

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

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U.S. COMMODITY FUTURES TRADING	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	CASE NO. _____
v.	)	
	)	
	)	
GROWTH CAPITAL MANAGEMENT	)	
LLC, ROBERT MIHAILOVICH, SR. AND	)	
ROBERT MIHAILOVICH, JR.,	)	
	)	
Defendants.	)	
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**COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY  
PENALTIES, AND OTHER EQUITABLE RELIEF**

Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) alleges as follows:

**I. SUMMARY**

1. Commencing in at least June 2008 and continuing through the present (the “relevant period”), Defendants Growth Capital Management LLC (“GCM”), a registered Commodity Trading Advisor (“CTA”) and Commodity Pool Operator (“CPO”), and Robert Mihailovich, Sr. (“Mihailovich, Sr.”) fraudulently solicited over \$30 million from approximately 93 customers to open individual managed accounts and trade on-exchange commodity futures and off-exchange foreign currency (“forex”) on a managed or leveraged basis pursuant to an

electronic trading software program and powers of attorney granted to GCM and Mihailovich, Sr. In their solicitations, GCM and Mihailovich, Sr. made false and misleading material claims and failed to disclose material facts, including but not limited to the following: (1) falsely claiming that Mihailovich, Sr. had expertise and a successful track record trading commodity futures and forex; (2) misrepresenting and failing to disclose fully the risk of loss in trading commodity futures and forex; (3) falsely claiming GCM and Mihailovich, Sr. never had a losing trade; (4) falsely claiming that only a certain percentage of a customer's account would be at risk at any one time; (5) misrepresenting that the trading being performed by the electronic trading system would be transparent to customers at all times; and (6) misrepresenting and failing to disclose Mihailovich, Sr.'s prior criminal conviction for mail fraud and his related prison time.

2. Contrary to their claims of expertise, success, minimal to no risk, and never having a losing trade, GCM's and Mihailovich Sr.'s trading on behalf of customers resulted in overall net losses.

3. Defendant Robert Mihailovich, Jr. ("Mihailovich, Jr."), the listed principal, president and registered Associated Person ("AP") of GCM, failed to disclose in GCM's regulatory filings required by Commission Regulations ("Regulations") that Mihailovich, Sr. was a principal of GCM.

4. By their respective fraudulent acts, Defendants GCM and Mihailovich, Sr. violated Sections 4b(a)(1)(A) and (C) and 4b(a)(2)(A) and (C) of the Commodity Exchange Act ("Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (subtitled "CFTC Reauthorization Act of 2008" ("CRA")), §§ 13101-13204, 122 Stat.

1651 (enacted June 18, 2008),, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C), and Section 4o(1) of the Act, 7 U.S.C. 6o(1).

5. GCM, through Mihailovich, Jr., failed to disclose in required filings with the Commission through the National Futures Association (“NFA”) pursuant to Regulation 3.10(a)(2) that Mihailovich, Sr. is a principal of GCM, and thereby GCM, aided and abetted by Mihailovich, Jr., filed false reports to the Commission in violation of Sections 6(c) and 9(a)(3) of the Act, 7 U.S.C. §§ 6k(1), 9, 15 and 13(a)(3) (2006), and Regulation 3.10(a)(2), 17 C.F.R. § 3.10(a)(2) (2010).

6. In soliciting prospective GCM managed account customers for commodity futures trading, or supervising the solicitation activities of others, Mihailovich, Sr. was required to be registered as an AP of GCM. Mihailovich, Sr. was not registered as an AP of GCM in violation of Section 4k(3) of the Act. By permitting Mihailovich, Sr. to engage in activities which required him to be registered with the Commission as an AP while it knew or should have known that Mihailovich, Sr. was not registered as an AP, GCM violated Section 4k(3) of the Act.

7. In advising and directing the trading of GCM customers’ individual commodity futures trading accounts for compensation prior to and after the formation of GCM, Mihailovich, Sr. acted as a CTA without being registered as required in violation of Section 4m(1) of the Act.

8. Mihailovich, Sr.’s and Mihailovich, Jr.’s acts, failures and omissions in violation of the Act and Regulations were done within the scope of their employment, agency or office with GCM and therefore, GCM is liable for those acts, failures and omissions in violation of the Act and Regulations, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010).

9. Mihailovich, Sr. controlled the day-to-day operations of GCM, solicited GCM customers for himself and on behalf of GCM, and traded commodity futures and forex on behalf of customers. Mihailovich, Sr. is not registered as an AP of GCM or as a CTA. As a controlling person of GCM and having knowingly induced the violative acts or failed to act in good faith, Mihailovich, Sr. is liable for GCM's violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13b (2006).

10. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and Regulations and to further enjoin Defendants from engaging in any commodity-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

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

## **II. JURISDICTION AND VENUE**

12. Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), 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 the Act or any rule, regulation, or order thereunder.

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

14. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants transacted business in the Northern District of Texas and certain of the transactions, acts, practices, and courses of business alleged occurred, are occurring, and/or are about to occur within this District.

