

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

<p>U.S. COMMODITY FUTURES TRADING</p> <p>COMMISSION,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MIDWEST LAND & LIVESTOCK, INC., a</p> <p>Nevada corporation, SKV FARMS INC., a</p> <p>Delaware corporation, DCV FARMS, INC., a</p> <p>Delaware corporation, and MARK ALAN</p> <p>VANDERPLOEG, an individual,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CIVIL ACTION</p> <p>CASE NO. <u>10-2490-EFM-KGG</u></p> <p>FILED UNDER SEAL</p>
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**COMPLAINT FOR INJUNCTIVE AND OTHER
EQUITABLE RELIEF AND FOR CIVIL MONETARY PENALTIES
PURSUANT TO THE COMMODITY EXCHANGE ACT**

I. SUMMARY

1. This matter involves a fraudulent grain sales scheme that took place predominantly in Kansas, Iowa, Minnesota, Illinois, and South Dakota during August 2007 to December 2008 (the “Relevant Period”). During the Relevant Period, Midwest Land & Livestock, Inc. (“MLL”), SKV Farms Inc. (“SKV”), DCV Farms, Inc. (“DCV”), and Mark Alan Vanderploeg (“Vanderploeg”) (collectively, “Defendants”) implemented a scheme by which they pretended to be farmers and sought to profit from record-high wheat, soybean, and corn (collectively, “Grain”) prices at the expense of certain grain elevators and cooperatives located throughout these five states (the “Grain Entities”) by entering into forward contracts with the Grain Entities for the future delivery of Grain.

2. To hedge the risks associated with these forward contracts, the Grain Entities entered into “short” commodity futures contracts (“Futures”) positions. Pursuant to a grain industry business custom, if a farmer is unable to deliver the contracted-for grain and the grain elevator or cooperative made a gain on its short hedge position, the grain elevator or cooperative will often share the trading gain with the farmer. Defendants sought to take advantage of this business custom in their scheme.

3. To that end, Defendants entered into forward contracts with the Grain Entities for the delivery of over one million bushels of Grain during the 2008 harvest, despite the fact that Defendants, unbeknownst to the Grain Entities, lacked the ability to produce the contracted-for Grain.

4. Just prior to the 2008 harvest, Defendants informed the majority of these Grain Entities that they would be unable to deliver the contracted-for Grain, which effectively cancelled their contracts.

5. When the price of Grain decreased after the parties entered into the forward contracts and there were corresponding gains in the short Futures hedging positions, in many instances Defendants demanded that the Grain Entities share with Defendants their hedging gains.

6. Several Grain Entities did, in fact, pay Defendants pursuant to their demands.

7. When the price of Grain increased after the parties entered into the forward contracts and there were corresponding losses in the short Futures hedging positions, in many instances Defendants failed to deliver any Grain and simply disappeared.

8. As a result of this scheme, Defendants made at least \$209,000 in ill-gotten gains and caused Grain Entities to incur damages of at least \$112,400.

9. During the Relevant Period, Defendants violated Section 9(a)(2) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 13(a)(2) (2006), by knowingly delivering, or causing to be delivered, for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication, false or misleading or knowingly inaccurate reports concerning crop or market information that affects or tends to affect the price of a commodity in interstate commerce. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the U.S. Commodity Futures Trading Commission (“CFTC”) brings this action to enjoin Defendants' unlawful acts and practices and to compel Defendants' compliance with the above-referenced provisions of the Act and Regulations. In addition, the CFTC seeks restitution to the Grain Entities for losses proximately caused by Defendants' false reporting, disgorgement of Defendants' ill-gotten gains, civil monetary penalties, and such other relief as the Court may deem necessary or appropriate.

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

II. JURISDICTION AND VENUE

11. The Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that, whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because certain of the Defendants transacted business in this District and/or violations of the Act have occurred, are occurring, or are about to occur within this District, among other places.

III. THE PARTIES

13. Plaintiff **CFTC** is an independent federal regulatory agency charged by Congress with administering and enforcing provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (“Regulations”).

