UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

U.S. COMMODITY FUTURES TRADING COMMISSION,	
Plaintiff,	
vs.	
BEAU DIAMOND and DIAMOND VENTURES LLC,	Civil Action No.:
Defendants.	Complaint For Injunctive and Other Equitable Relief and Civil Monetary Penalties Under The Commodity Exchange Act

Plaintiff, the United States Commodity Futures Trading Commission ("Commission" or "CFTC"), by its attorneys, alleges as follows:

I. SUMMARY

1. From at least April 2006 to the present, Diamond Ventures LLC ("DVL"), by and through its employees and agents, including but not limited to its principal and control person, Beau Diamond ("Diamond"), (collectively, "Defendants") solicited approximately $37 million from at least 200 members of the general public, for the purported purpose of trading off-exchange foreign currency ("forex") contracts. Defendants deposited only approximately $15.2 million into forex trading accounts and misappropriated at least $1.1 million of customer funds for their own benefit.

2. Defendants guaranteed customers the return of their deposits and monthly returns of between 2.75% and 5% on their investment, depending on the date of the

investment and whether monthly returns were withdrawn or compounded. Defendants falsely represented that the guaranteed 2.75% to 5% return on investment was produced by Defendants' successful forex trading. In fact, Defendants' forex trading resulted in substantial losses and the purported guaranteed monthly returns paid to customers came from existing customers' original principal and/or from money invested by subsequent customers. Defendants, therefore, are operating a Ponzi scheme.

3. Diamond offered commissions to customers who referred new customers to DVL. Defendants offered larger monthly returns to customers who elected to compound their returns, thereby lulling customers into keeping their funds invested with DVL.

4. Defendants misrepresented to customers that an investment in DVL involved no risk because the maximum loss DVL could sustain was 15%, and DVL maintained a reserve account to cover this 15% maximum loss. In particular DVL's promotional materials, authored by Diamond, state that the reserve account money "just sits there, unused, untouched and ready to cover this 15% maximum loss" and, thus, "no client loses a single penny." In fact, DVL did not maintain a reserve account.

5. To conceal and perpetuate their fraud, Defendants provided their customers with false account statements misrepresenting that the customers' accounts were increasing by their respective guaranteed rates, when, in fact, the accounts incurred substantial losses. Defendants also misrepresented to customers that they would be entitled to a full and complete repayment of their deposit and earnings within 30 calendar days of providing written notice to DVL. In fact, customers have provided DVL with the

requisite notice, but have been unable to obtain repayment of their deposit and purported earnings guaranteed by Defendants.

6. By virtue of this conduct and the conduct further described herein, from June 18, 2008 to the present, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of provisions of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 1 *et seq*. (2006), 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. Diamond, along with other DVL employees and agents, committed the acts and omissions described herein within the course and scope of their employment at DVL. DVL, therefore, is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation ("Regulation") 1.2, 17 C.F.R. § 1.2 (2009), as principal for its agents', including but not limited to Diamond's, violations of the Act as amended by the CRA.

8. Diamond is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of DVL for its violations of the Act, because he did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

9. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act as amended by the CRA and to

further enjoin Defendants from engaging in certain commodity or forex-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

10. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

11. Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

12. The Commission has jurisdiction over the forex transactions at issue in this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act, to be codified at 7 U.S.C. § 2(c)(2).

13. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants transacted business in the Middle District of Florida and certain of the transactions, acts, practices, and courses of business alleged occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

14. **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, the CRA, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations, 17 C.F.R. §§ 1.1 *et seq.*

15. **Diamond Ventures LLC** is a Florida limited liability company created on March 30, 2006, with its principal place of business at 6547 Midnight Pass Road, Sarasota, Florida 34242. DVL has never been registered with the CFTC.

16. **Beau Diamond** resides in Sarasota, Florida, and is the manager of DVL. At all material times, DVL was owned by Diamond. As DVL's owner and manager, Diamond opened and managed DVL's forex trading accounts, controlled DVL's bank account and controlled all aspects of DVL's solicitations. Diamond hired and supervised DVL employees and traders, prepared DVL's promotional materials, and made all decisions concerning DVL's operation, such as fixing the percentage of guaranteed monthly returns DVL offered its customers. As such, Diamond is DVL's controlling person and held himself out to the public as such. Diamond has never been registered with the Commission. Diamond filed a voluntary Chapter 7 bankruptcy petition on March 31, 2009, and that case is pending. *See In re Beau Diamond*, Case No. 09-bk-06199-KRM (Bankr. M.D. Fl. (Tampa)).

