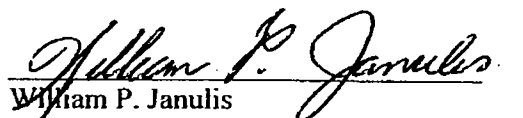
13 **IT IS SO ORDERED.**

14 Dated: January 09, 2006


  
UNITED STATES DISTRICT JUDGE

15 Consented to by:

16  
17 *(see attached page)*  
18 Charles A. DeFazio  
19 Individually and on behalf of Galaxy  
20 Resources 2000, LLC

  
William P. Janulis  
One of the Attorneys for the Plaintiff  
Commodity Futures Trading Commission  
525 West Monroe Street, Suite 1100  
Chicago, Illinois 60606  
(312) 596-0545  
(312) 596-0714 (facsimile)

21 Approved as to Form by:

22   
23 Andrew B. Holmes  
24 Attorney for the Defendants  
25 Beck, DeCorso, Daly, Kreindler & Harris  
26 601 West Fifth Street, 12<sup>th</sup> Floor  
27 Los Angeles, California 90071  
28 (213) 688-1198  
(213) 489-7532 (facsimile)

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7B



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