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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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DEPUTY

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**United States Commodity Futures  
Trading Commission,  
  
Plaintiff,**

**vs.**

**Douglas Elsworth Wilson, Elsworth Berg  
Capital Management LLC, Elsworth Berg  
Inc., and Elsworth Berg FX LLC,  
  
Defendants.**

**Case No: 11-cv-1651-WQH-BLM**

**Hon. William Q. Hayes**

**CONSENT STATUTORY  
RESTRAINING ORDER**

Plaintiff U.S. Commodity Futures Trading Commission and defendants Douglas Elsworth Wilson, Elsworth Berg Capital Management LLC, Elsworth Berg Inc., and Elsworth Berg FX LLC (collectively "Defendants" and together with Plaintiff, the "Parties") have reached an agreement to resolve Plaintiff's Application for Statutory Restraining Order (Dkt. 3). Defendants, without admitting or denying the allegations of the CFTC's complaint for the purposes of this Consent Statutory Restraining Order, except as to jurisdiction and venue, which they admit, consent to the entry of this Order. Defendants state that their consent is voluntary and that no promise or threat has been made by the CFTC or any member, officer, agent, or representative thereof, to induce them to consent to this Order.

**THE PARTIES AGREE AND THE COURT FINDS THAT:**

1            1.        This Court has jurisdiction over the parties and subject matter of this action  
2  
3 pursuant to the Commodity Exchange Act (the “Act”), as amended by the Food, Conservation,  
4 and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008  
5 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008) and the Dodd-Frank Wall  
6 Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203 (“Dodd-Frank Act”),  
7 Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat.  
8 1376 (enacted July 21, 2010) to be codified at 7 U.S.C. §§ 1 *et seq.*

10            2.        This Court has authority under Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), to  
11 issue a statutory restraining order against defendants Douglas Elsworth Wilson (“Wilson”),  
12 Elsworth Berg Capital Management LLC (“EBCM”), Elsworth Berg Inc. (“EBI”), and Elsworth  
13 Berg FX LLC (“EBFX”) (collectively “Defendants”).

14            3.        Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C.  
15 § 13a-1(e).

16            4.        Defendants Wilson, EBCM, EBI, and EBFX waive entry of findings of fact and  
17 conclusions of law for the purposes of this Order pursuant to Rule 52 of the Federal Rules of  
18 Civil Procedure.

**DEFINITIONS**

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

22            5.        The term “assets” means any legal or equitable interest in, right to or claim to any  
23 real or personal property, including, but not limited to, chattels, goods, instruments, equipment,  
24 fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks,  
25 notes, accounts, credits, receivables, lines of credit, contracts, insurance policies and all cash,  
26 wherever located.

6. The term “document” is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a) and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records 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.

7. “Defendants” means Douglas Elsworth Wilson (“Wilson”), Elsworth Berg Capital Management LLC (“EBCM”), Elsworth Berg Inc. (“EBI”), and Elsworth Berg FX LLC (“EBFX”), as well as any 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 Defendants who receive actual notice of this Order by personal service or otherwise.

**STATUTORY RESTRAINING ORDER**

**I. ASSET FREEZE**

**IT IS ORDERED** that Defendants, 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 Defendants who receive actual notice of this Order by personal service or otherwise, including email, facsimile, and UPS or other commercial overnight service, are restrained from directly or indirectly 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 or safe deposit boxes and all funds on deposit in any financial or brokerage institution, futures commission merchant, bank, or savings and loan account held by, under the actual or constructive control of, or in the name of Defendants. The assets affected

1 by this paragraph include both existing assets and assets acquired after the effective date of this  
2 Order. The assets affected by this paragraph do not include assets in the possession of  
3 Defendants' attorneys Khuong Dan Tien (Cal. Bar No. 213502) or Todd C. Ringstad (Cal. Bar  
4 No. 97345) as of August 11, 2011 that were provided to attorneys Tien and Ringstad as a retainer  
5 for providing legal services to Defendants (the "Attorney Assets").  
6

