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 19 Commodity Futures Trading Commission

20 United States District Court
 21 Central District of California
 22 Southern Division

23 U.S. Commodity Futures) Case No.: SACV 08-1352-AG (RNBx)
 24 Trading Commission,)
 25) [PROPOSED] EX PARTE
 26 Plaintiff,) STATUTORY RESTRAINING ORDER
 27) TO FREEZE ASSETS AND
 28 v.) PRESERVE BOOKS AND RECORDS,
) AND FOR AN ACCOUNTING
 29 Paul Abad, Thirteen Thirty-))
 30 Two, Inc., and Thirteen))
 31 Thirty-Two, Inc. dba "MRTS))
 32 Asset Management,"))
 33))
 34 Defendants.)

1 Pursuant to Section 6c of the Commodity Exchange
2 Act, 7 U.S.C. § 13a-1, as amended by The Food,
3 Conservation, and Energy Act of 2008, Pub. L. No. 110-
4 246, Title XIII (the "CFTC Reauthorization Act of
5 2008"), §§ 13101-13204, 122 Stat. 1651, this matter
6 ~~was received~~
7 ~~came on for hearing~~ the 1st day of December,
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9 2008 on the application of Plaintiff, the United States
10 Commodity Futures Trading Commission (the "Commission"
11 or "Plaintiff"), for an ex parte: (1) Statutory
12 Restraining Order; and (2) Order to Show Cause
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14 Regarding Preliminary Injunction.
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16 The Court, having considered the Commission's
17 complaint, application, declarations and attached
18 exhibits, and other evidence in the record of this case
19 finds that:
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22 1. This Court has jurisdiction over the parties
23 and over the subject matter of this action pursuant to
24 7 U.S.C. § 13a-1.

25 2. Venue lies properly within this district
26 pursuant to Section 6c(e) of the Act, 7 U.S.C.
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1 § 13a-1(e), in that there is good cause to believe that
2 Defendants have engaged, are engaging or are about to
3 engage in acts and practices constituting violations of
4 the Act in this district.
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7 3. There is good cause to believe that Defendants
8 have engaged in, are engaging in, or are about to
9 engage in violations of the following provisions of the
10 Act: Sections 4b(a)(1)(A), (B) and (C), 7 U.S.C.
11 §§ 6(b)(a)(1)(A), (B) and (C), for conduct occurring on
12 or after June 18, 2008; Sections 4b(a)(2)(i), (ii) and
13 (iii), 7 U.S.C. §§ 6(b)(a)(2)(i), (ii) and (iii), the
14 pre-CFTC Reauthorization Act of 2008 precursors to
15 Sections 4b(a)(1)(A), (B) and (C), for conduct
16 occurring before June 18, 2008; Sections 4o(1), 4k(2)
17 and 4m(1), 7 U.S.C. §§ 6o(1), 6k(2) and 6m(1); and
18 Commission Regulations 4.20, 4.21, 4.22 and 4.30, 17
19 C.F.R. §§ 4.20, 4.21, 4.22 and 4.30.
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25 4. There is good cause to believe that immediate
26 and irreparable damage to the Court's ability to grant
27 effective final relief for investors in the form of
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1 monetary redress will occur from the sale, transfer,
2 assignment, or other disposition by Defendants of
3 assets or records unless Defendants are immediately
4 restrained and enjoined by this Court.
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7 5. Good cause exists for the freezing of assets,
8 owned, controlled, managed, or held by, on behalf of,
9 or for the benefit of Defendants in order to assure
10 payment of restitution and disgorgement as authorized,
11 and for the benefit of Defendants' commodity pool
12 participants and other investors.
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15 6. Good cause exists for entry of an order
16 prohibiting Defendants from destroying records and
17 denying agents of the Commission access to inspect and
18 copy records.
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21 7. Good cause exists to require an accounting to
22 determine the location and disposition of pool
23 participants' and other investors' funds.
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25 8. Good cause exists to order repatriation of
26 Defendants' assets to assure payment of restitution and
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1 disgorgement as authorized and for the benefit of pool
2 participants and other investors.
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4 9. Weighing the equities and considering the
5 Commission's likelihood of success upon its claims for
6 relief, the issuance of this Statutory Restraining
7 Order is in the public interest.
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10 **DEFINITIONS**