14. Defendant **MLL** is a Nevada corporation with a principal place of business of 6635 Happy Valley Road, Suite A104, #467, Glendale, Arizona. MLL is the entity Vanderploeg utilized in connection with the Grain scheme conducted in Kansas and Illinois. In Kansas, MLL at times conducted business as “Midwest Land and Cattle.” In Illinois, MLL at times conducted business as “MLL Farms” and “MLL #311.” As discussed below in Section IV.C, MLL #311 is an unincorporated pseudonym for MLL. MLL has never been registered with the Commission in any capacity.

15. Defendant **SKV** is a Delaware corporation with a principal place of business of 4089 South 84th Street, Omaha, Nebraska. SKV is the entity Vanderploeg utilized in connection with the Grain scheme conducted in Iowa and South Dakota. In Iowa, SKV at times used the names “Ox Plow Farms” and “Ox Plow Farms 350” (collectively, “Ox Plow”). In South Dakota, SKV at times conducted business as “JDDB Farms” (“JDDB”). In December 2008, SKV registered to do business in Iowa and registered JDDB and Ox Plow as fictitious names with the Iowa Secretary of State. SKV has never been registered with the Commission in any capacity.

16. Defendant **DCV** is a Delaware corporation with a principal place of business of 3208 West Lake Street, Suite 72, Minneapolis, Minnesota, 55416. DCV is the entity Vanderploeg utilized in connection with the Grain scheme conducted in Minnesota. DCV has never been registered with the Commission in any capacity.

17. Defendant **Vanderploeg** is an individual with a last known address in Glendale, Arizona. Vanderploeg is MLL's corporate secretary and, upon information and belief, a director of SKV. From 1983 to 1985, Vanderploeg was registered with the Commission as an associated person of three different introducing brokers. He has not been registered with the Commission in any capacity since that time.

IV. FACTS COMMON TO ALL COUNTS

A. General Background Related to Grain Markets

18. Most farmer-produced grain in the United States is sold by farmers to local grain elevators and cooperatives that, in turn, pool and sell the grain purchased from farmers to milling companies, grain exporters, and large multi-national grain companies.

19. Much of the grain the farmers sell to the grain elevators and cooperatives is "new crop" grain.

20. "New crop" grain is grain that is planted, grown, and harvested during the current harvest cycle for that particular grain, as opposed to grain from a prior harvest that is stored in an elevator for later resale.

21. Prior to harvest, farmers will often lock-in prices for their grain by entering into forward contracts with grain elevators and cooperatives for the future delivery of their grain. A forward contract is a cash transaction whereby the farmer and the grain elevator or cooperative agree upon the future delivery of a specified amount of grain at a predetermined price.

22. To minimize the risk of financial loss from adverse price changes, most grain elevators and cooperatives hedge their forward grain purchases from farmers by taking positions in the Futures markets opposite to the positions they hold in the cash markets.

23. Specifically, grain elevators and cooperatives typically hedge forward grain purchases by *selling* a commensurate volume of Futures in a particular grain.

24. Selling Futures is also known as taking a *short* position in the Futures markets. A short Futures position is profitable when the price of the underlying commodity decreases and is unprofitable when the price of the underlying commodity increases. Depending on the size of the hedge, the profits or losses on a short position can be offset by a corresponding loss or gain in the cash market.

25. It is a common practice in the grain industry for grain elevators and cooperatives to share with farmers the gains on their hedge positions when a forward contract is cancelled due to a farmer's inability to produce the contracted-for grain and monetary gains result from the grain elevators' and cooperatives' hedge positions. For example, if a farmer cancels a forward grain contract and the price of the grain has *decreased* (causing the elevator to make money on its short hedge of the contract), a grain elevator or cooperative will often agree to pay the farmer the difference between the forward contract price and market price, which results in a net gain to the farmer.

26. Conversely, grain elevators and cooperatives will often charge a farmer the loss on their hedge positions when a forward contract is cancelled due to a farmer's inability to produce the contracted-for grain and monetary losses result from the grain elevators' and cooperatives' hedge positions. For example, if a farmer cancels a forward contract and the price of the grain has *increased* (causing the elevator to lose money on its short hedge of the contract),

the farmer owes the grain elevator or cooperative the difference between the contract price and market price.

