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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

SENEN POUSA, INVESTMENT
INTELLIGENCE CORPORATION, DBA
PROPHETMAX MANAGED FX, JOEL
FRIANT, MICHAEL DILLARD, AND
ELEVATION GROUP, INC.

Defendants.

Civil Action No.

A 1 2 C V 0 8 6 2 LY

**PLAINTIFF’S MOTION FOR *EX PARTE* STATUTORY RESTRAINING ORDER,
ORDER FOR A TEMPORARY RECEIVER, AND ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

Plaintiff U. S. Commodity Futures Trading Commission (“CFTC” or “Commission”), pursuant to Section 6c of the Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), 7 U.S.C. § 1 *et seq.* (2006 & Sup. IV 2011), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), Pub. L. No. 111-203, §§ 701-774, 124 Stat. 1376, 1641 *et seq.* (enacted July 21, 2010), 7 U.S.C. §§ 1 *et seq.*, and Local Court Rule CV-65, hereby moves this Court for an *ex parte* statutory restraining order and ancillary relief, freezing assets, preserving documents, granting access to documents, and appointing a temporary receiver as to

Defendants Investment Intelligence Corporation, *dba* ProphetMax Managed FX (“IIC”), Senen Pousa (“Pousa”) and Joel Friant (“Friant”) (collectively the “Defendants”); and

1. Prohibiting Defendants Pousa, Friant, and IIC, their agents, attorneys, partners, servants, representatives, employees, any person(s) acting or purporting to act for or on their behalf, and corporate and partnership entities in which the Defendants have an interest, from withdrawing, transferring, removing, dissipating, or encumbering any funds, assets or other property, wherever situated, including any funds, assets or property held outside the United States;

2. Requiring any financial or brokerage institution, business entity, or person that holds, controls or maintains custody of any account or asset of, or at any time since January 1, 2010, has held, controlled, or maintained custody of, any account of the Defendants Pousa, Friant, and/or IIC, to:

(a) prohibit any person from transferring, dissipating, withdrawing or encumbering any such current assets,

(b) deny any person access to the Defendants Pousa’s, Friant’s, and IIC’s safe deposit boxes; and

(c) provide the Commission with a statement describing assets held on behalf of the Defendants Pousa, Friant, and/or IIC and allowing representatives of the Commission access to inspect and copy records pertaining to the accounts;

3. Restraining and enjoining Defendants Pousa, Friant, and IIC from directly or indirectly destroying, mutilating, concealing, altering, or disposing of any of the books, records, documents, correspondence, brochures, manuals, electronically stored data, tape recordings, or

other property of Defendants wherever such materials may be situated, that refer or relate in any manner to any transaction or matter described in the Complaint in this case;

4. Authorizing representatives of the Commission to immediately inspect the books, records, and other documents of Defendants Pousa, Friant, and IIC, and their agents, wherever the documents may be situated and whether they are in the possession of Defendants, or others;

5. Requiring Defendants Pousa, Friant, and IIC to cooperate fully with the Commission to locate and provide to representatives of the Commission all books, and records of Defendants, wherever such assets, books, and records may be situated; and

6. Authorizing service of the Statutory Restraining Order by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents of Defendants Pousa, Friant, and/or IIC or that may be subject to any provision of the Statutory Restraining Order.

II.

Temporary Receiver

The Commission seeks the appointment of a temporary Receiver for Defendants Pousa's, Friant's, and IIC's assets and the assets of any affiliates or subsidiaries of Defendants Pousa, Friant, and IIC. The Receiver shall have the full powers of an equity receiver. The Receiver shall be the agent of this Court in acting as Receiver under the Statutory Restraining Order.

III.

Order to Show Cause re Preliminary Injunction

The Commission also moves the Court to issue an Order to Show Cause why a Preliminary Injunction should not be granted to prohibit further violations of the Act and

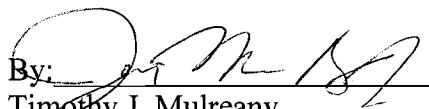
Regulations, incorporate the provisions of the Statutory Restraining Order and such other relief as this Court deems necessary and appropriate under the circumstances.

In support of this motion, the Commission respectfully refers the Court to the Commission's Brief in Support of Plaintiff's Motion for Statutory Restraining Order and Preliminary Injunction and exhibits; the declarations of Kyong J. Koh, Timothy Selling, and Becky Davie; and Local Rule CV-7(b) Appendix of Facts.

WHEREFORE, Plaintiff requests that the Court grant this Motion for a Statutory Restraining Order, issue an *ex parte* Statutory Restraining Order as set forth herein, enter an Order requiring Pousa, Friant, and IIC to Show Cause why Plaintiff's motion for a preliminary injunction should not be granted, and enter such further and additional relief as this Court deems just and appropriate.

Date: September 18, 2012

Respectfully Submitted,

By: 

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697 American clients), Australia, the United Kingdom, Canada, Germany, the Netherlands and Singapore, among other countries, through the use of emails and sophisticated Internet webcasts, podcasts, and webinars sent directly to clients via their websites www.investmentintelligence.com.au and www.prophetmax.com, in addition to using personal solicitations by IIC's agents located in the United States and Australia. During the relevant period, Pousa and Friant, individually and as the agents of IIC, misrepresented material facts, and failed to disclose other material facts, in their solicitations to actual and prospective clients, which operated as a fraud or deceit upon their clients, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B).

IIC, Pousa and Friant exercised discretionary trading authority or obtained written trading authority over forex trading accounts for or on behalf of persons that were not eligible contract participants ("ECPs"), in retail, leveraged foreign currency ("forex") transactions with IB Capital FX, LLC, an off-shore counterparty purportedly operating from offices in New Zealand without being registered with the Commodity Futures Trading Commission ("Commission") or having a valid exemption from the requirement to register in violation of Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2006 & Supp. IV 2011), and failing to register as a commodity trading advisor ("CTA") in violation of Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2012).

During the relevant period, IIC, through Pousa and Friant, also used Defendants Elevation Group, Inc. ("Elevation"), and Michael Dillard ("Dillard"), operating out of Austin, Texas, to solicit clients. Also, IIC website does not contain the disclaimer required by Regulation 4.41(a)(3), 17 C.F.R. § 4.41(a)(3) (2012), stating the limitations of making

investment decisions based on client testimonials, in violation of Regulation 4.41(a)(3), 17 C.F.R. § 4.41(a)(3) (2012).

Similarly, Pousa and Friant violated Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2006 & Supp. IV 2011), and Regulation 5.3(a)(3)(ii), 17 C.F.R. § 5.3(a)(3)(ii) (2012), by soliciting clients or prospective clients to open discretionary trading accounts in retail, leveraged forex transactions, or supervising any person so engaged, while associated with IIC as a partner, officer, employee, consultant or similar agent, without being registered with the Commission as an associated person (“AP”) of a CTA.

I. STATEMENT OF FACTS

A. The Parties

Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the CEA and the Regulations promulgated thereunder.

Defendant Investment Intelligence Corporation, dba ProphetMax FX is an Australian corporation. Its principal place of business is Waterfront Place, Level 19, 1 Eagle Street, Brisbane, QLD, 4000, Australia. Declaration of Kyong J. Koh (“*Koh Decl.*”)¹ ¶ 5. IIC has never been registered with the Commission in any capacity. *Koh Decl.* ¶ 5. IIC is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, or an associated entity of such entities. *Id.* ¶ 33.

Defendant Senen Pousa is a resident of Australia and is IIC’s principal and registered agent. Throughout the relevant period, Pousa was in charge of handling the day-to-day

¹ Attached hereto as Exhibit 1 is the Declaration of Kyong J. Koh.

operations of and solicitation of clients for IIC. *Id.* ¶ 6. Pousa has never been registered with the Commission in any capacity, nor has he sought or does he qualify for exemption from registration. *Id.* ¶ 6.

Defendant Joel Friant is a resident of Bellingham, Washington. Throughout the relevant period, Friant was the “Client Service Representative” of IIC who provided clients with day-to-day client assistance, account opening documents, customer assistance, and wire instructions for investing with IIC’s managed forex program. *Id.* ¶ 7. Friant has never been registered with the Commission in any capacity, nor has he sought or does he qualify for exemption from registration. *Id.* ¶ 7.

Defendant the Elevation Group, Inc., dba Elevation Group FX is an American corporation. Its principal place of business is 815-A Brazas St. Suite 111 Austin, Texas 78701. *Id.* ¶ 8. Elevation has never been registered with the Commission in any capacity. *Id.* ¶ 8. Elevation is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, or an associated entity of such entities. *Id.* ¶ 33.

Defendant Mike Dillard is a resident of Austin, TX and is the principal of Elevation. He operates Elevation, provides online advice to subscribers of Elevation, and solicited clients for IIC’s managed forex investment. *Id.* ¶ 9. Dillard has never been registered with the Commission in any capacity, nor has he sought or does he qualify for exemption from registration. *Id.* ¶ 9.

B. The Fraudulent Scheme

From at least January 1, 2012 through the present, IIC, through Pousa, Friant and its other agents, and Defendants Dillard and Elevation Group, utilized “wealth creation” webcasts,

webinars, podcasts, emails, and other online seminars via the Internet to directly and indirectly solicit actual and prospective clients worldwide to open forex trading accounts at IIC. Koh Decl. ¶ 15; Declaration of Timothy Selling (“Selling Decl.”)² ¶ 8, 14; and Declaration of Becky Davie (“Davie Decl.”)³ ¶ 6. IIC, through Pousa, Friant and its other agents, used these means to convince clients to allow IIC to exercise discretionary trading authority over clients’ accounts at IB Capital that engaged in leveraged forex transactions, or provided IIC with written discretionary trading authority to trade said accounts. Koh Decl. ¶ 17; Selling Decl. ¶ 5; and Davie Decl. ¶ 11. Defendants Pousa’s, Friant’s, and IIC’s fraudulent scheme accepted at least fifty three million dollars (\$53,000,000) from not less than nine hundred sixty (960) clients worldwide, including clients in the United States (at least 697 American clients), Australia, the United Kingdom, Canada, Germany, the Netherlands and Singapore, among other countries. Koh Decl. ¶ 3.

Clients were solicited either directly via IIC’s webcasts, webinars, podcasts, and other online seminars or were solicited by Elevation, through its agent Dillard. Koh Decl. ¶ 16; Davie Decl.) ¶ 5-6. Elevation, by and through its agents, operates the website *www.theelevationgroup.net*, through which it introduces its subscribers to various investment schemes. Koh Decl. ¶ 16. Its operator, Dillard purports to help middle class individuals learn of investment opportunities that he contends are only available to the wealthy. Koh Decl. ¶ 16. Clients paid a “membership fee” of approximately two thousand dollars (\$2,000) directly to IIC to gain twelve (12) months of access to IIC’s managed forex services. Davie Decl. ¶ 7. All clients were advised that ten thousand (\$10,000) was the minimum deposit required to participate

² Attached hereto as Exhibit 2 is the Declaration of Timothy Selling.

