

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

U.S. Commodity Futures Trading  
Commission,

Plaintiff,

v.

Anthony A. Demasi and Tsunami Capital,  
LLC,

Defendants.

No. 07 CIV

**07C 2256**

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U.S. DISTRICT COURT

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND FOR  
CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT

JUDGE SETTLEMAN  
MAGISTRATE JUDGE COLE

I. SUMMARY

1. From at least December 2004 to the present (“the relevant time”), Anthony Demasi (“Demasi”), individually and as the controlling person of Tsunami Capital, LLC (“Tsunami Capital”), solicited and accepted at least \$300,000 from at least three individuals who invested in early 2005 for the purpose of trading financial futures.

2. Demasi represented to prospective and actual pool participants that Tsunami Capital operated a commodity pool, structured as Tsunami Lakeshore Integrated Fund (“Tsunami Lakeshore”), which traded financial futures on behalf of pool participants.

3. Demasi convinced at least one prospective pool participant to invest by providing him with a false track record showing that Tsunami Lakeshore was profitable in all but two months during 2003 and 2004 and had its highest monthly return of 26.85% in April 2003. In reality, Tsunami Lakeshore did not have an active account in April 2003, lost money every month that it traded in 2003, and did not trade at all in 2004.

4. Demasi and Tsunami Capital also distributed false statements to at least two pool participants throughout 2005 showing that they were earning substantial profits when the trading accounts in the names of Tsunami Capital and Tsunami Lakeshore were overall unprofitable.

5. By making deceptive and misleading statements to pool participants and prospective pool participants regarding profit potential and risk of loss, Defendants cheated, defrauded and deceived pool participants and prospective pool participants, in violation of Sections 4b(a)(2)(i) and (iii), and 4o(1) of the Commodity Exchange Act, as amended (“Act,” 7 U.S.C. §§ 6b(a)(2)(i) and (iii), and 6o(1) (2000).

6. Defendants also cheated, defrauded or deceived, or attempted to cheat, defraud or deceive other persons by knowingly issuing false statements and a false track record to at least one pool participant, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii).

7. Demasi’s violations of Sections 4b(a)(2)(i), (ii) and (iii), and 4o(1) of the Act were done within the scope of Demasi’s employment with Tsunami Capital and, therefore, Tsunami Capital is liable for those violations, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2 (2000).

8. Demasi was a controlling person of Tsunami Capital. As such, Demasi is liable for Tsunami Capital’s violations of Sections 4b(a)(2) and 4o(1), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2000).

9. Accordingly, the Commodity Futures Trading Commission (“CFTC”) brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2000), to enjoin Defendants’ unlawful acts and practices and to compel their compliance with the Act. In addition, the CFTC seeks restitution, disgorgement, civil monetary penalties and such other equitable relief as this Court may deem necessary or appropriate.

## II. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2000), which provides that whenever it shall appear to the CFTC that any 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 promulgated thereunder, the CFTC may bring an action in the proper District Court of the United States against such person to enjoin such practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2000), because the Defendants reside in this District and the acts and practices in violation of the Order have occurred within this District.

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

## III. THE PARTIES

13. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged with administering and enforcing the Act, 7 U.S.C. §§ 1 *et seq.* (2000), and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2006).

14. Defendant **Tsunami Capital, LLC**, is an Illinois limited liability company, established in 2002. Its principal place of business is 455 North Cityfront Plaza Drive, #3110, Chicago. Tsunami Capital was registered with the Commission as a commodity pool operator (“CPO”) and commodity trading advisor (“CTA”) from April 2003 to July 2005, when it

withdrew its registration. Tsunami Capital is not currently registered with the CFTC in any capacity. Demasi is the principal and managing member of the company.

15. Defendant **Anthony A. Demasi** is the principal and managing member of Tsunami Capital. He currently resides in Chicago, IL and is a licensed attorney. Demasi was listed as a principal of Tsunami Capital from May 2003 to July 2005. Demasi is not currently registered with the CFTC in any capacity.

#### **IV. FACTUAL BACKGROUND**

##### **A. Statutory Background**

16. Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2000), defines a CPO as any person engaged in the 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.

##### **B. Tsunami Capital's and Tsunami Lakeshore's Trading Accounts**

17. From October 2002 to September 2006, Defendants opened and maintained six commodity futures accounts at Man Financial Inc. ("Man"), a registered futures commission merchant ("FCM"), four in the name of Tsunami Capital and two in the name of Tsunami Lakeshore.

18. Defendants funded only four of the six accounts at Man; three Tsunami Capital accounts and one Tsunami Lakeshore account. These funded accounts traded financial futures, such as the S&P 500, NASDAQ 100, Dow Jones Industrials, NYSE composite, as well as US Treasury Bonds, and Eurodollars.

