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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

WECORP, INC., a Hawaii company;
STUART W. JONES, an individual; and
PAYTON LOWE, an individual,

Defendants,

GARY V. DUBIN, an individual; GARY
DUCK, an individual, and NATHAN P.
RAMOS, an individual,

Relief Defendants.

2:09-CV-00153-PMP

FILED UNDER SEAL

ORDER GRANTING PLAINTIFF'S EX
PARTE EMERGENCY MOTION FOR
STATUTORY RESTRAINING ORDER

This matter came before the Court for hearing on April 8, 2009 on Plaintiff
Commodity Futures Trading Commission's (CFTC) Ex Parte Emergency Motion for a
Statutory Restraining Order, Expedited Discovery, Order to Show Cause Regarding
Preliminary Injunction and Other Equitable Relief (Motion) (Doc. #4). The Court, having
considered the Motion, the memorandum in support thereof, and all other evidence
presented by the CFTC, and having heard the arguments of CFTC's counsel, finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this
action pursuant to Section 6c of the Commodity Exchange Act (Act), 7 U.S.C. § 13a-1
(2006), and Section 2(c)(2) of the Act, as amended by the Food, Conservation, and Energy
Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act (CRA)),

SEALED
BY ORDER OF THE COURT

1 §§ 13101-13204, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C.

2 § 2(c)(2).

3 2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7
4 U.S.C. § 13a-1(e).

5 3. There is good cause to believe that Defendants WeCorp, Inc. (WeCorp), Stuart
6 W. Jones (Jones) and Payton Lowe (Lowe) (collectively, Defendants) have engaged, are
7 engaging, and are about to engage in acts and practices constituting violations of the Act, as
8 amended, to be codified at 7 U.S.C. §§ 1, et seq., and that Relief Defendants Gary V. Dubin
9 (Dubin), Gary Duck (Duck), and Nathan P. Ramos (Ramos) (collectively, Relief
10 Defendants) have received, are receiving, and are about to receive funds as a result of
11 Defendants' acts and practices that violate the Act.

12 4. There is good cause to believe that immediate and irreparable damage to the
13 Court's ability to grant effective final relief for investors in the form of monetary redress
14 will occur from the sale, transfer, assignment, or other disposition by Defendants and Relief
15 Defendants of assets or records unless Defendants and Relief Defendants are immediately
16 restrained and enjoined by Order of the Court.

17 5. Good cause exists for the freezing of assets owned, controlled, managed, or held
18 by, on behalf of, or for the benefit of Defendants and for entry of an order prohibiting
19 Defendants and Relief Defendants, their agents, servants, employees, assigns, attorneys, and
20 persons in active concert or participation with Defendants and Relief Defendants, including
21 any successor thereof, from destroying records. Additionally, good cause exists for entry of
22 an order prohibiting Defendants or anyone at their direction or on their behalf from denying
23 CFTC representatives access to inspect and copy records to ensure that CFTC
24 representatives have immediate and complete access to those books and records.

25 6. Good cause exists for entry of an order ex parte based on evidence presented to
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1 the Court that if Defendants and/or Relief Defendants received prior notice, Defendants
2 may dissipate or conceal assets, destroy or modify documents, and/or possibly leave the
3 United States.

4 7. Weighing the equities and considering the CFTC's likelihood of success in its
5 claims for relief, the issuance of a statutory restraining order is in the public interest.

6 **I.**

7 **DEFINITIONS**

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

9 8. The term "document" is synonymous in meaning and equal in scope to the usage
10 of the term in Federal Rule of Civil Procedure (FRCP) 34(a), and includes, but is not
11 limited to, writings, drawings, graphs, charts, photographs, audio and video recordings,
12 computer records, and other data compilations from which information can be obtained and
13 translated, if necessary, through detection devices into reasonably usable form. A draft or
14 non-identical copy is a separate document within the meaning of the term.