³ Attached hereto as Exhibit 3 is the Declaration of Becky Davie.

in IIC's managed forex services with victims Davie and Selling depositing \$230,000 and \$53,000 respectively. Selling Decl. ¶ 11; and Davie Decl. ¶ 7.

As a result of Defendants' solicitations, most if not all of the nine hundred sixty (960) customers were non-ECPs who opened trading accounts during the relevant period. Koh Decl. ¶ 34. Clients completed the account opening documents provided to them by the Friant and other agents of IIC. Selling Decl. ¶ 6. Clients were directed by IIC to open leveraged forex accounts at IB Capital, a counterparty operating out of New Zealand and the Netherlands with each client who opened an account at IB Capital executing a written limited power of attorney ("LPOA"), granting IIC *dba* Prophetmax discretionary trading authority over their account. Selling Decl. ¶ 5; and Davie Decl. ¶ 11. These LPOA's provided IIC with complete trading authority over the client's account. Koh Decl. ¶ 24.

In one webcast video, Pousa explains to Dillard how IIC purportedly trades clients funds in leveraged forex:

"Dillard: "How does your company work, how do people get involved, what are the requirements, if you don't mind? Let's get to it."

Pousa: "There are two services [offered by IIC]. One you could say is managed and this is a service where there are six (6) proprietary traders that trade a currency account on your behalf twenty-four (24) hours a day each in eight (8) hour shifts while the currency markets are open. The minimum there is \$10,000."

Pousa: "Very simple process, someone opens an account and from that point on, it gets traded. There is a platform that you can download so you can see what the proprietary trading group is doing with your money every single day. You could sit there twenty-four (24) hours per day and see the transactions they are making whenever they occur. Now the transactions with these are really only five (5) transactions per month on average. And these transactions occur within a few seconds most of the time- straight in and straight out. It's not holding something for hours, days, weeks or months. It's holding them in and out, straight away..."

Pousa: "Remembering the leverage ratio. They have a leverage ratio of 100:1. Someone with \$10,000 has really \$1,000,000 they can get in the market. So that's the leverage component. But they [traders] also exercise risk management rules. They are never

risking more than 1-3% of the capital on any one time....”

Koh Decl. ¶ 20. *See also* Selling Decl. ¶ 7-10.

Clients were promised by IIC, through Pousa, Friant and other agents: (i) a monthly return of 9%; (ii) that IIC’s managed forex trading would risk less than 3% of a client’s capital per transaction; (iii) that IIC was able to limit the risk inherent to forex trading by limiting its managed forex trading to 2 to 5 trades per month; and (iv) that IIC has six (6) “proprietary traders” working twenty-four (24) hours a day trading clients’ funds. Selling Decl. ¶ 7-8; and Davie Decl. ¶ 5, 8, 15. Yet, all of these representations to clients were false. Koh Decl. ¶ 19.

On or about May 16-17, 2012, clients suffered a loss of over sixty (60) percent of their investment, when IIC, by and through its agents, entered over two hundred (200) forex trades in each client’s account. Koh Decl. ¶ 28; Selling Decl. ¶ 12-13, 15; and Davie Decl. ¶17-18. These trades violated the representations made by IIC, by and through its agents. In webcasts subsequent to May 17, 2012, Pousa admitted that he had very little prior experience trading forex, that hundreds of trades were effected in clients’ accounts in a single day, that more than three percent (3%) of clients’ funds were traded at one time, and that IIC had only one trader trading clients’ accounts, not the “six (6) proprietary” traders claimed previously. Koh Decl. ¶29.

In response to numerous IIC client complaints to IB Capital about their losses, IB Capital notified clients that it was closing all accounts of clients, required clients to execute account closing documents, and notified customers that their accounts were automatically settled. Davie Decl. ¶19; Koh Decl. ¶ 30.

The forex trades conducted, or offered to be conducted, by IIC, Pousa and Friant on behalf of the Defendants' clients were entered into on a leveraged or margined basis. Koh Decl. ¶ 31. IIC was required to provide as margin only a percentage of the value of the forex contracts

that it purchased. Koh Decl. ¶ 31. The forex transactions for which the Defendants solicited clients, and placed with IB Capital acting as the counterparty, neither resulted in delivery within two days nor created an enforceable obligation to deliver between a buyer and a seller who had the ability to deliver and accept delivery, respectively, in connection with their line of business. Koh Decl. ¶ 32. Rather, these forex contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so). Koh Decl. ¶ 32. Neither IIC, Pousa, Friant, Elevation, or IB Capital are a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company or associated person of financial institutions, registered broker dealer, insurance company, financial holding company, or investment bank holding company. Koh Decl. ¶ 33. Finally, some or all of Defendants' clients were not "eligible contract participants" as that term is defined in Section 1(a)(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi). Koh Decl. ¶ 34; Selling Decl. ¶ 4; and Davie Decl. ¶ 4.

Date: September 18, 2012

Respectfully Submitted,

by:



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**DECLARATION OF KYONG J. KOH
PURSUANT TO 28 U.S.C. 1746**

I, Kyong J. Koh, hereby make the following declaration based upon my personal knowledge:

I. BACKGROUND

1. I am employed as a Futures Trading Investigator in the Division of Enforcement (“Division”) at the CFTC. I have worked as an investigator for the Commission since December 1997. I received a Bachelor of Science degree in Finance from The University of Maryland and a Masters in Business Administration from The Pennsylvania State University.

2. My responsibilities as a futures trading investigator include the investigation of registered and unregistered commodity firms and individuals located throughout the United States and abroad, in order to ensure compliance with and enforcement of the Commodity Exchange Act and the rules and regulations promulgated thereunder. Throughout my career with the Commission I have analyzed and reviewed bank records, commodity futures and foreign currency trading records, and other financial documents.

II. SUMMARY

3. As part of my responsibilities at the Commission, I reviewed and analyzed a variety of documents relating to this matter. These included interviews of and documents from the complaining investors, bank records, and documents from the subjects of interest themselves, produced voluntarily and pursuant to subpoena. My analysis revealed the following information:

- a. From at least January 2012 through the present (the “relevant period”), Defendants Senen Pousa (“Pousa”) and Joel Friant (“Friant”), individually and as the agents of Defendant Investment Intelligence Corporation, dba ProphetMax Managed FX (“IIC”), operated a fraudulent scheme that solicited clients to provide IIC with

discretionary authority to engage in leveraged foreign currency (“forex”) transactions on their behalf with IB Capital FX, LLC, an off-shore counterparty purportedly operating from offices in New Zealand.

- b. During the relevant period, IIC, Pousa and Friant accepted at least fifty three million dollars (\$53,000,000) from not less than nine hundred sixty-one (961) clients worldwide, including clients in the United States, Australia, the United Kingdom, Canada, Germany, the Netherlands and Singapore, among other countries, through the use of emails and sophisticated Internet webcasts , podcasts, and webinars sent directly to clients via their websites www.investmentintelligence.com.au and www.prophetmax.com, in addition to using personal solicitations by IIC’s agents located in the United States and Australia. IIC, through Pousa and Friant, also used Elevation Group, Inc. (“Elevation”) and Michael Dillard (“Dillard”), out of Austin, Texas, to solicit clients.
- c. During the relevant period, IIC, Pousa and Friant, individually and as the agents of IIC, misrepresented material facts, and failed to disclose other material facts, in their solicitations to actual and prospective clients, which operated as a fraud or deceit upon them.

III. DOCUMENTS REVIEWED

4. I have reviewed the following documents and records in connection with the preparation of this declaration:

- A. Multiple customer interviews
- B. Three customer declarations – Mr. Tim Selling, Mrs. Becky Davie, and Mr. Anand Sukhadia

- C. Documents submitted by complaining customers
- D. Preserved websites and webinars related to Elevation, IIC, and Senen Pousa (Exhibit A)
- E. Bank transactions produced by the Federal Reserve Bank of New York pursuant to administrative subpoena issued by the Commission (Exhibit B)
- F. Documents produced by Mike Dillard pursuant to administrative subpoena (Exhibit C)
- G. Documents produced by Elevation pursuant to administrative subpoena
- H. Bank transactions produced by ING Bank pursuant to Memorandum of Understanding (“MOU”) with Netherlands’ Authority for Financial Markets (“AFM”) (Exhibit D)
- I. Registration records provided by the National Futures Association (“NFA”) for the named individuals and entities (Exhibit E)
- J. Foreign regulatory websites for registration status of relevant individuals and entities (Exhibit F)
- K. Transcript of Senen Pousa’s interview conducted by ASIC (Exhibit G)
- L. Documents provided by foreign regulators.

IV. SUBJECTS OF INTEREST

5. **Investment Intelligence Corporation (“IIC”)**, dba **ProphetMax FX** is an Australian corporation. Its principal place of business is Waterfront Place, Level 19, 1 Eagle Street, Brisbane, QLD, 4000, Australia. IIC has never been registered with the Commission in any capacity. It is also not registered with the Australian Securities and Investments Commission (“ASIC”).

6. **Senen Pousa** is a resident of Australia and is IIC's principal and registered agent.

Throughout the relevant period, Pousa was in charge of handling the day-to-day operations of and solicitation of clients for IIC. Pousa has never been registered with the Commission in any capacity, nor has he sought or does he qualify for exemption from registration.

7. **Joel Friant** is a resident of Bellingham, Washington. Throughout the relevant period, Friant was the Client Service Representative of IIC who provided clients with day-to-day client assistance, account opening documents, customer assistance, and wire instructions for investing with IIC's managed forex program. Friant has never been registered with the Commission in any capacity, nor has he sought or does he qualify for exemption from registration.

8. **The Elevation Group, Inc.**, dba Elevation Group FX is an American corporation. Its principal place of business is 815-A Brazas St. Suite 111 Austin, Texas 78701. Elevation has never been registered with the Commission in any capacity.

9. **Mike Dillard** ("Dillard") is a resident of Austin, TX and is the principal of Elevation. He operates Elevation, provides online advice to subscribers of Elevation, and solicited clients for IIC's managed forex investment. Dillard has never been registered with the Commission in any capacity, nor has he sought or does he qualify for exemption from registration.

10. **IB Capital FX LLC** of Wellington, NZ ("IB Capital") is a Dutch corporation with its principal place of business located at IBCAP Office, Level 5, 22 the Terrace 6011 Wellington, New Zealand. IB Capital has never been registered with the Commission in any capacity. IB Capital may be acting as an unregistered foreign exchange dealer.

