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 11 Commodity Futures Trading Commission

12 UNITED STATES DISTRICT COURT
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

15 UNITED STATES COMMODITY
 16 FUTURES TRADING COMMISSION,

17 v.

Civil Action No.
 3:10-cv-02654-SC

18 HIGHLANDS CAPITAL
 19 MANAGEMENT, L.P., a California
 20 limited partnership, and
 21 GLENN KANE JACKSON, an individual,

Defendants.

22 ~~[PROPOSED]~~ CONSENT ORDER FOR PERMANENT INJUNCTION
 23 AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS
 24 HIGHLANDS CAPITAL MANAGEMENT, L.P. AND GLENN KANE JACKSON

25 I. INTRODUCTION

26 On June 17, 2010, Plaintiff Commodity Futures Trading
 27 Commission ("Commission") filed a Complaint against Defendant
 28 Highlands Capital Management, L.P. ("Highlands") and Glenn Kane

1 Jackson ("Jackson") (collectively "Defendants") seeking
2 injunctive and other equitable relief, as well as the imposition
3 of civil penalties, for violations of 7 U.S.C. §§ 6b(a)(2)(A)-
4 (C) (Supp. II 2009). The Court entered an *ex parte* statutory
5 restraining order against Defendants on June 17, 2010.

6
7 The Complaint alleges that from June 2008 and continuing
8 until December 2009, Highlands and Jackson, individually and in
9 his capacity as founder, manager, employee, and/or agent of
10 Highlands, fraudulently solicited members of the general public
11 (hereinafter referred to as "pool participants") for the
12 purported purpose of trading off-exchange foreign currency
13 contracts ("forex") in two limited partnerships, Highlands
14 Private Clients ("Private Clients") and Highlands Capital
15 Partners ("Capital Partners") (collectively the "Pools"). As
16 part of the solicitation of pool participants, Defendants made
17 false claims, both written and spoken, regarding Jackson's
18 success and background as a forex trader, including the forex
19 trading track record of the Pools. Specifically, Jackson sent
20 false account statements and trading summaries and made verbal
21 statements to pool participants claiming that Defendants were
22 engaging in profitable forex trading when, in fact, they were
23 not. Defendants used only a portion of those pool participants'
24 funds to trade forex (which trading resulted in net losses).
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1 On June 15, 2010, Jackson was arrested after being charged
2 by the Marin County, California District Attorney with a 38
3 count complaint alleging investment fraud based on the same
4 conduct alleged in the Commission complaint. *People of the*
5 *State of California v. Glenn K. Jackson* (Docket No. SC170537A)
6 (Superior Court of California, Marin County) (Simmons, J.)
7 (hereinafter, the "Jackson Criminal Action").
8

9 **II. CONSENTS AND AGREEMENTS**

10 To effect settlement of all charges alleged in the
11 Complaint against Defendants Highlands and Jackson without a
12 trial on the merits or any further judicial proceedings,
13 Defendants:
14

15 1. Consent to the entry of this Consent Order for
16 Permanent Injunction and Other Equitable Relief Against
17 Defendants Highlands and Jackson ("Consent Order");
18

19 2. Affirm that they have read and agreed to this Consent
20 Order voluntarily and that no promise, other than as
21 specifically contained herein, or threat has been made by the
22 Commission or any member, officer, agent or representative
23 thereof, or by any other person, to induce consent to this
24 Consent Order;
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26 3. Acknowledge service of the summons and Complaint;
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1 4. Admit the jurisdiction of this Court over them and the
2 subject matter of this action pursuant to 7 U.S.C. § 13a-1
3 (2012);

4 5. Admit the jurisdiction of the Commission over the
5 conduct and transactions at issue in this action pursuant to 7
6 U.S.C. §§ 1, *et seq.* (2012);

7 6. Admit that venue properly lies with this Court
8 pursuant to 7 U.S.C. § 13a-1(e) (2012);

9 7. Waive:

10 (a) any and all claims that they may possess under
11 the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28
12 U.S.C. § 2412 (2012), and/or the rules promulgated by the
13 Commission in conformity therewith, 17 C.F.R. §§ 148.1 *et seq.*
14 (2013), relating to, or arising from, this action;

