

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,**

Plaintiff,

vs.

**PAUL ATHA,
CHRISTOPHER McDONALD and
MICHAEL WHALEN,**

Defendants.

**Consent Order Of
Permanent Injunction
And Other Relief Against
Michael Whalen**

**Civil Action No.:
1:05-cv-0293-JOF**

I. BACKGROUND

1. On February 1, 2005, the Commodity Futures Trading Commission ("Commission") filed its complaint against Defendant Michael Whalen ("Whalen") and others seeking injunctive and other equitable relief, including a civil monetary penalty, for violations of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2000) (the "Complaint").

2. In particular, the Complaint alleges that during the period beginning approximately July 2000 and ending in late 2000 or early 2001 ("relevant time

period”), Whalen violated Sections 6(c), 6(d) and 9(a)(2), 7 U.S.C. §§ 9, 13b, 13(a)(2), by knowingly delivering false or misleading or knowingly inaccurate reports of market information to natural gas price indexes, by intentionally attempting to manipulate the price of natural gas, and by aiding and abetting two other traders in doing so.

II. CONSENTS AND AGREEMENTS

1. To effect a settlement of the matters alleged in the Complaint in this action without a trial or adjudication on the merits or further judicial proceedings, Whalen:

- a. Consents to the entry of this Consent Order of Permanent Injunction and Other Relief (“Order”);
- b. Affirms that he has read and agreed to this Order voluntarily, and that no threat, or promise other than as set forth specifically herein, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order;
- c. Acknowledges service of the Summons and Complaint;
- d. Admits that this Court has jurisdiction over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;

- e. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;
- f. Waives:
 - i. All claims which may be available under the Equal Access to Justice Act (“EAJA”), 5 U.S.C. § 504 and 28 U.S.C. § 2412 (2000), relating to, or arising from, this action and any right under EAJA to seek costs, fees and other expenses relating to, or arising from this action;
 - ii. Any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
 - iii. Any rights of appeal from this Order;
- g. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order, to assure compliance with the Order, and for any other purposes relevant to this case, even if Whalen now or in the future resides outside the jurisdiction; and
- h. Agrees that neither Whalen nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in the Order, or creating, or tending to create, the impression that the

Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Whalen's (i) testimonial obligation, or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

Whalen shall take all necessary steps to ensure that all of his agents or employees understand and comply with this agreement; and

i. Agrees to cooperate with Commission staff in the continuing litigation of this matter against any defendant not a party to this Order. As part of such cooperation, Whalen agrees, subject to all applicable privileges, to comply fully, promptly and truthfully to any inquires or requests for information or testimony, including but not limited to, testifying completely and truthfully at any trial or hearing in this action subject to the provisions of subparagraph h, above, or producing written statements or trial declarations to the Commission related to any trial of the subject matter of this proceeding.

2. By consenting to the entry of this Order, Whalen neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this Order, except as to jurisdiction and venue, which he admits. However, Whalen agrees, and the parties to this Order intend, that the allegations of the Complaint and the Findings of Fact made by this Court shall be taken as true and correct and given preclusive effect, without further proof, in any proceeding in

bankruptcy or to enforce the terms of this Order. Whalen shall provide immediate notice to this Court and the Commission via certified mail of any bankruptcy proceeding filed by, on behalf of, or against him, and shall provide immediate notice of any change of address, telephone number, or contact information.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of Findings of Fact, Conclusions of Law, and a permanent injunction and ancillary relief pursuant to § 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

FINDINGS OF FACT

A. The Commodity Exchange Act

2. The Act, 7 U.S.C. § 1 *et seq.*, and the Commodity Futures Trading Commission's Regulations ("Regulations"), 17 C.F.R. § 1.1 *et seq.* (2005), establish a comprehensive system for regulating the purchase and sale of commodities in interstate commerce or for future delivery on or subject to the rules of a contract market. One of the primary purposes of the Act is to protect against price manipulation.

B. The Commission

3. Plaintiff Commission is an independent federal regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated there under, 17 C.F.R. §§ 1.1 *et seq.*

C. Whalen

4. Whalen resides in Houston, Texas. From May 2000 through approximately August 2003, Whalen was employed in Houston, Texas as the Director of Financial Trading in the Energy Commodities Business Unit of Cinergy Corporation (“Cinergy”), where he traded natural gas, including physical and financial products.

D. Other Natural Gas Traders Involved

5. During the relevant time period, Trader A was employed as a natural gas trader for a publicly-held energy company (hereinafter “Company X”), trading natural gas for the western region of the United States.

