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 15 Commodity Futures Trading Commission

16 United States District Court
 17 Central District of California
 18 Southern Division

19 U.S. Commodity Futures) Case No. SA CV 08-1352-AG
 20 Trading Commission,) (RNBx)
)
 21 Plaintiff,) Consent Order Of Permanent
) Injunction, For Other
 22 v.) Equitable Relief, And For
 23) Civil Penalties

24 Paul Abad, Thirteen Thirty-)
 25 Two, Inc., and Thirteen)
 26 Thirty-Two, Inc. dba "MRTS)
 Asset Management,")
)
 27 Defendants.)
 28)

1 On December 1, 2008, Plaintiff Commodity Futures
2 Trading Commission ("Commission") filed this civil
3 enforcement action against Paul Abad, Thirteen Thirty-
4 Two, Inc. and Thirteen Thirty-Two, Inc. doing business
5 as MRTS Asset Management ("Defendants"), seeking
6 injunctive and other equitable relief, as well as
7 restitution and the imposition of civil monetary
8 penalties, for violations of the Commodity Exchange Act
9 ("Act"), as amended, 7 U.S.C. §§ 1 et seq. (2006), and
10 the Commission's Regulations ("Regulations")
11 promulgated thereunder, 17 C.F.R. §§ 1.1 et seq.
12 (2008) ("Complaint") (doc. no. 1).

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18 On December 1, 2008, pursuant to 7 U.S.C. § 13a-1,
19 this Court issued an *ex parte* statutory restraining
20 order freezing assets under the control of Defendants
21 and, among other things, prohibiting the destruction of
22 documents (doc. no. 3).

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25 On December 10, 2008, this Court issued an Order of
26 Preliminary Injunction and Other Equitable Relief,
27 which, among other things, continued the freeze of
28

1 assets under the control of Defendants and the
2 prohibition upon the destruction of documents (doc. no.
3 15).

4
5 I.

6 **CONSENTS AND AGREEMENTS**

7
8 1. To effect settlement of the matters alleged in
9 the Complaint, without a trial on the merits or any
10 further judicial proceedings, Defendants consent to the
11 entry of this "Consent Order Of Permanent Injunction,
12 For Other Equitable Relief, And For Civil Penalties"
13 ("Order").
14
15

16 2. Defendants agree that they have read this Order
17 and agree to this Order voluntarily and that no promise
18 or threat has been made by the Commission or any
19 member, officer, agent or representative thereof, or by
20 any other person, to induce consent to this Order,
21
22 other than as set forth specifically herein.
23

24 3. Defendants admit that this Court has
25 jurisdiction over them and the subject matter of this
26 Action pursuant to Section 6c of the Act, 7 U.S.C. §
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1 13a-1 (2006), which authorizes the Commission to seek
2 injunctive relief against any person whenever it shall
3 appear to the Commission that such person has engaged,
4 is engaging, or is about to engage in any Act or
5 practice constituting a violation of any provision of
6 the Act or any rule, regulation or order thereunder.
7
8

9 4. Defendants admit that venue properly lies with
10 this Court pursuant to Section 6c of the Act, 7 U.S.C.
11 §13a-1 (2006), in that certain of the acts and
12 practices alleged in the Complaint occurred in this
13 District.
14
15

16 5. In addition, Defendants waive: (a) the entry of
17 findings of fact and conclusions of law; (b) any and
18 all claims that they may possess under the Equal Access
19 to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. §
20 2412 (2006), and/or Part 148 of the Regulations, 17
21 C.F.R. §§ 148.1 *et seq.* (2009), relating to, or arising
22 from, this Action; (c) any and all claims that they may
23 possess under the Small Business Regulatory Enforcement
24 Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253,
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1 110 Stat. 847, 857-868 (1996), as amended by Pub. L.
2 No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007),
3 relating to, or arising from, this Action; (d) any
4 claim of Double Jeopardy based upon the institution of
5 this proceeding or the entry in this proceeding of any
6 order imposing a civil monetary penalty or any other
7 relief; and (e) all rights of appeal in this Action.
8
9

