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FILED IN UNITED STATES DISTRICT
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

VISION CAPITAL CORPORATION a/k/a
VISION CAPITAL, INC.; JOHN
GARRETT; ALLEN ANDERSEN;
ROBERT HENINGER; and
JOHN THOMAS,

Defendants, and

PLATINUM HOLDINGS, LLC,

Relief Defendant.

NO:

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE
RELIEF UNDER THE
COMMODITY EXCHANGE ACT,
AS AMENDED

Judge Bruce S. Jenkins
DECK TYPE: Civil
DATE STAMP: 09/01/2004 @ 10:15:21
CASE NUMBER: 2:04CV00804 BSJ

I.

SUMMARY

1. Vision Capital Corporation ("Vision") was created in March 2001 and, in conjunction with, John Garrett ("Garrett"), Allen Andersen ("Andersen") and Robert Heninger ("Heninger") (collectively the "Principals"), operated a commodity pool as a successor commodity pool to the Gahma commodity pool ("Gahma pool"). The Principals and Gahma Corporation are defendants in another action filed in this District, where plaintiff has alleged that the Principals operated the Gahma pool in a fraudulent manner. CFTC v. Gahma Corporation, Stephen Brockbank, John Garrett, Allen Andersen and Robert Heninger, Consolidated Docket No: 2:00CV00622ST (D. Utah, August 13, 2002).

2. Between March 2001 and April 2002, the Principals solicited approximately \$300,000 from seven members of the general public ("Vision pool participants"). These funds were pooled and used to trade commodity futures contracts. In the course of soliciting these pool participants, Vision and its Principals violated the Commodity Exchange Act, 7 U.S.C. § 1 et seq., as amended ("Act"), in that they: (a) misrepresented the profit and risk of loss associated with futures contracts by essentially guaranteeing the Vision pool participants profits as high as 32% per year, and by falsely stating that it was "virtually impossible to lose" with the Vision pool; (b) misrepresented the location of pool participants' funds, and falsely stated that participants' funds would be placed in a U.S. domiciled brokerage house when, in fact, participants' funds were misappropriated and sent offshore; and (c) misrepresented the experience of the pool's money managers, by falsely stating that participants' funds would be placed only with experienced money managers when, in fact, none of the Vision pool's money managers had any experience trading commodity futures and options or foreign currencies. By

April 2002, after one year in operation, over 90 percent of the Vision pool participants' funds were either lost in trading, misappropriated or otherwise dissipated.

3. John Thomas ("Thomas"), the Vision pool's money manager, defrauded the Vision pool participants by, among other things, issuing false statements and misappropriating the Vision pool's funds.

4. Accordingly, the Commodity Futures Trading Commission ("Commission" or "CFTC") alleges that Vision, Garrett, Andersen, Heninger and Thomas (collectively "Defendants") violated the Act by operating as unregistered CPOs, and cheating, defrauding and deceiving and attempting to cheat, defraud and deceive Vision pool participants and prospective pool participants by, among other things, misrepresenting and omitting material facts concerning the Vision pool; misappropriating Vision pool participants' funds; and issuing false statements. Defendant Thomas violated Commission regulations by failing to issue a Disclosure Document of any type to the Vision pool participants and failing to issue to the pool and its participants complete and accurate monthly statements. The Principals violated Commission regulations by failing to issue complete and accurate Disclosure Documents to the Vision pool participants. Because Vision is vicariously liable for its principals, officers, employees, and agents actions, it is liable for Thomas' and the Principals' conduct.

5. Thomas and the Principals effected a series of complex transactions in which they transferred pool participants' funds offshore, opened several offshore shell corporations, commingled participants' funds with those of others, and then traded portions of participants' funds under the names of the offshore shell corporations. One of the offshore entities the Principals and Thomas used to accomplish their fraud was relief defendant Platinum Holdings,

LLC ("Platinum"), which may still be holding Vision pool participant funds to which it is not entitled.

6. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and in similar acts and practices, as more fully described below. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commission brings this action to enjoin Defendants from committing the acts and practices alleged in this complaint, prevent Defendants from dissipating assets, and to compel Defendants to comply with the Act. In addition, the Commission seeks civil penalties, an accounting, restitution, disgorgement and such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

II.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 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 or any rule, regulation or order thereunder.

8. Venue properly lies with this Court pursuant to Section 6c of the Act, 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 have occurred, are occurring, or are about to occur within this district.

III.