6. During the relevant time period, Trader B was also employed by Company X, where he traded a variety of instruments, including contracts for fixed price and index-based over-the-counter natural gas, and supervised trading for the western region of the United States. Trader B supervised Trader A.

E. The Natural Gas Price Indexes

7. Natural gas is a commodity typically transported in interstate commerce through a network of pipelines across the United States. Cinergy and Company X buy and sell natural gas for profit and their traders engage in transactions calling for the actual physical delivery of natural gas (“physical trades”).

8. Physical trades are typically priced with either a fixed price set at the time of the transaction or with reference to an index to be set at a later date.

9. During the relevant time period, natural gas companies and traders, including Whalen, Trader A and Trader B, reported natural gas market information to companies that calculated natural gas price indexes (“indexes”). The indexes included *Inside FERC Gas Market Report ("IFERC")*, *Gas Daily*, and *Natural Gas Intelligence (NGI)*.

10. The reported market information included price and volume information for natural gas transactions entered into by market participants for delivery at a specific location or hub.

11. Participants in the natural gas industry widely used these price indexes to determine price and settlement of index trades, as well as to assess price risks.

12. The price and volume information reported to those indexes was market information that affects or tends to affect the price of natural gas, a commodity in interstate commerce.

F. Whalen Falsely Reported and Attempted to Manipulate the Price of Natural Gas in July/August 2000

13. On July 27, 2000, Trader B telephoned Whalen at Cinergy and told Whalen that he (Trader B) wanted the August *IFERC* index price of natural gas at the Permian delivery point to be low. During the call, which was recorded as part of Cinergy and Company X's routine business practice, Trader B stated, "I'd like a low Permian index. Do you need the same?," to which Whalen responded, "Yeah, oh yeah, absolutely."

14. Trader B told Whalen that he (Trader B) would report natural gas trades for the Permian delivery point at fabricated prices and/or volumes in an attempt to ensure that the August *IFERC* Permian index price of natural gas was lower than it otherwise would have been.

15. In order to ensure that the reports would carry greater weight with *IFERC*, Trader B told Whalen that he (Trader B) would falsely identify Cinergy as the counterparty to the transactions.

16. Whalen agreed and specifically intended to assist Trader B with his attempt to achieve a "low Permian index" by submitting false volume, price and

other transaction data, and falsely identifying Cinergy and Company X as parties to the transactions.

17. Trader B's July 27, 2000 recorded telephone call to Whalen revealed that Whalen and Trader B intended to manipulate the price of natural gas at the Permian delivery point, as well as multiple other delivery points.

18. In an attempt to further coordinate the false reporting of natural gas transactions, Whalen telephoned Trader B on July 28, 2000 to make sure that the false or misleading or knowingly inaccurate reports each agreed to report to *IFERC* would match. During that telephone call, which was also recorded, Whalen stated,

I'm going to send it in as a blanket sheet, and I'll need to put like a bunch of other companies on there as well, right, to make it more believable?

They then fabricated trades at various locations to submit to *IFERC* and agreed that each would identify the other as the counterparty.

19. Later in the day on July 28, 2000, Whalen telephoned Trader A to finalize the list of fabricated trades that Whalen and Traders A and B would falsely report to *IFERC* as trades having been executed between Cinergy and Company X, again to ensure that the prices and volumes they were going to report would be "believable" to *IFERC*.

20. Trader A prepared and electronically delivered, or caused to be delivered, to *IFERC* physical gas trade information on July 26, 27, 28, and 31, 2000. The report delivered on July 31, 2000, included the trades that Whalen, Trader B, and Trader A fabricated during the July 27 and 28 recorded telephone calls identified above. The same reports were electronically delivered by Trader A to *NGI* and *Gas Daily*.

21. Whalen also prepared and electronically delivered, or caused to be delivered, to *IFERC* a report which included the trades that Whalen, Trader B and Trader A fabricated during the July 27 and 28 recorded telephone calls identified above.

22. Whalen knowingly delivered, or caused to be delivered, the false or misleading or knowingly inaccurate reports, intending for the indexes to use these reports to calculate the index prices of natural gas.

23. If the attempted manipulation of the price of natural gas had been successful, it could have affected the price of natural gas, a commodity in interstate commerce, and the price of natural gas futures and options contracts traded on the New York Mercantile Exchange (“NYMEX”).

