

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 12-81311-CV-MIDDLEBROOKS/BRANNON

UNITED STATES COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

HUNTER WISE COMMODITIES, LLC,
et al.,

Defendants.

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY
PENALTY, AND OTHER EQUITABLE RELIEF AGAINST UNITED STATES
CAPITAL TRUST, LLC AND DAVID A. MOORE**

I. INTRODUCTION

On December 5, 2012, Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a thirteen-count Complaint (DE 1) against eight companies and twelve individuals seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2012), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012). On February 25, 2013, the Court entered an Order of Preliminary Injunction and Other Equitable Relief against all defendants (DE 78) (“Order of Preliminary Injunction”). Defendants United States Capital Trust (“USCT”) and David A. Moore (“Moore”) now consent to the entry of this order for permanent injunction, civil monetary penalty and other equitable relief as follows.

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against USCT and Moore (hereinafter, collectively "Consenting Defendants") without a trial on the merits or any further judicial proceedings, Consenting Defendants:

1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against United States Capital Trust, LLC and David A. Moore ("Consent Order");
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledge service of the summons and Complaint;
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1;
5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e);
7. Waive:
 - (a) any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2011), relating to, or arising from, this action;

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

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

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

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

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

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their:

(a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. The Consenting Defendants shall undertake all steps necessary to

ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement;

11. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 61 of Part VI. of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States;

12. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Consenting Defendants in any other proceeding; and

13. Neither admit nor deny the allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Consent Order, except as to jurisdiction and venue, or as made by the Court in entering the Order of Preliminary Injunction, which they admit. Further, the Consenting Defendants agree and intend that the allegations contained in the Complaint, the findings of fact and conclusions of law contained in the Order of Preliminary Injunction, and all of the Findings of Fact and Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Consenting Defendants; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.*; and/or (c) any proceeding to enforce the terms of this Consent Order.

III. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the

entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

14. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.*

15. USCT was a telemarketing firm that solicited retail customers to execute retail commodity transactions with Hunter Wise directly and through the intermediary firm Lloyds Commodities LLC (“Lloyds”). USCT was a Florida limited liability company that conducted business from an office located in Pompano Beach, Florida.

16. Moore was the owner and managing member of USCT. Moore directed and controlled the operations of USCT. Moore executed contracts on behalf USCT, controlled USCT’s bank accounts, managed the contents of USCT’s website, and made hiring and firing decisions for USCT.

17. USCT held itself out to the public on its website as a firm of expert traders offering financed investments in precious metals to retail and institutional customers. USCT told its retail customers that they could purchase physical commodities, including gold, silver, copper, platinum and palladium with financing provided by USCT. USCT told customers they could put down 25% of the purchase price for these metals, USCT would lend the customer the remaining portion of the purchase price, the customer would receive title to the physical commodity after the purchase, and USCT would store the physical metals at an independent depository on the customer’s behalf.

18. On its website, USCT told customers:

- a. "All metals are stored or delivered from internationally known and certified depositories (such as Delaware Depository Service Company) in the United States."
- b. "Your financed or stored metal is delivered to an independent bank or depository."
- c. "Receive the legal title to your metal, giving you actual ownership."
- d. "Metals held by the bank or depository will remain in your name until it is sold or you take personal delivery."

19. The agreements USCT executed with customers contained similar representations.

For example, the USCT Account Application informed customers that their "each transaction made by the customer is a purchase or sale of Physical Metals product."

20. "Transfer of Commodity" notices sent to USCT customers similarly represented that customers owned the metals purchased and sold in its retail commodity transactions. For example, a USCT Transfer of Commodity notice stated "USCT Alliance hereby confirms that a depository ("Custodian") authorized by agreements referred to below has received custody of the goods and/or warehouse receipts therefore ("commodities") identified above."

21. These statements on USCT's website, in its customer account documentation, and in its Transfer of Commodity notices, were false. USCT never possessed or had title to any physical metals in connection with its financed retail commodity transactions. USCT did not transfer ownership of any physical metals to its customers in connection with these retail commodity transactions. Neither USCT nor any affiliate loaned sums of money to customers for the purchase of physical commodities. There were no identifiable physical metals stored in independent banks, vaults or depositories for USCT or its customers.

22. Moore was the person at USCT responsible for ensuring the accuracy of the representations USCT made to customers on its website, in its customer account documents, and in other account statements and confirmations sent to customers. Moore had actual knowledge of and control over the representations made in these USCT materials but did not take steps to ensure that these materials were truthful and therefore allowed USCT to continue making these misrepresentations to customers and prospective customers during the relevant time period.