11 In this Order, the following definitions apply:

12 10. The term "document" is synonymous in meaning
13 and equal in scope to the usage of the term in Federal
14 Rule of Civil Procedure 34(a), and includes, but is not
15 limited to, writings, drawings, graphs, charts,
16 photographs, audio and video recordings, computer
17 records, and other data compilations from which
18 information can be obtained and translated, if
19 necessary, through detection devices into reasonably
20 usable form. A draft or non-identical copy is a
21 separate document within the meaning of the term.
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23 11. "Assets" means any legal or equitable interest
24 in, right to, or claim to, any real or personal
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1 property, including but not limited to: chattels,
2 goods, instruments, equipment, fixtures, general
3 intangibles, effects, leaseholds, mail or other
4 deliveries, inventory, checks, notes, accounts
5 including bank accounts and accounts at financial
6 institutions, credits, receivables, lines of credit,
7 contracts including spot and futures contracts,
8 insurance policies, and all cash, wherever located.

12 12. "Defendants" means Paul Abad, Thirteen Thirty-
13 Two, Inc., a Nevada corporation, and Thirteen Thirty-
14 Two, Inc. dba "MRTS Asset Management," and includes any
15 person or entity insofar as the person or entity is
16 acting in the capacity of an officer, agent, servant,
17 employee, or attorney of Defendants, and any person or
18 entity who receives actual notice of this order by
19 personal service or otherwise insofar as the person or
20 entity is acting in concert or participation with
21 Defendants.
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1 RELIEF GRANTED

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3 **I. ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL**
4 **OF ASSETS**

5 IT IS HEREBY ORDERED that

6 13. Defendants are restrained and enjoined from
7 directly or indirectly transferring, selling,
8 alienating, liquidating, encumbering, pledging,
9 leasing, loaning, assigning, dissipating, converting,
10 withdrawing, or otherwise disposing of any assets,
11 including those owned, controlled, managed, or held by,
12 on behalf of, or for the benefit of Defendants,
13 wherever located, including assets held outside the
14 United States, except as provided in Section III of
15 this Order, or as otherwise ordered by the Court. The
16 assets affected by this paragraph shall include both
17 existing assets and assets acquired after the effective
18 date of this Order.
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24 14. Defendants, and their agents, servants,
25 employees, attorneys, and persons in active concert or
26 participation with them who receive actual notice of
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1 this Order by personal service except as otherwise
2 ordered by this Court, are restrained and enjoined from
3 directly or indirectly transferring, selling,
4 alienating, liquidating, encumbering, pledging,
5 leasing, loaning, assigning, dissipating, converting,
6 withdrawing, or otherwise disposing of any assets,
7 including those owned, controlled, managed, or held by,
8 on behalf of, or for the benefit of Defendants,
9 wherever located, including assets held outside the
10 United States, except as provided in Section III of
11 this Order, or as otherwise ordered by the Court. The
12 assets affected by this paragraph shall include both
13 existing assets and assets acquired after the effective
14 date of this Order.

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21 15. Defendants are restrained and enjoined from
22 directly or indirectly opening or causing to be opened
23 any safe deposit boxes titled in the name of, or
24 subject to access by, Defendants.
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1 **II. DIRECTIVES TO FINANCIAL INSTITUTIONS AND OTHERS**

2 IT IS FURTHER ORDERED that any financial or
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4 brokerage institution, business entity, or person that
5 holds, controls, or maintains custody of any account or
6 asset owned, controlled, managed, or held by, on behalf
7 of, or for the benefit of Defendants, or has held,
8 controlled, or maintained custody of any account or
9 asset owned, controlled, managed, or held by, on behalf
10 of, or for the benefit of Defendants at any time since
11 February 2, 2001, shall:
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15 16. Prohibit Defendants and all other persons from
16 withdrawing, removing, assigning, transferring,
17 pledging, encumbering, disbursing, dissipating,
18 converting, selling or otherwise disposing of any such
19 account or asset except as directed by further order of
20 the Court;
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23 17. Deny Defendants and all other persons access to
24 any safe deposit box that is: (a) titled in the name of
25 Defendants either individually or jointly; or (b)
26 otherwise subject to access by Defendants;
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1 18. Provide counsel for the Commission, within five
2 (5) business days of receiving a copy of this Order, a
3 statement setting forth: (a) the identification number
4 of each and every such account or asset titled in the
5 name, individually or jointly, of Defendants, or owned,
6 controlled, managed, or held by, on behalf of, or for
7 the benefit of Defendants; (b) the balance of each such
8 account, or a description of the nature and value of
9 such asset as of the close of business on the day it
10 receives this Order, and, if the account or other asset
11 has been closed or removed, the date closed or removed,
12 the total funds removed in order to close the account,
13 and the name of the person or entity to whom such
14 account or other asset was remitted; and (c) the
15 identification of any safe deposit box that is either
16 titled in the name, individually or jointly, of
17 Defendants or is otherwise subject to access by
18 Defendants; and
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26 19. Promptly provide the Commission with copies of
27 all records or other documentation pertaining to such
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1 account or asset, including, but not limited to,
2 originals or copies of account applications, account
3 statements, signature cards, checks, drafts, deposit
4 tickets, transfers to and from the accounts, all other
5 debit and credit instruments or slips, currency
6 transaction reports, 1099 forms, and safe deposit box
7 logs.