G. Whalen Falsely Reported and Attempted to Manipulate the Price of Natural Gas in September/October 2000

24. On September 26, 2000, Trader A delivered, or caused to be delivered, the first of three cumulative spreadsheets to *IFERC* reporting that Company X allegedly had completed a transaction on September 25, 2000 with Enserco Energy, Inc. (“Enserco”) at the Questar delivery point (the “fictitious Questar Transaction”). Trader A’s report included both price and volume information for the fictitious Questar Transaction.

25. On October 2, 2000, a reporter from *IFERC* telephoned Trader A to verify the fictitious Questar Transaction. Trader A could not provide verification of the fictitious Questar Transaction to the *IFERC* reporter.

26. Realizing that he could not provide verification of the fictitious Questar Transaction, Trader A placed the *IFERC* reporter on hold and contacted Trader B for assistance. Trader B told Trader A to falsely tell the *IFERC* reporter that the correct counterparty was Cinergy, and further advised Trader A that he (Trader B) would telephone Whalen at Cinergy to confirm that Whalen would verify the trade to *IFERC*.

27. Trader A falsely told the *IFERC* reporter that the fictitious Questar Transaction was originally executed with Enserco, but that the deal was broken and re-executed with Cinergy.

28. While Trader A was telling that false story to the *IFERC* reporter, Trader B telephoned Whalen and in a recorded call, secured his (Whalen's) agreement to provide the same false information to the *IFERC* reporter.

29. Later on October 2, 2000, the *IFERC* reporter telephoned Whalen at Cinergy to verify the fictitious Questar Transaction. Even though Whalen had not included that transaction on the report he submitted to *IFERC*, Whalen falsely told *IFERC* that he executed that transaction with Company X.

30. To explain why that transaction did not appear on Cinergy's report to *IFERC*, Whalen falsely stated that he must have overlooked it when he was completing Cinergy's *IFERC* spreadsheet.

31. Whalen knowingly delivered, or caused to be delivered, the false or misleading or knowingly inaccurate reports containing the fictitious Questar transaction, intending for the index to use these reports to calculate the index prices of natural gas.

32. If the attempted manipulation of the price of natural gas had been successful, it could have affected the price of natural gas, a commodity in interstate commerce, and the price of natural gas futures and options contracts traded on the NYMEX.

H. Whalen Attempted to Manipulate the Price of Natural Gas in December 2000

33. On December 8, 2000, Whalen attempted to manipulate the price of natural gas at the Waha delivery point. Specifically, he intended to ensure that the Waha price index came out higher than it otherwise would have been. In furtherance of his attempt to manipulate the Waha index, Whalen telephoned Trader B and asked him to report an artificially high Waha number.

34. The telephone conversation between Whalen and Trader B wherein Whalen attempted to manipulate the price of natural gas at Waha by submitting fabricated transaction information was recorded. Whalen stated:

Well, it would help me out if you guys report a high Waha, and we'll buy you dinner if you do it.

Trader B responded:

All right. Well, I don't want to have a recorded phone call saying that we are doing that, but * * * But I understand what you need.

35. If the attempted manipulation of the price of natural gas had been successful, it could have affected the price of natural gas, a commodity in interstate commerce, and the price of natural gas futures and options contracts traded on the NYMEX.

CONCLUSIONS OF LAW

36. Section 6c of the Act authorizes the Commission to file a complaint for injunctive relief in the appropriate District Court “whenever it appears that . . . any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision” of the Act. 7 U.S.C. § 13a-1(a). The plain language of the Act authorizes an injunctive action based solely upon past conduct.

37. Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b, together authorize the Commission to serve a complaint and provide for the imposition of, among other things, fines and penalties if the Commission “has reason to believe that any person . . . has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market . . . or otherwise is violating or has violated any of the provisions of [the] Act.”

Whalen Violated Section 9(a)(2) of the Act by Submitting False, Misleading or Knowingly Inaccurate Reports

38. Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), makes it unlawful for any person to “[k]nowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or

other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce[.]” See *United States v. Valencia*, 394 F.3d 352, 357 (5th Cir. 2004) (false reporting is actionable under Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2)); *United States Commodity Futures Trading Commission v. Johnson*, 408 F.Supp.2d 259 (S.D. Tex. 2005) (holding the same); *United States Commodity Futures Trading Commission v. Bradley*, 408 F.Supp.2d 1214 (N.D. OK 2005) (also holding the same); see also *United Egg Producers v. Bauer Int’l Corp.*, 311 F. Supp. 1375, 1383 (S.D.N.Y. 1970) (concluding that false press releases regarding egg importation “tended to affect the price of eggs in interstate commerce”); *In re Soybean Futures Litig.*, 892 F. Supp. 1025, 1046 (N.D. Ill. 1995) (concluding that false reports can influence prices and constitute part of a manipulation claim).