### **III. PARTIES**

15. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), as amended by the CRA, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010). The Commission maintains its principal office at Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

16. **Growth Capital Management LLC** is a Texas Limited Liability Company formed on October 14, 2008, with its principal place of business at 6218 New Forest Drive, Rockwall, Texas 75087. GCM has been registered with the Commission as a CTA since September 2008 and as a CPO since October 2008. GCM is not a financial institution, registered broker dealer (or their associated person), insurance company, bank holding company, or investment bank holding company. Upon information and belief, **Growth Capital Management Corp.** (“GCMC”) is the unincorporated predecessor entity of GCM and is the doing business as (“dba”) name utilized by Mihailovich, Sr. prior to the formation of GCM. GCMC was also used as the name for the website utilized by Mihailovich, Sr. to solicit

prospective customers. Based upon information and belief, GCMC and GCM are interchangeable and are alter egos of each other.

17. **Robert Mihailovich, Sr.** resides in Rockwall, Texas and is an undisclosed principal of GCM. Mihailovich, Sr. has never been registered with the CFTC. In 2005, Mihailovich, Sr. pleaded guilty in the United States District Court, Northern District of Texas, Case Number 3:05-CR-067-N (01) to charges of mail fraud and aiding and abetting mail fraud, violations of 18 U.S.C. §§ 1341 & 2, arising out of a scheme involving fictitious contract employees of Mihailovich, Sr.'s employer who were created by Mihailovich, Sr. and for whom Mihailovich, Sr. collected payments in the forms of wages paid to the fictitious contract employees. Mihailovich, Sr. was sentenced to serve, and in fact served, 21 months in federal prison and was placed on supervised release for three years after his release from prison on June 27, 2007. He was also ordered to pay restitution in the amount of \$197,445.12. Mihailovich, Sr. has paid the restitution ordered by the court.

18. **Robert Mihailovich, Jr.** resides in Rockwall, Texas. According to the records of the Texas Secretary of State, Mihailovich, Jr. is the purported president of GCM. Mihailovich, Jr. has been registered with the Commission as an AP of GCM since September 2008 and has identified himself in filings with the Commission and the NFA as the only principal of GCM. He is the son of Mihailovich, Sr. During the relevant period, Mihailovich, Jr. was employed full time with another company which has no relation to GCM.

#### IV. FACTS

##### A. Mihailovich, Sr.'s Fraudulent Solicitation of Customers to Trade Futures and Forex

19. Subsequent to his release from prison, Mihailovich, Sr. formed GCM on or about October 14, 2008 with Mihailovich, Jr. as its listed president. Mihailovich, Sr. formed GCM to engage in the solicitation of customers to open managed individual accounts to trade on-exchange commodity futures and off-exchange forex on a managed or leveraged basis. Prior to and after the formation of GCM, Mihailovich, Sr. utilized the dba GCMC to solicit prospective customers through marketing materials and a website.

20. From June 2008 until the registration of GCM with the Commission in September 2008, Mihailovich, Sr. solicited customers personally and through his dba GCMC. Once GCM was registered with the Commission, Mihailovich, Sr. transitioned to mainly using GCM instead of GCMC. However, GCMC references remained in some of his marketing materials.

21. In regulatory filings, specifically Forms 7R and 8R required to be filed with the Commission through the NFA, GCM, through Mihailovich, Jr. identifies Mihailovich, Jr. as the president and principal of GCM. There was no disclosure in GCM's filings concerning Mihailovich, Sr. and/or his involvement with GCM.

22. However, Mihailovich, Sr. directed the day-to-day business of GCM. Mihailovich, Sr. solicited most, if not all, managed account customers to trade commodity futures and forex.

23. Customers of GCM dealt mainly with Mihailovich, Sr. with regards to the trading and setting up of their accounts. Many of GCM's customers had no contact with Mihailovich, Jr., the purported president and principal of GCM. Customers generally believed that Mihailovich, Sr. operated GCM and traded their accounts utilizing the GCM electronic trading system.

24. At the time they were solicited and while trading with GCM, most, if not all of, the customers did not know that Mihailovich, Sr. was a felon convicted of a federal mail fraud charge.

25. GCM, through Mihailovich, Sr. and third party marketers, solicited prospective customers to open commodity futures and forex trading accounts utilizing the GCM electronic trading system through print ads in trade journals and through marketing and due diligence materials provided directly to prospective customers. GCM also used a website to solicit customers.

26. GCM, through Mihailovich, Sr., also solicited prospective customers through webinars, or Internet presentations, which were presented every Saturday morning. In these webinars, Mihailovich, Sr. presented the GCM electronic trading system by employing graphs that purportedly showed trading in live commodity futures accounts and forex accounts. Mihailovich, Sr. claimed that his GCM electronic trading system virtually guaranteed substantial profits and minimized the risk of loss trading commodity futures and forex. His recurring theme and reassurance was that trading using GCM's electronic trading system was protected at all times from loss.

27. GCM and Mihailovich, Sr. also solicited prospective customers through the use of the former GCMC website. The GCMC website is registered to "Robert Mihailovich" and lists as its address Mihailovich, Sr.'s home address. The website has been removed from the Internet but archived versions can still be accessed. The website address was [www.growthcapitalmanagementcorp.com](http://www.growthcapitalmanagementcorp.com).



28. The GCMC website made material misrepresentations and omissions about the profit potential and minimal risk of loss if customers opened an account to be traded with the GCM electronic trading system. For example, the website states that a GCM account would have the highest transparency, i.e., a customer would be able to track their account in real time, face virtually negligible risk of loss and experience profits no matter what the market conditions. During an audit of GCM by the NFA in 2009, Mihailovich, Jr. and Mihailovich, Sr. admitted that GCM maintained the GCMC website.