IV. FACTS

A. DVL's Operation

17. From approximately April 2006 to the present, DVL, by and through its employees and agents, including but not limited to Diamond, its principal and controlling person, solicited members of the general public to trade forex. Diamond initially solicited customers who resided in the Sarasota, Florida area, where Diamond and his father, Harvey Diamond, resided. Many DVL customers solicited new customers, who resided throughout the United States, and received commissions from Defendants for their customer referrals. During the foregoing period, DVL grew to include at least 200 customers.

18. Customers entered into a Participation Agreement with DVL, which expressly provided that DVL "shall guarantee the Participant the return of their deposit and their earnings." Diamond instructed customers to wire transfer funds for investment in DVL to a Bank of America account number ending in 7477 and to send an e-mail to deposits@diamondventuresclub.com, confirming that the deposit was sent and designating the amount of the deposit.

19. Purportedly, DVL customers had the option of withdrawing their monthly earnings, allowing their monthly earnings to compound, or splitting their account into two parts and taking monthly withdrawals of their earnings on a portion of their account while allowing the other portion to compound. Defendants lulled customers into not withdrawing their purported monthly earnings by offering a larger monthly return to customers who opted to compound their earnings.

B. Defendants' False Representations and Omissions

20. From April 2006 to the present, Defendants, through the Participation Agreement, promotional materials prepared by Diamond and representations made by Diamond, guaranteed customers the return of their deposits and monthly returns of between 2.75% and 5%. Defendants falsely represented to customers that they could guarantee the return of customer deposits and respective monthly returns because Defendants' forex trading generated monthly profits of up to 30%. In fact, during the period September 2006 to the present, Defendants' forex trading resulted in losses of approximately $13.3 million. Similarly, during the period June 18, 2008 to the present, Defendants' forex trading lost approximately $1.3 million. From April 2006 to the present, the purported 2.75 to 5% monthly return on investment was paid to customers from existing customers' original principal and/or from money invested by subsequent customers. Defendants, therefore, are operating a Ponzi scheme.

21. Through DVL's promotional materials and representations made by Diamond, Defendants falsely claimed that DVL could guarantee the return of a customer's principal and earnings because DVL had a reserve account, created with profits earned by DVL, that would cover trading losses. For example, DVL's promotional materials state that "in the worst case scenario we [DVL] lose 15%" and in that event, DVL "uses the reserve account to reimburse that 15% loss to club funds and no client loses a single penny." Similarly, Defendants falsely represented in promotional materials that no client would ever lose their investment and monthly earnings because

the reserve account money "just sits there, unused, untouched and ready to cover this 15% maximum loss." In fact, DVL did not maintain a reserve account.

22. Through DVL's promotional materials and representations made by Diamond, Defendants falsely represented that a customer assumes no risk by investing with DVL. For example, promotional materials prepared by Diamond claimed that "[the] risk is limited to very specific percentages, and my company [DVL], NOT the client assumes the liability of that risk." Similarly, other promotional materials claimed that DVL "will always have enough funds to cover the worst case scenario, and the maximum loss of 15% would be credited to the investor's account, resulting in no loss whatsoever." While Defendants' promotional materials emphasized that a customer "can take their funds out whenever they want" and "at any point down the road," DVL's customers have been unable to withdraw their deposits and the purported earnings they were guaranteed.

23. DVL's promotional materials also falsely claimed that a customer assumes no risk by investing in DVL because customer funds "are held in major US brokerage firms that have been around for many, many years. They're incredibly safe; it's basically just like having your money in a bank." Defendants failed to tell their customers of the actual losses sustained by their forex trading.

C. DVL's Actual Trading Losses and Misappropriation of Customer Funds

24. From September 2006 through April December 2008, Diamond opened a total of five forex trading accounts, in the name of DVL, at three registered futures commission merchants ("FCM's"), including Gain Capital Group LLC ("Gain"), Global Forex Trading ("GFT") and Interbank FX, LLC ("IBFX").