THE PARTIES

A. PLAINTIFF

9. Plaintiff Commission is an independent federal regulatory agency that is charged with the responsibility of administering and enforcing the provisions of the Act and Commission Regulations.

B. DEFENDANTS

10. Defendant Vision Capital Corporation is a Utah Corporation, currently in inactive status. Garrett, Anderson and Heninger formed Vision in 2001 for the purpose of soliciting investors to trade futures contracts. Garrett, Andersen and Heninger are Vision's directors. Vision acted as a commodity pool operator of the Vision pool and has never been registered with the Commission in any capacity.

11. Defendant John Garrett resides in North Salt Lake City, Utah. He is the president and chairman of the board of directors of Vision. Garrett acted as a commodity pool operator of the Vision pool and has never been registered with the Commission in any capacity. Garrett is currently a defendant in CFTC v. Gahma, et al., Consolidated Case No. 2:00CV00622ST (D. Utah, August 13, 2002).

12. Defendant Allen Andersen resides in Riverton, Utah. He is a vice president, the executive secretary, and a director of Vision. Andersen acted as a commodity pool operator of the Vision pool and has never been registered with the Commission in any capacity. Andersen is currently a defendant in CFTC v. Gahma, et al., Consolidated Case No. 2:00CV00622ST (D. Utah, August 13, 2002).

13. Defendant Robert Heninger currently resides in Auburn, Washington. He is a vice president and director of Vision. Heninger acted as a commodity pool operator of the Vision pool and has never been registered with the Commission in any capacity. Heninger is currently a defendant in CFTC v. Gahma, et al., Consolidated Case No. 2:00CV00622ST (D. Utah, August 13, 2002). During the relevant time period, Heninger resided and transacted business in Draper, Utah.

14. Defendant John Thomas has been a licensed attorney since 1999. He currently resides in Draper, Utah. He has also resided in Grenada and Nevis, West Indies. Thomas served as the Vision pool's money manager. Thomas acted as the commodity pool operator of the Platinum pool. Thomas has never been registered with the Commission in any capacity.

C. **RELIEF DEFENDANT**

15. Relief Defendant Platinum Holdings, LLC ("Platinum") is an offshore entity incorporated in Nevis, West Indies, that has traded over \$1,000,000 in funds in the United States securities and futures markets. Thomas operated the Platinum pool. The Vision Principals and Thomas used the Platinum pool to trade Vision pool funds in exchange-traded futures contracts and securities. Thomas closed the Platinum pool in April 2002. Platinum has never been registered with the Commission in any capacity.

V.

FACTS COMMON TO ALL COUNTS**A. Formation of the Vision Pool**

16. Garrett, Andersen and Heninger formed the Vision pool in or about March 2001 as a successor commodity pool to Gahma. Garrett, Andersen, Heninger and Vision act as the commodity pool operators ("CPOs") of the Vision pool. Vision and its Principals primarily operated the Vision pool out of offices located in Salt Lake City, Utah. In conducting the business of the Vision pool, Vision and its Principals used the U.S. mail, wires, facsimiles and interstate telephone lines. The gross aggregate of funds it received from participants never was less than \$200,000.

17. The Vision pool investment, according to the pool's Private Offering Memorandum ("POM") was structured as a corporate note with purported payments to participants of 32% interest per year with a ten-year maturation date. The 32% yearly payments were purportedly to be generated from trading the pool participants' funds in various financial instruments, including futures contracts.

B. Vision's Fraudulent Investor Solicitation

18. Between March 2001 and April 2002, Vision and its Principals solicited and attempted to solicit Vision pool participants in two ways: (a) by advertising the Vision investment in a local Salt Lake City newspaper, and (b) by holding informal seminars with prospective pool participants where they discussed the Vision pool's profit potential and the past successful performance of the pool's money managers.

19. In the course of soliciting the Vision pool participants and prospective participants, Vision and its Principals misrepresented or omitted material facts, either through the

Vision pool's POM which each of the Principals reviewed and approved and either distributed or caused to be distributed to Vision pool participants, or through oral statements made by the Principals to the pool participants. Garrett and Heninger misrepresented the Vision pool's profit potential by, among other things, falsely stating to pool participants and prospective participants that the Vision pool was safe and that the 32% annual return was "locked in," when in fact they knew or should have known that a 32% rate of return was not guaranteed. Heninger pressured at least one pool participant by stating that he did not invest immediately, future investment opportunities in the Vision pool would only be offered at lesser rates of return.