29. Once a customer decided to open a commodity futures trading account or forex account to be traded utilizing the GCM electronic trading system, a GCM representative, normally Mihailovich, Sr., instructed the customer to open a discretionary account at a Futures Commission Merchant ("FCM") ostensibly approved by GCM. Customers understood that GCM approved certain FCMs because the FCMs allegedly had trading systems compatible with the signals from the GCM electronic trading system.

30. After opening individual trading accounts in their names at a FCM, the customers granted GCM, usually Mihailovich, Sr., the authority to trade the account on the customer's behalf, by executing a power of attorney in favor of GCM and Mihailovich, Sr. as part of the FCM's account opening documents.

31. At least certain, if not all, of GCM's customers were individuals who each had total assets of less than \$5 million.

32. The GCM electronic trading system is believed to function via a remote signal system. The trading software purportedly sent a signal to the FCM's system that resulted in the FCM placing a trade for the customer's account. Mihailovich, Sr. and GCM had the ability for

some, if not all, of the customer accounts to override the GCM electronic trading system and place trades manually in customer accounts.

33. GCM, through Mihailovich, Sr., traded on-exchange futures and/or off-exchange forex on a leveraged or margined basis on behalf of customers in the individual managed accounts at the FCMs. The forex transactions offered and/or conducted by GCM and Mihailovich, Sr. neither resulted in delivery within two days or created an enforceable obligation to deliver between a buyer and a seller that had the ability to deliver or accept delivery in connection with their lines of business. Rather, the forex contracts offered or transacted were to and did remain open from day to day and ultimately were able to be offset without anyone making or taking delivery or facing an obligation to do so.

34. GCM received commissions from the FCMs of 25 to 50 percent of the profits generated in customer accounts.

35. GCM's customers typically traded either forex or S&P E-mini stock index futures in their accounts. Generally, to trade forex, a customer would have to have a minimum amount of \$50,000.00 to \$100,000.00 as an initial investment. To trade S&P E-mini stock index futures, a customer had to have a minimum amount of \$300,000.00 to \$500,000.00 as an initial investment. These amounts varied by customer.

36. The customers' accounts were traded mainly through the use of the electronic trading system by GCM; however, one customer reported that Mihailovich, Sr. manually traded his account by using a "mass sub-algorithm" to gain extra profits.

**B. Misrepresentations Exaggerating the Likelihood of Profit**

37. During the relevant period, Mihailovich, Sr. and GCM, through Mihailovich, Sr., the GCM website and other GCM agents, commonly misrepresented the likelihood of customers profiting from the use of GCM's electronic trading system to trade customers' commodity futures and forex accounts. For example, the GCM website made the follow misrepresentations that:

- a. "GCM would outperform any stock portfolio; any public mutual fund; any hedge fund; any commodity pool; and any private investment;"
- b. All "GCM managed accounts would significantly grow real cash income in any market climate or environment;"
- c. Accounts with GCM "would *never* be negatively affected by uncertainty or deteriorating and volatile market conditions" [emphasis supplied]; and
- d. "income grows at significant high yields in bull markets, bear markets and sideways markets."

38. GCM and Mihailovich, Sr. further commonly misrepresented the profit potential of an investment with GCM and Mihailovich, Sr. during their webinar presentations. During these presentations, Mihailovich, Sr. stated:

- a. that an investment with GCM would "return one hundred percent of intraday market movement to clients of GCM;"
- b. that "it does not matter what the markets do during the trading day for the computerized trading software to make an account profitable;" and
- c. that an "investment of \$1,000,000.00 would get you a \$1,000,000.00" [in profit].

39. Some prospective customers solicited by GCM and Mihailovich, Sr. received GCM marketing materials, termed as “due diligence” binders, which had many of the same misrepresentations and omissions made by the website and the webinars. These other marketing materials contained additional false and misleading statements that Defendants had never closed a trade at a loss since the year 2000, and that Mihailovich, Sr. had over twenty years of continuous trading experience.

40. GCM and Mihailovich, Sr. knew the falsity of, or acted with reckless disregard for the truth of, the above alleged material misrepresentations and omissions in the solicitations of customers to trade forex and commodity futures on their behalf.

41. Customers and prospective customers relied on GCM’s and Mihailovich, Sr.’s misrepresentations and omissions in making their decisions to trade with Defendants.

**C. Misrepresenting and Failing to Disclose Federal Felony and Imprisonment**

42. Mihailovich, Sr. routinely misrepresented and failed to disclose to prospective and existing customers the fact that he pleaded guilty to a federal charge of mail fraud and aiding and abetting mail fraud in 2005, served a prison sentence and was on supervised release for three years. Most of GCM’s customers were unaware of Mihailovich, Sr.’s criminal past. To the extent customers were aware, Mihailovich, Sr. misrepresented the nature, status and disposition of the criminal charges against him.

43. When asked by a customer about his criminal history, Mihailovich, Sr. falsely informed the customer that he pleaded guilty to a charge that was “completely off the books” because the Federal Bureau of Investigation was threatening to put his family in prison.

Mihailovich, Sr. further told this customer that he had won a motion and had been let out of prison.

44. Mihailovich, Sr. pleaded guilty to an informational count of federal mail fraud in 2005, served 21 months in prison and was on a three-year period of supervised release.