15 (b) any and all claims that they may possess under
16 the Small Business Regulatory Enforcement Fairness Act of 1996,
17 Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996),
18 as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205
19 (2007), relating to, or arising from, this action;

20 (c) any claim of Double Jeopardy based upon the
21 institution of this action or the entry in this action of any
22 order imposing a civil monetary penalty or any other relief,
23 including this Consent Order; and

24 (d) any and all rights of appeal from this action;

1 8. Consent to the continued jurisdiction of this Court
2 over them for the purpose of implementing and enforcing the
3 terms and conditions of this Consent Order and for any other
4 purpose relevant to this action, even if Defendants now or in
5 the future reside outside the jurisdiction of this Court;

6
7 9. Agree that they will not oppose enforcement of this
8 Consent Order by alleging that it fails to comply with Rule
9 65(d) of the Federal Rules of Civil Procedure and waive any
10 objection based thereon;

11 10. Agree that neither they nor any of their agents or
12 employees under their authority or control shall take any action
13 or make any public statement denying, directly or indirectly,
14 any allegation in the Complaint or the Findings of Fact or
15 Conclusions of Law in this Consent Order, or creating or tending
16 to create the impression that the Complaint and/or this Consent
17 Order is without a factual basis; provided, however, that
18 nothing in this provision shall affect their: (a) testimonial
19 obligations, or (b) right to take legal positions in other
20 proceedings to which the Commission is not a party. Defendants
21 shall undertake all steps necessary to ensure that all of their
22 agents and/or employees under their authority or control
23 understand and comply with this agreement; and

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27 11. Admit to all of the findings made in this Consent
28 Order and all of the allegations in the Complaint.

1 12. Agree to provide immediate notice to this Court and
2 the Commission by certified mail, in the manner required by
3 paragraph 46 of Part VI of this Consent Order, of any bankruptcy
4 proceeding filed by, on behalf of, or against them, whether
5 inside or outside the United States, and

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7 13. Agree that no provision of this Consent Order shall in
8 any way limit or impair the ability of any other person or
9 entity to seek any legal or equitable remedy against Defendants
10 in any other proceeding.

11 **III. FINDINGS AND CONCLUSIONS**

12 The Court, being fully advised in the premises, finds that
13 there is good cause for the entry of this Consent Order and that
14 there is no just reason for delay. The Court therefore directs
15 the entry of the following Findings of Fact, Conclusions of Law,
16 permanent injunction and equitable relief pursuant to 7 U.S.C. §
17 13a-1 (2012), as set forth herein.
18

19 **THE PARTIES AGREE AND THE COURT HEREBY FINDS:**
20

21 **A. Findings of Fact**

22 **1. The Parties To This Consent Order**

23 14. Plaintiff Commodity Futures Trading Commission is an
24 independent federal regulatory agency that is charged by
25 Congress with administering and enforcing the Commodity Exchange
26 Act, ("Act") 7 U.S.C. §§ 1 et seq., and the Commission's
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1 Regulations ("Regulations") promulgated thereunder, 17 C.F.R.
2 §§ 1.1 et seq. (2013).

3 15. **Highlands Capital Management, L.P.** is a California
4 limited partnership with its principal place of business listed
5 as 220 Jackson Street, Third Floor, San Francisco, California
6 94111. Highlands was formed in January 2006 and is the general
7 partner of the Pools purportedly with the exclusive right and
8 authority to manage, operate, and conduct the business of the
9 Pools. Highlands is not, and has never been, registered with
10 the Commission.
11

12 16. **Glenn Kane Jackson** resides in Healdsburg, California
13 94920. Jackson was a founder, incorporator, director, manager,
14 officer, employee, and/or agent of Highlands and held himself
15 out to the public as the person in charge of Highlands. Jackson
16 was also the "forex trading advisor" and manager of the Pools.
17 Jackson is not, and has never been, registered with the
18 Commission.
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21 **2. Background**

22 17. From approximately June 2008 through December 2009
23 ("the relevant period"), Defendants solicited and accepted at
24 least \$998,000 from pool participants for the purported purpose
25 of trading forex.
26

27 18. Defendants offered pool participants subscriptions to
28 two limited partnerships, Private Clients and Capital Partners,

1 the terms of which were communicated to pool participants by
2 Defendants verbally and through Private Offering Memoranda,
3 Agreements of Limited Partnership, and related documents.