20. Garrett and Heninger misrepresented the risk of loss associated with the Vision pool by, among other things, falsely stating to Vision pool participants and prospective participants that Vision would limit losses and assure the safety of their investment by purchasing exchange-traded "put option contracts" with the pool participants' funds. The Vision POM also touted Vision as low-risk investment. The Principals either knew or should have known that Vision was not a low-risk investment. In fact, the Principals and Thomas invested portions of the pool participants' funds, as commingled with the funds of others, in natural gas and foreign currency futures contracts, not "put option contracts."

21. During the relevant period, Vision's POM falsely stated that the Vision pool funds would be placed only with money managers with extensive portfolio management experience. This statement was false in that the Vision pool money managers selected by Thomas had minimal securities trading experience and no futures or inter-bank trading experience. Moreover, the POM never disclosed to the Vision pool participants the identities of the Vision pool money managers. The Principals either knew or were reckless in failing to know that the money managers selected by Thomas did not possess extensive portfolio management

experience. Thomas knew or should have known that the money managers he selected did not possess extensive portfolio management experience.

22. The Vision pool's POM falsely stated that the Vision's pool's money managers were "required to show consistent success" in providing returns sufficient to meet the 32% per year interest to be paid to the pool participants. This statement falsely suggested to Vision pool participants and prospective participants that the Principals would monitor the Vision pool investment accounts to ensure that the Vision pool was making profits sufficient to generate 32% yearly interest. As noted above, the Vision pool investment failed to make 32% per year in profits. The Principals failed to independently monitor the profitability of the Vision pool's money manager, in that they did not receive or review any formal statements from the accounts trading Vision pool funds.

23. Garrett and Heninger told Vision pool participants and prospective participants that their funds would be invested in a United States domiciled brokerage. This statement was misleading. In fact, Garrett, Andersen and Heninger transferred the Vision pool participants' funds offshore and deposited them into accounts owned by foreign corporations and commingled the Vision pool participants' funds with the funds of others.

24. Heninger verbally reassured at least one Vision pool participant that the Vision pool investment was safe and profitable, and he and Garrett issued account statements to the Vision pool participants indicating profitable trading, when, among other things, they knowingly used Vision pool funds to pay off Gahma pool participants and knew or should have known that the Vision pool trading accounts were suffering losses.

C. Garrett, Andersen and Heninger Used Vision Pool Participants' Funds To Pay Gahma Commodity Pool Participants

25. Once they successfully solicited the Vision pool participants, Garrett, Andersen and Heninger instructed the participants to send their funds to Vision's bank account at Jordan Credit Union, Sandy, Utah, where the funds were pooled.

26. Shortly after the Vision pool participants began sending their funds to the Vision bank account, Heninger diverted some of these funds to pay purported profits to investors in Gahma, another commodity pool the Principals operated. From approximately June 2001 to April 2002, the Principals paid a total of approximately \$50,000 of Vision pool funds to the Gahma pool participants.

D. The Principals and Thomas Transferred Vision Funds Offshore

27. The Principals and Thomas commingled approximately \$250,000 of Vision pool funds with Gahma funds, transferred the funds offshore, and effected a series of complex offshore transactions to trade those funds in futures contracts. One of the offshore entities the Principals and Thomas utilized was Platinum.

Platinum

28. Platinum is an offshore corporation operated by Thomas that traded over \$1.3 million of investor funds in the United States securities and futures markets. Thomas opened at least four United States domiciled trading accounts under the name "Platinum," hired the traders for the Platinum accounts, determined the traders' compensation and paid them from Platinum funds. One of the trading accounts was a commodity futures account at Man Financial Inc. ("Man"), a registered FCM, in which Platinum traded natural gas futures. By accepting investor funds to trade commodity futures contracts, pooling those funds and trading them in commodity futures contracts, Platinum operated a commodity pool.

29. From approximately November 2001 to March 2002, the Principals and Thomas invested at least \$90,000 of the Vision pool's funds in the Platinum pool.

30. Between November 2001 and March 2002, the time period in which the Vision pool funds were invested in the Platinum pool, the trading in the Platinum pool resulted in net losses.

31. When the Platinum pool closed in March 2002, Thomas returned approximately \$62,000 to Garrett. Rather than return the funds to Vision pool participants, Garrett converted them to his own use.