10 6. By consenting to the entry of this Order,
11 Defendants neither admit nor deny the allegations
12 contained in the Complaint, except as to jurisdiction
13 and venue, which they admit. However, Defendants agree
14 that the allegations of the Complaint shall be taken as
15 true and correct and be given preclusive effect,
16 without further proof, for the purpose of any
17 bankruptcy proceeding filed by, on behalf of, or
18 against Defendants or to enforce the terms of this
19 Order. Defendants also shall provide immediate notice
20 of any bankruptcy filed by, on behalf of, or against
21 them in the manner required by Part III of this Order.
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1 7. Defendants agree that they will not oppose
2 enforcement of the Order on the ground that it fails to
3 comply with Rule 65(d) of the Federal Civil Rules of
4 Civil Procedure and waives any objections based
5 thereon;
6

7
8 8. Defendants agree that neither they nor any of
9 their agents or employees under their authority or
10 control shall take any action or make any public
11 statement denying, directly or indirectly, any
12 allegation in the Complaint, or creating, or tending to
13 create the impression that the Complaint or this Order
14 is without a factual basis; provided, however, that
15 nothing in this provision shall affect Defendants' (a)
16 testimonial obligations; or (b) right to take positions
17 in other proceedings to which the Commission is not a
18 party. Defendants shall take all steps necessary to
19 ensure that all of their agents and employees under
20 their authority or control understand and comply with
21 this agreement.
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1 9. Defendants consent to the continued
2 jurisdiction of this Court for the purpose of enforcing
3 the terms and conditions of this Order and for any
4 other purposes relevant to this Action even if they now
5 or in the future reside or operate outside of this
6 jurisdiction.
7
8

9 10. The Court, being fully advised in the premises,
10 finds that there is good cause for the entry of this
11 Order and that there is no just reason for delay. The
12 Court therefore directs the entry of a permanent
13 injunction and ancillary equitable relief pursuant to
14 Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), as set
15 forth herein.
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19 **II.**

20 **ORDER OF PERMANENT INJUNCTION**

21 NOW THEREFORE, IT IS ORDERED THAT:
22

23 1. Defendants shall be permanently restrained,
24 enjoined, and prohibited from directly or indirectly
25 engaging in conduct that violates: Sections
26 4b(a) (1) (A) - (C) of the Act, as amended by the Food,
27
28

1 Conservation, and Energy Act of 2008, Pub. L. No. 110-
2 246, Title XIII (the CFTC Reauthorization Act of
3 2008 ("CRA")), § 13102, 122 Stat. 1651 (enacted June 18,
4 2008), to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C);
5 Sections 4k(2), 4m(1), and 4o(1) of the Act, 7 U.S.C. §
6 6k(2), 6m(1), 6o(1) (2006); and/or Regulations 4.20,
7 4.21, 4.22 and 4.30, 17 C.F.R. §§ 4.20, 4.21, 4.22,
8 4.30 (2009).

9
10
11
12 2. Defendants are permanently restrained,
13 enjoined, and prohibited from engaging, directly or
14 indirectly, in:

15
16 a. trading on or subject to the rules of any
17 registered entity (as that term is defined in
18 Section 1a(29) of the Act, 7 U.S.C. § 1a(29)
19 (2006));

20
21 b. entering into any transactions involving
22 commodity futures, options on commodity futures,
23 commodity options (as that term is defined in
24 Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1)
25 (2009)) ("commodity options"), and/or foreign
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1 currency (as described in Sections 2(c)(2)(B)
2 and/or 2(c)(2)(C)(i) of the Act as amended by the
3 by the CRA, to be codified in 7 U.S.C. §§
4 2(c)(2)(B) and/or 2(c)(2)(C)(i)) ("forex
5 contracts") for their own personal account or for
6 any account in which they have a direct or indirect
7 interest;
8
9

10 c. having any commodity futures, options on
11 commodity futures, commodity options, and/or forex
12 contracts traded on their behalf;
13

14 d. controlling or directing the trading for
15 or on behalf of any other person or entity, whether
16 by power of attorney or otherwise, in any account
17 involving commodity futures, options on commodity
18 futures, commodity options, and/or forex contracts;
19

20 e. soliciting, receiving or accepting any
21 funds from any person for the purpose of purchasing
22 or selling any commodity futures, options on
23 commodity futures, commodity options, and/or forex
24 contracts;
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1 f. applying for registration or claiming
 2 exemption from registration with the Commission in
 3 any capacity, and engaging in any activity
 4 requiring such registration or exemption from
 5 registration with the Commission except as provided
 6 for in Commission Regulation 4.14(a)(9), 17 C.F.R.
 7 § 4.14(a)(9) (2009); and
 8