V. FACTS

Registration Status

13. In order to determine whether any of the defendants had ever been registered with the Commission, I requested that the National Futures Association ("NFA"), a designated self-regulatory organization, search its registration files for the following individuals/entities:

- A. Investment Intelligence Corp. LLC
- B. ProphetMax
- C. Senen Pousa
- D. Joel Friant
- E. The Elevation Group
- F. Mike Dillard
- G. IB Capital FX LLP

14. The NFA has determined that none of the individual or corporate defendants listed in Paragraph 13 have been registered¹. See Exhibit E.

Solicitation via Webinars

15. From at least January 1, 2012 through the present, IIC, through Pousa, Friant and its other agents, utilized "wealth creation" webcasts, webinars, podcasts, emails, and other online seminars via the Internet to directly and indirectly solicit actual and prospective clients worldwide to open forex trading accounts at IIC.

16. Clients were solicited either directly via IIC's webcasts, webinars, podcasts, and other online seminars or were introduced by Elevation, through its agent Dillard. Elevation, by and through its agents, operates the website www.theelevationgroup.net, through which it introduces its subscribers to various investment schemes. Its operator, Dillard, purport to help the general public learn of investment opportunities that he contends are only available to the wealthy.

17. IIC, through Pousa, Friant and its other agents, used these means to convince clients to allow IIC to exercise discretionary trading authority over clients' accounts at IB Capital that

¹ Because we had no other identifying information for Kevin Clark, and due to the common-ness of that name, we could not obtain NFA registration records for Mr. Clark.

engaged in leveraged forex transactions, or provided IIC with written discretionary trading authority to trade said accounts.

18. Dillard subsequently appeared on multiple webcasts and webcasts with Pousa, touting the benefits of IIC's purported trading system. He represented that Elevation had properly vetted IIC and Pousa, and that Pousa and IIC were sound. Dillard stated that he trusted Pousa "with his life" and this endorsement induced members of Elevation to allow IIC to exercise discretionary trading authority over their accounts at IB Capital.

19. Clients were promised by IIC, through Pousa and other agents:

- A. a monthly return of 9%;
- B. that IIC's managed forex trading would risk less than 3% of a client's capital per transaction;
- C. that IIC was able to limit the risk inherent to forex trading by limiting its managed forex trading to 5 to 7 trades per month; and
- D. that IIC has six (6) "proprietary traders" working twenty-four (24) hours a day trading clients' funds.

All of these representations to clients were false.

20. In one webcast video, Pousa explains to Dillard how IIC purportedly trades clients' funds in leveraged forex:

Dillard: "How does your company work, how do people get involved, what are the requirements, if you don't mind? Let's get to it."

Pousa: "There are two services [offered by IIC]. One you could say is managed and this is a service where there are six (6) proprietary traders that trade a currency account on your behalf twenty-four (24) hours a day each in eight (8) hour shifts while the currency markets are open. The minimum there is \$10,000."

Pousa: "Very simple process, someone opens an account and from that point on, it gets traded. There is a platform that you can download so you can see what the proprietary

trading group is doing with your money every single day. You could sit there twenty-four (24) hours per day and see the transactions they are making whenever they occur. Now the transactions with these are really only five (5) transactions per month on average. And these transactions occur within a few seconds most of the time- straight in and straight out. It's not holding something for hours, days, weeks or months. It's holding them in and out, straight away..."

Pousa: "Remembering the leverage ratio. They have a leverage ratio of 100:1. Someone with \$10,000 has really \$1,000,000 they can get in the market. So that's the leverage component. But they [traders] also exercise risk management rules. They are never risking more than 1-3% of the capital on any one time..."

21. The representations to clients in Paragraph 19 were false.

Fees

22. Clients paid a "membership fee" of approximately two thousand dollars (\$2,000) directly to IIC to gain twelve (12) months of access to IIC's managed forex services. All clients were advised that ten thousand (\$10,000) was the minimum deposit required to participate in IIC's managed forex services.

23. Elevation, through Dillard, recommended to its subscribers that they invest with Pousa and IIC. Elevation was compensated with a 30% commission of IIC's two thousand dollar (\$2,000) membership fee for every investor introduced to IIC.

Account Opening Process

24. As a result of Defendants' solicitations, at least nine hundred sixty-one (961) customers opened trading accounts during the relevant period. Clients completed the account opening documents provided to them by Friant and other agents of IIC. Each client who opened an account at IB Capital executed a written limited power of attorney ("LPOA"), granting IIC dba Prophetmax discretionary trading authority over their account. These LPOA's provided IIC with complete trading authority over the client's account. Exhibit H.

25. Once they paid their fees, clients were directed by IIC to open leveraged forex accounts at IB Capital, a counterparty operating out of New Zealand and the Netherlands.

26. Friant, who held himself out as a “client service representative” of IIC, provided clients with instructions on how to wire funds to a bank account in the name of IB Capital in New Zealand (ING Group in the Netherlands). Clients, at the direction of Pousa and Friant, wired funds to IB Capital for trading by IIC in its managed forex investment. Exhibit I.

27. Friant was compensated with a 2.5% share of the 25% “performance fee” debited from clients’ accounts by IIC. This compensation was paid to Friant via a deposit into Friant’s IB Capital trading account.

Trading Losses

28. On or about May 16-17, 2012, clients suffered a loss of over sixty (60) percent of their investment, when IIC, by and through its agents, entered over two hundred (200) forex trades in each client’s account. IB Capital was the counterparty to all of IIC’s trades on behalf of clients. These trades violated the representations made by IIC, by and through its agents.

29. In webcasts subsequent to May 17, 2012, Pousa admitted that he had very little prior experience trading forex, that hundreds of trades were effected in clients’ accounts in a single day, that more than three percent (3%) of clients’ funds were traded at one time, and that IIC had only one trader trading clients’ accounts, not the “six (6) proprietary” traders claimed previously.

30. In response to numerous IIC client complaints to IB Capital about their losses, IB Capital notified clients that it was closing all accounts of clients, required clients to execute account closing documents, and notified customers that their accounts were automatically settled.

Transactions

31. The forex trades conducted, or offered to be conducted, by IIC, Pousa and Friant on behalf of the Defendants' clients were entered into on a leveraged or margined basis. IIC was required to provide as margin only a percentage of the value of the forex contracts that it purchased.

32. The forex transactions for which the Defendants solicited clients, and placed with IB Capital acting as the counterparty, neither resulted in delivery within two days nor created an enforceable obligation to deliver between a buyer and a seller who had the ability to deliver and accept delivery, respectively, in connection with their line of business. Rather, these forex contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

33. Neither IIC, Pousa, Friant, Elevation, or IB Capital are a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company or associated person of financial institutions, registered broker dealer, insurance company, financial holding company, or investment bank holding company.

34. Some or all of Defendants' clients were not "eligible contract participants" as that term is defined in Section 1a(12)(xi) of the Act, 7 U.S.C. § 1a(12)(xi) (2006). Beginning July 23, 2012, and with passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII, §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), an ECP is defined by the Act, in relevant part, as an individual who has "amounts invested on a discretionary basis" the aggregate of which is in excess of the same amounts. *See* Section 1a(18)(xi) of the Act, 7 U.S.C. § 1a(18)(xi) (2006 & Supp. IV 2011). Most if not all of Defendants' clients have total net assets of less than \$5 million.

35. The Defendants failed to disclose to customers or prospective customers that IIC was acting as a CTA, and Pousa and Friant were acting as APs of a CTA, without the benefit of registration with the Commission and without claiming a valid exemption from registration.

36. The Defendants failed to disclose to customers or prospective customers that Elevation was acting as an IB, and Dillard was acting as AP of an IB, without the benefit of registration with the Commission and without claiming a valid exemption from registration.

VI. ANALYSIS

37. According to my analysis of available records, there are at least 961 customers from 40 different countries who had invested with IIC. At least 697 of the 961 may be US citizens.

38. In reviewing the production from Joel Friant, forwarded to the Commission by the SEC, there may have been at least 1,323 unique accounts managed by IIC in 4 types of accounts – US Dollar, Euro, British Pound, and Tony British Pound. Friant's spreadsheet (Exhibit C - Master PM Performance Fees April 2012.xlsx from Friant) shows the profits gained by each account in April 2012, and the calculated performance fees to be charged to each account. While this spreadsheet doesn't tell us the exact total number of customers nor the total funds the scheme took in, it does tell us how many individual accounts there were (that Joel Friant kept track of). Also, at least two complainants (Delphine Frasier and Timothy Selling) have stated that their profits were ~4% in April. Using that number and assuming everyone's returns were the same (traded in a pool) we can work backwards to come up with rough estimate of total customer funds at the beginning of April 2012:

Total \$53,126,422.52

- USD \$42,996,955.00
- EUR € 1,823,324.50 (=USD \$2,388,555.10 at 1.31 rate)

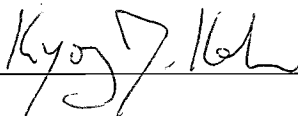
- GBP £3,841,115.50 (=USD \$ 6,222,607.11 at 1.61 rate)
- TONY £937,225.50 (= USD \$ 1,518,305.31 at 1.61 rate)

39. In reviewing the production from the Federal Reserve Bank of New York for the Fedwire Funds Transfer System (“Fedwire”), for the relevant time, there were at least 615 transactions, with 440 deposits totaling over \$15 million. (Exhibit B).

40. Due to the voluminous nature of the exhibit documents, all exhibits to this declaration are saved electronically to the attached DVD.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Washington, D.C. on September 14, 2012.



Kyong J. Koh

**DECLARATION OF TIMOTHY SELLING
PURSUANT TO 28 U.S.C. §1746**

I, Timothy Selling, declare, pursuant to 28 U.S.C. §1746, as follows:

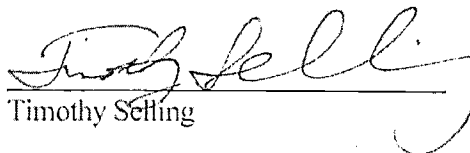
1. I am over the age of 18 and competent to testify to the facts stated in this declaration. I am making this declaration voluntarily and based upon my personal knowledge.
2. I hereby authorize the United States Commodity Futures Trading Commission ("CFTC") and any of its representatives to use this declaration in any proceedings pertaining to the matters described herein.
3. I am a resident of Scottsdale, AZ, and am employed as a Private Investigator.
4. I am not in the business of buying or selling foreign currencies, and this was my first experience in trading off-exchange foreign currencies. My total assets are under \$5,000,000.
5. In December 2011 and January 2012 respectively, I opened and funded a managed forex trading account with IB Capital FX (NZ) LLP, aka IB Capital LLP, a UK company with its principal address in Wellington, NZ. Their FSP registration number is 190284. I signed a Limited Power of Attorney authorizing ProphetMax Managed FX (which I believed was a dba of Investment Intelligence Corporation or "IIC"), an Australian company, to trade the account on my behalf.
6. Senen Pousa ("Pousa") of Brisbane, Australia is the principal of IIC, and the known associates participating in the company are his wife Laura Curley, and a customer relationship manager based in Washington State in the US by the name of Joel Friant ("Friant"). Mr. Friant was to be the sole contact point for any and all questions, issues and transactions involving this program. I was told by Mr. Pousa that Kevin Clarke ("Clarke") of Global Forex Management was responsible for trading our accounts. I was told of Mr. Clarke's identity and involvement only after the problems arose.
7. In soliciting for investors, Mr. Pousa made the following representations: IIC's proprietary trading method had averaged net return of 9.19% per month over the past 4 ½ years. The maximum risk to be undertaken at any time was to be 2 to 3% of customer's account balance, and the maximal drawdown experienced during this period was stated as 8.68%.
8. Before participating in the ProphetMax Managed FX program, IIC required its customers to first complete a series of training videos and exercises presumably to prepare them emotionally and intellectually for the experience of earning over 100% per annum in passive income through the investing prowess of IIC's as yet unnamed investment manager.