27. Between 2007 and 2008, corn, wheat, and soybeans were trading at record-high or near record-high prices in the United States as a whole, as well as in Kansas, Minnesota, Iowa, Illinois, and South Dakota.

B. Overview of Defendants' Scheme

28. As is further detailed below, during the Relevant Period, Defendants sought to profit from record-high Grain prices by engaging in a Grain-sales scheme during which Defendants made false reports and gave false information about the location, supply, and volume of Grain to Grain Entities located in Kansas, Minnesota, Iowa, Illinois, and South Dakota.

29. In order to further their scheme, Defendants generally took the following actions: Defendants contacted Grain Entities between the fall of 2007 and early summer of 2008 (when Grain prices were at or near record highs) and falsely reported to the Grain Entities that Defendants had procured local farmland and would be growing either wheat, soybeans, or corn for delivery during the 2008 harvest. During these communications, Defendants often provided Grain Entities with a local address, which gave the appearance that Defendants had a local presence. These addresses, however, were merely mail boxes Vanderploeg rented in the various states and from which mail was forwarded to Vanderploeg in Arizona.

30. Defendants and Grain Entities then typically entered into a forward contract for the delivery of Grain based on Defendants' representations.

31. In reality, Defendants had not procured any farmland and had neither the intent nor the ability to produce the Grain they contracted to deliver to the Grain Entities.

32. Just prior to the 2008 harvest, Defendants typically informed the Grain Entities that Defendants were unable to deliver the Grain as agreed, which effectively cancelled the forward contracts.

33. In many instances where the Grain price decreased and Grain Entities thus had corresponding gains in their short hedging positions, Defendants demanded, per business custom, that the Grain Entities pay Defendants the difference between the market and contract price of the Grain.

34. In many instances where the Grain price increased and Grain Entities thus had corresponding losses in their short hedging positions, Defendants disappeared, causing the Grain Entities to be unable to recoup from Defendants the losses they incurred on their short hedge positions.

35. During the scheme, Defendants forward contracted with 57 different Grain Entities in Kansas, Minnesota, Iowa, Illinois and South Dakota to deliver to these entities over one million bushels of Grain.

36. As is described below, in states where the price of Grain decreased, at least eight Grain Entities complied with Defendants' demands and paid Defendants approximately \$209,000.

37. In Kansas, where the price of Grain increased, Defendants failed to deliver any Grain, which caused Kansas Grain Entities to incur net losses on Futures positions of \$112,400.

38. In July 2008, the Kansas Grain and Feed Association ("KGFA") published a news-alert cautioning that MLL was not delivering wheat against its forward contracts.

39. The Minnesota Grain and Feed Association ("MGFA") and the Grain and Feed Association of Illinois published similar news alerts regarding DCV and MLL #311.

40. Upon information and belief, these news alerts caused Defendants to alter their scheme in an attempt to mitigate the bad press.

41. For example, in a few instances Defendants actually delivered Grain to Grain Entities with whom they had contracted. Defendants did not, however, actually produce the delivered Grain. Instead, Defendants purchased the Grain on the cash market, despite their initial statements that Defendants intended to grow the Grain themselves.

42. In addition, Defendants sent money to a few of the Grain Entities in Kansas to reimburse them for a portion of the damages caused by Defendants' failure to deliver.

C. Defendants' Use of Trade Names and Aliases

43. Defendants carried out their scheme using a variety of trade names and aliases. The following table illustrates the different trade names and aliases used by Defendants in each of the states in which they operated:

True identity	Trade name, pseudonym, or alias used	State used
Mark Vanderploeg	Drew Ploeg ("Ploeg")	Kansas
Mark Vanderploeg	Caleb Vander ("Vander")	Illinois
Mark Vanderploeg	John Wall ("Wall")	Iowa
Mark Vanderploeg	Tim Clay ("Clay")	Minnesota
Mark Vanderploeg	Dave Bend ("Bend")	South Dakota
Midwest Land & Livestock, Inc.	MLL #311	Illinois
Midwest Land & Livestock, Inc.	Midwest Land & Livestock	Kansas
SKV Farms, Inc.	JBDC Farms	South Dakota
SKV Farms, Inc.	Ox Plow Farms	Iowa
SKV Farms, Inc.	Ox Plow Farms #350	Iowa

DCV Farms, Inc.	DCV Farms	Minnesota
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44. From approximately 2007 to the present, Vanderploeg controlled the operations of MLL, SKV, and DCV. On behalf of each of MLL, SKV and DCV, Vanderploeg, communicated, executed contracts, negotiated checks, and opened post office drop boxes from which he conducted business pertaining to those entities. Further, Vanderploeg did not act in good faith or knowingly induced, directly or indirectly, the acts constituting MLL's, SKV's, and DCV's violations of the Act and Regulations described herein.