23. USCT also failed to disclose to existing and prospective customers that the vast majority of its customers lose and had lost money in connection with their retail commodity transactions. Moore had regular access to data showing the performance of USCT customers through the internet-based portal system provided by Hunter Wise. He had access on a daily basis to documents generated and maintained by Hunter Wise such as customer "position reports" that showed regular, significant losses suffered by the vast majority of USCT's customers. Nonetheless, Moore did not take steps to ensure that customers and prospective customers were alerted to these substantial losses therefore allowing this significant omission to continue.

24. The retail commodities transactions offered and entered into by USCT did not take place on a regulated exchange.

25. USCT acted as a retail dealer soliciting customers whose orders for retail commodity transactions were executed by Hunter Wise between at least July 16, 2011 and the date of the preliminary injunction order in this case on February 25, 2013. During that time, USCT received commissions and fees from illegal retail commodity transactions in an amount of at least \$750,515.

B. Conclusions of Law

1. Jurisdiction and Venue

26. This 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 in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

27. The Commission has jurisdiction over the solicitations and transactions at issue in this action pursuant to Section 2(c)(2)(D) of the Act, 7 U.S.C. § 2(c)(2)(D).

28. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because the Consenting Defendants either reside in this jurisdiction and/or the acts and practices in violation of the Act occurred within this District.

2. Violation of Section 4(a) of the Commodity Exchange Act – Off-Exchange Retail Commodity Transactions (Count 1 of the Complaint)

29. Between July 16, 2011 and February 25, 2013, the retail commodity transactions described in the Complaint (DE 1) were offered and entered into (a) on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, and (b) with persons who are not eligible contract participants or eligible commercial entities as defined by the Commodity Exchange Act. These transactions were not made or conducted on, or subject to, the rules of any board of trade, exchange or contract market.

30. USCT and Moore violated Section 4(a) of the Commodity Exchange Act by offering to enter into, entering into, and conducting an office or business in the United States for the purpose of soliciting, or accepting orders for, or otherwise dealing in, retail commodity transactions.

31. The foregoing acts, omissions, and failures of Moore occurred within the scope of his employment, office, or agency with the USCT; therefore, pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § .2 (2013), USCT is liable for Moore's acts, omissions, and failures in violation of Section 4(a) of the Act.

32. Moore knowingly induced the acts constituting the violations of USCT described in this Consent Order. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), therefore, Moore is liable as controlling person for the violations by USCT of the Act.

33. Unless restrained and enjoined by this Court, there is a reasonable likelihood that USCT and Moore will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

3. Violation of Section 4b of the Commodity Exchange Act – Fraud in Connection With Retail Commodity Transactions (Count 10 of the Complaint)

34. Between July 16, 2011 and February 25, 2013, USCT violated Section 4b of the Commodity Exchange Act by cheating, defrauding, and attempting to cheat and defraud persons in or in connection with retail commodity transactions.

35. Specifically, USCT recklessly made material misrepresentations on its website, in account documentation, and in statements and notices sent to customers regarding nature of the product being purchased, the significant risks associated with the transactions. USCT also

recklessly failed to inform customers and prospective customers of the substantial losses being suffered by USCT's customers.

36. The foregoing acts, omissions, and failures of Moore and other officials, agents or persons acting for USCT occurred within the scope of their employment, office, or agency with USCT; therefore, pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2013), USCT is liable for their acts, omissions, and failures in violation of Section 4b of the Act.

37. Moore knowingly induced the acts constituting the violations of USCT described in this Consent Order. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), therefore, Moore is liable as controlling person for the violations by USCT of the Act.

38. Unless restrained and enjoined by this Court, there is a reasonable likelihood that USCT and Moore will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

4. Violation of Section 6(c) of the Commodity Exchange Act and Commission Regulation 180.1 – Fraud in Connection With Commodity Transactions in Interstate Commerce (Count 11 of the Complaint)

39. Between August 15, 2011 and February 25, 2013, USCT, through its agents and employees, recklessly used or employed, or attempted to use or employ, in connection with contracts of sale of commodities in interstate commerce, a scheme or artifice to defraud in violation of Section 6(c) of the Commodity Exchange Act and Commission Regulation 180. USCT recklessly made untrue or misleading statements of material facts and omitted to state material facts necessary in order to make the statements made not untrue or misleading.

40. Specifically, USCT made material misrepresentations on its website, in account documentation, and in statements and notices sent to customers regarding nature of the product being purchased and the significant risks associated with the transactions. USCT also recklessly

failed to inform current and prospective customers of the substantial losses being suffered by USCT's customers.