11 **III. ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS**

12 IT IS FURTHER ORDERED that within three (3)
13 business days following service of this Order,
14 Defendants shall:
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16 20. Provide the Commission with a full accounting
17 of all funds, documents, and assets, including those
18 outside of the United States, that are owned, managed,
19 or held by, on behalf of, or for the benefit of, or
20 under the direct or indirect control of Defendants,
21 whether jointly or singly;
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24 21. Transfer to the territory of the United States
25 all funds, documents, and assets located in foreign
26 countries which are owned, managed, or held by, on
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1 behalf of, or for the benefit of, or under the direct
2 or indirect control of Defendants, whether jointly or
3 singly; and
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5 22. Provide the Commission access to all records of
6 Defendants held by financial institutions located
7 outside the territorial United States by signing the
8 Consent to Release of Financial Records attached to
9 this Order.
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12 **IV. MAINTENANCE OF BUSINESS RECORDS**

13 IT IS FURTHER ORDERED that:
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15 23. Defendants and all persons or entities who
16 receive notice of this Order by personal service or
17 otherwise, are restrained and enjoined from directly or
18 indirectly destroying, mutilating, erasing, altering,
19 or disposing of, in any manner, directly or indirectly,
20 any documents that relate to the business practices or
21 business or personal finances of Defendants.
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1 **V. INSPECTION AND COPYING OF BOOKS AND RECORDS**

2 IT IS FURTHER ORDERED that:

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4 24. Representatives of the Commission be
5 immediately allowed to inspect the books, records, and
6 other documents of Defendants and their agents,
7 including, but not limited to, electronically stored
8 data, tape recordings, and computer discs, wherever
9 they may be situated and whether they are on the person
10 of Defendant Abad or others, and to copy said
11 documents, data and records, either on or off the
12 premises where they may be situated; and

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14 25. Defendants and their agents, servants,
15 employees, attorneys, and persons in active concert or
16 participation with them who receive actual notice of
17 this order by personal service or otherwise, including
18 facsimile transmission, shall cooperate fully with the
19 Commission to locate and provide to representatives of
20 the Commission all books and records of Defendants,
21 wherever such books and records may be situated.
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1 **VI. BOND NOT REQUIRED OF PLAINTIFF**

2 IT IS FURTHER ORDERED that:

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4 26. Pursuant to Rule 65(c) of the Federal Rules of
5 Civil Procedure, Plaintiff Commission, an agency of the
6 United States of America, need not provide security in
7 connection with this Order.
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9 **VII. SERVICE**

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11 IT IS FURTHER ORDERED that:

12 27. Any deputy U.S. Marshal, any authorized
13 representative of the Sheriff's Department of Orange
14 County, California or any authorized representative of
15 the California Corporation Commission may serve the
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17 the California Corporation Commission may serve the
18 Summons, Complaint and all other papers on behalf of
19 plaintiff. Service may also occur in any other manner
20 that is in accordance with Federal Rule of Civil
21 Procedure 4.
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23 28. Copies of this Order may be served by any
24 means, including facsimile transmission, upon any
25 entity or person that may have possession, custody, or
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1 control of any documents or assets of Defendants or
2 that may be subject to any provision of this Order.
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4 29. Plaintiff's counsel, Gretchen Lowe, Luke Marsh,
5 Glenn Chernigoff and Timothy Kirby are specially
6 appointed by the Court to effect service of this Order.
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8 **VIII. FORCE AND EFFECT**

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10 IT IS FURTHER ORDERED that this Order shall remain
11 in full force and effect until further order of this
12 Court, and that this Court retains jurisdiction of this
13 matter for all purposes.
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16 SO ORDERED, at Santa Ana, California on the

17 1st day of December, 2008.
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20 **ANDREW J. GUILFORD**

21

22 UNITED STATES DISTRICT JUDGE
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