45. In addition, during the Relevant Period, Vanderploeg was an employee and/or agent of MLL, SKV and DCV acting within the scope of his employment and/or authority while engaging in all of the acts constituting violations of the Act and Regulations described herein.

D. Defendants' Transactions with Grain Entities

Kansas Grain Entities

46. In Kansas, hard red winter wheat ("Wheat") is typically planted by late September and the new crop is harvested in June and July. Soybeans are typically planted in Kansas during May and harvested between September and November.

47. In or about August 2007, Defendants Vanderploeg (using the Ploeg alias) and MLL began emailing and telephoning Grain Entities throughout Kansas. During these communications, Vanderploeg and MLL knowingly misrepresented that MLL had procured farmland in Kansas and would have new crop Wheat available for delivery during the 2008 summer harvest.

48. In at least one instance, Vanderploeg and MLL also knowingly misrepresented that MLL would have new crop soybeans available for delivery in Kansas during the 2008 fall harvest.

49. In addition, Vanderploeg and MLL provided false, misleading or knowingly inaccurate reports concerning crop or market information via forward contracts with Kansas grain entities. Specifically, between September 2007 and January 2008, MLL, by and through its representative Vanderploeg, forward contracted with at least eleven Grain Entities throughout Kansas (collectively, "Kansas Grain Entities") to deliver at least 217,200 bushels of new crop Wheat at prices ranging between \$5.70 and \$9.42 per bushel. Delivery on the contracts was to occur between June and July 2008.

50. In September 2007, MLL, by and through its representative Vanderploeg, also forward contracted with one Kansas Grain Entity to deliver 5,000 bushels of new crop soybeans for \$9.30 per bushel. Delivery on this contract was to occur during October 2008.

51. To grow 217,200 bushels of Wheat in Kansas requires approximately 5,430 acres of farmland.

52. To grow 5,000 bushels of soybeans in Kansas requires approximately 125 acres of farmland.

53. Despite making representations to the contrary, Vanderploeg and MLL never intended to produce the contracted-for Wheat or soybeans. Vanderploeg and MLL did not own, rent, or otherwise have access to sufficient Kansas farmland during 2007 or 2008 to grow 217,200 bushels of Wheat or 5,000 bushels of soybeans.

54. Most Kansas Grain Entities hedged their Wheat purchases from MLL by selling July 2008 Wheat Futures on the Kansas City Board of Trade ("KCBT"). The Kansas Grain Entity that purchased soybeans from Vanderploeg and MLL hedged its soybean purchase by selling November soybean Futures on the Chicago Board of Trade ("CBOT"). One Kansas Grain Entity hedged its risk by granting three wheat call options.

55. When the 2008 summer Wheat harvest arrived, Vanderploeg and MLL failed to deliver any Wheat or soybeans to the Kansas Grain Entities.

56. In most cases, the time for delivery passed with no explanation or communication from Vanderploeg or MLL.

57. As a result of Vanderploeg's and MLL's failure to deliver the contracted-for Wheat and soybeans, the Kansas Grain Entities cancelled their contracts with MLL.

58. After cancelling their contracts, several of the Kansas Grain Entities received emails from an email address that was used by MLL and, on information and belief, created by Vanderploeg stating "Drew [Ploeg] became ill in June and is no longer with us. I am his brother Caleb. . . . You can send Midwest Land and Livestock an invoice for the amount of your loss."

59. In several instances Kansas Wheat and soybean prices increased between the time Vanderploeg and MLL executed forward contracts with the Kansas Grain Entities. In these instances, Kansas Grain Entities lost money on their hedges in the aggregate amount of \$161,634.40.

