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CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

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7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10  
11 COMMODITY FUTURES TRADING  
COMMISSION,

12  
13 Plaintiff,

14 vs.

15 PROFIT PARTNERS, INC., an  
unincorporated entity,

16  
17 Defendant.  
18 \_\_\_\_\_

CV03-9190 LGB VBK

) Case No.

) COMPLAINT FOR INJUNCTIVE AND  
) OTHER EQUITABLE RELIEF AND  
) FOR CIVIL PENALTIES UNDER THE  
) COMMODITY EXCHANGE ACT, AS  
) AMENDED, 7 U.S.C. §§ 1-et seq

19  
20 I.

21 JURISDICTION AND VENUE

22 1. The Commodity Exchange Act, 7 U.S.C. § 1 et seq.  
23 (2001) ("Act") establishes a comprehensive system for regulating  
24 the purchase and sale of commodity futures contracts and options.  
25 This Court has jurisdiction over this action pursuant to Section  
26 6c of the Act, 7 U.S.C. § 13a-1 (2001), which authorizes the  
27 Commodity Futures Trading Commission ("Commission") to seek  
28 injunctive relief against any person whenever it shall appear

1 that such person has engaged, is engaging, or is about to engage  
2 in any act or practice constituting a violation of any provision  
3 of the Act or any rule, regulation or order thereunder.

4 2. Venue properly lies with this Court pursuant to Section  
5 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2001), in that Defendant is  
6 found in, inhabits, or transacts business in this District, and  
7 the acts and practices in violation of the Act have occurred, are  
8 occurring, or are about to occur, within this District, among  
9 other places.

10 II.

11 SUMMARY

12 3. From May 28, 2003 to the present, Defendant Profit  
13 Partners, Inc. ("PPI") has fraudulently solicited actual and  
14 potential customers for the purpose of selling computer trading  
15 systems ("trading systems") and/or further engaging these  
16 potential clients for the purpose of trading futures contracts  
17 with PPI's "preferred brokers", who, Defendant alleges, have  
18 experience using these trading systems. In these solicitations,  
19 Defendant falsely represented to one customer and one potential  
20 customer that it "guarantee[s] that you are profitable your first  
21 year of trading period." Defendant also represented that trading  
22 these systems has generated between 300% and 600% profit per  
23 year, and that one of the systems was approved by the Commodity  
24 Futures Trading Commission. Because these representations are  
25 willful attempts to defraud and deceive, Defendant has violated  
26 Section 4o of the Act, 7 U.S.C. § 6o (2001), and 17 C.F.R. §§  
27 4.16 and 4.41.

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4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001), Plaintiff Commission brings this action to enjoin the unlawful acts and practices of Defendant. In addition, Plaintiff seeks civil monetary penalties in the amount of not more than the higher of \$120,000 for each violation, or triple the monetary gain to Defendant for each violation of the Commodity Exchange Act, disgorgement of Defendant's ill-gotten gains, restitution to customers, prejudgment interest and such other relief as this Court may deem necessary or appropriate.

5. Unless enjoined by this Court, Defendant is likely to continue to engage in the acts and practices alleged in this Complaint, as more fully described below.

**III.**

**THE PARTIES**

6. Plaintiff Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Commodity Exchange Act, 7 U.S.C. §§ 1 et seq. (2001).

7. Defendant Profit Partners, Inc. ("PPI") is an unincorporated entity doing business in the state of California. PPI maintains its principal place of business at 5301 Beethoven Street, Los Angeles, California. PPI is engaged in the business of marketing and selling commodity futures and options trading systems to the retail public. PPI has never been registered with the Commission in any capacity.

**IV.**

1 **FACTUAL BACKGROUND**

2 8. From May 28, 2003 to the present, Defendant has  
3 conducted business out of its Los Angeles, California office for  
4 the purpose of marketing and selling commodity futures and  
5 options trading systems to the retail public.