4 According to Defendants' representations, the pool participants'
5 money was to be pooled in the name of the Pools and traded by
6 Jackson with the purported goal of capital growth through forex
7 trading. Pool participants' partnership interests in the Pools
8 were to grow (or shrink) depending on the profits (or losses)
9 from Defendants' forex trading.
10

11 19. The Private Offering Memoranda and related documents
12 for both of the Pools provided that Highlands would act as the
13 general partner to each with the exclusive right and authority
14 to manage, operate, and conduct the business of the Pools. In
15 order to subscribe to the Pools, pool participants were required
16 to grant Highlands an irrevocable limited power of attorney
17 concerning all partnership business.
18

19 20. The Private Offering Memoranda for both of the Pools
20 provided for withdrawal (upon 30 day notice), of a pool
21 participant's funds within 10 days of the end of each calendar
22 quarter. The Private Offering Memoranda further provided that
23 Highlands could suspend withdrawals by pool participants if: (i)
24 the markets were closed or trading was suspended, (ii)
25 regulatory or contractual prohibitions prevented the liquidation
26 of sufficient "portfolio securities" to fund the withdrawals,
27
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1 (iii) the sale of "portfolio securities" would "seriously
2 prejudice" the interests of non-redeeming pool participants, or
3 (iv) there was a "breakdown in the means of communication
4 normally used" to determine the value of the partnership's
5 "investments."

6
7 **3. Fraudulent Solicitation**

8 21. As part of the solicitation of pool participants,
9 Jackson made false representations regarding his past success
10 and background as a forex trader as well as his track record
11 trading the Pools.

12 22. For example, Jackson claimed to have never experienced
13 a single losing year trading forex. Defendants' domestic forex
14 trading accounts managed and controlled by Jackson, however,
15 consistently incurred net losses each year.

16 23. Jackson also provided pool participants with copies of
17 his resume suggesting that he had obtained Series 7 and Series
18 63 certifications from the National Association of Securities
19 Dealers when, in fact, Jackson had never been certified as such.

20 24. Jackson knew that the foregoing representations made
21 to pool participants about his background and trading history
22 were false. Jackson made these false statements with the intent
23 to mislead pool participants.
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4. The Money Trail

25. Based on Jackson's misrepresentations and omissions regarding his forex trading success and background, from June 2008, and continuing until December 2009, pool participants wired at least \$998,000 to Defendants for trading forex.

26. During the relevant period, Defendants traded and lost approximately \$426,000 and returned approximately \$329,000 to pool participants in response to their requests. Approximately \$243,000 was misappropriated by Defendants.

5. False Account Statements

27. Beginning as early as August 2008 and continuing through December 2009, Defendants sent account statements and other documents to pool participants showing that Defendants' forex trading was generating consistent profits.

28. For example, Defendants sent at least one pool participant an IRS K-1 tax form showing profits for 2008 of \$63,000 on his partnership interest of \$370,000. Other pool participants received statements showing quarterly returns for the third quarter of 2009 of 20.74%. Defendants also sent pool participants trading summaries for two purported Private Clients' forex trading accounts showing 80.6% and 12.85% returns, respectively, for the trading period November 2007 through December 2008. All of these statements were false.

1 29. Defendants knew that the foregoing account statements
2 and other representations about Defendants' forex trading made
3 to pool participants were false. Defendants made these false
4 statements with the intent to mislead pool participants.

5 **6. Denial of Pool Participants' Withdrawal Requests**

6 30. Although Defendants honored withdrawal requests from
7 pool participants totaling approximately \$329,000, Defendants
8 responded to other withdrawal requests with delay and numerous
9 explanations as to why the pool participants' money could not
10 (or would not) be returned.
11

12 31. For example, in early 2009 Jackson assured some of the
13 pool participants that their money would be returned "next
14 week," "next month," or on a specified date. None of these
15 assurances was honored. Instead, Jackson offered the pool
16 participants various excuses for failing to return their money,
17 including:
18

- 19 a) that the pool participants' money was "tied up
20 due to new Commission regulations;"
21 b) that there had been "margin problems" at the
22 futures commission merchant ("FCM") through which
23 Defendants' forex trades were purportedly
24 cleared;
25 c) that the partnership agreement gave Jackson
26 unfettered discretion over the pool participants'
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28

1 funds and that he was not required to return the
2 money unless he determined that it was in the
3 best interest of the partnership.