60. To date, Vanderploeg and MLL have reimbursed Kansas Grain Entities only \$49,234 for these losses.

61. Thus, the net aggregate loss of the Kansas Grain Entities from their dealings with Vanderploeg and MLL is \$112,400.

62. None of the Kansas Grain Entities would have contracted with MLL if they knew Vanderploeg and MLL lacked the ability to produce Wheat or soybeans.

Minnesota Grain Entities

63. In Minnesota, corn is typically planted in by mid-May and the new crop is harvested between October and December.

64. In April 2008, Defendants Vanderploeg (using the Clay alias) and DCV began telephoning Grain Entities throughout Minnesota. During these communications, Vanderploeg and DCV knowingly misreported to these Grain Entities that DCV had procured farmland in Minnesota and would have new crop corn available for delivery during the fall harvest.

65. In addition, Vanderploeg and DCV provided false, misleading or knowingly inaccurate reports concerning crop or market information via forward contracts with Grain Entities in Minnesota. Specifically, between April and July 2008, DCV, by and through its representative Vanderploeg, forward contracted with at least 14 Minnesota Grain Entities (collectively, "Minnesota Grain Entities") to deliver a total of 460,000 bushels of new crop corn at prices ranging between \$5.30 and approximately \$7.00 per bushel. Delivery on these contracts was to occur between October and December 2008.

66. To grow 460,000 bushels of corn in Minnesota requires approximately 2,500 acres of farmland.

67. Despite making representations to the contrary, Vanderploeg and DCV never intended to produce the contracted-for corn. Vanderploeg and DCV did not own, rent, or otherwise have access to sufficient farmland in Minnesota during 2008 to produce 460,000 bushels of corn.

68. All but one of the Minnesota Grain Entities hedged their contracts with DCV by selling December 2008 corn Futures on the CBOT.

69. Minnesota corn prices decreased between the time Vanderploeg and DCV executed forward contracts with the Minnesota Grain Entities and August 2008.

70. In early July 2008, Vanderploeg and DCV began alerting the Minnesota Grain Entities that DCV would be unable to deliver against its forward contracts. Vanderploeg and DCV gave varying excuses for DCV's inability to deliver corn to the Minnesota Grain Entities.

71. In at least four instances, Vanderploeg and DCV cancelled DCV's contracts with the Minnesota Grain Entities.

72. Subsequently, Vanderploeg and DCV demanded that some of the Minnesota Grain Entities pay DCV the gains the Minnesota Grain Entities had made hedging their purchases from DCV, i.e., the difference between the market and contract price of the corn. These demands have been made as recently as November 2009.

73. Two Minnesota Grain Entities complied with Defendants' demands and sent DCV checks totaling \$79,776.

74. Defendants Vanderploeg and DCV delivered corn to only a few of the Minnesota Grain Entities with which they had contracted. In total, Vanderploeg and DCV delivered only 140,000 of the 460,000 bushels of corn DCV had contracted to deliver to the Minnesota Grain Entities.

75. In each instance that Vanderploeg and DCV delivered corn to a Minnesota Grain Entity, the corn was procured from another Minnesota grain elevator or from grain elevators in Iowa or North Dakota.

76. None of the Minnesota Grain Entities would have contracted with DCV if they knew Vanderploeg and DCV lacked the ability to produce corn.

Iowa Grain Entities

77. In Iowa, soybeans are typically planted by May and the new crop is harvested between September and November.

78. In early 2008, Defendants Vanderploeg (using the Wall alias) and SKV (using the Ox Plow name) began telephoning Grain Entities in Iowa. During these communications, Vanderploeg and SKV knowingly misreported to these entities that SKV had procured farmland in Iowa and would have new crop soybeans for delivery during the fall 2008 harvest.

79. In addition, Vanderploeg and SKV provided false, misleading or knowingly inaccurate reports concerning crop or market information via forward contracts with Grain Entities in Iowa. Specifically, between March and July 2008, SKV, by and through its representative Vanderploeg, forward contracted with at least 23 Iowa Grain Entities (collectively, "Iowa Grain Entities") to deliver a total of approximately 357,000 bushels of new crop soybeans at prices ranging between \$10.79 and \$15.21 per bushel. Delivery on the contracts was to occur between October and December 2008.