25. Defendants deposited a total of approximately $15.2 million into these five forex trading accounts at the FCMs referenced in Paragraph 24 above. From September 2006 to February 2009, Defendants lost approximately $13.3 million, including commissions and fees, trading forex in these accounts. Furthermore, during this same period, Defendants withdrew approximately $1.9 million of customer funds from these five accounts.

26. From June 18, 2008 to the present, Defendants lost approximately $1.3 million, including commissions and fees, trading forex in the above-referenced accounts. Furthermore, during this same period, Defendants withdrew approximately $282,711 of customer funds from these five accounts.

27. In running their Ponzi scheme, Defendants' returned approximately $14 million to customers. Moreover, from April 2006 to the present, Defendants misappropriated at least $1.1 million in customer funds to pay for personal items and expenditures such as gambling, jewelry, air travel and hotel accommodations. Similarly, from June 18, 2008 to the present, Defendants misappropriated at least $850,000 in customer funds and used those funds for their benefit.

D. Defendants' Issuance of False Statements to Customers

28. To conceal and perpetuate their fraud, Defendants sent their customers monthly account statements that falsely reported the customers' "guaranteed" monthly earnings and account balance. Customers received their monthly account statements by e-mail and/or the U.S. mail. These account statements reported purported earnings that were consistent with the guaranteed monthly returns Defendants promised each customer.

29. The monthly account statements Defendants issued to their customers failed to disclose that Defendants were experiencing substantial trading losses, were misappropriating customer funds, and that any returns on investment provided to DVL customers came from either DVL customers' original investments or money invested by subsequent DVL customers.

E. Defendants' Inability to Repay Customers

30. In early December 2008, some DVL customers did not receive their monthly withdrawal checks from DVL, even though the e-mailed and/or mailed account statements they received showed their guaranteed returns had been paid to them. When customers contacted Diamond about not receiving their monthly withdrawal checks, Diamond blamed the problem on the "fussy and oversensitive fraud protection department" at the Bank of America. Diamond subsequently notified DVL customers that he was establishing new accounts for DVL at JP Morgan Chase and that the December checks "were in the mail."

31. When DVL customers did not receive their December checks by late December 2008, Diamond told DVL customers that the December checks "are taking longer because of the Christmas mail slowdown." Finally, on January 7, 2009, Diamond sent e-mails to DVL customers informing them that "we have a serious situation at hand" and tentatively scheduling a meeting in Sarasota, Florida for January 10, 2009.

32. On January 9, 2009, before the scheduled meeting, Diamond sent another e-mail to DVL customers informing them that "the funds have been lost" and blaming the loss on the downturn in the world economy and unprecedented volatility. In this e-mail,

Diamond failed to tell his customers that DVL's forex trading had resulted in substantial trading losses, that he misappropriated at least $1.1 million of customer funds and spent those funds on luxury items and expenditures, such as gambling, jewelry and trips, and that any returns on investment provided to DVL customers came from either DVL investors' original investments or money invested by subsequent DVL customers.

33. On or about January 22, 2009, Diamond sent DVL customers an e-mail explaining that he was trying to come up with a plan to repay DVL customers their funds, and urging customers not to "initiate a Federal investigation" because if there is a federal investigation "no one will ever see a penny, and I most likely will be behind bars."

34. Neither Defendants nor the FCMs that were the counterparty to the forex transactions were financial institutions, registered broker dealers, insurance companies, financial holding companies, or investment bank holding companies or the associated persons of financial institutions, registered broker dealers, insurance companies, financial holding companies, or investment bank holding companies.

35. Some or all of Defendants' customers were not "eligible contract participants" as that term is defined in the Act. *See* Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12) (2006) (an "eligible contract participant," as relevant here, is 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").

36. The forex transactions conducted by Defendants on behalf of their customers were entered into on a leveraged or margined basis. Defendants were required to provide only a percentage of the value of the forex contracts that they purchased.

37. The forex transactions conducted by Defendants neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines 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).

