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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

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12 U.S. COMMODITY FUTURES
TRADING COMMISSION

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Plaintiff,

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vs.

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FOREX LIQUIDITY LLC,

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Defendant.

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CASE NO. SACV07-1437 CJC (RNBx)

[Honorable District Court Judge
Cormac J. Carney]

**OPPOSITION OF ROBERT GRAY
TO RENEWED MOTION BY THE
RECEIVER FOR AN ORDER
REQUIRING ROBERT GRAY TO
COMPENSATE THE
RECEIVERSHIP ESTATE AND
PLAINTIFF FOR LOSSES CAUSED
BY HIS CIVIL CONTEMPT**

**[MEMORANDUM OF POINTS AND
AUTHORITIES ATTACHED
HERETO; EVIDENTIARY
OBJECTIONS FILED
CONCURRENTLY HEREWITH]**

Date: April 5, 2010
Time: 1:30 p.m.
Dept. Courtroom 9B

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION.

3 Robert Gray went from running a multi-million dollar company to being
4 destitute. While fault for his circumstance is not the issue here, surely he bears
5 blame for at least his failure to keep adequate records and, to put the very best face
6 on it, for his failure to adequately communicate with those in authority. Now, with
7 his company, Forex Liquidity, LLC ("FXLQ") mostly dissolved and wound up, he is
8 being asked to account once again for his failings by the Receiver who is seeking a
9 civil judgment of over \$2.7 Million and a finding of fiduciary fraud. The Court has
10 already found Mr. Gray to have been in contempt of the Court's order requiring the
11 assets of FXLQ to be turned over to the Receiver. The question remains what if any
12 damage has Mr. Gray caused that would warrant such a judgment and finding?

13 The Receiver's motion fails to present sufficient evidence of fraud or a
14 shortfall. Mr. Gray is not a fiduciary to FXLQ's creditors, the only parties left
15 unpaid, and no evidence of actual fraud is in the record before the Court. The
16 evidence of a shortfall the Receiver presents lacks foundation and sufficient detail to
17 allow this Court to enter the judgment it requests. The Receiver has presented
18 nothing more than a summary of work performed by some unknown author in a form
19 that does not allow the Court, or Mr. Gray, to examine it for accuracy.

20 Mr. Gray has taken these proceedings very seriously. Despite the Receiver's
21 misgivings, Mr. Gray has worked to bring into the estate those assets that he has
22 consistently said belong to the estate. The primary issue which has prolonged these
23 proceedings has been clear communication regarding the character of those assets.
24 Mr. Gray has tried to communicate that the assets the Receiver seeks are not found
25 in any bank account he controls, but rather, in accounts controlled by others in
26 Panama and with Romsford. He has done everything he can do to recover those
27 funds. The evidence does not establish that his actions have caused the shortfall the
28 Receiver alleges. The motion should be denied and the losses stopped.

1 **II. THE RELIEF REQUESTED IN THE RECEIVER'S MOTION FOR**
2 **SANCTIONS IS INAPPROPRIATE IN THIS CONTEXT**

3 As noted by this Court in its July 23, 2009 Order Holding Robert Gray in
4 Civil Contempt, “[c]ivil contempt is distinguished from criminal contempt by the
5 purpose and character of the sanctions issued by a court. Sanctions for criminal
6 contempt are punitive in nature, while ‘civil contempt sanctions, or those penalties
7 designed to compel future compliance with a court order are considered to be
8 coercive in nature and avoidable through obedience.’” (7/23/09 Order, p.8:19-24
9 [citing *International Union, United Mine Workers of America v. Bagwell*, 512 U.S.
10 821, 827 (1994).] In its Motion for Sanctions, the Receiver is attempting to short-
11 cut the process of obtaining a civil judgment against Robert Gray, who is not a party
12 to this action, by couching the relief requested in terms of a sanction to redress civil
13 contempt. When the requested relief and supporting evidence are analyzed,
14 however, the Receiver’s request falls far short of what the law allows to obtain a
15 judgment for fiduciary fraud.