F. Thomas Defrauded the Vision Pool Participants

32. Thomas, Vision's money manager, defrauded the Vision pool participants by: (a) misrepresenting the experience of the Platinum money managers to the Principals; (b) issuing false and materially incomplete account statements; and (c) misappropriating Vision pool participants' funds.

33. First, Thomas falsely represented to the Principals that the Platinum money managers - who ultimately managed Vision pool funds - were experienced, knowledgeable and successful traders who consistently earned 6-7% per month in profitable trading. In fact, the Platinum money managers Thomas selected were his step-brother and sister-in-law, who were former hair salon owners with minimal securities trading experience and no futures or inter-bank trading experience. Thomas knew or should have known that the Woolfs were inexperienced money managers.

34. Second, Thomas issued false and materially incomplete monthly account profit and loss statements. From at least March 2001 to approximately March 2002, to report on the progress of the Vision pool funds, Thomas sporadically sent Garrett, Andersen and Heninger e-

mails that typically showed profits while, in reality, the accounts containing Vision pool funds were suffering losses. Thomas knew or should have known that Vision pool funds were suffering losses because he had access to the account statements for the trading accounts holding Vision funds, but did not review them. The e-mails also failed to disclose material information such as the net asset value of Platinum's pool, losses on open positions in Platinum's pool, the amount of management advisory fees and other fees charged by Platinum, and the total amount of expenses incurred by Platinum. Further, Thomas knew or should have known that the Vision Principals would rely upon his reports to report on the profitability of the Vision pool investment to the Vision pool participants.

35. The Vision Principals in fact did issue to Vision pool participants statements based upon Thomas' information which they knew or should have known was false.

36. Third, Thomas misappropriated Vision pool funds by taking profits to which he was not entitled from the Platinum pool. Thomas received payments equal to 50% of the Platinum pool's purported "profits." When Thomas became aware that Platinum had suffered losses, he refused to return the payments he received.

G. Defendants Failed To Issue Disclosure Documents and Monthly Statements to Vision Pool Participants

37. Pursuant to Commission Regulations 4.21, 17 C.F.R. § 4.21 (2004), registered CPOs and those required to be registered as CPOs must issue a Disclosure Document to prospective pool participants.

38. Thomas never provided a disclosure document required by Commission Regulation 4.21 to the Vision pool for the Platinum pool investment.

39. Pursuant to Commission Regulations 4.22, 17 C.F.R. § 4.22 (2004), registered CPOs and those required to be registered as CPOs must issue monthly statements which must

include such specific information such as trading losses, the pool's net asset value, management, advisory fees and other fees, and the total amount of expenses incurred by the pool.

40. Thomas failed to issue to the Vision pool monthly statements that contained the information referenced in 39 above relating to the Platinum pool investment.

41. Pursuant to Commission Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2004), pool operators, whether registered or required to be registered, must provide pool participants with written disclosures of specified information about the pool. These disclosures include the identity of the pool's trading advisor, the names of the FCMs carrying the accounts, the trading advisor's background and performance record, and the offshore jurisdictions where the pool's money would be invested.

42. Vision and its Principals failed to provide the information referenced in paragraph 41 above to Vision pool participants.

43. Throughout the relevant period, the Principals and Thomas engaged in the conduct described in this Complaint while acting as officers, employees or agents of Vision Corporation.

VI.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT I

**DEFENDANTS VISION, GARRETT, ANDERSEN, HENINGER
AND THOMAS COMMITTED FRAUD IN VIOLATION OF
SECTION 4b(a)(2)(i) and (iii) OF THE ACT**

44. Paragraphs 1 through 43 are realleged and incorporated herein.

45. From approximately March 2001, Defendants Garrett, Andersen, and Heninger violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2001), which

prohibit cheating, defrauding or willfully deceiving other persons, by, among other acts, misrepresenting and omitting material facts regarding the Vision pool to Vision pool participants and misappropriating Vision pool participants' funds.

46. From approximately March 2001, Defendant Thomas violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i), and (iii) (2001), by misrepresenting material information such as the Platinum pool's money managers' experience to the Vision Principals; misappropriating Vision pool funds; and issuing materially incomplete account statements to the Vision pool operators when he knew or should have known that these reports would be used to report to the Vision pool participants.

47. Defendants Garrett, Andersen, Heninger, and Thomas engaged in the conduct alleged in this count in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

48. Each fraudulent act, misrepresentation or practice, or act of misappropriation by Defendants Garrett, Anderson, Heninger, and Thomas, in connection with futures contracts, not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2001).