6 9. From at least May 2003 and continuing to the present,  
7 PPI has acted as a commodity trading advisor ("CTA") offering  
8 commodity trading advice for compensation to members of the  
9 public through commodity trading systems that PPI produces, or  
10 causes to be produced, while conducting business under the name  
11 of Profit Partners, Inc..

12 10. Section 1a(6)(A) of the Act, 7 U.S.C. § 1a(5)(A),  
13 defines a CTA as any person who, for compensation or profit,  
14 engages in the business of advising others as to the value or the  
15 advisability of trading in: (i) any contract of sale of a  
16 commodity for future delivery made or to be made on or subject to  
17 the rules of a contract market; (ii) any commodity option  
18 authorized under Section 4c of the Act, 7 U.S.C. § 6c; or (iii)  
19 any leverage transaction authorized under Section 19 of the Act,  
20 7 U.S.C. § 23; or a person who for compensation or profit, and as  
21 part of a regular business, issues or promulgates analyses or  
22 reports concerning any of the activities referred to above.

23 11. From on or about May 2003 to the present, PPI, or  
24 representatives of PPI, willfully solicited customers in an  
25 attempt to sell trading systems.

26 12. Specifically, Defendant falsely describes the results  
27 generated by, and the profit opportunities available from trading  
28 through their trading systems, and misrepresents that their

1 trading systems are approved by the Commission.

2 13. Defendant, by and through its representatives, solicits  
3 customers to purchase either the "Duffy Mojo Trading System", or  
4 the "Tradewins 'Trade For A Living'" trading system. Defendant's  
5 solicitations are both telephonic and via electronic mail.

6 14. During the initial telephone solicitation, the sales  
7 representative for PPI attempts to generate interest in one of  
8 the trading systems the company offers.

9 15. Defendant's solicitations for the Duffy Mojo Trading  
10 System include oral representations made to at least one  
11 potential customer that the trading system will generate 600%  
12 return per year. Defendant's representatives stated that this is  
13 based upon actual trades, and not hypothetical results.

14 16. Defendant's solicitations for the Tradewins Trade For A  
15 Living trading system included oral representations to at least  
16 one actual customer who purchased the system, and one potential  
17 customer that the trading system will generate at least 300%  
18 return per year.

19 17. Contemporaneous with the initial telephone  
20 conversation, the PPI sales representative forwards an electronic  
21 mail message to the customer. Included in the electronic mail  
22 solicitation for each trading system is a history of purported  
23 trades made using the trading system, along with representations  
24 concerning the profitability of the trading system.

1           18. The written solicitation for the Duffy Mojo Trading  
2 system included identification of the number of profitable trades  
3 made, along with the total dollar profits made from those trades.

4           19. The written solicitation for the Tradewins Trade For A  
5 Living trading system included representations that the trading  
6 system "has been able to consistently see an approx. 300% return  
7 per year per contract."

8           20. The electronic messages also suggest that the potential  
9 customer utilize PPI's "preferred" or "recommended" brokers, in  
10 order to "trade the system to its FULL potential."

11           21. Customers obtain access to the trading systems by  
12 sending funds to PPI. Specifically, a potential customer signs  
13 and sends an order form to PPI, along with the necessary funds.  
14 The order form notes that computer software, along with a manual,  
15 are sent to the customer to utilize in their trading of futures  
16 contracts.

17           22. Alternatively, after paying the fee to gain access to  
18 the trading system, the customer may utilize the services of a  
19 broker that is recommended by PPI. Upon information and belief,  
20 Plaintiff alleges that these preferred brokers then purportedly  
21 use the trading system to make trades in the futures markets with  
22 the customer's funds. Upon information and belief, Plaintiff  
23 alleges that these brokers charge a commission of thirty dollars  
24 per round turn.

25           23. PPI's representations to its customers include a  
26 "guarantee" that the person using either Duffy Mojo Trading  
27 System or the Tradewins Trade For A Living trading system will be  
28 profitable.