4 32. Each of these explanations was false and inconsistent
5 with the terms of participation in the Pools.

6 **7. Jackson's Control of Highlands**

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8 33. Jackson was the founder, principal, manager, and agent
9 of Highlands and of the Pools and at all material times held
10 himself out to the public as such. Jackson solicited pool
11 participants to trade forex through the Pools and, in doing so,
12 sent partnership offerings, subscription agreements, account
13 statements, and related documents to pool participants and
14 prospective pool participants. Jackson also carried out and
15 controlled all forex trading conducted on behalf of the pool
16 participants through the Pools. At all material times, Jackson
17 maintained control of bank and other accounts where pool
18 participant funds were held.
19
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21 **B. Conclusions of Law**

22 **1. Jurisdiction and Venue**

23 34. This Court has jurisdiction over this action pursuant
24 to 7 U.S.C. § 13a-1 (2012), which provides that whenever it
25 shall appear to the Commission that any person has engaged, is
26 engaging, or is about to engage in any act or practice
27 constituting a violation of any provision of the Act or any
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1 rule, regulation, or order promulgated thereunder, the
2 Commission may bring an action in the proper district court of
3 the United States against such person to enjoin such act or
4 practice, or to enforce compliance with the Act, or any rule,
5 regulation or order thereunder.

6
7 35. Venue properly lies with this Court pursuant to
8 7 U.S.C. § 13a-1(e) (2012), because the Defendants reside in this
9 jurisdiction and the acts and practices in violation of the Act
10 occurred within this District.

11 2. Violation of Sections 4b(a)(2)(A)-(C) of the Act:
12 Fraud in Connection with Forex

13 36. 7 U.S.C. §§ 6b(a)(2)(A)-(C) (Supp. II 2009), provide,
14 in relevant part, that it is unlawful for any person, in or in
15 connection with any order to make or the making of a forex
16 contract for or on behalf of any other person, (A) to cheat or
17 defraud or attempt to cheat or defraud another person, (B)
18 willfully to make or cause to be made to the other person any
19 false report or statement or willfully to enter or cause to be
20 entered for the other person any false record, or (C) willfully
21 to deceive or attempt to deceive such other person by any means
22 whatsoever in regard to any such order or contract or the
23 disposition or execution of any such order or contract.

24
25
26 37. By the conduct described in paragraphs 14 through 33
27 above, from at least June 18, 2008, through December 2009, in or
28

1 in connection with forex contracts, made or to be made, for or
2 on behalf of, or with, other persons, Defendants violated 7
3 U.S.C. §§ 6b(a)(2)(A)-(C) (Supp. II 2009), by, among other
4 things, knowingly (i) misappropriating pool participant funds,
5 (ii) misrepresenting Jackson's background and trading success as
6 a forex trader, and (iii) making or causing to be made false
7 account statements, trading summaries, and tax forms to pool
8 participants misstating the value of and trading activity in
9 their accounts.
10

11 38. Defendants engaged in the acts and practices described
12 above knowingly or with reckless disregard for the truth.
13

14 39. At all relevant times, Jackson controlled Highlands
15 and the Pools, directly or indirectly, and did not act in good
16 faith or knowingly induced, directly or indirectly, Highlands's
17 conduct alleged in this Complaint. Therefore, pursuant to 7
18 U.S.C. § 13c(b) (2012), Jackson is liable for Highlands's
19 violations of 7 U.S.C. §§ 6b(a)(2)(A)-(C) (Supp. II 2009).
20

21 40. The foregoing acts, misrepresentations, omissions, and
22 failures of Jackson occurred within the scope of his employment
23 or office with Highlands, therefore, Highlands, is liable for
24 those acts, omissions and failures pursuant to 7 U.S.C. §
25 2(a)(1)(B) (2012), and 17 C.F.R. § 1.2 (2013).
26

27 41. Unless restrained and enjoined by this Court, there is
28 a reasonable likelihood that the Defendants will continue to

1 engage in the acts and practices alleged in the Complaint and in
2 similar acts and practices in violation of the Act.