49. The actions and omissions of Garrett, Andersen, Heninger and Thomas described in this count were done within the scope of their employment or as agents of Vision Corporation.

Therefore, Vision Corporation is liable for their violations of Section 4b(a)(2)(i) and (iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

COUNT II

**DEFENDANTS VISION, GARRETT, ANDERSEN, HENINGER AND THOMAS
ISSUED FALSE ACCOUNT STATEMENTS TO VISION INVESTORS,
IN VIOLATION OF SECTION 4b(a)(2)(ii) OF THE ACT**

50. Paragraphs 1 through 43 are realleged and incorporated herein.

51. From approximately June 2001 to March 2002, Defendants Garrett, Andersen and Heninger violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2001), which prohibits willfully making or causing to be made to any person any false report or statement, by, among other acts, issuing to at least three Vision pool participants false account statements indicating profitable trading when no profitable trading existed or pooled funds were incurring losses.

52. From at least March 2001 to approximately March 2002, to report on the progress of the Vision pool's funds, Thomas sporadically sent Garrett, Andersen and Heninger e-mails that typically showed profits while, in reality, the accounts containing Vision pool funds were suffering losses and Thomas knew or should have known that these reports would be used to report to Vision pool participants.

53. Defendants Garrett, Andersen, Heninger and Thomas engaged in the conduct alleged in this count in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or

(c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

54. Each false report or statement issued by Defendants Garrett, Anderson Heninger and Thomas, in connection with futures contracts, not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2001).

55. The actions and omissions of Garrett, Andersen, Heninger and Thomas described in this count were done within the scope of their employment or as agents of Vision Corporation. Therefore, Vision Corporation is liable for their violations of Section 4b(a)(2)(ii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

COUNT III

**DEFENDANTS VISION, GARRETT, ANDERSEN, HENINGER AND THOMAS
OPERATED AS UNREGISTERED COMMODITY POOL OPERATORS,
IN VIOLATION OF SECTION 4m(1) OF THE ACT**

56. Paragraphs 1 through 43 are re-alleged and incorporated herein.

57. A "commodity pool operator" is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a)(5), as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

58. Between March 2001 and April 2002, Defendants Vision, Garrett, Andersen and Heninger have acted as CPOs in that they have engaged in a business that is of the nature of an

investment trust, syndicate, or similar form of enterprise and in connection therewith, and have solicited, accepted or received funds, securities or property from others for the purpose of trading commodity futures contracts.

59. Since at least November 2001 to April 2002, Defendant Thomas has acted as a CPO in that he engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise and in connection therewith, and solicited, accepted or received funds, securities or property from others for the purpose of trading commodity futures contracts.

60. In connection with such conduct, Defendants Vision, Garrett, Andersen, Heninger and Thomas have used or are using the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as CPOs, but have never registered with the Commission, in violation of Section 4m(1) of the Act, U.S.C. § 6m(1) (2001).

COUNT IV

DEFENDANTS VISION, GARRETT, ANDERSEN, HENINGER AND THOMAS ENGAGED IN COMMODITY POOL OPERATOR FRAUD, IN VIOLATION OF SECTION 4o(1) OF THE ACT

61. Paragraphs 1 through 43 are re-alleged and incorporated herein.

62. CPOs Garrett, Andersen and Heninger, violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that they directly or indirectly employed or are employing a device, scheme, or artifice to defraud pool participants or prospective pool participants, or engaged or are engaging in transactions, practices or a course of business which operated or operates as a fraud or deceit upon pool participants, by using the mails or other means or instrumentalities of interstate commerce.

63. Garrett, Andersen and Heninger, among other acts, misrepresented and omitted material facts such as the Vision pool's profit potential, risk of loss and location of pool

participants' funds; misappropriated Vision pool participant funds and issued false statements to Vision pool participants.

64. Thomas violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that he directly or indirectly employed or is employing a device, scheme, or artifice to defraud pool participants or prospective pool participants, or engaged or is engaging in transactions, practices or a course of business which operated or operates as a fraud or deceit upon pool participants, by using the mails or other means or instrumentalities of interstate commerce.

65. Thomas misrepresented the competency and experience of the Platinum money managers; failed to timely disclose material information, as required, concerning the trading losses; and issued materially incomplete and inaccurate account statements to the Vision pool.

66. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1).