Mihailovich, Sr. attempted to overturn his conviction by filing a § 2255 habeas corpus petition claiming ineffective assistance of counsel, but that petition was denied. Mihailovich, Sr. failed to disclose to prospective and current customers his past criminal conviction and subsequent imprisonment.

45. GCM and Mihailovich, Sr. knew the falsity of, or acted with reckless disregard for the truth of, the above alleged material misrepresentations and omissions in the solicitations of customers to trade forex and commodity futures on their behalf.

46. Customers and prospective customers relied on Defendant GCM and Mihailovich, Sr.'s misrepresentations and omissions in making their decisions to trade with Defendants.

**D. Misrepresentations and Omissions Minimizing the Risk of Loss**

47. GCM's and Mihailovich Sr.'s marketing materials, website, webinars and statements routinely failed to disclose adequately the risk of loss inherent in trading commodity futures and forex. Defendants' occasional references to risk of loss (such as "results not guaranteed") were nullified when Defendants falsely represented that while losses on trading commodity futures were theoretically possible, trading commodity futures and forex using Defendants' electronic trading software was virtually risk free. For example, during the relevant time period:

- a. Mihailovich, Sr. stated during a webinar and directly to customers that no more than one percent (some customers were told five percent) of a client's funds would ever be at risk during the trading period;
- b. Defendants' website, webinars, marketing materials and statements made directly to customers represented that an investment with Defendants was "completely transparent in every respect" as a customer could track the trading in their accounts in real time and act to stop trading at anytime if they believed there was a potential problem or potential loss;
- c. Defendants' website stated: "All income derivatives are liquidated at a profit – never a capital loss – in a properly funded hedged account;"
- d. Defendants' marketing materials stated that their software "has never closed a managed position at a loss. Not on Forex... Not on Bond positions... Not on the S&P... Or even on the many other types – commodities, stocks and indexes – it has managed over the years;" and
- e. Defendants marketing materials also stated that "Growth Capital Individually Managed Accounts can sustain (high) incomes in a properly funded account **without risk of loss to the invested capital**" (emphasis original).

48. These representations were false and misleading because:

- a. Customers reported that often times more than the percentage of their account they understood to be at risk was actually at risk. For instance, one customer who had been told that no more than one percent of his

account would be at risk reported that in fact four to seven percent of his capital was at risk at any one time;

- b. Customers reported that they were unable to watch their account trading in real time. Customers also reported that at times Mihailovich, Sr. would trade their accounts manually and the customers would not be able to watch Mihailovich, Sr. make those trades. Customers also reported that the trading shown in real time would not match what was reported in the nightly statements from the FCM's utilized by the customers; and
- c. Despite claims to the contrary, some customers' accounts lost money while being traded by the GCM electronic trading system and overall, as alleged below, Defendants' trading on behalf of customers resulted in net losses.

49. GCM and Mihailovich, Sr. knew the falsity of, or acted with reckless disregard for the truth of, the above alleged material misrepresentations and omissions in the solicitations of customers to trade forex and commodity futures on their behalf.

50. Customers and prospective customers relied on GCM's and Mihailovich, Sr.'s misrepresentations and omissions in making their decisions to trade with Defendants.

**E. GCM's and Mihailovich, Sr.'s Performance Record**

51. GCM, through Mihailovich Sr. and others, and Mihailovich, Sr. successfully solicited approximately \$30 million from approximately 93 individuals to trade on-exchange commodity futures and off-exchange forex on a leveraged or margined basis on their behalf

through individual managed accounts. Over time, GCM customers withdrew approximately \$26 million from their accounts.

52. Despite their repeated claims concerning profit and minimization of risk, GCM's and Mihailovich, Sr.'s trading on behalf of customer seldom, if ever, generated the magnitude of profits represented by Defendants. In fact, approximately half of Defendants GCM's and Mihailovich, Sr.'s customers lost money from their investments, and overall, their trading resulted in net losses of approximately \$2.2 million in customer accounts.

53. From June 2008 through June 2009, GCM's and Mihailovich, Sr.'s trading of forex on behalf of customers resulted in overall realized losses of approximately \$711,000. GCM and Mihailovich, Sr. received approximately \$241,000 in performance and management fees related to this trading.

54. Between September 2008 and through November 2009, GCM's and Mihailovich, Sr.'s trading of S&P e-mini futures resulted in realized net losses totaling approximately \$1.5 million. GCM and Mihailovich, Sr. received approximately \$147,000 in performance and management fees related to this trading.

55. Despite these mounting losses, GCM and Mihailovich, Sr. continued to solicit new customers by highlighting the profit potential of investing with GCM using GCM's proprietary trading software, without disclosing the fact that many of their customers lost most, if not all, of their investment; that overall GCM's and Mihailovich, Sr.'s trading resulted in losses; and that Mihailovich, Sr. was a felon. Furthermore, GCM and Mihailovich, Sr. continued to generate large amounts of commissions from trading their customers' accounts.

**F. Mihailovich, Sr. is a controlling person of GCM**



56. Mihailovich, Sr. manages and controls GCM's daily operations. Mihailovich, Sr. directed the trading in the customers' accounts and conducted the webinar presentations. Mihailovich, Sr. was the main contact at GCM for customers and routinely contacted customers to help them set up their accounts or deal with problems. Customers believed that Mihailovich, Sr. was in charge of GCM because he was the main person with whom they dealt. Customers also believed that Mihailovich, Sr. was in charge of GCM because the due diligence marketing materials contained biographies of Mihailovich, Sr. only and stated that he had decades of experience trading commodity futures and forex.