16 In its Motion, the Receiver seeks, “the total sum of \$2,725,971.43 against
17 Robert Gray (‘Gray’) to *compensate* the receivership estate for damages it has
18 suffered...,” including a “finding by the Court that Gray’s failure to return funds to
19 the receivership estate constitutes a ‘fraud or defalcation while acting in a fiduciary
20 capacity’...” (Notice of Motion, p. 1:9-15 [emphasis added], *see also* Memorandum
21 of Points and Authorities, p.13:9-14.) The Receiver argues that sanctions for civil
22 contempt may properly compensate the aggrieved party for injuries resulting from
23 the contemptuous behavior. (Memorandum of Points and Authorities, p. 8:18-9:10.)
24 In such cases, “the amount of the fine must be based on the complainant’s actual
25 losses sustained as a result of the contumacy” and may not be speculative.
26 (*O’Connor v. Midwest Pipe Fabrications, Inc.*, 972 F.2d 1204, 1211 (10th Cir. Kan.
27 1992).) Thus, some causal connection between the complainant’s actual losses and
28 the contemnor’s violation of the Court’s Order must be established.

1 In its Motion for Sanctions, however, the Receiver has not even attempted to
2 establish the requisite causal connection between Mr. Gray's actions and the amount
3 sought. There has been no evidence presented that, but for the violation of the
4 Court's Order, the receivership estate would not have experienced the alleged \$2.8
5 Million shortfall. To satisfy this burden, the Receiver would need to demonstrate
6 that there actually existed funds sufficient to cover the alleged shortfall and that Mr.
7 Gray could have somehow returned those funds to the receivership estate as ordered
8 by the Court. The evidence, however, established that despite his every effort, Mr.
9 Gray was unable to do so.

10 Throughout its renewed motion and in connection with the prior hearings, the
11 Receiver assumed that the money being demanded exists or existed somewhere in a
12 bank account controlled directly or indirectly by Mr. Gray. The evidence as to the
13 existence of the money in question is primarily Mr. Gray's December 4, 2007 letter
14 (Exhibit 18) to Malory Investments which speaks to Mr. Gray's belief or state of
15 mind, but does not prove that such money which Mr. Gray may have believed
16 existed did in fact reside in the accounts of Malory Investments. The best, and
17 potentially only, evidence of the amount of money held by Malory would be the
18 account statements which have been turned over to the Receiver or ProFi's bank
19 statements which are apparently out of Mr. Gray's reach. And the Receiver's
20 position that Mr. Gray's statements in that December 4th letter constitute an
21 admission, does not create funds in an account. Again, the admission, if there is
22 one, is to Mr. Gray's state of mind.

23 The inability to comply with a Court's order may be a defense to civil
24 contempt where the defendant demonstrates: (1) it was unable to comply, explaining
25 why in detail; (2) the inability to comply was not self-induced; and (3) in good faith,
26 it made all reasonable efforts to comply. (*Chicago Truck Drivers v. Brotherhood*
27 *Labor Leasing* 207 F3d 500, 506 (8th Cir. 2000); *Federal Trade Comm'n v.*
28 *Affordable Media, LLC* 179 F3d 1228, 1239 (9th Cir. 1999.) Mr. Gray has

1 attempted to explain in as much detail as he seems capable the whereabouts of the
2 funds which he believed were held or controlled by ProFi. His explanation
3 recounted funds in two “accounts,” Romsford and Forex SA in Panama. His
4 explanation also included his efforts to recover those funds. (Reporter’s Transcript
5 of August 24, 2009 Hearing, p.8:5-11:14.) The Receiver has not introduced any
6 evidence contradicting Mr. Gray. As the matter stands, the funds identified by Mr.
7 Gray which are with Romsford and Forex SA in Panama, are FXLQ assets but
8 which Mr. Gray has been unable to recover for the receivership estate.