67. The actions and omissions of Garrett, Andersen, Heninger and Thomas described in this count were done within the scope of their employment or as agents of Vision Corporation. Therefore, Vision Corporation is liable for their violations of Section 4o(1) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

COUNT V**DEFENDANT THOMAS FAILED TO ISSUE
DISCLOSURE DOCUMENTS TO VISION,
IN VIOLATION OF COMMISSION REGULATION 4.21, 17 C.F.R. § 4.21 (2004)**

68. Paragraphs 1 through 43 are re-alleged and incorporated herein.

69. Pursuant to Commission Regulation 4.21, 17 C.F.R. § 4.21 (2004), no CPO registered or required to be registered under the Act, may solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or intends to operate unless on or before the date it engages in the activity the CPO delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool.

70. Defendant Thomas violated Regulation 4.21, 17 C.F.R. § 4.21(2004), by failing to provide Vision and the Principals with a Disclosure Document for the Platinum pool.

71. Each act by Thomas of failing to provide Vision or any other Platinum pool participant or prospective participant with a Disclosure Document for the Platinum pool is alleged as a separate and distinct violation of Regulation 4.21, 17 C.F.R. § 4.21 (2004).

COUNT VI**DEFENDANT THOMAS FAILED TO ISSUE MONTHLY ACCOUNT
STATEMENTS TO VISION, IN VIOLATION OF
COMMISSION REGULATION 4.22, 17 C.F.R. § 4.22 (2004)**

72. Paragraphs 1 through 43 are re-alleged and incorporated herein.

73. Pursuant to Commission Regulation 4.22, 17 C.F.R. § 4.22 (2004), each CPO registered or required to be registered under the Act must on a monthly basis distribute to each participant in each pool that it operates an account statement that contains, among other information, losses incurred by the pool, the net asset value of the commodity pool, all management and advisory fees, brokerage commissions and other expenses incurred by the pool.

74. Defendant Thomas failed to provide Vision with monthly accounts statements that met the requirements set forth by Commission Regulation 4.22, 17 C.F.R. § 4.22 (2004).

75. Each act by Thomas of failing to provide Vision or any other Platinum pool participant or prospective participant with monthly account statements that met the requirements of Commission Regulation 4.22, 17 C.F.R. § 4.22, is alleged as a separate and distinct violation of Regulation 4.22, 17 C.F.R. § 4.22 (2004).

COUNT VII

DEFENDANTS VISION, GARRETT, ANDERSEN AND HENINGER FAILED TO ISSUE COMPLETE DISCLOSURE DOCUMENTS, IN VIOLATION OF COMMISSION REGULATIONS 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2004)

76. Paragraphs 1 through 43 are re-alleged and incorporated herein.

77. Pursuant to Commission Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2003), pool operators, whether registered or required to be registered must provide pool participants with written disclosures of specified information about the pool. These disclosures include the identity of the pool's trading advisor, the names of the FCMs carrying the accounts, the trading advisor's background and performance record, and the offshore jurisdictions where the pool's money would be invested.

78. Defendants Vision, Garrett, Andersen and Heninger failed to distribute to Vision pool participants Disclosure Documents that contained the disclosures set in paragraph 77 above, in violation of Commission Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2004).

COUNT VIII

DISGORGEMENT OF FUNDS FROM THE RELIEF DEFENDANT

79. Paragraphs 1 through 43 are re-alleged and incorporated herein.

80. The Defendants have engaged in fraudulent conduct and other violations of the Act resulting in a fraud against Vision investors.

81. The Relief Defendant has received funds that were obtained as a result of the Defendants' fraudulent conduct.

82. The Relief Defendant has no legitimate entitlement to or interest in the funds received from the Defendants' fraudulent conduct.

83. The Relief Defendant should be required to disgorge the funds it received from the Defendants' fraudulent conduct, or the value of those funds that the Relief Defendant may have subsequently transferred to third parties.

84. By reason of the foregoing, the Relief Defendant holds funds in constructive trust for the benefit of Vision investors who were victimized by Defendants' fraudulent conduct.

VII.

RELIEF REQUESTED

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

A. Find Defendants Vision, Garrett, Andersen, and Heninger liable for violating Sections 4b(a)(2)(i), (ii) and (iii), 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii), and (iii), 6m(1) and 6o(1), and Commission Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2004).

B. Find Defendant Thomas liable for violation Sections 4b(a)(2)(i), (ii) and (iii), 4m(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii), and (iii), 6m(1) and 6o(1), and Commission Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21 and 4.22 (2004).