80. To grow 357,000 bushels of soybeans in Iowa requires approximately 7,000 acres of farmland.

81. Despite making representations to the contrary, Vanderploeg and SKV never intended to produce the contracted-for soybeans. Vanderploeg and SKV did not own, rent, or otherwise have access to sufficient farmland in Iowa during 2008 to produce 357,000 bushels of soybeans.

82. The Iowa Grain Entities hedged their contracts with SKV by selling November soybean Futures on the CBOT.

83. Iowa soybean prices decreased between the time Vanderploeg and SKV executed forward contracts with the Iowa Grain Entities and August 2008.

84. In July 2008, Vanderploeg and SKV began alerting some of the Iowa Grain Entities that SKV would be unable to deliver soybeans against its contracts. Vanderploeg and

SKV gave varying excuses to the Iowa Grain Entities as to why SKV would be unable to deliver soybeans.

85. Vanderploeg and SKV demanded that some of the Iowa Grain Entities pay SKV the market gains the Iowa Grain Entities had made hedging their purchases from SKV, i.e., the difference between the market and contract price of the soybeans.

86. At least two of the Iowa Grain Entities complied with Vanderploeg's and SKV's demands and sent SKV (in the name of Ox Plow) checks totaling \$67,899.00.

87. Vanderploeg and SKV delivered soybeans to only a few of the Iowa Grain Entities with whom they had contracted, but the total bushels of soybeans delivered were much less than the 357,000 bushels that SKV had contracted to deliver.

88. In each instance that Vanderploeg and SKV delivered soybeans to an Iowa Grain Entity, the soybeans were procured from another grain elevator and not produced by Vanderploeg and SKV.

89. None of the Iowa Grain Entities would have contracted with SKV if they knew Vanderploeg and SKV lacked the ability to produce soybeans.

Illinois Grain Entities

90. In Illinois, soybeans are typically planted by May and the new crop is harvested between September and November.

91. In January 2008, Defendants Vanderploeg (using the Vander alias) and MLL (using the MLL #311 name) began telephoning Grain Entities in Illinois. During these communications, Vanderploeg and MLL misrepresented to these Grain Entities that MLL had procured farmland in Illinois and would have new crop soybeans for delivery during the fall 2008 harvest.

92. In addition, Vanderploeg and MLL provided false, misleading or knowingly inaccurate reports concerning crop or market information via forward contracts with Grain Entities in Illinois. Specifically, between January 2008 and June 2008, MLL, by and through its representative Vanderploeg, forward contracted with at least seven Grain Entities in Illinois (collectively, the “Illinois Grain Entities”) to deliver at least 84,800 bushels of new crop soybeans between September and November 2008 at an average price of \$13.17 per bushel.

93. To grow 84,800 bushels of soybeans in Illinois requires approximately 1,800 acres of farmland.

94. Despite making representations to the contrary, Vanderploeg and MLL never intended to produce the contracted-for soybeans. Vanderploeg and MLL did not own, rent, or otherwise have access to sufficient farmland in Illinois during 2008 to produce 84,800 bushels of soybeans.

95. The majority of the Illinois Grain Entities hedged their purchases from Vanderploeg and MLL by selling November soybean Futures on the CBOT.

96. Illinois soybean prices decreased between the time Vanderploeg and MLL executed forward contracts with the Illinois Grain Entities and August 2008.

97. In August 2008, Vanderploeg and MLL began alerting the Illinois Grain Entities that MLL would be unable to deliver soybeans against its forward contracts.

98. In at least four instances, Vanderploeg and MLL cancelled MLL’s forward contracts with the Illinois Grain Entities. Vanderploeg and MLL gave varying excuses to the Illinois Grain Entities for MLL’s inability to deliver soybeans.

99. Vanderploeg and MLL demanded that some of the Illinois Grain Entities pay MLL the market gains the Illinois Grain Entities had made hedging their purchases from MLL, i.e., the difference between the market and contract price of the soybeans.

100. Four Illinois Grain Entities complied with Vanderploeg's and MLL's demands and paid Vanderploeg and MLL a total of \$61,440.