41. The foregoing acts, omissions, and failures of Moore and other officials, agents or persons acting for USCT described in this Order occurred within the scope of their employment, office, or agency with USCT; therefore, pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2013), USCT is liable for their acts, omissions, and failures in violation of Section 6(c) of the Act.

42. Moore knowingly induced the acts constituting the violations of USCT described in this Consent Order. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), therefore, Moore is liable as controlling person for the violations by USCT of the Act.

43. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the USCT and Moore will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

44. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, the Consenting Defendants are permanently restrained, enjoined and prohibited from directly or indirectly violating Sections 4(a), 4b and 6(c) of the Act, as amended, 7 U.S.C. §§ 6(a), 6b and 9, and Regulation 180.1, 17 C.F.R. § 180.1.

45. Consenting Defendants are also permanently restrained, enjoined and prohibited from directly or indirectly:

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

- b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2011)) (“commodity options”), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47), and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“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, security futures products, forex contracts and/or swaps 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, security futures products, forex contracts, and/or swaps;
- 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, security futures products, forex contracts and/or swaps;
- 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); and/or

- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) 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).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

46. USCT and Moore shall pay restitution in the amount of three hundred eighty-four thousand, six hundred sixty-four dollars (\$380,664). USCT and Moore are jointly and severally liable for this restitution.

47. The Consenting Defendants will pay their Restitution Obligation, plus post-judgment interest, within thirty (30) days of the date of the entry of this Consent Order. If the Restitution Obligation is not paid in full within thirty (30) days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

48. The Court-appointed Special Monitor and Corporate Manager, Melanie Damian ("Monitor"), shall pursue and collect restitution payments from the Consenting Defendants and make distributions as set forth below.

49. Consenting Defendants shall make Restitution Obligation payments under this Consent Order to the Monitor in the name "Hunter Wise Settlement/Restitution Fund" and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Monitor at the office of

Damian & Valori LLP, 1000 Brickell Avenue, Suite 1020, Miami, Florida 33131 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

50. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' customers or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible customers is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part V.B. below.

51. Consenting Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify the customers to whom the Monitor, in her sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Consenting Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

52. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' customers during the previous

year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

53. The amounts payable to each customer shall not limit the ability of any customer to prove that a greater amount is owed from Consenting Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law.

54. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Consenting Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Consenting Defendants to ensure continued compliance with any provision of this Consent Order and to hold Consenting Defendants in contempt for any violations of any provision of this Consent Order.

55. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Consenting Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

B. Civil Monetary Penalty

56. USCT and Moore shall pay a civil monetary penalty in the amount of seven hundred fifty thousand dollars (\$750,000). USCT and Moore are jointly and severally liable for this civil monetary penalty.

57. The Consenting Defendants shall pay their respective civil monetary penalty ("CMP Obligation"), plus post-judgment interest, within thirty (30) days of the date of the entry of this Consent Order. If the CMP Obligation is not paid in full within thirty (30) days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the CMP

Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

58. Consenting Defendants shall pay their CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, Consenting Defendants shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Consenting Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies the Consenting Defendant and the name and docket number of this proceeding. Consenting Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

C. Provisions Related to Monetary Sanctions

59. Partial Satisfaction: Any acceptance by the Commission or the Monitor of partial payment of Consenting Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of Consenting Defendants' obligation to make further payments pursuant to

this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

D. Cooperation

60. Consenting Defendants shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

VI. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Rosemary Hollinger
Deputy Director
U.S. Commodity Futures Trading Commission
525 W. Monroe, Suite 1100
Chicago, Illinois 60661

Notice to David Moore:

Gary Sinclair, Esq.
2043 N. Mohawk Street
Chicago, IL 60614

For USCT:

Melanie Damian, in her capacity as Corporate Manager
Damian & Valori LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131

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

62. **Change of Address/Phone:** Until such time as Consenting Defendants satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Consent Order, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone numbers and mailing addresses within ten (10) calendar days of the change.

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

64. **Invalidation:** If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

65. **Waiver:** The failure of any party to this Consent Order or of any of Defendants' customers at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or customer at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

66. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Consenting Defendants to modify or for relief from the terms of this Consent Order.

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

68. **Authority:** Melanie Damian, as Corporate Monitor and Manager for USCT hereby warrants that she has been duly empowered to sign and submit this Consent Order on behalf of USCT.

69. **Counterparts and Facsimile Execution:** This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

70. **Consenting Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.**

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against USCT Alliance, Inc. and John Moore.

DONE AND ORDERED in Chambers in West Palm Beach, Florida, this 25 day of February, 2014.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record
John A. King, *pro se* Defendant
Chadewick Hopkins, *pro se* Defendant