C. Enter orders of permanent injunction enjoining Defendants Vision, Garrett, Andersen, and Heninger, and all persons insofar as they are acting in the capacity of Defendants' agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(i) of the Act, 7 U.S.C. § 6b(a)(2)(i) (2001);
2. Willfully making or causing to be made to other persons any false report or statement thereof, or willfully to enter or cause to be entered for such persons any false record thereof, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(2)(a)(ii) (2001); and
3. Willfully deceiving or attempting to deceive other persons by any means whatsoever in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in

such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(iii) of the Act, 7 U.S.C. § 6b(a)(2)(iii) (2001);

4. Operating as CPOs engaged in the business of soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market without being registered with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2001);
5. In the capacity of CPOs, commodity trading advisors or associated persons of a CPO or commodity pool trading advisor, employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2001); and
6. Soliciting, accepting or receiving funds, securities or other property from a prospective participant in a pool that they operate or intend to operate without, on or before the date they engage in soliciting, accepting or receiving funds, securities or other property, delivering or causing to be delivered to the prospective participant a Disclosure Document for the pool containing the information set forth in Sections 4.24 and 4.25 of the Commission's Regulations, 17 C.F.R. §§ 4.24 and 4.25 (2004).

D. Enter orders of permanent injunction enjoining Defendant Thomas and all persons insofar as they are acting in the capacity of Defendant's agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendant who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(i) of the Act, 7 U.S.C. § 6b(a)(2)(i) (2001);

2. Willfully making or causing to be made to other persons any false report or statement thereof, or willfully to enter or cause to be entered for such persons any false record thereof, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2001);
3. Willfully deceiving or attempting to deceive other persons by any means whatsoever in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(iii) of the Act, 7 U.S.C. § 6b(a)(2)(iii) (2001);
4. Operating as a CPO engaged in the business of soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market without being registered with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2001);
5. In the capacity of a CPO, commodity trading advisor or associated person of a CPO or commodity pool trading advisor, employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant, by use of the mails or any means or instrumentality of interstate commerce, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2001);
6. Soliciting, accepting or receiving funds, securities or other property from a prospective participant in a pool that he operates or intends to operate without, on or before the date he engages in soliciting, accepting or receiving funds, securities or other property, delivering or causing to be delivered to the prospective participant a Disclosure Document for the pool containing the information set forth in Section 4.21 of the Commission's Regulations, 17 C.F.R. § 4.21 (2004); and

7. Failing to issue monthly account statements that comport with Commission Regulation 4.22, 17 C.F.R. § 4.22 (2004), to participants in any pool that he operates.

E. Enter orders pursuant to Section 6c(a) of the Act restraining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants or Relief Defendants, wherever located, including all such records concerning defendants' business operations;
2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants or Relief Defendants, wherever located, including all such records concerning Defendants' or Relief Defendants' business operations; and
3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of Defendants;

F. Enter an order directing that Defendants provide the Plaintiff immediate and continuing access to Defendants' books and records, make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds they received from and paid to investors or pool participants.

G. Enter an Order requiring Defendants immediately to identify and provide an accounting for all accounts they maintain outside the United States, and to repatriate any and all

such funds by paying them to the Clerk of court or as otherwise ordered by the Court, for further disposition in this case.

H. Enter an order prohibiting Defendants, all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of the Defendants, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of the Order by personal service or otherwise, from:

1. Directly or indirectly soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract;
2. Placing orders, giving advice or price quotations or other information in connection with the purchase or sale of commodity interests for themselves and others;
3. Introducing customers to any other person engaged in the business of trading in commodity interests;
4. Issuing statements or reports to others concerning the trading of commodity interests; and
5. Otherwise engaging in any business activities related to the trading of commodity interests.

I. Enter an order requiring Defendants and the Relief Defendant to disgorge to any officer appointed or directed by the Court or for later distribution to the pool participants, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest.

J. Enter an order requiring Defendants to make restitution by making whole each and every investor or pool participant whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest.

K. Enter an order requiring Defendants to pay civil penalties under the Act, to be assessed by the Court, in amounts of a civil monetary penalty of not more than the higher of

\$120,000 for violations committed on or after October 23, 2000 or triple the monetary gain to Defendants for each violation of the Act and Regulations.

L. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2000).

M. Enter an Order such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: August 31, 2004

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