9 g. acting as a principal (as that term is
 10 defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)
 11 (2009)), agent or any other officer or employee of
 12 any person registered, exempted from registration
 13 or required to be registered with the Commission
 14 except as provided for in Commission Regulation
 15 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009).
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20 3. The injunctive provisions of this Order shall
 21 *who receives actual notice by personal service or otherwise*
 22 be binding on Defendants, upon any person [^] who acts in
 23 the capacity of an officer, agent, servant, employee,
 24 attorney, successor and/or assign of Defendants, and
 25 upon any person who receives actual notice of this
 26 Order by personal service or otherwise insofar as he or
 27
 28

and

1 she is acting in active concert or participation with
2 Defendants.

3 **III.**

4 **ORDER OF RESTITUTION, CIVIL MONETARY PENALTY,**
5 **AND ANCILLARY RELIEF**

6
7 IT IS FURTHER ORDERED THAT:

8 **A. Restitution**

9
10 1. Defendants shall pay, jointly and severally,
11 restitution in the amount of four hundred eighty six
12 thousand eight hundred forty five dollars (\$486,845),
13 plus post-judgment interest.
14

15 2. Defendants may petition the Court for a
16 reduction of their restitution obligation imposed in
17 this Order based upon Defendants' satisfaction of any
18 criminal restitution obligation that may be imposed
19 against any of them in the criminal action, *The People*
20 *of the State of California v. Abad*, Case No. OCSO 08-
21 032842 (C.D. Cal. filed October 22, 2009).
22
23
24

25 3. Post-judgment interest shall accrue beginning
26 on the date of entry of this Order and shall be
27 determined by using the Treasury Bill rate prevailing
28

1 on the date of entry of this Order pursuant to 28
2 U.S.C. § 1961.

3 4. To effect payment by Defendants and the
4 distribution of restitution, the Court appoints the
5 National Futures Association ("NFA") as Monitor. The
6 Monitor shall collect restitution payments from
7 Defendants and make distributions as set forth below.
8 Because the Monitor is not being specially compensated
9 for these services, and these services are outside the
10 normal duties of the Monitor, it shall not be liable
11 for any action or inaction arising from its appointment
12 as Monitor, other than actions involving fraud.
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17 5. Defendants shall make his required restitution
18 payments under this Order in the name of "Paul Abad -
19 Restitution Fund" and shall send such restitution
20 payments by electronic funds transfer, or by U.S.
21 postal money order, certified check, bank cashier's
22 check, or bank money order to the Office of
23 Administration, National Futures Association, 300 South
24 Riverside Plaza, Suite 1800, Chicago, Illinois 60606,
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1 under a cover letter that identifies the paying
2 Defendant and the name and docket number of the
3 proceeding. The paying Defendant shall simultaneously
4 transmit copies of the cover letter and the form of
5 payment to (a) Director, Division of Enforcement,
6 Commodity Futures Trading Commission, Three Lafayette
7 Centre, 1155 21st Street, NW, Washington, D.C. 20581,
8 and (b) Chief, Office of Cooperative Enforcement,
9 Division of Enforcement at the same address.
10
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13 6. The Monitor shall oversee Defendants'
14 restitution obligation, and shall have the discretion
15 to determine the manner of distribution of funds in an
16 equitable fashion to Defendants' participants and
17 clients or may defer distribution until such time as it
18 may deem appropriate. In the event that the amount of
19 restitution payments to the Monitor are of a de minimis
20 nature such that the Monitor determines that the
21 administrative costs of the making a restitution
22 distribution to Defendants' participants or clients is
23 impractical, the Monitor may, in its discretion, treat
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1 such restitution payments as civil monetary penalty
2 payments, which the Monitor shall forward to the
3 Commission following the instructions for civil
4 monetary penalty payments as set forth in Section
5 III.B, below.
6

7 7. Defendants shall execute any documents
8 necessary to release funds that they have in any
9 repository, bank, investment or other financial
10 institution wherever located, in order to make partial
11 or total payment toward the restitution obligation.
12
13