101. Vanderploeg and MLL delivered soybeans to only one of the Illinois Grain Entities with which they had contracted. In total, Vanderploeg and MLL delivered only 18,900 bushels of the 84,900 bushels of soybeans MLL had contracted to deliver to Illinois Grain Entities.

102. These soybeans were not produced by Vanderploeg and MLL but procured from another Illinois grain elevator.

103. None of the Illinois Grain Entities would have contracted with MLL if they knew Vanderploeg and MLL lacked the ability to produce soybeans.

South Dakota Grain Entities

104. In South Dakota, soybeans are typically planted by May and the new crop is harvested between September and November.

105. In May 2008, Defendants Vanderploeg (using the Dave or Dale Bend alias) and SKV (using the JDBC name) began telephoning Grain Entities in South Dakota. During these communications, Vanderploeg and SKV misreported to these Grain Entities that SKV had procured farmland in South Dakota and would have new crop soybeans available for delivery during the fall harvest.

106. In addition, Vanderploeg and SKV provided false, misleading or knowingly inaccurate reports concerning crop or market information via forward contracts with Grain

Entities in South Dakota. Specifically, between May and June 2008, SKV, by and through its representative Vanderploeg, forward contracted with at least two Grain Entities in South Dakota (collectively, the “South Dakota Grain Entities”) for the delivery of 9,000 bushels of soybeans during October 2008 at prices ranging between \$12.01 and \$13.68 per bushel.

107. To grow 9,000 bushels of soybeans in South Dakota requires 225 acres of farmland.

108. Despite making representations to the contrary, Vanderploeg and SKV never intended to produce the contracted-for soybeans. Vanderploeg and SKV did not own, rent, or otherwise have access to sufficient farmland in South Dakota during 2008 to produce 9,000 bushels of soybeans.

109. Both South Dakota Grain Entities hedged their purchases from SKV by selling November soybean Futures on the CBOT.

110. South Dakota soybean prices decreased between the time Vanderploeg and SKV executed forward contracts with the South Dakota Grain Entities and August 2008.

111. Thereafter, one South Dakota Grain Entity received a call from Vanderploeg and SKV indicating that Vanderploeg and SKV would not deliver any soybeans because Vanderploeg and SKV had been unable to rent any farmland in South Dakota.

112. Because soybean prices had fallen from the time SKV contracted with this South Dakota Grain Entity, Vanderploeg and SKV demanded that this South Dakota Grain Entity pay SKV the market gains it had made hedging its purchases from SKV, i.e., the difference between the market and contract price of the soybeans. This South Dakota Grain Entity refused.

113. The other South Dakota Grain Entity received a telephone call in October 2008 from Vanderploeg and SKV stating that soybeans would be delivered against SKV's contract. No soybeans, however, were ever delivered to this South Dakota Grain Entity.

114. Neither South Dakota Grain Entity would have contracted with SKV if it knew that Vanderploeg and SKV lacked the ability to produce soybeans.

E. The False Reports' Impact on Commodity Prices in Interstate Commerce

115. The Defendants' false reports, including emails, interstate telephone calls, written contracts, and other communications, contained information about the location, supply, and volume of Wheat, corn, and soybeans available for sale.

116. In both its written contracts with Grain Elevators, and via interstate telephone calls, emails, and other communications with Grain Entities, Defendants repeatedly, and falsely, conveyed information pertaining to the supply, price, and volume of commodities available for sale.

117. The Grain Entities commonly utilized the type of information falsely reported to them by Defendants in setting their prices with their customers.

118. The Grain Entities' customers are typically large grain end-users that purchase Grain from the Grain Entities as part of their interstate operations. For example:

- a. Much of the wheat sold by the Kansas Grain Entities with which Defendant contracted is sold to mills, processors, and/or grain exporters located outside of Kansas;
- b. Most Minnesota grain companies forward contract the corn they purchase from farmers to ethanol plants, feed mills, processors, or grain exporters located outside of Minnesota;

- c. Many grain companies in Iowa sell the soybeans they have purchased from farmers to feed mills, processors, and/or grain exporters located outside of Iowa;
- d. A large percentage of soybeans produced in Illinois are exported and at least one of the Illinois Grain Entities with which Defendants contracted sells soybeans it purchases from farmers to a grain exporter; and
- e. A large percentage of soybeans produced in South Dakota are sold to feed mills, processors, and/or grain exporters located outside of South Dakota.