57. Many customers dealt directly with Mihailovich, Sr. when they had issues with their accounts. In one instance, a customer who closed his account and revoked GCM's ability to trade his account received a direct call from Mihailovich, Sr. inquiring as to why he was terminating his relationship with GCM. It was the customer's understanding that Mihailovich, Sr. was responsible for GCM from these contacts with Mihailovich, Sr.

58. Upon information and belief, Mihailovich, Sr. produced the marketing materials, website, and webinars or directed others to produce them on his behalf.

59. Mihailovich, Sr. routinely signed his name and social security number on customer account documents as the trader of those accounts. Mihailovich, Sr. corresponded with the various FCMs to set up GCM's trading program and to conduct GCM's business with the FCMs.

60. In some instances, customers signed powers of attorney which gave Mihailovich, Sr. specifically the power to execute trades in the customers' accounts. Some of these powers of attorney listed Mihailovich, Sr.'s home address and social security number.

61. Further, when initially questioned by the NFA during an audit in early 2009, Mihailovich, Sr. answered approximately ninety percent of the questions asked by the NFA examiner concerning GCM. The NFA examiner reported that during this conference call, she asked multiple questions concerning GCM's operations in preparation for a full audit. During that conversation, Mihailovich, Sr. answered most of her questions and appeared to have the most knowledge of GCM. The NFA examiner further reported that Mihailovich, Jr., who was also on the call, did not appear to know much about GCM's business.

62. In that same audit, Mihailovich, Jr. stated that he did not have any discretionary managed futures accounts for customers. The NFA had discovered certain individual managed accounts for customers which GCM and "Robert Mihailovich" held trading authority over. When asked about these accounts by the NFA, Mihailovich, Jr. stated that he had nothing to do with those accounts and that they were his dad's accounts.

**G. GCM, Through Mihailovich, Jr., Knowingly Filed a False Statement with the Commission and Failed to Disclose that Mihailovich, Sr. was a Principal**

63. When GCM sought registration with the CFTC as a CTA it was required to file a CFTC Form 7-R disclosing the names of all of the firm's principals pursuant to Regulation 3.10(a)(2). GCM was also required to accompany its Form 7-R with Form 8-Rs for each natural person who is a principal of GCM.

64. Mihailovich, Jr. on behalf GCM executed and filed a Form 7-R with the CFTC along with a Form 8-R for Mihailovich, Jr., but did not file a Form 8-R for Mihailovich, Sr. or otherwise disclose in its application that Mihailovich, Sr. was a principal of GCM.

65. GCM, through Mihailovich, Jr., failed to file a Form 8-R or otherwise disclose that Mihailovich, Sr. was a principal despite the fact that Mihailovich, Sr. directly controlled and managed the day to day operations of GCM.

**H. Mihailovich, Jr. Aided and Abetted the Violations by GCM**

66. Mihailovich, Jr. willfully and knowingly aided and abetted the violations by GCM by failing to disclose that Mihailovich, Sr. was a principal of GCM in the required regulatory filings with the Commission through the NFA.

67. Specifically, Mihailovich, Jr. failed to file a Form 8-R for Mihailovich, Sr. with his Form 7-R as required by the Commission through the NFA.

68. Because Mihailovich, Sr. controlled the day-to-day operations of GCM, and had the ability to control the business of GCM, Mihailovich, Sr. should have been listed as a principal of GCM.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS**

**COUNT I**

**Violations of Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and(C)  
(Off-Exchange Conduct: Fraudulent Solicitation)**

69. The allegations set forth in paragraphs 1 through 68 are realleged and incorporated herein by reference.

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

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of, or with, any other person, other than on

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

Sections 4b(a)(2)(A) and(C) of the Act, as amended by the CRA, apply to GCM's and Mihailovich, Sr.'s foreign currency transactions "as if" they were a contract of sale of a commodity for future delivery. Section 2(c)(2)(C)(iv) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C)(iv).

71. As set forth above, from at least June 2008 through the present, in or in connection with forex, made, or to be made, for or on behalf of, or with, other persons, Mihailovich, Sr. and GCM cheated or defrauded or attempted to cheat or defraud customers or prospective customers and willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly (i) misrepresenting the likelihood of profit to be gained from the use of GCM's electronic trading system; (ii) misrepresenting and omitting the risk of loss of trading commodities utilizing GCM's electronic trading system; (iii) misrepresenting GCM's and Mihailovich, Sr.'s experience and trading record; (iv) falsely claiming never to have a losing trade; (v) falsely claiming that only a certain percentage of customer's funds would be at risk at any one time; (vi) misrepresenting that the trading being performed by the electronic trading system would be transparent to customers at all times; and (vii) misrepresenting and failing to disclose Mihailovich Sr.'s prior criminal conviction for mail

fraud and related prison sentence, all in violation of Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

72. GCM, by and through its agents, and Mihailovich, Sr. engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

73. Mihailovich, Sr. controlled GCM, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, GCM's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Mihailovich, Sr. is liable for GCM's violations of Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and(C).

74. The foregoing acts, misrepresentations, omissions, and failures of Mihailovich, Sr. occurred within the scope of his employment, office or agency with GCM; therefore, GCM is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010).