14 8. Pursuant to Rule 71 of the Federal Rules of
15 Civil Procedure, Defendants' defrauded customers are
16 explicitly made an intended third-party beneficiary of
17 this Order and may seek to enforce obedience of this
18 Order to obtain satisfaction of any portion of the
19 restitution that has not been paid by Defendants, to
20 ensure continued compliance with any provision of this
21 Order and to hold Defendants in contempt for any
22 violations of any provision of this Order.
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1 9. Defendants shall cooperate with the Monitor as
2 appropriate to provide such information as the Monitor
3 deems necessary and appropriate to identify Defendants'
4 participants and clients, whom the Monitor, in his sole
5 discretion, may determine to include in any plan for
6 distribution of any restitution payments.
7

8
9 10. To the extent that any funds accrue to the U.S.
10 Treasury as a result of Defendants' restitution
11 obligation, such funds shall be transferred to the
12 Monitor for disbursement in accordance with the
13 procedures set forth in paragraph 5 of this Section.
14

15
16 **B. Civil Monetary Penalty**

17 11. Defendants shall pay to the Commission, jointly
18 and severally, a civil monetary penalty in the amount
19 of three hundred seventy-five thousand dollars
20 (\$375,000), plus post-judgment interest.
21

22
23 12. Post-judgment interest shall accrue beginning
24 on the date of entry of this Order and shall be
25 determined by using the Treasury Bill rate prevailing
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1 on the date of entry of this Order, pursuant to 28
2 U.S.C. § 1961.

3 13. Defendants shall pay this civil monetary
4 penalty by electronic funds transfer, U.S. postal money
5 order, certified check, bank cashier's check, or bank
6 money order. If payment is to be made other than by
7 electronic funds transfer, the payment shall be made
8 payable to the Commodity Futures Trading Commission and
9 sent to the address below:
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11
12

13 Commodity Futures Trading Commission
14 Division of Enforcement
15 Attn: Marie Bateman - AMZ-300
16 DOT/FAA/MMAC
17 6500 S. MacArthur Blvd.
18 Oklahoma City, Oklahoma 73169
19 Telephone: 405-954-6569

20 If payment is to be made by electronic funds
21 transfer, Defendants shall contact Marie Bateman or her
22 successor at the above address to receive payment
23 instructions and shall fully comply with those
24 instructions. Defendants shall accompany payment of
25 the penalty with a cover letter that identifies
26 Defendants and the name and docket number of this
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1 proceeding. Defendants shall simultaneously transmit
2 copies of the cover letter and the form of payment to
3 the Director, Division of Enforcement, Commodity
4 Futures Trading Commission, Three Lafayette Centre,
5 1155 21st Street, N.W., Washington, D.C. 20581, and to
6 the Chief, Office of Cooperative Enforcement, at the
7 same address.
8
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10 **C. Priority Of Monetary Sanctions**
11 **And Partial Payments**

12 14. All payments by Defendants pursuant to this
13 Order shall first be applied to satisfaction of their
14 restitution obligation. After satisfaction of their
15 restitution obligation, payments by Defendants pursuant
16 to this Order shall be applied to satisfy their civil
17 monetary penalty obligation.
18
19

20 15. Any acceptance by the Commission and/or Monitor
21 of partial payment of Defendants' restitution
22 obligation and/or civil monetary penalty shall not be
23 deemed a waiver of the respective requirement to make
24 further payments pursuant to this Order, or a waiver of
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1 the Commission's and/or Monitor's right to seek to
2 compel payment of any remaining balance.

3 **D. Equitable Relief Provisions**

4
5 16. The equitable relief provisions of this Order
6 shall be binding upon Defendants and any person who is
7 acting in the capacity of an officer, agent, employee,
8 servant or attorney of Defendants, and any person
9 acting in active concert or participation with
10 Defendants who receive actual notice of this Order by
11 personal service or otherwise.
12
13

14 **IV.**

15 **MISCELLANEOUS PROVISIONS**

16
17 IT IS FURTHER ORDERED THAT:

18
19 1. Entire Agreement and Amendments: This Order
20 incorporates all of the terms and conditions of the
21 settlement among the parties hereto. Nothing shall
22 serve to amend or modify this Order in any respect
23 whatsoever, unless: (1) reduced to writing; (2) signed
24 by all parties hereto; and (3) approved by order of
25
26 this Court.
27
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1 2. Invalidation: If any provision of this Order,
2 or the application of any provisions or circumstances
3 is held invalid, the remainder of the Order and the
4 application of the provision to any other person or
5 circumstance shall not be affected by the holding.
6