9. Members of IIC, as customers are also called, were required to sign strict non-disclosure agreements before being made aware of the identities of either the brokerage used (IB Capital) or the supposed superstar investment manager who normally only provides his services to the ultra-rich, but has graciously agreed to accept accounts from average individuals, provided they are introduced by IIC and agree never to contact either the broker, or the manager or the bank with whom money is to be deposited.
10. Funds were to be wired directly to the bank (ING in the Netherlands) due to their high degree of security, and so the story goes, and then traded through very high-level currency exchange channels at multiple world-class financial institutions who have granted special access to the legendary trader engaged by IIC, Mr. Kevin Clarke.
11. In January 2012, I deposited \$50,000 into my account. For the first several months of trading, the activity level was as represented, just a few days a month of trading. My returns for April 2012 were approximately 4%. The gains were smaller than would be expected from the track record, but still within reason (as were losses), overall stable and fairly consistent. IB Capital deducted a performance fee for payment to ProphetMax Managed FX each month, equivalent to 25% of new profits earned in that calendar month. After fees, my account had grown to US \$53,554.62 by mid-May 2012.
12. On May 16, I noticed an extremely high level of activity, as if perhaps the whole client group's trades were mistakenly run through our individual account, but I was confident this would be corrected once the accounting was reviewed by the brokerage and/or the manager. Since it normally would take 1 to 3 days to get a response thru Mr. Friant, and there had been no such problem previously, (and all trades were to be allocated equally to the accounts of all ProphetMax Managed FX clients), I did not attempt to contact Mr. Friant that day.
13. On May 17, however, there were an enormous number of large, mostly losing, trades run through our account, and I aggressively attempted to reach Mr. Friant, Mr. Pousa and anyone available at IIC to alert them to what I termed a serious major error and get it corrected. By the end of the day on May 17, our \$53,554.62 account had lost all but \$19,953.53 of its value, a 64% drop in a single day on an account that was supposed to be managed with no more than 3% risk!
14. On May 21, Mr. Pousa and Mr. Clarke conducted a webinar to explain the large losses. Mr. Pousa and Mr. Clarke presented a lot of excuses and longwinded explanations; wherein they claimed it was a human error by Mr. Clarke, equivalent to entering 200 contracts instead of 20, and then attempting to make up for the damage by doubling down until the losses got out of hand. Apparently, most other ProphetMax Managed FX customers experienced similar losses that day. However, Mr. Pousa claimed that some clients actually made money.
15. The amount our account lost due to erroneous and possibly unauthorized trading of May 16-17th was US \$33,143.75, which is the amount of restitution I believe we are owed. To the best of my knowledge, neither Mr. Pousa, nor Mr. Clarke, nor IIC nor Managed FX

are properly registered to engage in the management of investments for US clients, nor residents of the UK nor New Zealand nor Australia or any other country for that matter. As the losing trades were executed without authority, I believe that IB Capital should also bear liability for accepting trade instructions from an unauthorized, unlicensed individual or his company.

16. IIC recently confirmed that Mr. Clarke is based in the US, but the cast of characters reaches from here to IIC in Australia to the brokerage in New Zealand, which is registered in the UK, with funds initially held in the Netherlands at ING Bank.
17. While this is pure conjecture, it is conceivable that these activities were planned in advance to extract funds from unsuspecting customers after being set up by IIC, as IB Capital can act as counterparty to any trade and benefit directly from any loss by a customer. This would allow IB Capital and the other parties to profit from the supposed errors of Mr. Clarke. Since IIC originally represented that the funds would be traded through major interbank exchanges, highly liquid with no counterparty or intermediary bidding against the customers' interests, this is just another of many deceptions and inconsistencies foisted upon the public by this group of manipulators.
18. To my knowledge, Investment Intelligence Corporation has no registration or licensing as an introducing broker, securities or forex dealer or any other financial advisory. They claim to have no relationship to IB Capital except to have located the firm, verified their and Kevin Clarke's track record and credentials through extensive due diligence performed by IIC and its attorneys, and arranged for IIC customers to gain access to their and Mr. Clarke's trading services with a US \$10,000 minimum deposit. The traders were to be compensated by 25% of new profits each month deducted from the client's account.
19. Pousa claims to not receive any compensation from Mr. Clarke for trading activities nor for his referrals, though all communication is handled through IIC. IIC charged a membership fee of anywhere from approximately \$500 to \$2,000 for the privilege of participating in their programs. Although I executed a Limited Power of Attorney for ProphetMax Managed FX, I did not do so for Kevin Clarke nor Global Forex Management or any other entity. IIC is now admitting that ProphetMax Managed FX is not a legal entity but merely an area of IIC's website, and therefore the LPOA is of no effect. In any event, I believe that I and the other participants were swindled and defrauded by the activities and deceptions of IIC, IB Capital, Global Forex Management, Kevin Clarke, and Senen Pousa. There may be other individuals and/or entities involved that we, the public, are unaware of.

I state under penalty of perjury that the foregoing statement is true and correct. Executed on this 12th day of July 2012 at Scottsdale, AZ.


Timothy Selling

**DECLARATION OF BECKY DAVIE
PURSUANT TO 28 U.S.C. §1746**

I, Becky Davie, declare, pursuant to 28 U.S.C. §1746, as follows:

1. I am over the age of 18 and competent to testify to the facts stated in this declaration. I am making this declaration voluntarily and based upon my personal knowledge.
2. I hereby authorize the United States Commodity Futures Trading Commission (“CFTC”) and any of its representatives to use this declaration in any proceedings pertaining to the matters described herein.
3. My husband and I (“We”) reside in Fall City, WA. My husband is an Entrepreneur and I am employed as a Biochemist.
4. We are not in the business of buying or selling foreign currencies, and this was our first experience in trading instruments other than stocks. Our combined total assets are under \$5,000,000.
5. We were members of an investment club called “The Elevation Group” (“EVG”) <<http://theelevationgroup.com>>, run by Mike Dillard (“Dillard”) in Austin, Texas. We, along with other EVG members, were introduced to Senen Pousa (“Pousa”) doing business as ProphetMax, through Mr. Dillard, who attested that he had researched ProphetMax thoroughly, was investing 3% of his own capital and trusted Pousa with “his life”. In his promotional emails, Dillard claimed that Pousa had made 2501% over the past 48 months for his clients.
6. On February 22, 2012, my husband Jim and I watched the sales webinar featuring Senen Pousa through EVG’s website. The webinar was live-casted from Austin, TX and was heavily marketed and used scarcity tactics to get people to sign up immediately, which we did (only a certain number of people could sign up for Prophet Max before they “closed” to new members). We followed a link posted in the webinar, which took us to Investment Intelligence Corporation website that had links for signing up for ProphetMax Managed FX (a foreign exchange trading account managed by supposed proprietary traders), ProphetMax Quant (a purported algorithmic trading software that trades foreign exchange currencies), or both. We signed up for both, but never setup or accessed the Quant portion- only the managed FX portion. We paid with a credit card online.
7. We joined what we believed was a financial services company, Investment Intelligence Corporation (“IIC”), based out of Brisbane, Australia, giving us access to their “proprietary” trading group and Quant Software, “ProphetMax” <<http://www.prophetmax.com/pm/>>, after paying \$2997 USD fee (\$3177.42 with AUD exchange rate and the international fee charged by our credit card company) for the ProphetMax Managed FX service and access to their FX Quant software platform. Subsequently, we invested a total of \$230,000 via three accounts: A joint account

(\$120,000- funds credited on 4/2/2012) and two accounts with funds from our Self-Directed IRA, LLCs (\$30,000- credited 4/23/2012 and \$80,000 credited 4/15/2012).

8. Mr. Pousa advertised 100% returns per year of low risk, safe, passive income, 2 to 5 trades per month, 1-3% risk per trade. Also, we were told repeatedly that the proprietary trading group had 6 world-class, professional traders who traded in 8-hour shifts around the clock. We were told that for every quarter our funded account remained open, we would be paid 3.2% annual interest. This is all recorded on the webinar that was posted, but now has been removed, from EVG's website. Prior to it being taken down, I watched and transcribed the part of the webinar where Senen Pousa made these claims. Pousa also claimed IIC's proprietary trading group, which normally only dealt with clients who had at least \$10 million, required as part of the agreement to manage "smaller investors" to remain anonymous to us.
9. ProphetMax was marketed to unsophisticated investors, and investors who had no FX trading background. After we signed up and paid the enrollment fee we were informed that fees were not refundable under any circumstances, which it turns out, is illegal in Australia where they are located. We only were told about IB Capital FX, (NZ) LLP ("IB Capital"), the broker with the "proprietary trading platform" AFTER we had paid membership fees to IIC. We were not offered any alternatives and in order to have our accounts traded were required to sign up with IB Capital, and we could only fund our accounts after completing level three of ProphetMax managed FX videos and personal data entry, which was a "program" to determine our investment objectives, how much we should invest to generate the desired passive income. These "stages" collected significant information about our liquid and hard assets as well as all income sources. It concerns us that all this personal information is in the hands of potential criminals.
10. After completing the three "stages" of ProphetMax Managed FX, we were given access to the enrollment forms for IB Capital through the IIC website. We were required to sign the NDA agreeing under no circumstances to defame Senen Pousa, IIC, ProphetMax, etc, or to reveal who the broker or the bank were to anyone. We were also required to listen to a webinar by Joel Friant ("Friant") on the Level 3 part of the website where he gave details about exactly how to complete the application, and then how to fund the account. Friant stated that he was the point person for any and all questions regarding ProphetMax Managed FX. In this webinar, Friant stated that under no circumstances were we to contact IB Capital about anything and all customer service queries were to be directed to a specific email address [mailto:managedfx@investmentintelligence.com.au]. The reason given was that IB Capital does not want the headache of managing "small investors". He stated that if we did contact them, then our account could be closed. The application for IB Capital looked like a window that ran in IIC and collected the data. Then about 1 week later, we received an email from the managedfx email above stating that IB Capital had opened our account and it could now be funded. Attached to that email were the various forms. The Investment Intelligence logo is all over the application form to open an account with IB Capital so IIC was clearly marketing and managing this investment vehicle. We completed the forms, signed them with all required documents, scanned them, and emailed back to the managedfx e-mail above.