19. A total of \$291,425 was pooled and deposited into the one funded Tsunami Lakeshore account. The account was opened in June 2003 and by December 2003 all the funds were lost trading. The account closed in January 2005.

20. A total of \$1,939,000 was deposited into the three funded Tsunami Capital accounts between October 2002 and September 2006. By September 2006, \$1,318,459 had been withdrawn and \$620,542 had been lost trading.

21. The Tsunami Capital and Tsunami Lakeshore accounts collectively lost money in 22 of the 29 months they were active.

### **C. Solicitation Fraud**

#### **1. Tsunami Capital and Demasi Provided Pool Participants and Prospective Pool Participants With False Statements and a False Track Record.**

22. Demasi solicited Brett Simons ("Simons") to invest in Tsunami Lakeshore in December 2004.

23. At that time, Demasi told Simons that Tsunami Capital operated Tsunami Lakeshore, and that Tsunami Lakeshore was a commodity pool trading commodity futures with six million dollars invested, with a minimum investment of \$50,000.

24. Contrary to Demasi's representations, however, in December 2004 Tsunami Lakeshore had a deficit of \$4,425 in its trading accounts and none of the Tsunami Capital accounts were open or active.

25. In January 2005, Demasi provided Simons with a document titled "Confidential Private Placement Memorandum Tsunami Lakeshore Integrated Fund, LLC," stating that Tsunami Lakeshore's managing member and commodity pool operator is Tsunami Capital and that Demasi is the principal of Tsunami Capital. It also stated that the pool would use Man and Refco, Inc. for clearing its trades.

26. In an attempt to get Simons to invest, Demasi also gave Simons a profit and loss spreadsheet on Tsunami Capital letterhead. The spreadsheet falsely claimed that Tsunami Lakeshore's trading was profitable in all but two months in 2003 and 2004, with rates of return as high as 26.85% in April 2003 and 22.21% in May 2003.

27. Defendants had one other active trading account in 2003, but it was carried at Man in the name Tsunami Capital. It was opened in October 2002, lost money trading every month except for February 2003, and closed in June 2003 with a total loss of \$229,834.

28. As a result of the false profits represented in the profit and loss spreadsheet Demasi gave to Simons, in January 2005 Simons invested \$50,000 with Tsunami Capital for the purpose of trading in the Tsunami Lakeshore commodity pool.

29. Simons invested an additional \$100,000 in March 2005 as a result of Demasi's verbal representations that his previous \$50,000 investment was profitable.

30. Simons received his first quarterly statement in April 2005 on Tsunami Capital letterhead showing that he had profited 17%, when in fact, the Tsunami Lakeshore account was inactive and had carried a debit balance of -\$4,425 since January 2004 and had been closed in January 2005 and the Tsunami Capital accounts had only profited 3% during that quarter.

31. The quarterly statements that Simons received from Demasi for calendar year 2005 and the first quarter of 2006 all reflected that Simons' investments were earning profits. However, the Tsunami Lakeshore trading account was closed in January 2005, and the Tsunami Capital trading accounts, if even part of the pool, sustained losses or were less profitable than represented in five of the six quarterly statements Simons received.

32. Demasi told Simons that 30 to 35 pool participants had invested with Tsunami Capital for the purpose of trading in the Tsunami Lakeshore pool.

33. At least two others, did, in fact, invest in Tsunami Lakeshore. Jay Deutsch (“Deutsch”) invested \$50,000 in April 2005 and Mike Budicak (“Budicak”) invested \$100,000 in early 2005, after Demasi had represented to them that Tsunami Lakeshore had been profitable.

34. Deutsch’s fourth quarter 2005 statement showed that he had profited 7.71%, but the actual return for the Tsunami Capital trading accounts that quarter was -46% and the Tsunami Lakeshore trading account had been closed in January 2005.

35. Simons did not receive a statement for the quarter ending December 2005. When he asked Demasi and others at Tsunami Capital about the status of his investment, he was simply told “it’s up” without any further explanation.

## **2. Pool Participants Have Had Difficulty Withdrawing Their Funds**

36. At Deutch’s request, on January 3, 2006, Simons requested that Demasi refund Deutsch’s balance, \$63,384. Although Demasi advised Simons that Deutsch’s funds were forthcoming, they were not returned until February 2006.

37. Also around this time, Simons requested that Demasi return \$200,000 that Simons had invested in another Tsunami Capital and Demasi business venture, Sugartooth Entertainment, LLC (“Sugartooth”), for the purpose of opening a nightclub in Chicago.

38. On information and belief, this \$200,000 investment in Sugartooth was commingled with funds intended for investment in the Tsunami Lakeshore commodity pool.