3 **IV. PERMANENT INJUNCTION**

4 **IT IS HEREBY ORDERED THAT:**

5 42. Based upon and in connection with the foregoing
6 conduct, pursuant to 7 U.S.C. § 13a-1 (2012), Defendants are
7 permanently restrained, enjoined and prohibited from directly or
8 indirectly cheating or defrauding, or attempting to cheat or
9 defraud, other persons in or in connection with any order to
10 make, or the making of, any forex contract that is made, or to
11 be made, for or on behalf of, or with, any other person in
12 violation of 7 U.S.C. § 6b (2012).
13
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15 43. Defendants are also permanently restrained, enjoined
16 and prohibited from directly or indirectly:

- 17 a) Trading on or subject to the rules of any
18 registered entity (as that term is defined in 7
19 U.S.C. § 1a (2012));
20
21 b) Entering into any transactions involving commodity
22 futures, options on commodity futures, commodity
23 options (as that term is defined in 17 C.F.R.
24 § 1.3(hh) (2013)) ("commodity options"), security
25 futures products, swaps (as that term is defined in
26 7 U.S.C. § 1a(47) (2013), and as further defined
27 in 17 C.F.R. § 1.3(xxx) (2013)), and/or foreign
28

1 currency (as described in 7 U.S.C. §§ 2(c)(2)(B)
2 and 2(c)(2)(C)(i) (2012)) ("forex contracts") for
3 their own personal account or for any account in
4 which they have a direct or indirect interest;

5 c) Having any commodity futures, options on commodity
6 futures, commodity options, security futures
7 products, and/or forex contracts traded on their
8 behalf;

9
10 d) Controlling or directing the trading for or on
11 behalf of any other person or entity, whether by
12 power of attorney or otherwise, in any account
13 involving commodity futures, options on commodity
14 futures, commodity options, security futures
15 products, swaps, and/or forex contracts;

16
17 e) Soliciting, receiving or accepting any funds from
18 any person for the purpose of purchasing or
19 selling any commodity futures, options on
20 commodity futures, commodity options, security
21 futures products, swaps and/or forex contracts;

22
23 f) Applying for registration or claiming exemption
24 from registration with the Commission in any
25 capacity, and engaging in any activity requiring
26 such registration or exemption from registration
27
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1 with the Commission, except as provided for in 17
2 C.F.R. § 4.14(a)(9) (2013); and/or
3 g) Acting as a principal (as that term is defined17
4 C.F.R. § 3.1(a) (2013)), agent or any other
5 officer or employee of any person (as that term
6 is defined in Section 1a of the Act, 7 U.S.C.
7 § 1a (2012)) registered, exempted from
8 registration or required to be registered with
9 the Commission except as provided for in 17
10 C.F.R. § 4.14(a)(9) (2013).
11
12

13 V. RESTITUTION

14 44. The Defendants' violations of the Act merit the award
15 of significant restitution. However, the Court recognizes that
16 Jackson is subject to a criminal restitution obligation of \$3.8
17 million entered in the Jackson Criminal Action for the same
18 misconduct at issue in this civil action. Because the criminal
19 court has already awarded restitution to defrauded customers in
20 an amount greater than would be warranted in this case, the
21 Court is not ordering additional restitution against Defendants
22 in this Consent Order.
23

24 VI. MISCELLANEOUS PROVISIONS

25' 45. Cooperation: Defendants shall cooperate fully and
26 expeditiously with the Commission, including the Commission's
27 Division of Enforcement, and any other governmental agency in
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1 this action, and in any investigation, civil litigation, or
2 administrative matter related to the subject matter of this
3 action or any current or future Commission investigation related
4 thereto.

5 46. Notice: All notices required to be given by any
6 provision in this Consent Order shall be sent certified mail,
7 return receipt requested, as follows:

8 Notice to Commission:

9
10 Director, Division of Enforcement
11 U.S. Commodity Futures Trading Commission
12 1155 21st street, N.W.
13 Washington, D.C. 20581

14 Notice to Defendants Jackson and Highlands:

15 1083 Vine Street #196
16 Healdsburg, CA 95448

17 All such notices to the Commission shall reference the name and
18 docket number of this action.

19 47. Change of Address/Phone: In the event that there is
20 an address and/or telephone number change for any Defendant,
21 that Defendant shall provide written notice to the Commission by
22 certified mail of any change to his telephone number and mailing
23 address within ten (10) calendar days of the change.
24

25 48. Entire Agreement and Amendments: This Consent Order
26 incorporates all of the terms and conditions of the settlement
27 among the parties hereto to date. Nothing shall serve to amend
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1 or modify this Consent Order in any respect whatsoever,
2 unless: (a) reduced to writing; (b) signed by all parties
3 hereto; and (c) approved by order of this Court.