11. When funding the account, we signed a Limited Power of Attorney (LPOA) declaring ProphetMax Managed FX, as the agent and attorney for the purposes of buying and selling margined foreign currency contracts, for our account and at our sole risk, through IB Capital FX (NZ) LLP. Additionally we were required to sign I.C.C. Non-Circumvention, Non-Disclosure Agreement (“NDA”) for the Bank that held the account (ING Bank in the Netherlands), the trading group (IB Capital FX (NZ) LLP in New Zealand) and the LPOA led us to believe the proprietary trading group was part of ProphetMax. These NDA and Non-Circumvent agreements strictly prohibited our contacting the bank or broker directly or our accounts would be terminated and funds returned. These NDAs also had requirements that we agree to not claim in any format or media that Pousa, ProphetMax, and/or IIC were scams, frauds, crooks, criminals, etc and that they would prosecute us legally if we were to disclose any information or defame them in any way.
12. Once the accounts were opened with IB Capital, we were sent the specifics for wiring funds to a master account held by IB Capital FX, (NZ) LLP at ING Bank in the Netherlands and had to designate the currency that we wished our account to be denominated (USD, GBP, or EUR). We then transferred funds from a Scottrade Brokerage Account to fund our joint account, and from two separate UMPQUA Bank LLC Bank Accounts to fund the other two accounts. We were also given instructions on downloading a read-only version of MetaTrade 4 where we could track the trades made in our accounts.
13. We were given no trading rules in writing by either the broker or by ProphetMax and did not realize that we were entitled to these as we were not sophisticated FX investors - we assumed what we were told in the webinars about the amount of risk per trade and number of trades was true.
14. Senen Pousa stated that it was very important that we attend “gatherings” which I expected to include discussions about the trading activity, but instead, were Pousa’s own personal, delusional self-improvement program called “Zero-point consciousness.” At the first “gathering” I joined online, Pousa gruffly answered a few questions about ProphetMax, but stated after that week he would no longer take any questions about it and we should all contact Joel Friant, the customer service person for ProphetMax.
15. We believed that ProphetMax were the proprietary traders that had been working for IIC for the 48 months that had resulted in the original marketed 2501% return. In fact, Pousa claimed in his webinars that he and his wife, Laura Curley, were seasoned expert traders, and Laura was the lead trader and provided training to people who wanted to learn trade on their own. Suddenly on April 24, we received an e-mail announcing that they could disclose the trading group called Global Forex Management (“GFM”) and were required to sign a new I.C.C. Non-Circumvention, Non-Disclosure Agreement before being able to access our account in the ProphetMax website.

16. Both IB Capital and Global Forex Management state on their website that they trade managed funds for clients, starting with as little as \$10k so it was a lie by Senen Pousa to state that the trading group only usually dealt with clients of USD \$10 million net worth.
17. From May 15-17, 2012, we suffered huge trading losses losing over 60% of our investment. Pousa claimed that "Not everyone lost money, in fact, some people made money". He presented a webinar with Kevin Clarke, the GFM trader who took all the blame, claiming that he (Clarke) had "misentered" the lot sizes and the risk on the first day (May 15), thought it was fixed, only to come in the next day and see that there was a software glitch and the Master account allocations to the sub-accounts were incorrect and had suffered losses, which he then "doubled down" to try to recoup the loses, losing even more. We had over 200 trades on that day (see attached. Mr. Clarke stated that over 8 years, he had never had a trading loss in any month greater than 9% and he believed he could bring our accounts back (that would require a 300% return). Pousa told a "story" about how losses around 30% happened before with ProphetMax and they recovered within a few months. When confronted by a web participant, Pousa became very threatening calling investors who had gone online questioning the situation and speculating that fraud had occurred as extremist, and that he had "friends" in Interpol who he could have monitor these individuals. He claimed that he had software that tracked what we were saying about him and his company and that he would prosecute us (trying to make us afraid to turn him into law enforcement and regulators).
18. There were over 200 trades in those 2 days (versus the 5 per month we expected), with many individual losses exceeding 3% as claimed to be part of the risk management. Pousa blamed the clients and the trader, taking no responsibility for these losses and then went on in future webinars to state that he doesn't know Kevin Clarke and GFM very well (even though he claimed GFM had been trading for PM for years), or even Joel Friant, the US citizen <www.thetradingtruth.com> who provides the customer service between the broker and the clients. Pousa claimed that IIC is just a research company, and therefore doesn't need any financial service license from ASIC, the Australian regulator.
19. On June 12, 2012, we received an email from IB Capital stating that they had ceased business with ProphetMax and Intelligence Investment Corporation and that we were to close our accounts immediately. Then ProphetMax sent out an e-mail asking us to wait 72 hours prior to doing anything with our funds but heard nothing after 72 hours other than that Pousa was travelling and would not be holding his bogus "gatherings" for clients. On 6/15/2012 we submitted paperwork to IB Capital to liquidate the funds remaining in our 3 accounts and changed the wording that we would not hold IB Capital responsible for trades made in our accounts, to would hold them responsible. They refused to process the forms and close our accounts if we changed the forms so we submitted the forms with an email stating that we did not release them from liability. I also contacted the credit card company we used to pay the enrollment fees to IIC and disputed the charge for this non-existent, possibly fraudulent trading scam and they are investigating on their end.

20. On June 21, we received an email and two PDF files from the ProphetMax Support Team. In it was a letter from IIC but not signed by anyone “explaining” the original relationship with GFM and IB Capital, and supposed reason for the dissolution of the relationship between the entities. It also stated that the LPOA that we signed was invalid in that designating “ProphetMax Managed FX”, not a legal person or registered entity, was a drafting error. Therefore, the letter claims that it was illegal for IB Capital to give GFM access to our account and that all trades made with our accounts were not lawfully authorized.
21. On June 25, we received an e-mail from IB Capital refuting the claims made in the letter from IIC that the LPOA was not valid.
22. Pousa’s website is still up and he is actively trying to get clients to introduce relatives and friends to the service, and those “introducers” get a commission. He brought in a couple of men offering a “Joint Venture” model to troll various internet groups on the web, and elsewhere to promote ProphetMax webinars to even more “investors”.
23. Needless to say, in the days following, we discovered the Trade2Winds forum where there were many warnings about Senen Pousa (or is it Senan Pouser) who has a history of these kinds of scams. He has myriad websites using SEO to create a false reputation for individuals trying to do due diligence on his so called “products”. You can see how he used words like “scam” and “fraud” in the coding to pull in people to the fake websites that endorsed the services. IB Capital is a shady outfit as well, just having been registered in New Zealand in December of 2011, changing names several times. It has phone numbers linked to another FX Service in Vienna, Austria, that was shut down by regulators. It now appears that we have been duped. Below are just a few of pre-marketing SEO that was done prior to the webinars with EVG (Many pulled up with the words: Prophet Max Scam or Fraud).
 - <http://www.webwire.com/ViewPressRel.asp?aId=15312>
 - http://www.passiveincomegenius.com/passive_income/prophetmax-review/
 - <http://www.articlesbase.com/business-articles/outsider-code-scam-2767582.html>
 - <http://blackboxsocialmedia.com/mike-dillard-interviews-senen-pousa/>
 - <http://www.youtube.com/watch?v=-4-HgwL1HRM>
 - <http://www.linkedin.com/pub/senen-pousa/24/42/969>
 - <http://www.wdng.net/webwirearticles1.cfm/ID/96>
 - <http://outsidercodescam.wetpaint.com/>
 - <http://www.moremoneyreview.com/tag/senan-pauser>
 - <http://www.finance-mentor.com/is-15-minutes-a-week-for-100-return-really-worth-the-effort>
 - <http://www.howtoinvesttoday.com/2011/09/13/prophetmax-does-prophetmax-actually-work/>
24. My husband and I lost \$142,115 out of \$230,000 we invested. The remaining balance of the three accounts was returned on June 30, 2012.

I state under penalty of perjury that the foregoing statement is true and correct. Executed on this 13th day of July 2012 at Fall City, WA.


Becky Davie

**DECLARATION OF ANAND SUKHADIA
PURSUANT TO 28 U.S.C. §1746**

I, Anand Sukhadia, declare, pursuant to 28 U.S.C. §1746, as follows:

1. I am over the age of 18 and competent to testify to the facts stated in this declaration. I am making this declaration voluntarily and based upon my personal knowledge.
2. I hereby authorize the United States Commodity Futures Trading Commission (“CFTC”) and any of its representatives to use this declaration in any proceedings pertaining to the matters described herein.
3. I reside in Jersey City, New Jersey. I am employed as a Managing Director of JAI Global Enterprises.
4. I am not in the business of buying or selling foreign currencies, and this was my first experience in trading these instruments. My total assets are under \$5,000,000.
5. I found out about this investment opportunity through a company called TheElevationGroup.net, an investing research company I subscribe to, that had Senen Pousa (“Pousa”) on a video seminar to talk about his services.
6. I saw the webinar hosted by The Elevation Group website in February 2012 held in Brisbane, Australia, and learned that Mr. Pousa came to Austin, Texas (where The Elevation Group is headquartered) for a live Q&A webinar with The Elevation Group to promote his company ProphetMax, also doing business as Investment Intelligence Corporation (“IIC”). Mr. Pousa’s contact information is Waterfront Place, Level 19, 1 Eagle St, Brisbane, Qld, 4000, Australia.
7. Pousa advertised 100% returns per year, 2 to 5 trades per month, 1-3% risk per trade, and further claimed that Investment Intelligence Corporation (Prophetmax) had access to a trading group which only dealt with clients who had at least 10 million US dollars.
8. The potential investor could only sign up for the ProphetMax Managed FX after completing three levels of the training program to determine our investment objectives. I paid the US \$2,173.54 subscription fee (plus a \$40 wire transfer fee) to ProphetMax to get into the investment. Joel Friant (“Friant”) was IIC's US customer support contact, and directed me to the application forms and the wiring instructions to ING Bank.
9. Only after we paid this membership fee to IIC were we told that our accounts would be at a company called IB Capital. We were not offered any alternatives and had to sign up with IB Capital.
10. The IIC logo is all over the application form to open an account with IB Capital, so they were clearly marketing and managing this investment vehicle and cannot claim that IIC only conducts education and research.