39. In response to Simons’ request, Demasi tried to persuade Simons not to withdraw his funds from Sugartooth. When Simons continued to request that Demasi return his funds, Demasi falsely promised Simons that the funds were forthcoming, but failed to deliver them.

40. In June 2006, Simons requested return of his principal and interest reported on his Tsunami Lakeshore statements, which then totaled \$294,515. Demasi tried to persuade Simons

not to withdraw his funds. When Simons continued to request the return of his funds, Demasi stalled, giving various excuses why he could not yet return Simon's funds.

41. In August 2006, Simons hired an attorney who sent Tsunami Capital and Sugartooth demand letters requesting return of his principal and interest as reported on his last statement in June 2006 for the Tsunami Lakeshore fund totaling \$294,515, and his \$200,000 investment in Sugartooth.

42. In response to the demand letters, in September 2006, Demasi sent Simons two checks for \$100,000. Both checks bounced.

43. Finally, Demasi repaid Simons the entire amount plus an additional \$1,485 in interest on the Sugartooth investment in various installments in late September, October, and November 2006.

44. Budicak requested return of his balance in December 2006, and was told it would be returned in January 2007. On information and belief, to date, Budicak has not received his funds.

#### **D. Demasi is a Controlling Person of Tsunami Capital**

45. At all relevant times, Demasi has been the sole principal and managing member of Tsunami Capital.

46. Demasi exercised control over the day-to-day business operations of Tsunami Capital and Tsunami Lakeshore.

47. On information and belief, Demasi hired and supervised Tsunami Capital's employees.



48. Demasi solicited prospective pool participants, and is the signatory on Tsunami Capital and Tsunami Lakeshore's account agreements with Man, and the Tsunami Lakeshore and Tsunami Capital bank accounts at New Century Bank.

49. Demasi knowingly induced Tsunami Capital's violations by personally participating in the fraud by knowingly misrepresenting profit potential, risk of loss, and trading profits to prospective and actual pool participants.

50. Demasi also knowingly distributed a false track record to at least one pool participant and false statements to at least two others, and failed to return pool participants' funds when requested, including issuing bad checks to at least one pool participant.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

**COUNT ONE**

**VIOLATIONS OF SECTIONS 4b(a)(2)(i) AND (iii) OF THE ACT:  
FRAUD BY MISREPRESENTATION**

51. The allegations set forth in paragraphs 1 through 50 are re-alleged and incorporated by reference.

52. Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully deceive or attempt to deceive by any means whatsoever other persons 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 such 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.

53. Beginning in at least December 2004 and continuing through the present, Demasi and Tsunami Capital willfully violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), among other things, by: (1) soliciting investments through fraudulent misrepresentations about Tsunami Lakeshore's past performance results; (2) misrepresenting to at least one pool participant that Tsunami Lakeshore was averaging 40% to 50% annual returns when it was either losing money or not trading; and (3) creating and delivering Tsunami Lakeshore's statements that falsely reported the pool's trading performance and the pool participant's investment value.

54. The actions and omissions of Demasi, as described in this Count One, were done within the scope of his employment with Tsunami Capital and, therefore, Tsunami Capital is liable for his violations of Sections 4b(a)(2)(i) and (iii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2.

55. During the relevant time, Demasi directly and indirectly controlled Tsunami Capital and its employees, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count I. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Demasi is liable for the violations described in this Count I to the same extent as Tsunami Capital.

56. Each material misrepresentation or omission from at least December 2004 to the present, including but 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.

## COUNT TWO

### **VIOLATIONS OF SECTION 4b(a)(2)(ii) OF THE ACT: FRAUD BY MAKING FALSE STATEMENTS**

57. The allegations set forth in paragraphs 1 through 50 are re-alleged and incorporated herein.

58. Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii), makes it unlawful for any person to willfully make or cause to be made to other persons false reports or statements, or willfully to enter or cause to be entered for other persons false records 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 such 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.

59. Demasi and Tsunami Capital willfully violated Section 4b(a)(2)(ii) of the Act by, among other things, making or causing to be made false reports and false statements issued or communicated to at least one pool participant who invested money with Demasi and Tsunami Capital in the Tsunami Lakeshore pool to trade commodity futures contracts.

60. The actions and omissions of Demasi, as described in this Count II, were done within the scope of his employment with Tsunami Capital and, therefore, Tsunami Capital is liable for his violations of Sections 4b(a)(2)(ii) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2.

61. During the relevant time, Demasi directly and indirectly controlled Tsunami Capital and its employees, and did not act in good faith or knowingly induced, directly or

indirectly, the acts constituting the violations described in this Count II. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Demasi is liable for the violations described in this Count II to the same extent as Tsunami Capital.

62. 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 4b(a)(2)(ii) of the Act.