7 3. Waiver: The failure of any party hereto or of
8 any customer at any time or times to require
9 performance of any provision hereof shall in no manner
10 affect the right of such party at a later time to
11 enforce the same or any other provision of this Order.
12 No waiver in one or more instances of the breach of any
13 provision contained in this Order shall be deemed to be
14 or construed as a further or continuing waiver of such
15 breach or waiver of the breach of any other provision
16 of this Order.
17
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19 4. Acknowledgements: Upon being served with
20 copies of this Order after entry by the Court,
21 Defendants shall sign an acknowledgment of such service
22 and serve such acknowledgments on the Court and the
23 Commission within seven (7) calendar days.
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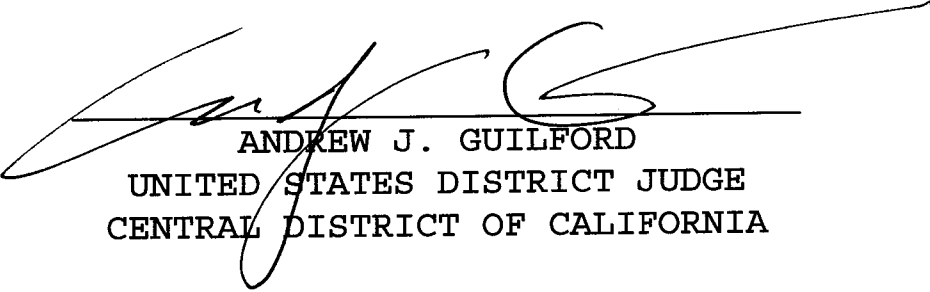
1 5. Continuing Jurisdiction of this Court: This
2 Court shall retain jurisdiction of this cause to assure
3 compliance with this Order and for all other purposes
4 related to this Action.
5

6 6. Counterparts and Facsimile Execution: This
7 Agreement may be executed in two or more counterparts,
8 all of which shall be considered one and the same
9 agreement and shall become effective when one or more
10 counterparts have been signed by each of the parties
11 and delivered (by facsimile or otherwise) to the other
12 party, it being understood that all parties need not
13 sign the same counterpart. Any counterpart or other
14 signature to this Agreement that is delivered by
15 facsimile shall be deemed for all purposes as
16 constituting good and valid execution and delivery by
17 such party of this Agreement.
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23 7. Authority: Thirteen Thirty-Two, Inc. and
24 Thirteen Thirty-Two, Inc. doing business as MRTS Asset
25 Management represent that they read this Order and have
26 had the assistance of counsel in reviewing this Order,
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1 and hereby represent and warrant that this Order has
2 been duly authorized and is signed and submitted on
3 their behalf by a duly authorized and empowered
4 officer.
5

6
7 SO ORDERED, this 14TH day of DECEMBER, ²⁰¹⁰~~2009~~.
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10 
11 ANDREW J. GUILFORD
12 UNITED STATES DISTRICT JUDGE
13 CENTRAL DISTRICT OF CALIFORNIA
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1 Consented to and approved for entry by:

2 PLAINTIFF U.S. COMMODITY FUTURES
3 TRADING COMMISSION

4
5 _____
6 Timothy M. Kirby
7 Glenn I. Chernigoff
8 Gretchen L. Lowe
9 Division of Enforcement
10 U.S. Commodity Futures
11 Trading Commission
12 1155 21st Street, N.W.
13 Washington, D.C. 20581
14 Telephone - (202) 418-5305 (Chernigoff)
15 Facsimile - (202) 418-5523

16
17 _____
18 PAUL ABAD

19 THIRTEEN THIRTY-TWO, INC. AND
20 THIRTEEN THIRTY-TWO, INC.
21 DBA "MRTS ASSET MANAGEMENT"

22
23 _____
24 By: Paul Abad, President and Sole Owner

25 _____
26 Henry P. Friesen
27 Friesen, Guy & Associates
28 7545 Irvine Center Drive Suite 200
Irvine, CA 92618
Counsel for Defendants