39. By his conduct set forth above, Whalen violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) when he knowingly delivered, or caused to be delivered, false or misleading or knowingly inaccurate reports concerning natural gas transactions, including fabricated trades, to the index publications.

40. The false or misleading or knowingly inaccurate reports Whalen delivered, or caused to be delivered, to the index publications contained market

information that affects or tends to affect the price of natural gas, a commodity in interstate commerce.

Whalen Violated Section 9(a)(2) of the Act
By Attempting to Manipulate the Price of Natural Gas

41. Section 9(a)(2), 7 U.S.C. § 13(a)(2), makes it unlawful for any person “to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery[.]”

42. The following elements are required to prove an attempted manipulation: (i) an intent to affect the market price; and (ii) some overt act in furtherance of that intent. *See Commodity Futures Trading Commission v. Atha, et al.*, 2006 WL 687728, *6 (N.D. Ga. 2006) (citing *In re Hohenberg Bros. Co.*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271 at 21,477 (CFTC Feb. 18, 1977)). To prove the intent element of manipulation or attempted manipulation, it must be shown that the defendant “acted (or failed to act) with the purpose or conscious object of causing or effecting a price or price trend in the market that did not reflect the legitimate forces of supply and demand.” *In re Indiana Farm Bureau Cooperative Association*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796 at 27,281 (CFTC Dec. 17, 1982). “[I]ntent is the essence of manipulation.” *Id.* at 27,282.

43. Whalen specifically intended to manipulate the price of natural gas at multiple delivery points when he engaged in the overt act(s) of delivering, causing to be delivered, and/or coordinating with Trader A and Trader B to deliver or cause to be delivered, through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication, false or misleading or knowingly inaccurate reports concerning natural gas transactions to issuers of natural gas price indexes.

44. By his conduct set forth above, Whalen violated Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2), when he attempted to manipulate the price of natural gas, a commodity in interstate commerce.

By Aiding and Abetting the False Reporting and Attempted Manipulations of Traders A and B, Whalen Is Also Responsible for their Actions Pursuant to Section 13(a) of the Act

45. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), “[a]ny person who commits, or who willfully aids, abets, counsels, . . . or procures the commission of a violation of this Act, . . . or who acts in combination or concert with any other person in any such violation, or who willfully causes an act to be done . . . may be held responsible for such violation as a principal.”

46. Based on the conduct set forth above, Whalen willfully aided, abetted, counseled and worked in combination and concert with Traders A and B in the scheme to deliver, or cause to be delivered, false or misleading or knowingly inaccurate reports to indexes in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) and is therefore also responsible for such violations pursuant to Section 13(a) of the Act, 7 U.S.C. §13c(a).

IV. ORDER FOR PERMANENT INJUNCTION

With the consent of the Commission and Whalen, **IT IS NOW HEREBY ORDERED THAT:**

1. Whalen is permanently restrained, enjoined and prohibited from directly or indirectly engaging in any conduct that violates Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2), including:
 - a. Reporting any false, misleading or knowingly inaccurate information regarding crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce; and
 - b. Manipulating or attempting to manipulate the price of any commodity in interstate commerce or for future delivery on or subject to the rules of a registered entity.

2. Whalen is permanently restrained, enjoined and prohibited from applying for registration or engaging in any activity requiring such registration, or acting as a principal (as defined by the National Futures Association Registration Rule 101) of any registered entity or person, or entity or person required to be registered.

3. The injunctive provisions of this Order shall be binding on Whalen, upon any person acting in the capacity of officer, agent, servant, or employee of Whalen, and upon any person who receives actual notice of this Consent Order by personal service or otherwise insofar as he or she is acting in active concert or participation with Whalen.

V. ORDER FOR CIVIL MONETARY PENALTY AND OTHER ANCILLARY RELIEF

With the consent of the Commission and Whalen, **IT IS NOW HEREBY ORDERED** that Whalen shall comply fully with the following terms, conditions and obligations relating to the payment of a civil monetary penalty.

1. A civil monetary penalty in the amount of two hundred thousand dollars (\$200,000) is assessed against Whalen, and is due and owing ten days from the date of this Order, plus post-judgment interest pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.

2. Post-judgment interest shall accrue beginning on the date payment is due and shall be determined by using the Treasury Bill rate prevailing on the date of this Order pursuant to 28 U.S.C. § 1961.