7 However, notwithstanding the above, the Parties stipulate and the Court orders that  
8 defendant Wilson shall be allowed to withdraw up to \$6000.00 per month from account number  
9 xxx xxx 0026, held in the name of Douglas Wilson at J.P. Morgan Chase Bank, N.A. (the  
10 "Excluded Account") to pay for living expenses. All such withdrawals may only be from  
11 earnings or other income accrued after May 31, 2011, and no withdrawal shall derive from any  
12 funds obtained through commodity or forex trading related activity.

13 **II. PROHIBITION AGAINST DESTRUCTION OF BOOKS AND RECORDS**

14 **IT IS FURTHER ORDERED** that Defendants, all persons insofar as they are acting in  
15 the capacity of Defendants' agents, servants, successors, employees, assigns, and attorneys, and  
16 all persons insofar as they are acting in active concert or participation with Defendants who  
17 receive actual notice of this Order by personal service or otherwise, including email, facsimile,  
18 and UPS or other commercial overnight service, are restrained from directly or indirectly  
19 destroying, mutilating, concealing, altering, or disposing of any documents that related to the  
20 business practices or business or personal finances of the Defendants.  
21

22 **III. CFTC ACCESS TO AND INSPECTION OF BOOKS AND RECORDS**

23 **IT IS FURTHER ORDERED** that Defendants, all persons insofar as they are acting in  
24 the capacity of Defendants' agents, servants, successors, employees, assigns, and attorneys, and  
25 all persons insofar as they are acting in active concert or participation with Defendants who  
26 receive actual notice of this Order by personal service or otherwise, including email, facsimile,  
27  
28

1 and UPS or other commercial overnight service, are restrained from directly or indirectly  
2 refusing to permit authorized representatives of the Commission to inspect, when and as  
3 requested upon reasonable notice, any books and records, documents, correspondence,  
4 brochures, manuals, electronically stored data, tape records, or other property of Defendants,  
5 wherever located, including, but not limited to, all such records concerning Defendants' business  
6 operations and Defendants' business or personal finances. This paragraph does not constitute a  
7 waiver of any attorney-client privilege.  
8

9 **IV. DIRECTIVES TO FINANCIAL INSTITUTIONS AND OTHERS**

10 **IT IS FURTHER ORDERED**, pending further Order of this Court, that any bank,  
11 financial or brokerage institution, futures commission merchant, business entity, or person that  
12 holds, controls, or maintains custody of any account or asset owned, controlled, managed, or held  
13 by, on behalf of, or for the benefit of the Defendants, either individually or jointly, or has held,  
14 controlled, or maintained custody of any account or asset owned, controlled, managed, or held by,  
15 on behalf of, or for the benefit of the Defendants, either individually or jointly, and who receives  
16 notice of this Order by personal service or otherwise, including facsimile, electronic mail,  
17 Federal Express and United Parcel Service, shall:  
18

- 19 A. Prohibit Defendants and any other person from withdrawing, removing, assigning,  
20 transferring, pledging, encumbering, disbursing, dissipating, converting, selling or  
21 otherwise disposing of any such asset except as directed by further order of the  
22 Court, except that (1) this prohibition does not apply to the Attorney Assets  
23 defined in Section I above, and (2) defendant Wilson may make withdrawals from  
24 the Excluded Account as provided in Section I above;
- 25 B. Deny Defendants and all other person(s) access to any safe deposit box that is: (a)  
26 titled in the name of Defendants, either individually or jointly; or (b) otherwise  
27 subject to access by the Defendants;
- 28 C. 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 owned, controlled,  
managed, or held by, on behalf of, or for the benefit of the Defendants:

1 (b) the balance of each such account, or a description of the nature and  
2 value of such asset as of the close of business on the day on which this  
3 Order is served, and, if the account or other asset has been closed or  
4 removed, the date closed or removed, the total funds removed in order to  
5 close the account, and the name of the person or entity to whom such  
6 account or other asset was remitted; and (c) the identification of any safe  
7 deposit box that is either titled in the name, individually or jointly, of the  
8 Defendants or is otherwise subject to access by the Defendants; and

9  
10 D. Upon request by the Commission, promptly provide the Commission with  
11 copies of all records or other documentation pertaining to such account or  
12 asset, including, but not limited to, originals or copies of account  
13 applications, account statements, signature cards, checks, drafts, deposit  
14 tickets, transfers to and from the accounts, all other debit and credit  
15 instruments or slips, currency transaction reports, 1099 forms, and safe  
16 deposit box logs.

17  
18 **V. BOND NOT REQUIRED OF PLAINTIFF**

19 **IT IS FURTHER ORDERED** that pursuant to Section 6c(b) of the Act, 7 U.S.C.  
20 § 13a 1(b), no bond need be posted by the Commission, which is an agency of the United States  
21 of America.

22  
23 **VI. SERVICE OF THE ORDER**

24 **IT IS FURTHER ORDERED** that copies of this Order may be served by any means,  
25 including by way of personal service, UPS or other commercial overnight service, email,  
26 facsimile or pursuant to Fed. R. Civ. P. 5 and Articles 2 through 10 of the Hague Convention,  
27 Service Abroad of Judicial and Extrajudicial Documents, upon any financial or brokerage  
28 institution, futures commission merchant, bank, savings and loan institution, other financial  
institution, or any other person or entity that holds any accounts, funds, assets, or other property  
of Defendants or that may have possession, custody, or control of any documents of Defendants,  
or that may be subject to any provision of this Order. Theodore Z. Polley III, William P. Janulis,  
Melissa Glasbrenner, and John Wilson, all representatives of the Commission, are hereby

1 specially appointed to serve process and/or effectuate service of process, including of this Order  
2 and all other papers in this action.

3 **VII. SERVICE ON THE COMMISSION**

4 **IT IS FURTHER ORDERED** that Defendants shall serve all pleadings,  
5 correspondence, notices required by this Order, and other materials on the Plaintiff by delivering  
6 a copy to Theodore Z. Polley III, Senior Trial Attorney, or William P. Janulis, Senior Trial  
7 Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe  
8 Street, Suite 1100, Chicago, Illinois 60661.

9 **VIII. FORCE AND EFFECT**

10 **IT IS FURTHER ORDERED** that this Order shall remain in full force and effect until  
11 further Order of this Court upon application, notice, and an opportunity to be heard, and that this  
12 Court shall retain jurisdiction over this action to ensure compliance with this Order and for all  
13 other purposes related to this action.

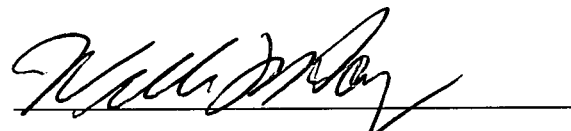
14 **IX. FURTHER COURT HEARINGS**

15 **IT IS FURTHER ORDERED** that Plaintiff should file its Motion for a Preliminary  
16 Injunction within two business days following entry of this Order. Should any defendant wish to  
17 file a memorandum of law or other papers in opposition to Plaintiff's Motion for a Preliminary  
18 Injunction, all such papers shall be filed and served on or before August 31, 2011. Any reply by  
19 Plaintiff shall be filed and served on or before September 9, 2011.

20 **IT IS FURTHER ORDERED** that Plaintiff's Motion for a Preliminary Injunction is set  
21 for hearing on September 23, 2011 at 1:00 p.m. in Courtroom 4.

22 **IT IS SO ORDERED.**

23 **DATED:** 8/18/11

24   
25 **WILLIAM Q. HAYES**  
26 United States District Judge