38. By virtue of their actions, Defendants have engaged, are engaging, or are about to engage in acts and practices that violate Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

Violations of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C) (Fraud in Connection with Forex)

39. The allegations set forth in paragraphs 1 through 38 are realleged and incorporated herein by reference.

40. Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), make it unlawful:

> for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made,

> for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA apply to Defendants' forex transactions "as if" they were a contract of sale of a commodity for future delivery. Section 2(c)(2)(C)(iv) of the Act as amended by the CRA.

41. As set forth above, from at least June 18, 2008, through the present, in or in connection with forex contracts, made, or to be made, for or on behalf of other persons, Defendants cheated or defrauded, or attempted to cheat or defraud, customers or prospective customers and willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly: (i) misappropriating customer funds; (ii) misrepresenting that Defendants could guarantee the return of customer deposits and a monthly return on investment because Defendants' trading was profitable, when, in fact, Defendants' trading resulted in substantial losses, and the purported "profits" were paid to customers from existing customers' original principal and/or from money invested by subsequent customers; (iii) failing to disclose the risks of forex trading; and (iv) knowingly providing customers with account statements that misrepresented the value of the customers' investment as well as claiming that Defendants' trading was

producing profits when, in fact, it was not, all in violation of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

42. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

43. Diamond controlled DVL, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, DVL's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Diamond is liable for DVL's violations of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

44. The foregoing acts, misrepresentations and omissions, of Diamond, along with other DVL employees and agents, occurred within the scope of their employment with DVL; therefore, DVL is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009).

45. Each misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers:

A. Enter an order finding that Defendants violated Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

B. Enter an order of permanent injunction prohibiting Defendants, and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, from engaging, directly or indirectly:

1. in conduct violative of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C); and

2. in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2006) ("commodity interest"), included but not limited to the following:

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

(b). entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1)) ("commodity options"), and/or foreign currency (as described in Section 2(c)(2)(C)(i) of the Act as amended by the CRA) ("forex contracts") for their own personal account or for any account in which they have a direct or indirect interest;

(c). having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

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

(e). soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

(f). applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);

(g). acting as a principal (as that term is defined in Regulation 3.1(a)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009).

C. Enter an order pursuant to Section 6c(a) of the Act restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of the Defendants wherever located, including all such records concerning Defendants' business operations; and

3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account, whether domestic or foreign, held by, under the control, or in the name of the Defendants;

D. Enter an order directing that Defendants, and any successors thereof, provide the Plaintiff immediate and continuing access to their books and records, make an accounting to the Court of all of their assets and liabilities, together with all funds they received from and paid to investors and other persons in connection with commodity

futures or options transactions or forex transactions, including the names, mailing addresses, email addresses and telephone numbers of any such persons from whom they received such funds from April 2006 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from pool participants, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from April 2006 to and including the date of such accounting. At a minimum, the accounting should include a chronological schedule of all cash receipts and cash disbursements. In addition, each transaction shall be classified as business or personal. All business transactions shall disclose the business purpose of the transaction. The accounting shall be provided in an electronic format such as Quicken, Excel, or other accounting or electronic format spreadsheet. In addition, the Defendants shall supply true and accurate copies of any balance sheets, income statements, statement of cash flow, or statement of ownership equity previously prepared for the Defendants' business(es);

E. Enter an order requiring Defendants immediately to identify and provide an accounting in the same manner as described above, for all assets and property that they currently maintain outside the United States, including, but not limited to, all funds on deposit in any financial institution, futures commission merchant, bank, or savings and loan accounts held by, under the control of, or in the name of Beau Diamond and Diamond Ventures LLC, or their nominees, whether held jointly or otherwise, and requiring them to repatriate all funds held in such accounts by paying them to the Clerk of the Court, or as otherwise ordered by the Court, for further disposition in this case;

F. Enter an order requiring Defendants, and any third party transferee and/or successors thereof, to disgorge to any officer appointed or directed by the Court, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest;

G. Enter an order requiring Defendants to make restitution by making whole each and every customer whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

H. Enter an order directing the Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act and Regulations, as described herein;

I. Enter an order directing each Defendant to pay a civil monetary penalty in the amount of the higher of $140,000 for each violation of the Act committed on or after October 23, 2008, and $130,000 for each violation of the Act committed before October 23, 2008, or triple the monetary gain to each defendant for each violation of the Act described herein, plus post-judgment interest;

J. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

K. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: September 2, 2009

Respectfully submitted,

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