11. We thought IB Capital were the traders and only later were told it was another entity called Global Forex Management (“GFM”), which appears to be run by a lone trader named Kevin Clarke (“Clarke”). As far as I know, I never gave GFM authority to trade on my behalf. The Limited Power of Attorney (“LPOA”) form that I signed lists ProphetMax, and not GFM, with the authority to manage my account.

12. I invested \$10,500 with this program. On May 16th, Kevin Clarke made over 200 trades, and on May 17th, my account and that of the other investors suffered losses of around 63%. Clarke admitted it was his mistake regarding having wrong allocation of the funds and then followed up by making more mistakes – risking much higher amounts to recover the losses, and losing much of it. The amounts traded were much higher than stated in our agreement with them and what was advertised.

13. Since then, there has been a clear lack of communication from IB Capital, ProphetMax, Pousa, and Friant. After the losses on May 17, my remaining balance was \$4,071.89.

14. Afterwards, I got an email from IB Capital stating that the IB Capital and ProphetMax have ceased ties. The email directed me to close my account at IB Capital and to withdraw my funds. That balance was subsequently returned to me.

15. This is clearly a setup or scam and I would like to prosecute all parties to the fullest extent of the law. More importantly, I would like to recover the money that was invested as I was clearly lied to in the promotion of what kind of investment this was. There are hundreds of people in similar situation as I.

I state under penalty of perjury that the foregoing statement is true and correct. Executed on this 3 day of August 2012 at Jersey City, NJ.


Anand Sukhadia

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
2012 SEP 18 AM 11:50
CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY *JJ*

U.S. COMMODITY FUTURES)
TRADING COMMISSION)
)
Plaintiff,)
)
v.)
)
SENEN POUSA, INVESTMENT)
INTELLIGENCE CORPORATION, *DBA*)
PROPHETMAX MANAGED FX, JOEL)
FRIANT, MICHAEL DILLARD, AND)
ELEVATION GROUP, INC.)
)
Defendants.)
)

Case No.:

A12CV0862 LY

**PLAINTIFF’S BRIEF IN SUPPORT OF ITS *EX PARTE* MOTION FOR STATUTORY
RESTRAINING ORDER, TEMPORARY RECEIVER, ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION AND OTHER EQUITABLE RELIEF**

I. INTRODUCTION

Plaintiff U.S. Commodity Futures Trading Commission (the “Commission” or “CFTC”) respectfully submits this Brief in Support of its *Ex Parte* Motion for Statutory Restraining Order, a Temporary Receiver, and an Order to Show Cause re: Preliminary Injunction and Other Equitable Relief (“Motion”), and exhibits attached hereto, pursuant to Section 6c¹ of the

¹ Section 6c(a), 7 U.S.C. § 13a-1, provides: Whenever it shall appear to the CFTC that any . . . person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act . . . the CFTC may bring an action in the proper district court of the United States . . . to enjoin such act or practice, or to enforce compliance with this Act . . . and said courts shall have jurisdiction to entertain such actions: Provided, That no restraining order (other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the CFTC to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, and other than an order appointing a temporary receiver to administer such restraining

Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), 7 U.S.C. § 1 *et seq.* (2006 & Sup. IV 2011), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), Pub. L. No. 111-203, §§ 701-774, 124 Stat. 1376, 1641 *et seq.* (enacted July 21, 2010), 7 U.S.C. §§ 1 *et seq.*, and Commission Regulations (“Regulation(s)”), 17 C.F.R. §§ 1 *et seq.* (2012).

As discussed in more detail in the concurrently filed Local Rule CV-7(b) Appendix of Facts, from at least January 1, 2012 through the present (the “relevant period”), Defendant Investment Intelligence Corporation, *dba* ProphetMax Managed FX (“IIC”), by and through its agents Defendants Senen Pousa (“Pousa”) and Joel Friant (“Friant”), are operating a fraudulent scheme that has accepted at least fifty three million dollars (\$53,000,000) from not less than nine hundred sixty (960) clients worldwide. This includes clients in the United States (at least 697 American clients), Australia, the United Kingdom, Canada, Germany, the Netherlands and Singapore, among other countries. Defendants solicited clients personally through agents located in the United States and Australia, and through the use of emails and sophisticated Internet webcasts, podcasts, and webinars sent directly to clients via their websites www.investmentintelligence.com.au and www.prophetmax.com. During the relevant period, Pousa and Friant, individually and as the agents of IIC, misrepresented material facts, and failed to disclose other material facts in their solicitations to actual and prospective clients, which

order and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this Act shall be issued *ex parte* by said Court.

operated as a fraud or deceit upon their clients, in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B).²

Unless restrained and enjoined by this Court, Defendants IIC, Pousa, and Friant are likely to continue to engage in the acts and practices alleged in this motion, as more fully described below, and similar acts and practices. Because of the emergency nature of this situation, the Commission hereby moves the Court for the entry of an *Ex Parte* Statutory Restraining Order preventing Defendant IIC, Pousa, and Friant, their agents and/or any other person or entity from the following: (1) withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property of Defendants IIC, Pousa, and Friant; (2) destroying, altering, mutilating, or disposing of any books, records, or other documents of Defendants IIC, Pousa, and Friant; (3) refusing to permit authorized representatives of the CFTC to inspect any books, records, or other documents of Defendants IIC, Pousa, and Friant; and (4) appointing a temporary receiver. The Commission further moves the Court for an order compelling Defendants IIC, Pousa, and Friant to appear before the Court and show cause why a preliminary injunction should not be entered against them to enjoin further violations of the CEA and the Regulations.

² The purpose of Section 4o(1) is to “implement[] the fiduciary capacity that characterizes the advisor’s relationship to his clients.” *CFTC v. Perkins*, 2009 WL 806576, at *7 (D.N.J. 2009) (quoting *CFTC v. Savage*, 611 F.2d 270, 280 (9th Cir. 1980)); *Messer v. E.F. Hutton & Co.*, 833 F.2d 909, 920 (11th Cir. 1987) (holding that securities brokers and CTAs are “charged with the duty of dealing with utmost honesty and good faith in his transactions on behalf of his client,” and have “breached this duty where there is a showing of fraud, deceit or absence of good faith”), *aff’d* in relevant part, 833 F.2d 909 (June 16, 1988). Failure to disclose material information is a violation of Section 4o(1). Although scienter is required to prove violations of Section 4o(1)(A) of the Act, it is *not* required to prove a violation of Section 4o(1)(B). See *Messer*, 847 F.2d at 678-679; *Commodity Trend Serv. v. CFTC*, 233 F.3d 981, 993 (7th Cir. 2000); *Perkins*, 2009 WL 806576, *7. Section 4o(1)(B) requires that the “[CTA] engaged in a transaction, practice or course of business that *effected [or operated] a fraud* upon customers or potential customers.” *Id.*

I. JURISDICTION

A. The Court Has Jurisdiction Pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1

This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order there under and bring an action in the proper district court of the United States. In this matter, it appears that Defendants have engaged in and are continuing to engage in violations of the Act by fraudulently soliciting members of the general public to invest for the purpose of trading forex that is margined.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that Defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur, within this District, among other places.

B. The Court Has Jurisdiction over the Foreign Currency Transactions at Issue Pursuant to Section 2(c)(2)(B)-(C) of the Act, 7 U.S.C. § 2(c)(2)(B)-(C)

Under Section 2(c)(2)(C) of the Act, the Commission has jurisdiction over “any agreement, contract, or transaction in foreign currency” if three criteria are met:

- (1) The transactions are: (a) offered to, or entered into with, a person that is not an ECP; and (b) offered, or entered into, on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis;
- (2) the agreement, contract or transaction is not a security, except a security futures product, and the contract of sale does not result in actual delivery within 2 days or otherwise create an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery in connection with their line of business; and
- (3) the counterparty to the transactions is not one of certain enumerated persons.

See Section 2(c)(2)(C)(i),(ii) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(i),(ii). As discussed below, Defendants IIC's, Pousa's, and Friant's retail leveraged forex transactions meet these three jurisdictional criteria.

a. The Transactions Are Offered to, or Purportedly Entered into with, Non-Eligible Contract Participants on a Leveraged or Margined Basis

The first jurisdictional element requires that the transactions be offered to, or entered into with, persons that are not eligible contract participants ("ECPs"). Throughout the relevant period, an ECP is defined by the Act, in relevant part, as an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction "to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual." *See* Section 1a(12)(xi) of the Act, 7 U.S.C. § 1a(12)(xi) (2006). In the instant matter, most if not all of Defendants' clients have total net assets of less than \$5 million. Declaration of Kyong J. Koh ("Koh Decl.") ¶ 34;³ Selling Decl. ¶ 4; and Davie Decl. ¶ 4. Furthermore, Defendants Pousa, Friant, and IIC executed forex transactions on a margined basis. Koh Decl. ¶ 31.

b. The Transactions Do Not Result in Actual Delivery or Create an Enforceable Obligation to Deliver

The second jurisdictional element requires that the transactions were not securities (except securities futures) and the contract of sale neither resulted in "actual delivery" of foreign currency within two days nor created an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business. *See* Section 2(c)(2)(C)(i)(II)(aa)-(bb), 7 U.S.C. § 2(c)(2)(C)(i)(II)(aa)-(bb)

³ *See* Appendix of Facts which contains: Exhibit 1: Declaration of Kyong J. Koh.; Exhibit 2: Declaration of Timothy Selling; and Exhibit 3 is the Declaration of Becky Davie.

(2006 & Supp. IV 2011). The forex contracts at issue remained open from day to day and ultimately were offset without anyone making or taking delivery of actual foreign currency (or facing an obligation to do so). Koh Decl. ¶ 32. Therefore, the second jurisdictional element is met.

c. Neither the Counterparties nor the Defendants Are Among Certain Enumerated Persons

The third element required for Commission jurisdiction is that the counterparty to the persons offered the foreign currency transactions cannot be one of certain excluded persons. Specifically, Section 2(c)(2)(B)(i)(II) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)(II) (2006 & Supp. IV 2011), excludes the following persons and their associated persons: financial institutions, registered broker dealers, certain FCMs registered with the Commission, financial holding companies, and investment bank holding companies. In the instant matter, the counterparty of the customers, IB Capital, is not one of the excluded persons. Koh Decl. ¶¶ 33. Thus, the third jurisdictional element is met.

II. ARGUMENT

A. An *Ex Parte* Statutory Restraining Order Is In The Public Interest And May Be Granted Pursuant To Section 6(c) Of The CEA

The Court should issue an *Ex Parte* Statutory Restraining Order because it is in the public interest to prevent disposal of funds, destruction of records and continued violations of the CEA.