75. Each act of misrepresentation or omission of material facts, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A) and(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and(C).

## COUNT II

**Violations of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be  
codified at 7 U.S.C. §§ 6b(a)(1)(A) and(C)  
(On-Exchange Conduct: Fraudulent Solicitation)**

76. The allegations set forth in paragraphs 1 through 75 are realleged and incorporated herein by reference.

77. Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), make it unlawful:

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

78. As set forth above, from at least June 2008 through the present, in or in connection with commodity futures, made, or to be made, for or on behalf of, or with, other persons, Defendants Mihailovich, Sr. and GCM cheated or defrauded or attempted to cheat or defraud customers or prospective customers and willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly (i) misrepresenting the likelihood of profit to be gained from the use of GCM's electronic trading system; (ii) misrepresenting and omitting the risk of loss of trading commodities utilizing GCM's electronic trading system; (iii) misrepresenting GCM's and Mihailovich, Sr.'s experience and trading record; (iv) falsely claiming never to have a losing trade; (v) falsely claiming that only a certain percentage of customer's funds would be at risk at any one time; (vi) misrepresenting that the trading being performed by the electronic trading system would be transparent to customers at all

times; and (vii) misrepresenting and failing to disclose Mihailovich, Sr.'s prior criminal conviction for mail fraud and related prison sentence, all in violation of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C).

79. GCM, by and through its agents, and Mihailovich, Sr. engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

80. Mihailovich, Sr. controlled GCM, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, GCM's conduct alleged in this Complaint; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Mihailovich, Sr. is liable for GCM's violations of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and(C).

81. The foregoing acts, misrepresentations, omissions, and failures of Mihailovich, Sr. occurred within the scope of his employment, office or agency with GCM; therefore, GCM is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010).

82. Each act of misrepresentation or omission of material facts, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(1)(A) and(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and(C).

### **COUNT III**

**Violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006)  
(Fraud by a Commodity Trading Advisor and  
Associated Person of a Commodity Trading Advisor)**

83. The allegations set forth in paragraphs 1 through 82 are realleged and incorporated herein by reference.

84. From at least June 2008 through the present, in or in connection with forex and commodity futures, made, or to be made, for or on behalf of, or with, other persons, GCM, while acting as a CTA, and Mihailovich, Sr., while acting as an AP and CTA, violated Section 40(1) of the Act, 7 U.S.C. § 60(1) (2006), in that GCM and Mihailovich, Sr. directly or indirectly employed and is employing, a device, scheme, or artifice to defraud customers or potential customers, or has engaged and is engaging in transactions, practices or a course of business which operated as a fraud or deceit upon customers or prospective customers by, among other acts, knowingly or recklessly (i) misrepresenting the likelihood of profit to be gained from the use of GCM's electronic trading system; (ii) misrepresenting and omitting the risk of loss of trading commodities utilizing GCM's electronic trading system; (iii) misrepresenting GCM's and Mihailovich, Sr.'s experience and trading record; (iv) falsely claiming never to have a losing trade; (v) falsely claiming that only a certain percentage of customer's funds would be at risk at any one time; (vi) misrepresenting that the trading being performed by the electronic trading system would be transparent to customers at all times; and (vii) misrepresenting and failing to disclose Mihailovich, Sr.'s prior criminal conviction for mail fraud and related prison sentence.

85. GCM and Mihailovich, Sr. perpetrated the foregoing acts by use of the mails and other means or instrumentalities of interstate commerce, directly or indirectly.

86. GCM and Mihailovich, Sr. each engaged in the acts and practices herein knowingly or with reckless disregard for the truth.



87. The foregoing acts, misrepresentations, omissions, and failures of Mihailovich, Sr. occurred within the scope of his employment, office or agency with GCM; therefore, GCM is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010).

88. Mihailovich, Sr. controlled GCM, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, GCM's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Mihailovich, Sr. is liable for GCM's violations Section 4o(1) of the Act.

89. Each misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act.

#### COUNT IV

**Violations of Sections 6(c) and 9a(3) of the Act and Regulation 3.10(a)(2)  
(GCM and Mihailovich, Jr. Knowingly Filed a False CTA Application for Registration  
with the Commission and Failed to Disclose a Principal)**

90. The allegations set forth in paragraphs 1 through 89 are realleged and incorporated herein by reference.

91. Section 6(c) of the Act, 7 U.S.C § 9(c) (2006), authorizes the Commission to serve a complaint and provide for the imposition of, among other things, fines and penalties “[I]f the Commission has reason to believe that any person... has willfully made any false or misleading statement of a material fact in any... report filed with the Commission under this Act, or willfully omitted to state in any such... report any material fact which is required to be stated therein...”

92. Section 9(a)(3) of the Act, 7 U.S.C. 13(a)(1) (2006), makes it a violation for “[a]ny person knowingly to make, or cause to be made, any statement in any... report, or document required to be filed under this Act or any rule or regulation thereunder..., which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be stated therein or necessary to make the statements therein not misleading.”

93. Regulation 3.10(a)(1), 17 C.F.R. § 3.10(a)(1) (2010) requires in relevant part, that applications for registration as a CTA be filed with the CFTC through the NFA on Form 7-R. Regulation 3.10(a)(2) requires that each Form 7-R so filed be accompanied by a Form 8-R for each natural person who is a principal of the applicant. Regulation 3.1(a) includes within the definition of principal any person “having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity’s activities that are subject to regulation by the Commission.”