119. In addition, Defendants' actions caused Grain Entities to transact in Futures.

120. The Futures markets serve as a price discovery mechanism for cash commodities.

That is, the Futures markets, among other things, serve as a centralized market for buyers and sellers to evaluate supply and demand conditions and are widely used as a pricing reference in the cash agricultural markets. The prices of commodities in interstate commerce are thus directly affected by the open interest volume and price of Futures traded on exchange.

121. The Grain Entities that received false reports from Defendants sold July Wheat Futures on the KCBT, November soybean Futures on the CBOT, and November corn Futures on the CBOT to hedge their purchases from Defendants. These Futures transactions impacted the open interest volumes and prices of these Futures contracts, which in turn impacted the cash price of these commodities in interstate commerce.

122. Thus, Defendants' false reports affected the price of commodities in interstate commerce.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

**COUNT I
DELIVERY OF FALSE OR MISLEADING OR
KNOWINGLY INACCURATE REPORTS
(All Defendants)**

Violations of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2)

123. Paragraphs 1 through 122 are realleged and incorporated herein by reference.

124. Pursuant to Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), it is unlawful for any person "[k]nowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communications false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce."

125. Defendants violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), when they delivered, or caused to be delivered, for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information to grain entities throughout the Midwest United States.

126. Defendants' false or misleading or knowingly inaccurate reports concerned crop or market information that affects or tends to affect the price of a commodity in interstate commerce.

127. The foregoing acts of Vanderploeg occurred within the scope of his employment and/or agency with MLL, SKV, and DCV; therefore, MLL, SKV, and DCV are liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

128. Vanderploeg controls MLL, SKV, and DCV, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, MLL's, SKV's, and DCV's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Vanderploeg is liable for MLL's, SKV's and DCV's violations of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2).

129. Each occasion upon which Defendants delivered or caused to be delivered, for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or knowingly inaccurate reports concerning crop or market information is alleged herein as a separate and distinct violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2).

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, and pursuant to its own equitable powers, enter the following:

- a) An order finding that MLL, SKV, DCV, and Vanderploeg violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2);
- b) An order of permanent injunction prohibiting MLL, SKV, DCV, and Vanderploeg, and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly, in conduct in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), and from engaging in any commodity-related activity;
- c) An order of permanent injunction prohibiting MLL, SKV, DCV, and Vanderploeg, and any of their agents, servants, employees, assigns, attorneys,

and persons in active concert or participation with any Defendant, including any successor thereof, from engaging directly or indirectly, in:

- (i) 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));
- (ii) entering into any transactions involving Futures, Options, commodity options (as that term is defined in Regulation 32.1(b)(1)) (“Commodity Options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008), § 13101, 122 Stat. 1651 (enacted June 18, 2008)) (“Forex Contracts”) for their own personal account or for any account in which they have a direct or indirect interest;
- (iii) having any Futures, Options, Commodity Options, and/or Forex Contracts traded on their behalf;
- (iv) 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 Futures, Options, Commodity Options, and/or Forex Contracts;
- (v) soliciting, receiving, or accepting any funds from any person for purposes of purchasing or selling any Futures, Options, Commodity Options, and/or Forex Contracts;

- (vi) applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and
 - (vii) 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 CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010).
- d) an order directing MLL, SKV, DCV, and Vanderploeg, as well as any other person or entity associated with them, including any successor thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;
- e) an order directing MLL, SKV, DCV, and Vanderploeg, as well as any other person or entity associated with them, including any successor thereof, to make full restitution, pursuant to such procedure as the Court may order, to every entity who was damaged as a result of acts and practices by Defendants that constitute violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

- f) an order directing MLL, SKV, DCV, and Vanderploeg to each pay civil monetary penalties in the amount of not more than the higher of \$130,000 or triple the monetary gain to each Defendant for each violation of the Act or Regulations committed by them before October 23, 2008 and \$140,000 or triple the monetary gain to each Defendant for each violation of the Act or Regulations occurring thereafter; and
- g) such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully submitted by,

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