4 49. Invalidation: If any provision of this Consent Order
5 or if the application of any provision or circumstance is held
6 invalid, then the remainder of this Consent Order and the
7 application of the provision to any other person or circumstance
8 shall not be affected by the holding.

10 50. Waiver: The failure of any party to this Consent
11 Order or of any Pool Participant at any time to require
12 performance of any provision of this Consent Order shall in no
13 manner affect the right of the party or Pool Participant at a
14 later time to enforce the same or any other provision of this
15 Consent Order. No waiver in one or more instances of the breach
16 of any provision contained in this Consent Order shall be deemed
17 to be or construed as a further or continuing waiver of such
18 breach or waiver of the breach of any other provision of this
19 Consent Order.
20
21

22 51. Continuing Jurisdiction of this Court: This Court
23 shall retain jurisdiction of this action to ensure compliance
24 with this Consent Order and for all other purposes related to
25 this action, including any motion by Defendants to modify or for
26 relief from the terms of this Consent Order.
27
28

1 52. Injunctive and Equitable Relief Provisions: The
2 injunctive and equitable relief provisions of this Consent Order
3 shall be binding upon Defendants, upon any person under their
4 authority or control, and upon any person who receives actual
5 notice of this Consent Order, by personal service, e-mail,
6 facsimile or otherwise insofar as he or she is acting in active
7 concert or participation with Defendants.
8

9 53. Authority: Jackson hereby warrants that he is the
10 founder and manager of Highlands, and that this Consent Order
11 has been duly authorized by Highlands and he has been duly
12 empowered to sign and submit this Consent Order on behalf of
13 Highlands.
14

15 54. Counterparts and Facsimile Execution: This Consent
16 Order may be executed in two or more counterparts, all of which
17 shall be considered one and the same agreement and shall become
18 effective when one or more counterparts have been signed by each
19 of the parties hereto and delivered (by facsimile, e-mail, or
20 otherwise) to the other party, it being understood that all
21 parties need not sign the same counterpart. Any counterpart or
22 other signature to this Consent Order that is delivered by any
23 means shall be deemed for all purposes as constituting good and
24 valid execution and delivery by such party of this Consent
25 Order.
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1 55. Defendants understand that the terms of the Consent
2 Order are enforceable through contempt proceedings, and that, in
3 any such proceedings they may not challenge the validity of this
4 Consent Order.

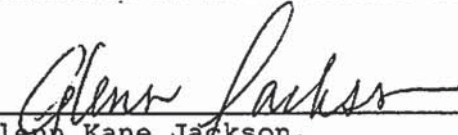
5 56. There being no just reason for delay, the Clerk of the
6 Court is hereby directed to enter this Consent Order.

7
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9 **IT IS SO ORDERED** on this 01 day of October, 2014,


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11 

12 **The Honorable Samuel Conti**
13 **United States District Judge**
14 **Northern District of California**

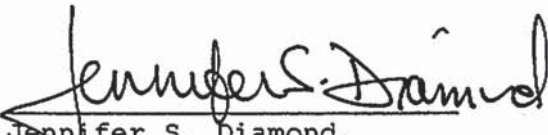
15 **CONSENTED TO AND APPROVED BY:**

16
17 
18 Glenn Kane Jackson,
19 individually
20 Defendant

21 Date: 16 August 2014

22 For Highlands Capital
23 Management, L.P.:
24 
25 Glenn K. Jackson, signing as
26 Founder and Manager for
27 Highlands Capital Management,
28 L.P.

Dated: 16 August 2014

16 
17 Jennifer S. Diamond,
18 Senior Trial Attorney
19 Daniel C. Jordan,
20 Chief Trial Attorney
21 Attorneys for Plaintiff U.S.
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Dated: Sept. 29, 2014