Section 6c(a) of the CEA explicitly authorizes the Court to issue an *ex parte* restraining order freezing assets, appointing a temporary receiver and prohibiting any person from destroying Defendants' records or denying Commission officials access to Defendants' records.⁴

⁴ Texas District courts have applied Section 6c in the Commission's enforcement cases to issue *ex parte* SROs. *See, e.g., CFTC v. Groover*, 2011 WL 1490901, at *1 (E.D. Tex. Feb. 11, 2011); *CFTC v. Yancy*, No. 4:10-cv-02955 (S.D. Tex. filed Aug. 18, 2010); *CFTC v. PrivateFX Global One Ltd.*, No. 4:09-cv-01540 (S.D. Tex. filed May 21, 2009); *CFTC v. Rusfeldt*, No. 3:07-cv-

See 7 U.S.C. § 13a-1. Congress authorized district courts to issue restraining orders in Commission enforcement cases in order to “to prevent possible removal or destruction of potential evidence or other impediments to legitimate law enforcement activities and to prohibit movement or disposal of funds, assets and other property which may be subject to lawful claims of customers.” H.R. Rep. 6 No. 97-565, Part I, 97th Cong., 2d Sess. 53-54, 93 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3871, 3902-03, 3942. The Court has “broad discretion” to grant such statutory relief, including an asset freeze, when presented with a “prima facie case of illegality.” *CFTC v. Co Petro Marketing Group, Inc.*, 680 F.2d 573, 583 (9th Cir. 1982) (the Court may also grant relief ancillary to injunctive relief); and *SEC v. First Fin. Group*, 645 F.2d 429, 438 (5th Cir. 1981).⁵

An asset freeze is especially appropriate here to preserve funds for disgorgement and restitution to defrauded clients of Defendants IIC, Pousa, and Friant. *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 678 (S.D.N.Y. 1979); *CFTC v. Trending Cycles for Commodities, Inc.*, (1980-1982 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 21,013 at 23,970 (S.D. Fla. 1980). Moreover, a freeze maintains the court’s jurisdiction over the assets when disgorgement or restitution is ordered. *CFTC v. American Metal Exch. Corp.*, 693 F. Supp. 168, 196 (D.N.J. 1988).

An order prohibiting the destruction of records and granting the Commission access to inspect and copy records will allow the Commission to identify assets and additional clients. *See Co Petro*, 680 F.2d at 583; *Clothier*, 799 F. Supp. at 493. Such relief will “preserve the status quo while an investigation is conducted to clarify the sources of various funds.” *Morgan*, 484 F.

00130 (S.D. Tex. filed Mar. 12, 2007); *CFTC v. Schafer*, No. 4:96-cv-01213 (S.D. Tex. filed Apr. 17, 1996).

⁵ Because Plaintiff’s injunctive actions derive from statute, Federal Rule of Civil Procedure 65 does not govern a request for a restraining order under Section 6c(a). *CFTC v. Clothier*, 799 F.Supp. 490, 492-93 (D. Kan. 1992).

Supp. at 678.

The appointment of a receiver is appropriate where, as in this case, it is necessary to protect the public interest. *Morgan*, 484 F. Supp. at 677; *CFTC v. M25 Invs., Inc.*, 2009 WL 3740627, at **4-6 (N.D. Tex. Sept. 29, 2009)(the Court granted the CFTC's motion to appoint a receiver to marshal and preserve assets); *Cf. SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1972) (courts repeatedly have upheld the appointment of receivers to effectuate the purposes of the federal securities laws). A receiver investigates the Defendants' activities, ascertains the Defendants' financial status and the identity of investors and prevents diversion or waste of the Defendants' assets to the detriment of customers. *Morgan*, 484 F. Supp. at 677; *CFTC v. Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477 (10th Cir. 1983); *American Metal Exch. Corp.*, 693 F. Supp. 168, 196 (D.N.J. 1988).

In this matter, the appointment of a receiver is necessary to ensure that all assets are identified and located, all clients are identified and the scope and full nature of Defendants IIC's, Pousa's, and Friant's wrongdoing is ascertained. A receiver is necessary to protect the public interest by marshaling, monitoring and protecting any remaining assets in the possession and control of the Defendants IIC, Pousa, and Friant.

B. Order to Show Cause Why Preliminary Injunction Should Not Be Issued Is Necessary

The Commission also seeks an order to show cause as to why a preliminary injunction should not be issued prohibiting, among other things, any future violations of the CEA or Regulations. In that regard, Section 6c of the CEA provides federal courts with broad discretion to fashion appropriate relief, afford redress to aggrieved parties, and deter violations of the CEA. *Co Petro*, 680 F.2d at 583 (Section 6c of the CEA provides the court with authority to issue a broad variety of orders). In fact, Section 6c(a) provides that "(u)pon a proper showing, a . . . temporary

injunction . . . shall be granted without bond.”

Unlike private actions, which are rooted in the equity jurisdiction of the federal court, Commission suits for injunctive relief are statutorily created. The injunctive relief contemplated in Section 6c of the CEA is remedial in nature, and is designed to prevent injury to the public and to deter future illegal conduct. “When the ‘public interest is involved . . . the district court’s equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.” *FSLIC v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989); *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 174-75 (9th Cir. 1987).

As discussed above, restrictive concepts ordinarily associated with private litigation, such as proof of irreparable injury or inadequacy of other remedies, are inapplicable. *See Odessa*, 833 F.2d at 176; *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979); *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978) (holding that there is no requirement for a showing of irreparable harm where an injunction is authorized by a federal statute); *Co Petro*, 502 F. Supp. at 818. Indeed, upon a showing that the CEA has been violated, irreparable injury may be presumed. *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984) *cert. denied sub nom.*, *Windrush Partners, Ltd. v. Metro Fair Housing Svcs.*, 469 U.S. 882 (1984) (finding presumption of irreparable injury in statutory enforcement action). As irreparable harm is presumed, the Court need only find some chance of probable success on the merits. *See FTC v. World Wide Factors*, 882 F.2d 344, 247 (9th Cir. 1989); *Gresham*, 730 F.2d at 1423. And, that will be satisfied by a prima facie showing of illegality. *See Muller*, 570 F.2d at 1300.

Accordingly, the Commission is entitled to injunctive relief upon a showing that a violation has occurred and is likely to continue unless enjoined. *Odessa*, 833 F.2d at 174; *Sahni*, 868 F.2d at 1097; *Co Petro*, 680 F.2d at 583 n.16 (court correctly issued permanent injunction

where there was a reasonable likelihood of future violations); *FTC v. Sage Seminars, Inc.*, 1995 WL 798938, at *8 (N.D. Cal. Nov. 2, 1995); *see also Kemp v. Peterson*, 940 F.2d 110, 113 (4th Cir. 1991). “(T)he commission of past illegal conduct is highly suggestive of the likelihood of future violations.” *CFTC v. Crown Colony Comm. Options, Ltd.*, 434 F. Supp. 911, 919 (S.D.N.Y. 1977) (quoting *SEC v. Mgmt. Dynamics*, 515 F.2d 801, 807 (2d Cir. 1975)). Even a purported cessation of illegal activity should not prevent the granting of a preliminary injunction. *Crown Colony*, 434 F. Supp. at 919-20 (“past actions speak louder than . . . present words.”). Therefore, the Commission requests that the Court enter an order compelling Defendants IIC, Pousa, and Friant to appear before the Court and show cause why a preliminary injunction should not be entered against them to enjoin further violations of the CEA and Regulations.

III. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court grant the Commission’s Motion and issue a SRO: (1) freezing Defendants Pousa’s, Friant’s, and IIC’s assets; (2) appointing a temporary receiver; (3) permitting the Commission and the receiver to inspect and copy Defendants Pousa’s, Friant’s, and IIC’s books, records, documents and correspondence (wherever they may be located); and (4) preventing Defendants Pousa, Friant, and IIC from directly or indirectly destroying, mutilating, concealing, altering or disposing of any books, records, documents or correspondence. The Commission further requests that the Court enter an order compelling Defendants Pousa, Friant, and IIC to appear before the Court and show cause why a preliminary injunction should not be entered against them to enjoin further violations of the CEA and Regulations.

Date: September 18, 2012

Respectfully Submitted,

by:

Handwritten signature of Timothy J. Mulreany and JonMarc P. Buffa, written in black ink over a horizontal line.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
2012 SEP 18 AM 11:50
CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

U.S. COMMODITY FUTURES)
TRADING COMMISSION)

Plaintiff,)

v.)

SENEN POUSA, INVESTMENT)
INTELLIGENCE CORPORATION, *DBA*)
PROPHETMAX MANAGED FX, JOEL)
FRIANT, MICHAEL DILLARD, AND)
ELEVATION GROUP, INC.)

Defendants.)

Civil Action No.

BY _____ DEPUTY

A12CV0862 LY

CERTIFICATE OF SERVICE

I do hereby certify that the contemporaneously filed: U.S. Commodity Futures Trading Commission's Motion for *Ex Parte* Motion for Statutory Restraining Order, a Temporary Receiver, and an Order to Show Cause re: Preliminary Injunction and Other Equitable Relief; Brief in Support of its *Ex Parte* Motion for Statutory Restraining Order, a Temporary Receiver, and an Order to Show Cause re: Preliminary Injunction and Other Equitable Relief; Appendix of Facts and its attendant exhibits; and Proposed Statutory Restraining Order was filed on September 18, 2012 with the Clerk of this Court by hand, and was served on:

[X] INTELLIGENCE CORPORATION, *DBA* PROPHETMAX MANAGED FX and SENEN POUSA: mailing by UPS to Australian Securities & Investments Commission for personal service:

Australian Securities & Investments Commission
c/o Michael Ryan, Senior Manager
Level 20, 240 Queen Street,
Brisbane 4000, Queensland

Australia


[X] JOEL FRIANT: by personal service by process server at the following address:

1234 Puget St
Bellingham, WA 98229

[X] MICHAEL DILLARD, AND ELEVATION GROUP, INC.: by personal service to:

15-A Brazas St. Suite 111
Austin, Texas 78701

September 18, 2012



Jon Marc P. Buffa

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

U.S. COMMODITY FUTURES)
 TRADING COMMISSION)
)
 Plaintiff,)
)
 v.)
)
 SENEN POUSA, INVESTMENT)
 INTELLIGENCE CORPORATION, *DBA*)
 PROPHETMAX MANAGED FX, JOEL)
 FRIANT, MICHAEL DILLARD, AND)
 ELEVATION GROUP, INC.)
)
 Defendants.)

Civil Action No.

A12CV0862 LY

PROPOSED STATUTORY RESTRAINING ORDER

This matter came before the Court on September 17, 2012, on the Motion of Plaintiff U.S. Commodity Futures Trading Commission (the "Commission" or "Plaintiff") for a: (1) Statutory *Ex Parte* Restraining Order; (2) Appointment of a Temporary Receiver; and (3) Order to Show Cause re: Preliminary Injunction (the "Application"). The Court, having considered the Commission's Complaint, Motion, Brief in Support of the Motion, Appendix of Facts, Exhibits, other materials in support thereof, and all other evidence presented by Plaintiff filed herein, finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Commodity Exchange Act, as amended (the "Act") 7 U.S.C. § 13a-1 (2006).
2. Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006).