1           24. With respect to the Duffy Mojo Trading System, PPI  
2 guarantees in writing that a trader using the system will be  
3 profitable in his or her first year of trading. This guarantee,  
4 according to Defendant's order form, "is based on trading profits  
5 during the first twelve 12 months [sic] period of ownership  
6 and/or trades that are taken. If all trades are taken as  
7 directed by the MOJO system during the 12 month period and all  
8 appropriate account statements are included with your refund  
9 request and if the period has been unprofitable, you'll receive a  
10 full refund of the purchase price."

11           25. Regarding the Tradewins Trade For A Living trading  
12 system, PPI states in its electronic mail solicitation that it  
13 "guarantee[s] that you are profitable your first year of trading  
14 period."

15           26. In a conversation between a representative of PPI and a  
16 representative of a prospective customer, the representative of  
17 the Defendant stated that PPI's trading system is "CFTC  
18 approved." This statement is false and misleading.

19           27. The CFTC does not verify, endorse or otherwise pass  
20 upon the adequacy, accuracy or success of any trading advice,  
21 system or methodology and has not done so with respect to PPI,  
22 the trading activities of any of PPI's alleged customers, or any  
23 of PPI's trading advice, systems or methodologies. The CFTC does  
24 not pass upon the truthfulness or accuracy of any advertisements  
25 for commodity trading advice, systems or methodologies and has  
26 not done so with respect to any of PPI's representations. The  
27 CFTC also does not recommend or approve CTAs or otherwise pass  
28

1 upon their abilities or qualifications and has not done so in  
2 connection with PPI.

3 COUNT I

4 VIOLATION OF SECTION 40(1) OF THE ACT:  
5 FRAUD AS A CTA

6 28. Paragraphs 1 through 27 are re-alleged and incorporated  
7 herein.

8 29. Beginning in at least May 2003, and continuing through  
9 the present, PPI, while acting as a CTA, violated Section 40(1)  
10 of the Act, 7 U.S.C. § 60(1), in that Defendant directly or  
11 indirectly employed or is employing a device, scheme, or artifice  
12 to defraud customers or prospective customers, or has engaged or  
13 is engaged in transactions, practices or a course of business  
14 which operated or operates as a fraud or deceit upon customers or  
15 prospective customers by using the mails or other means or  
16 instrumentalities of interstate commerce. PPI's fraudulent acts  
17 consisted of, among other things, making the material  
18 misrepresentations and omissions of fact in the solicitation of  
19 customers through telephone solicitations and emails which would  
20 lead a reasonable customer to believe, *inter alia*, the facts set  
21 forth in paragraphs 11 through 15 and paragraphs 19 through 21,  
22 above.

23 COUNT II

24 VIOLATION OF COMMISSION REGULATION 4.16:  
25 PROHIBITED REFERENCES TO THE COMMISSION

26 30. Paragraphs 1 through 29 are re-alleged and incorporated  
27 herein.

28 31. Pursuant to Commission Regulation 4.16, 17 C.F.R.  
§ 4.16, it shall be unlawful for a CTA to represent or imply in

1 any manner whatsoever that the Commission, the Federal  
2 government, or any agency thereof has sponsored, recommended,  
3 approved, or in any respect passed upon, the CTA's abilities or  
4 qualifications.

5 32. From at least May 2003 and continuing through the  
6 present, PPI, while acting as a CTA, falsely misrepresented  
7 either directly or through implication in solicitations, either  
8 oral or written, that the Commission approved PPI's trading  
9 system.

10 COUNT III

11 **VIOLATION OF COMMISSION REGULATION 4.41:  
12 FRAUDULENT ADVERTISING AS A CTA**

13 33. Paragraphs 1 through 32 are re-alleged and incorporated  
14 herein.

15 34. Pursuant to Commission Regulation 4.41(a), 17 C.F.R.  
16 § 4.41(a), no CTA may advertise through any publication,  
17 distribution or broadcast of any report, letter, circular,  
18 memorandum, publication, writing, advertisement, or other  
19 literature or advice in a manner which employs any device, scheme  
20 or artifice to defraud any participant or client or prospective  
21 participant or client, or where such advertising involves any  
22 transaction, practice or course of business which operates as a  
23 fraud or deceit upon any participant or client or any prospective  
24 participant or client.