3. Whalen shall pay this penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order made payable to the Commodity Futures Trading Commission and sent to the attention of the Office of Cooperative Enforcement, Division of Enforcement, CFTC, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Whalen shall accompany payment of the penalty with a cover letter that identifies himself, and the name and docket number of this proceeding. Whalen shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, CFTC, Three Lafayette Centre, 1155 21st N.W., Washington, D.C. 20581.

VI. MISCELLANEOUS PROVISIONS

1. Notices. All notices required by this Order shall be sent by certified mail, return receipt requested, as follows:

- a. Notice to Plaintiff Commission:
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581
- b. Notice to Defendant Michael Whalen:
c/o David Gerger & Associates
700 Louisiana Street, Suite 2300
Houston, TX 77002

2. Successors and Assigns. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

3. Counterparts. This Order may be executed by the parties in counterparts and by facsimile.

4. Entire Agreement, Amendments and Severability. This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court.

5. Invalidation: If any provision of this Order, or if the application of any provisions or circumstances is held invalid, the remainder of the Order and the application of the provisions to any other person or circumstance shall not be affected by the holding.

6. Waiver: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

7. Acknowledgements: Whalen understands and acknowledges that this Consent Order must be accepted and ratified by the Commission before it becomes final. However, Whalen understands and agrees that by his signature he is bound by the terms and conditions of this Order, unless the Commission refuses to accept and ratify the Order.

Upon being served with copies of this Order after entry by the Court, Whalen shall sign an acknowledgment of such service and serve such acknowledgment on the Court and the Commission within seven (7) calendar days.

8. Continuing Jurisdiction of this Court. Upon entry of this Order, this case shall be dismissed with prejudice as to Whalen, and the Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

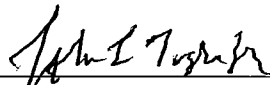
WHEREFORE, there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Relief Against Defendant Michael Whalen.

Consented to and approved for entry by:

Dated: August ____, 2006

David Gerger, Esq.
(Admitted *pro hac vice*)
David Gerger & Associates
700 Louisiana Street, Suite 2300
Houston, TX 77002
Counsel for Defendant

Dated: August 22nd, 2006



John Taylor, Esq.
Chorey, Taylor & Feil
The Lenox Building, Suite 1700
3399 Peachtree Road, N.E.
Atlanta, GA 30326-1148
Local Counsel for Defendant

Dated: August ____, 2006

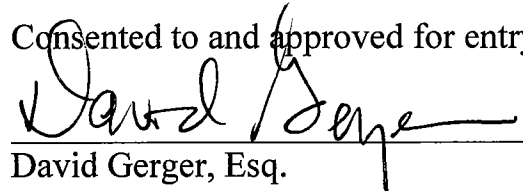
Michael Whalen

8. Continuing Jurisdiction of this Court. Upon entry of this Order, this case shall be dismissed with prejudice as to Whalen, and the Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

WHEREFORE, there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Relief Against Defendant Michael Whalen.

Dated: August 28, 2006

Consented to and approved for entry by:

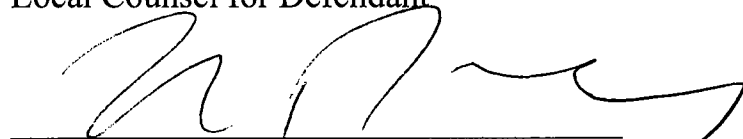


David Gerger, Esq.
(Admitted *pro hac vice*)
David Gerger & Associates
700 Louisiana Street, Suite 2300
Houston, TX 77002
Counsel for Defendant

Dated: August _____, 2006

John Taylor, Esq.
Chorey, Taylor & Feil
The Lenox Building, Suite 1700
3399 Peachtree Road, N.E.
Atlanta, GA 30326-1148
Local Counsel for Defendant

Dated: August 24, 2006



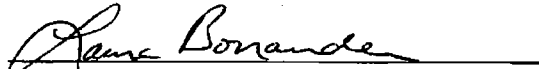
Michael Whalen

~~August~~ ^{September} 6, 2006



Kathleen M. Banar, Esq.
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1155 21st Street, N.W.
Washington, DC 20581
Counsel for Plaintiff

~~August~~ ^{September} 6, 2006



Laura Bonander, Esq.
Assistant United States Attorney
600 U.S. Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30303
Local Counsel for Plaintiff

Ordered on this 17th day of November, 2006.

s/ J. Owen Forrester

HON. J. Owen Forrester
UNITED STATES DISTRICT JUDGE