94. GCM and Mihailovich, Jr. violated Sections 6(c) and 9(a)(3) of the Act and Regulation 3.10(a)(2) by knowingly omitting required information from their registration forms, namely, a Form 8-R application for Mihailovich, Sr. disclosing that he had been a principal of GCM since the inception of GCM because he managed the daily operations of GCM, directed trading and marketing at GCM and has an ownership interest in GCM.

95. The actions, omissions and failures of Mihailovich, Jr. as described in this Count, were done within the scope of his employment with GCM and, therefore, GCM is liable for Mihailovich, Jr.’s acts, omissions and failures constituting violations as alleged in this Count,

pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010).

96. Mihailovich, Sr. controlled GCM, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, GCM's conduct alleged in this Count; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Mihailovich, Sr. is liable for GCM's violations of Sections 6(c) and 9a(3) of the Act, codified at 7 U.S.C. §§ 13, 9 and Regulation 3.10(a).

97. Mihailovich, Jr. has willfully aided, abetted, counseled, commanded, induced, procured, caused or acted in combination or concert with other persons in the foregoing violations of the Act and the Regulations by GCM. Mihailovich, Jr. is therefore responsible for these violations by operation of Section 13(a) of the Act, 7. U.S.C § 13c(a).

## COUNT V

### **Violations of Section 4k(3)**

#### **(Acting as an Unregistered Associated Person and Permitting an Unregistered Associated Person to Remain Associated in a Capacity Requiring Registration)**

98. The allegations set forth in paragraphs 1 through 97 are realleged and incorporated herein by reference.

99. In soliciting prospective customers for commodity futures trading on behalf of GCM and by being associated with GCM, Mihailovich, Sr. acted as an AP of GCM without the benefit of registration, in violation of Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (2006).

100. The foregoing failure of Mihailovich, Sr. to register as an AP occurred within the scope of Mihailovich, Sr.'s employment or office with GCM. GCM is therefore liable for Mihailovich, Sr.'s acts and failures in violation of Section 4k(3) of the Act, 7 U.S.C. § 6k(3)

(2006), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010).

101. GCM permitted Mihailovich, Sr. to become or remain associated with GCM when it knew or should have known that Mihailovich, Sr. was not registered with the Commission. Therefore, GCM violated Section 4k(3), 7 U.S.C. § 6k(3) (2006).

102. Mihailovich, Sr. controls GCM, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, GCM's conduct alleged in this Count; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Mihailovich, Sr. is liable for GCM's violations of Section 4k(3) of the Act, codified at 7 U.S.C. § 6k(3).

## **COUNT VI**

### **Violation of Section 4m(1) of the Act (Failure to Register as a Commodity Trading Advisor)**

103. The allegations set forth in paragraphs 1 through 102 are realleged and incorporated herein by reference.

104. Section 1a(6) of the Act, 7 C.F.R. § 1a(6) (2006), in relevant part, defines the term CTA as any person who “for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in” futures.

105. Mihailovich, Sr. was in the business of trading commodities on behalf of customers of GCM and advising investors as to the advisability of commodity futures trading. Mihailovich, Sr. further held himself out as a commodity trading advisor to the public. Mihailovich, Sr. further managed and directed the commodity futures trading on behalf of GCM

and GCM's customers for compensation or profit. By such conduct, Mihailovich, Sr. acted as a CTA.

106. Mihailovich, Sr. used the mails or instrumentalities of interstate commerce in or in connection with his business as a CTA while failing to register with the Commission as a CTA during his trading activities on behalf of customers through his dba from June 2008 until September 2008, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

107. Mihailovich, Sr. directly or indirectly, controlled GCM and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting GCM's violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1)(2006). Mihailovich, Sr. is therefore liable for these violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

## **VI. RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

a) An order finding that Defendants GCM and Mihailovich, Sr. violated Sections 4b(a)(1)(A) and (C) and Sections 4b(a)(2)(A) and(C) as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C) and 6b(a)(2)(A) and(C); that GCM and Mihailovich, Sr. violated Section 4o(1), 7 U.S.C. § 6o(1); that GCM directly, and Mihailovich, Jr. directly and through aiding and abetting GCM, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), violated Sections 9a(3) and 6(c) of the Act, 7 U.S.C. §§ 6k(1), 9, 15 and 13(a)(3) (2006), and Regulation 3.10(a)(2), 17 C.F.R. § 3.10(a)(2) (2010); that Mihailovich, Sr. and GCM violated Section 4k(3), 7 U.S.C § 6k(3) (2006); and Mihailovich, Sr. and GCM violated Section 4m(1) of the Act, 7 U.S.C. § 6m (2006);

b) An order of permanent injunction prohibiting GCM and Mihailovich, Sr. and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any defendant, including any successor thereof, from engaging, directly or indirectly:

- (i) in conduct in violation of Sections 4b(a)(2)(A) and(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and(C);
- (ii) in conduct in violation of Sections 4b(a)(1)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C);
- (iii) in conduct in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006);
- (iv) in conduct in violation of Sections 9a(3) and 6(c), 7 U.S.C. §§ 6k(1), 9, 15 and 13(a)(3) (2006), and Regulation 3.10(a)(2), 17 C.F.R. § 3.10(a)(2) (2010);
- (v) in conduct in violation of Section 4k(3), 7 U.S.C § 6k(3) and (iii) (2006);
- (vi) in conduct that violates Section 4m(1) of the Act, 7 U.S.C § 6m (2006);
- (vii) in trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);
- (viii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1)) (2010) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA, to be codified at 7