15 9. "Assets" mean any legal or equitable interest in, right to, or claim to, any real or
16 personal property, whether individually or jointly, direct or indirect control, and wherever
17 located, including, but not limited to: chattels, goods, instruments, equipment, fixtures,
18 general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes,
19 accounts (including, but not limited to, bank accounts and accounts at financial institutions),
20 credits, receivables, lines of credit, contracts including spot and futures or options contracts,
21 insurance policies, and all cash, wherever located.

22 10. "Defendants" shall mean and refer to not only WeCorp, Jones, and Lowe but
23 also to any d/b/a, successor, affiliate, subsidiary or other entity owned, controlled, managed
24 or held by, on behalf of, or for the benefit of WeCorp, Jones, and/or Lowe.

25 11. "Relief Defendants" shall mean and refer to not only Dubin, Duck, and Ramos
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1 but also to any d/b/a, successor, affiliate, subsidiary or other entity owned, controlled,
2 managed or held by, on behalf of, or for the benefit of Dubin, Duck, and/or Ramos.

3 **II.**

4 **RELIEF GRANTED**

5 **Order Against Transfer, Dissipation, and Disposal of Assets**

6 **IT IS HEREBY ORDERED** that:

7 12. Defendants and their agents, servants, employees, assigns, attorneys, and
8 persons in active concert or participation with them, including any successor thereof, and
9 persons in active concert or participation with them, who receive actual notice of this Order
10 by personal service or otherwise, are immediately restrained and enjoined from directly or
11 indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing,
12 loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing
13 of any of Defendants' Assets, wherever located, including Defendants' Assets held outside
14 the United States, except as otherwise ordered by the Court. The Assets affected by this
15 paragraph shall include both existing Assets and Assets acquired after the effective date of
16 this Order.

17 13. Relief Defendants and their agents, servants, employees, assigns, attorneys, and
18 persons in active concert or participation with them, including any successor thereof, and
19 persons in active concert or participation with them, who receive actual notice of this Order
20 by personal service or otherwise, are immediately restrained and enjoined from directly or
21 indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing,
22 loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing
23 of any assets received from Defendants.

24 14. Defendants are restrained and enjoined from directly or indirectly opening or
25 causing to be opened any safe deposit boxes titled in the name of, or subject to, access by
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1 Defendants.

2 **III.**

3 **Directives to Financial Institutions and Others**

4 **IT IS FURTHER ORDERED**, pending further Order of this Court, that any
5 financial or brokerage institution, business entity, or person that holds or has held, controls
6 or has controlled, or maintains or has maintained custody of any of Defendants' Assets at
7 any time since June 1, 2008, shall:

8 15. Prohibit Defendants and all other persons from withdrawing, removing,
9 assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling,
10 or otherwise disposing of Defendants' Assets, except as directed by further Order of the
11 Court;

12 16. Deny Defendants and all other persons access to any safe deposit box that is: (a)
13 owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants,
14 either individually or jointly; or (b) otherwise subject to access by Defendants;

15 17. Provide counsel for the CFTC, within ten (10) business days of receiving a copy
16 of this Order, a statement setting forth: (a) the identification number of each and every
17 account or other asset owned, controlled, managed, or held by, on behalf of, or for the
18 benefit of Defendants, either individually or jointly; (b) the balance of each such account, or
19 a description of the nature and value of such asset as of the close of business on the day on
20 which this Order is served, and, if the account or other asset has been closed or removed,
21 the date closed or removed, the total funds removed in order to close the account, and the
22 name of the person or entity to whom such account or other asset was remitted; and (c) the
23 identification of any safe deposit box that is owned controlled, managed, or held by, on
24 behalf of, or for the benefit of Defendants, either individually or jointly, or is otherwise
25 subject to access by Defendants; and

26 18. Upon request by the CFTC, promptly provide the CFTC with copies of all

1 records or other documentation pertaining to such account or asset, including, but not
2 limited to, originals or copies of account applications, account statements, signature cards,
3 checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit
4 instruments or slips, currency transaction reports, Internal Revenue Service Form 1099s,
5 and safe deposit box logs.