3. There is good cause to believe that the Defendants Investment Intelligence Corporation, dba ProphetMax Managed FX (“IIC”), Senen Pousa (“Pousa”), and Joel Friant (“Friant”), have engaged, are engaging and/or are about to engage in acts and practices constituting violations of the Act, 7 U.S.C. §§ 1, et seq. (2006).
4. There is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for clients in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition by Defendants of assets or records unless they are immediately restrained and enjoined by Order of this Court.
5. Good cause exists for the freezing of assets owned, controlled, managed or held by, on behalf of, or for the benefit of Defendants Pousa, Friant, and IIC (hereinafter “Defendants’ Assets”) as well as in order to assure payment of restitution and disgorgement as authorized and for the benefit of clients or customers. Good cause exists for entry of an order prohibiting Defendants Pousa, Friant, and IIC, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants Pousa, Friant, and IIC from destroying records and denying agents of the Commission access to inspect and copy records to ensure that Commission representatives have immediate and complete access to those books and records.
6. Good cause exists to require an accounting to determine the location and disposition of clients or customers’ funds.
7. Good cause exists to order repatriation of assets controlled by Defendants Pousa, Friant, and IIC to assure payment of restitution and disgorgement as authorized and for the benefit of clients or customers.

8. Weighing the equities and considering the Commission's likelihood of success in its claims for relief, the issuance of a statutory restraining order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions apply:

9. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records (including, but not limited to, floppy diskettes, hard disks, ZIP disks, CD-ROMs, optical discs, backup tapes, printer buffers, smart cards, memory calculators, pagers, personal digital assistants such as Palm Pilot computers, as well as printouts or readouts from any magnetic storage device), and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.
10. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts including bank accounts and accounts at financial institutions, credits, receivables, lines of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.
11. "Defendants" means IIC, Pousa, and Friant, and for all parties includes any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of the Defendants, and any person who receives actual notice of this Order by

personal service or otherwise insofar as he or she is acting in concert or participation with Defendants.

RELIEF GRANTED

I.

ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS

IT IS HEREBY ORDERED that:

12. Defendants are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including those held in the name of Defendants, wherever located, including assets held outside the United States, except as provided in Part III of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.
13. Defendants and their agents, servants, employees, attorneys, and persons in active concert or participation with Defendants who receive actual notice of this Order by personal service except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any of Defendants' assets, wherever located, including assets held outside the United States, except as provided in Paragraph III of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

14. Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name or subject to access by the Defendants.

II.

DIRECTIVES TO FINANCIAL INSTITUTIONS AND OTHERS

IT IS FURTHER ORDERED, pending further Order of this Court, that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any Defendants' asset or account, or account established by Defendants on behalf of any other entity or person, including a commodity pool, accounts or assets, or has held, controlled, or maintained custody of any account or asset of the Defendants at any time since January 1, 2012, shall:

15. Prohibit Defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset (other than to margin existing futures or securities positions) except as directed by further order of the Court, provided that any Receiver appointed by the Court may, in the execution of his or her duty to preserve the value of any account or asset controlled or managed by Defendants on behalf of another person, either:

- a. liquidate any futures or securities positions held, controlled or managed by Defendants, or,
- b. engage in such transactions as deemed necessary to manage the risk associated with any open futures or securities position held, controlled or managed by Defendants.

16. Deny Defendants and all other persons access to any safe deposit box that is: (a) titled in the name of the Defendants, either individually or jointly; or (b) otherwise subject to access by the Defendants;
17. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every such account or asset titled in the name, individually or jointly, of the Defendants, or held on behalf of, or for the benefit, of the Defendants; (b) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and (c) the identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendants or is otherwise subject to access by the Defendants; and
18. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

III.

TEMPORARY RECEIVER

IT IS FURTHER ORDERED that:

19. _____ is appointed temporary Receiver for the Defendants' assets and the assets of any affiliates or subsidiaries of Defendants, with the full powers of an equity receiver. The Receiver shall be the agent of this Court in acting as Receiver under this Order;

20. The Receiver is directed and authorized to accomplish the following:

- a. Assume full control of the corporate Defendant and any business entities owned by any IIC by removing any officer, independent contractor, employee, or agent of a corporate defendant, from control and management of the affairs of the IIC and any business entities owned by any Defendants;
- b. Take exclusive custody, control, and possession of all the funds, property, mail and other assets of, in the possession of, or under the control of the Defendants, wherever situated. The Receiver shall have full power to sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information, and other papers and documents of the Defendants, including documents related to customers or clients whose interest are now held by or under the direction, possession, custody or control of the Defendants;

- c. Take all steps necessary to secure the residential and business premises of the Defendants;
- d. Preserve, hold and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to Defendants' customers or clients;
- e. Prevent the withdrawal or misapplication of funds entrusted to the Defendants and otherwise protect the interests of customers, clients, or investors;
- f. Manage and administer the assets of the Defendants by performing all acts incidental thereto that the Receiver deems appropriate, including hiring or dismissing any and all personnel or suspending operations;
- g. Collect all money owed to the Defendants;
- h. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of the Defendants or to carry out his or her duties pursuant to this Order;
- i. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;
- j. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;

- k. Open one or more bank accounts as designated depositories for funds of the Defendants. The Receiver shall deposit all funds of the Defendants in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts; and
 - l. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Defendants prior to the date of entry of this Order, except for payments that the Receiver deems necessary or advisable to secure assets of the Defendants.
21. Immediately upon service of this Order upon them, the Defendants and any other person or entity served with a copy of this Order, shall immediately or within such time as permitted by the Receiver in writing, deliver over to the Receiver:
- a. Possession and custody of all funds, property, and other assets, owned beneficially or otherwise, wherever situated, of the Defendants;
 - b. Possession and custody of documents of the Defendants, including but not limited to, all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;

- c. Possession and custody of all precious metals, other commodities, funds, and other assets being held by or on behalf of the Defendants or on behalf of the Defendants' customers, clients, or investors;
- d. All keys, computer passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or documents of the Defendants, including but not limited to, access to the Defendants' residential and business premises, means of communication, accounts, computer systems, or other property; and
- e. Information identifying the accounts, employees, properties or other assets or obligations of the Defendants.

22. The Defendants and all other persons or entities served with a copy of this order shall cooperate fully with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority; providing any password required to access any computer or electronic files in any medium; and discharging the responsibilities of the Receiver under this Order, and advising all persons who owe money to the Defendants that all debts should be paid directly to the Receiver.

23. Except by leave of the Court, during the pendency of the receivership ordered herein, the Defendants and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the Defendants, the Receiver, receivership assets, or the Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

- a. Commencing, prosecuting, litigating or enforcing any suit, except that actions may be filed to toll any applicable statute of limitations;
- b. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of the Defendants or any property claimed by the Defendants, or attempting to foreclose, forfeit, alter or terminate any of the Defendants' interests in property, whether such acts are part of a judicial proceeding or otherwise;
- c. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of the Defendants or the Receiver, or any agent of the Receiver; and
- d. Doing any act or thing to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver or the duties of the Receiver; or to interfere with the exclusive jurisdiction of this Court over the property and assets of the Defendants.
- e. This paragraph does not stay the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

24. Within 90 days of the date of this Order, the Receiver shall file with this Court and serve Plaintiff Commission a report outlining the steps taken to identify customers, marshal assets, determine the amount invested by each customer, and the portion of assets available to pay back customers. This report shall also include a statement as to the estimated time it will take to distribute available assets to customers and wind up the receivership.
25. The Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, or in the possession or control of, or which may be received by the Defendants. The Receiver shall file with the Court and serve on the parties, including Plaintiff Commission, periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. Plaintiff Commission may object to any part of a request within 30 calendar days of service of a request. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

IV.

ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS

IT IS FURTHER ORDERED that within ten (10) business days following the service of this Order, the Receiver shall:

26. Provide the Commission with a full accounting of all Defendants' funds, documents, and assets, including those outside of the United States from at least January 1, 2012, to the date of this Order;
27. Transfer to the territory of the United States all Defendants' Assets and documents located outside of the United States; and
28. Provide the Commission access to all records of the Defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

V.

MAINTENANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that:

29. Defendants and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of the Defendant.

VI.

INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

30. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the Defendants and their agents including, but not

limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are on the persons of the Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated; and

31. Defendants and their agents, servants, employees, attorneys, and persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of the Defendants, wherever such books and records may be situated.

VII.

BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

32. Plaintiff Commission is an agency of the United States of America and, accordingly, no bond need be posted by the Commission.

VIII.

ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that:

33. Defendants shall appear before this Court on _____ 2012, at _____ a.m./p.m., before the undersigned United States District Judge at the United States Courthouse for the Western District of Texas, to show cause, if there be any, why an Order for Preliminary Injunction should not be granted to prohibit further violations of the Act and why the other relief requested should not be granted pending trial on the merits of this action.

34. Should any party wish to file a memorandum of law or other papers in opposition to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed on or before _____, 2012 and served no later than _____, 2012.

IX.

SERVICE OF ORDER

IT IS FURTHER ORDERED that:

35. Copies of this Order may be served by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents of the Defendants or that may be subject to any provision of this Order, and additionally, that representatives of the Commission or their agents are authorized by the Court to effect service. Additionally, representatives of the Commission or their agents are specially appointed by the Court to effect service.
36. Service of this Order, the Complaint and other process may be effected by U.S. Marshal or deputy U.S. Marshal, any local law enforcement officer, international law enforcement officer, or otherwise in accordance with Fed. R. Civ. P. 4.
37. The Defendants shall file with the Court, within three days after receipt of this Order, an affidavit acknowledging receipt of this Order. Copies of this Order may be served by any means, including facsimile transmission.

X.

FORCE AND EFFECT

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, at Austin, Texas on this ____ day of September 2012.

UNITED STATES DISTRICT JUDGE

CONSENT TO RELEASE OF FINANCIAL RECORDS

I, _____, do hereby direct any bank or trust company at which I have a bank account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in your possession or control which relate to said bank accounts to any attorney of the Commodity Futures Trading Commission, and to give evidence relevant thereto, in the matter of *US Commodity Futures Trading Commission v. Senen Pousa et al.*, now pending before the United States District Court for the Western District of Texas, and this shall be irrevocable authority for so doing. This direction is intended to apply to the laws of countries other than the United States which restrict or prohibit the disclosure of bank information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same shall apply to any of the bank accounts for which I may be a relevant principal.

Dated: _____, 2012

Signature

Title