25 35. From at least May 2003 and continuing through the  
26 present, PPI, while acting as a CTA, violated Commission  
27 Regulation 4.41(a), 17 C.F.R. § 4.41(a), in that it  
28 misrepresented and failed to disclose material facts in

1 solicitations, both orally and in writing, in a manner which  
2 constituted a device, scheme or artifice to defraud prospective  
3 customers or a practice or course of business which operated as a  
4 fraud or deceit on prospective customers, to the extent that  
5 statements made in these advertisements would lead a reasonable  
6 customer to believe, *inter alia*, the facts set forth in  
7 paragraphs 11 through 15 and paragraphs 19 through 21, above.

8 V.

9 **RELIEF REQUESTED**

10 WHEREFORE, Plaintiff respectfully requests that this Court,  
11 as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and  
12 pursuant to its own equitable powers, enter:

13 A. An order of permanent injunction enjoining PPI and all  
14 persons insofar as they are acting in the capacity of agents,  
15 servants, employees, successors, assigns, or attorneys of PPI and  
16 all persons insofar as they are acting in active concert or  
17 participation with PPI who receive actual notice of the Order by  
18 personal service or otherwise, from directly or indirectly:

- 19 1. Employing any device, scheme, or artifice to defraud any  
20 client or prospective client, or engaging in any  
21 transaction, practice, or course of business which operates  
22 as a fraud or deceit upon any client or prospective client,  
23 by use of the mails or any means or instrumentality of  
24 interstate commerce, in violation of Section 40(1) of the  
25 Act, 7 U.S.C. § 60(1);
- 26 2. Representing or implying in any manner whatsoever that the  
27 Commission, the Federal government or any agency thereof  
28

1 have sponsored, recommended or approved, or in any respect  
2 passed upon PPI, or any of its trading systems, in violation  
3 of Regulation 4.16, 17 C.F.R. § 4.16; and

4 3. While acting as a CTA, advertising in a manner which: (1)  
5 employs any device, scheme or artifice to defraud any client  
6 or prospective client; or (2) involves any transaction,  
7 practice or course of business which operates as a fraud or  
8 deceit upon any client or prospective client, in violation  
9 of Regulation 4.41(a), 17 C.F.R. § 4.41(a).  
10

11 B. An order requiring PPI to make restitution to every  
12 customer whose funds were received or utilized by it as a result  
13 of acts and practices which constituted violations of the Act, as  
14 described herein, including pre-judgment interest;

15 C. An order requiring PPI to pay civil penalties under the  
16 Act, in an amount of not more than the higher of \$120,000 or  
17 triple the monetary gain to PPI for each violation of the Act;

18 D. An order directing that PPI make an accounting to the  
19 court of all its assets and liabilities, together with all the  
20 funds it received from persons in connection with the sale of its  
21 trading systems, trading manual, and/or video including the  
22 names, addresses and telephone numbers of any such persons from  
23 whom it received such funds, from May 2003 to and including the  
24 date of such accounting;

25 E. An order requiring PPI to pay costs and fees as  
26 permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

27 F. Such other equitable relief, including disgorgement, as  
28 the court may deem necessary or appropriate under the

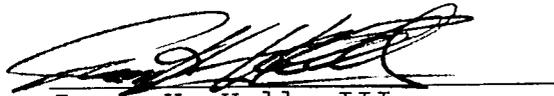
1 circumstances.

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3 Dated: December 15, 2003

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James H. Holl, III  
Rachel Entman  
Attorneys for Plaintiff  
Commodity Futures Trading  
Commission

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**CERTIFICATE OF SERVICE**

I certify that on this 15<sup>th</sup> day of December, 2003, I caused to be served one copy of the attached document, via U.S. First Class mail, postage prepaid, to the following:

Profit Partners, Inc.  
5301 Beethoven St.  
Los Angeles, California 90066-7061

A handwritten signature in black ink, appearing to be "R. J. [unclear]", is written over a horizontal line.