6 **IV.**

7 **Maintenance of Business Records**

8 **IT IS FURTHER ORDERED** that:

9 19. Defendants, Relief Defendants, and their agents, servants, employees, assigns,
10 attorneys, and persons in active concert or participation with Defendants or Relief
11 Defendants, including any successor thereof, and all other persons or entities who receive
12 notice of this Order by personal service or otherwise, are immediately restrained and
13 enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or
14 disposing of, in any manner, directly or indirectly, any documents that relate to the business
15 practices or business or personal finances of Defendants and their subsidiaries or affiliates.

16 **V.**

17 **Inspection and Copying of Books and Records**

18 **IT IS FURTHER ORDERED** that:

19 20. Representatives of the CFTC shall immediately be allowed to inspect the books,
20 records, and other documents of Defendants, including, but not limited to, electronically
21 stored information, tape recordings, and computer discs, wherever they may be situated and
22 whether they are in the person of Defendants or others, and to copy said documents,
23 information and records, either on or off Defendants' premises; and

24 21. Defendants and their employees, including any successor thereof, who receive
25 actual notice of this Order by personal service or otherwise, including facsimile or other
26 electronic transmission, shall cooperate fully with the CFTC to locate and provide to

1 representatives of the CFTC all books and records of Defendants, wherever such books and
2 records may be situated, and to locate and provide to representatives of the CFTC
3 information regarding the whereabouts of Defendants.

4 **VI.**

5 **Bond Not Required of Plaintiff**

6 **IT IS FURTHER ORDERED** that:

7 22. The CFTC is an agency of the United States of America and, accordingly, need
8 not post a bond.

9 **VII.**

10 **Hearing**

11 **IT IS FURTHER ORDERED** that:

12 23. The CFTC, Defendants, and Relief Defendants shall appear before this Court via
13 telephone on the 14th day of April, 2009, at 3:30 p.m. (Pacific Time), before the Honorable
14 Philip Pro, presiding at the United States Courthouse for the District of Nevada at Las
15 Vegas for a preliminary status conference regarding this matter. Counsel and parties
16 representing themselves shall contact Courtroom Deputy Donna Andrews at 702-464-5426
17 to coordinate their participation in this telephonic hearing.

18 **VIII.**

19 **Service**

20 **IT IS FURTHER ORDERED** that:

21 24. Copies of this Order may be served by any means, including facsimile
22 transmission, upon any entity or person that may have possession, custody, or control of any
23 documents or Defendants' Assets that may be subject to any provision of this Order, and,
24 additionally, that Jeff Le Riche, Jennifer J. Chapin, Tamera Goodman, Jo Mettenburg, and
25 Rick Glaser (among other representatives of the CFTC, including but not limited to private
26 process servers), are specially appointed by the Court to effect service. Further, service of

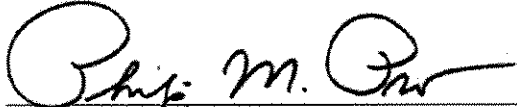
1 the Summons, Complaint, or other process may be effected by any CFTC representative,
2 any private process server, any U.S. Marshal or deputy U.S. Marshal, or in accordance with
3 FRCP 4.

4 **IX.**

5 **Force and Effect**

6 **IT IS FURTHER ORDERED** that this Order shall remain in full force and effect
7 until further order of this Court or until the Order otherwise expires pursuant to the Federal
8 Rules of Civil Procedure or other applicable rule or statute, and that this Court retains
9 jurisdiction of this matter for all purposes.

10 **IT IS SO ORDERED**, at Las Vegas, Nevada, on the 9th day of April, 2009, at
11 7:45 a.m. (Pacific Time).

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13 Philip M. Pro¹
14 United States District Judge

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¹ The Honorable Philip M. Pro, United States District Judge for the District of Nevada,
sitting by designation.