U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for any personal or proprietary account or for any account in which they have a direct or indirect interest;

- (ix) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
- (x) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- (xi) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- (xii) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010);  
and
- (xiii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)(2010)), agent or any other officer or employee of any person (as that term is defined in Section 1a(28) of the Act, 7 U.S.C. § 1a(28) (2006)) registered, exempted from registration or required to be

registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010);

c) An order of permanent injunction prohibiting Defendant Mihailovich, Jr. and any of his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any defendant, including any successor thereof, from engaging, directly or indirectly:

- (i) in conduct in violation of Sections 9a(3) and 6(c) and Regulation 3.10(a)(2), 7 U.S.C. §§ 6k(1), 9, 15 and 13(a)(3) (2006), 17 C.F.R. § 3.10(a)(2) (2010) directly and pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a);
- (ii) trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);
- (iii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1)) (2010) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for any personal or proprietary account or for any account in which he has a direct or indirect interest;
- (iv) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on his behalf;



- (v) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- (vi) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
- (vii) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)(2010)), agent or any other officer or employee of any person (as that term is defined in Section 1a(28) of the Act, 7 U.S.C. § 1a(28) (2006)) registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010);

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

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

f) An order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as described herein;

g) An order directing each Defendant to pay a civil monetary penalty for each violation of the Act and Regulations described herein, plus post-judgment interest, in the amount of the higher of: \$140,000 for each violation of the Act and Regulations committed on or after October 23, 2008; \$130,000 for each violation of the Act committed on or between October 23, 2004 and October 22, 2008; or triple the monetary gain to each defendant for each violation of the Act and Regulations described herein, plus post-judgment interest;

h) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

i) Such other and further relief as the Court deems proper.

Dated: July 27, 2010

Respectfully submitted by,

/s/Stephen T. Tsai

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 310 Airplane 362 Personal Injury - Med. Malpractice 610 Agriculture 422 Appeal 28 USC 158 400 State Reapportionment
120 Marine 315 Airplane Product Liability 365 Personal Injury - Product Liability 620 Other Food & Drug 423 Withdrawal 28 USC 157 410 Antitrust
130 Miller Act 320 Assault, Libel & Slander 368 Asbestos Personal Injury Product Liability 625 Drug Related Seizure of Property 21 USC 881 430 Banks and Banking
140 Negotiable Instrument 330 Federal Employers' Liability 370 Other Fraud 630 Liquor Laws 820 Copyrights 450 Commerce
150 Recovery of Overpayment & Enforcement of Judgment 340 Marine 371 Truth in Lending 640 R.R. & Truck 830 Patent 460 Deportation
151 Medicare Act 345 Marine Product Liability 380 Other Personal Property Damage 650 Airline Regs. 840 Trademark 470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (Excl. Veterans) 350 Motor Vehicle 385 Property Damage Product Liability 660 Occupational Safety/Health 861 HIA (1395ff) 480 Consumer Credit
153 Recovery of Overpayment of Veteran's Benefits 355 Motor Vehicle Product Liability 690 Other 862 Black Lung (923) 490 Cable/Sat TV
160 Stockholders' Suits 360 Other Personal Injury 710 Fair Labor Standards Act 863 DIWC/DIWW (405(g)) 810 Selective Service
190 Other Contract 441 Voting 720 Labor/Mgmt. Relations 864 SSID Title XVI 850 Securities/Commodities/Exchange
195 Contract Product Liability 442 Employment 730 Labor/Mgmt. Reporting & Disclosure Act 865 RSI (405(g)) 875 Customer Challenge 12 USC 3410
196 Franchise 443 Housing/Accommodations 740 Railway Labor Act 870 Taxes (U.S. Plaintiff or Defendant) 890 Other Statutory Actions
210 Land Condemnation 444 Welfare 790 Other Labor Litigation 871 IRS—Third Party 26 USC 7609 891 Agricultural Acts
220 Foreclosure 445 Amer. w/Disabilities - Employment 791 Empl. Ret. Inc. Security Act 892 Economic Stabilization Act
230 Rent Lease & Ejectment 446 Amer. w/Disabilities - Other 900 Appeal of Fee Determination Under Equal Access to Justice
240 Torts to Land 440 Other Civil Rights 462 Naturalization Application 463 Habeas Corpus - Alien Detainee 465 Other Immigration Actions 893 Environmental Matters
245 Tort Product Liability 510 Motions to Vacate Sentence 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 894 Energy Allocation Act
290 All Other Real Property 895 Freedom of Information Act 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S)
JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFF JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), Fed. R. Civ. P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers, or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress, or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity** Example U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, Fed. R. Civ. P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference cases that are related to this filing, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is "related" to this filing if the case: (1) involves some or all of the same parties and is based on the same or similar claim; (2) involves the same property, transaction, or event; (3) involves substantially similar issues of law and fact; and/or (4) involves the same estate in a bankruptcy appeal.

**Date and Attorney Signature.** Date and sign the civil cover sheet.