### **COUNT THREE**

#### **VIOLATIONS OF SECTION 4o(1) OF THE ACT: FRAUD BY COMMODITY POOL OPERATORS**

63. The allegations set forth in paragraphs 1 through 50 are re-alleged and incorporated herein.

64. Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B), prohibit any CPO and any AP of a CPO from directly or indirectly employing any device, scheme or artifice to defraud any client, participant or prospective client or participant, or engaging in transactions, practices or a course of business which operate as a fraud or deceit upon any client or participant or prospective client or participant by using the mails or other means or instrumentalities of interstate commerce.

65. Beginning in or about December 2004 and continuing through the present, Demasi, while acting as an AP of a CPO, and Tsunami Capital, while acting as a CPO, violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that they have employed or are employing, schemes or artifices to defraud pool participants or prospective pool participants or have engaged or are engaging in transactions, practices or a course of business which operate and operated as a fraud or deceit upon pool participants or prospective pool participants by using the mails or other means or instrumentalities of interstate commerce. The fraudulent acts included, but are not

limited to the following: (1) soliciting investments through fraudulent misrepresentations about Tsunami Lakeshore's past performance results; (2) misrepresenting to at least one pool participant that Tsunami Lakeshore was averaging 40% to 50% annual returns when it was either losing money or not trading; and (3) creating and delivering Tsunami Lakeshore's statements that falsely reported the pool's trading performance and the pool participant's investment value.

66. The actions and omissions of Demasi, as described in this Count III, were done within the scope of his employment with Tsunami Capital and, therefore, Tsunami Capital is liable for his violations of Sections 4o(1) of the Act, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2.

67. During the relevant time, Demasi directly and indirectly controlled Tsunami Capital and its employees, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count III. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Demasi is liable for the violations described in this Count III to the same extent as Tsunami Capital.

68. Each material misrepresentation or omission made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4o(1) of the Act.

## **VI. RELIEF REQUESTED**

WHEREFORE, the CFTC respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2000), and pursuant to its own equitable powers, enter:

A. An order finding that Defendants violated Sections 4b(a)(2)(i), (ii), and (iii), and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii), and 6o(1) (2000);

B. Enter an *ex parte* statutory restraining order and an order of preliminary injunction pursuant to Section 6c(a) of the Act restraining Defendants and all persons or entities insofar as they are acting in the capacity of their 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. 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 wherever located;
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 the Defendants wherever located, including all such records concerning Defendant's business operations;

C. Enter an *ex parte* statutory restraining order and an order of preliminary injunction 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, withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, 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 of, or in the name of Defendants.

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

1. Engaging in conduct in violation of Sections 4b(a)(2)(i), (ii) and (iii), and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i), (ii) and (iii), and 6o(1) (2000);
2. Engaging in, controlling, or directing the trading of any commodity futures or options accounts, on Defendants' own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise.

E. Enter an order directing that Defendants make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds Defendants received from and paid to pool participants and other persons in connection with commodity futures and options transactions or purported commodity futures and options transactions, including the names, mailing addresses, email addresses and telephone numbers of any such persons from whom they received such funds from April 3, 2003 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from pool participants, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from April 3, 2003 to and including the date of such accounting;

F. Enter an order requiring Defendants immediately to identify and provide an accounting for all assets and property that they currently maintain outside the United States,

including, but not limited to, all funds on deposit in any financial institution, futures commission merchant, bank, or savings and loan accounts held by, under the control of, or in the name of Demasi, Tsunami Lakeshore and/or Tsunami Capital, whether jointly or otherwise, and requiring them to repatriate all funds held in such accounts by paying them to the Clerk of the Court, or as otherwise ordered by the Court, for further disposition in this case.

G. Enter an order requiring Defendants to disgorge to any officer appointed or directed by the Court or directly to 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 that constitute violations of the Act as described herein, including pre-judgment interest;

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

I. Enter an order requiring Defendants to pay civil monetary penalties under the Act, 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, Regulations, and Order, or (2) a penalty of \$120,000 for each violation committed prior to October 23, 2004 or \$130,000 for each violation committed on or after October 23, 2004;

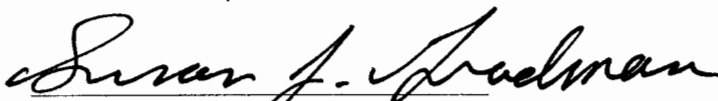
J. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and



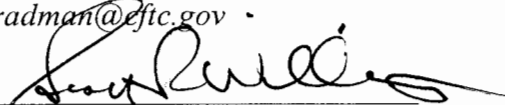
K. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: April 25, 2007

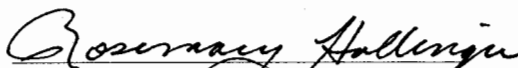
Respectfully Submitted,



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