9 On this record, the Receiver does not have sufficient evidence to either
10 support a causal connection between Mr. Gray’s conduct and the shortfall in the
11 estate or to contradict Mr. Gray’s defense that he has done his best to comply with
12 the Court’s order. This is especially so in light of 1) the Receiver’s failure to
13 establish the foundation and accuracy of its own accounting; 2) the Receiver’s
14 “Estimated Future Receivership Expenses” of \$350,000 which also contributes to
15 the shortfall and which is presented to the Court without any foundation or basis
16 whatsoever; 3) the totality of the Receiver’s own fees in the amount of almost \$1.6
17 Million which have contributed to the shortfall; and 4) the shortfall projected by the
18 complaint of \$11.6 Million (Complaint, ¶33), which is demonstrably erroneous but
19 without an accurate accounting to present to the Court, no conclusions as to the
20 actual shortfall can be reached. As such, the motion should be denied.

21 **III. THIS COURT DOES NOT HAVE JURISDICTION TO MAKE THE**
22 **REQUESTED FINDING OF NON-DISCHARGEABILITY.**
23 **MOREOVER, THERE WAS NO EVIDENCE PRESENTED TO**
24 **SUPPORT A FINDING OF FIDUCIARY FRAUD.**

25 As set forth above, in addition to seeking a monetary judgment against Mr.
26 Gray, the Receiver’s Motion for Sanctions further seeks that the judgment include a
27 finding that Mr. Gray’s failure to return funds to the receivership estate constitutes a
28 “fraud or defalcation while acting in a fiduciary capacity” pursuant to 11 U.S.C.

1 §523(a)(4). (Notice of Motion, p. 1:9-15 [emphasis added], see also Memorandum
2 of Points and Authorities, p.13:9-14.) 11 U.S.C. §523(a)(4) is the Bankruptcy Code
3 section that generally provides that a discharge of an obligation in bankruptcy does
4 not extend to a debt for fraud or defalcation while acting in a fiduciary capacity,
5 embezzlement, or larceny. That section, however, presupposes that some liability
6 for fraud or defalcation while acting in a fiduciary capacity either had been
7 established or was in the process of being established in an underlying action. That
8 is not the case here. Mr. Gray has never been accused, by complaint or otherwise,
9 of committing fiduciary fraud and a claim of fraud was never the subject of the
10 contempt proceedings.

11 Here, the Receiver is asking the Court to make a finding of fiduciary fraud out
12 of whole cloth pursuant a bankruptcy statute determining dischargeability where 1)
13 the issue of fiduciary fraud was never before the Court, 2) Mr. Gray received no
14 notice that such a finding would be sought in connection with the contempt
15 proceedings, 3) no evidence related to the issue of fiduciary fraud was ever
16 presented to the Court, either in connection with the contempt proceedings or in
17 connection with the instant Motion for Sanctions, and 4) no judicial determination
18 that Mr. Gray committed fiduciary fraud was ever made in the Court's order finding
19 the contempt.

20 The Receiver never explains how can this Court can make a determination of
21 dischargeability of a debt under the Bankruptcy Code. The exclusive jurisdiction to
22 determine dischargeability is vested in the Bankruptcy Court. (*In re Good*, 33 BR
23 163 (1983, BC MD Fla) ["The effect of § 523(c) is to give the Bankruptcy Court
24 exclusive jurisdiction over actions to determine dischargeability of a debt excepted
25 from discharge by section 523(a)(2), (4) or (6)."].)

26 But even if this Court could procedurally make an advance determination of
27 dischargeability under the Bankruptcy Code, it is well recognized that the burden of
28 proof as to the dischargeability of a debt falls on the party seeking to determine non-

1 dischargeability. (*In re Schnitz*, 52 B.R. 951, 955 (W.D. Mo. 1985); *In re Maiolo*,
2 12 B.R. 114, 116 (Bankr. N.D. Ga. 1981).) Exceptions to discharge are narrowly
3 construed in favor of the debtor. (*In re Schnitz, supra*, 52 B.R. at 955; *In re Wyatt*,
4 87 B.R. 874, 877 (Bankr. E.D. Va. 1988) [Dischargeability provisions are to be
5 “strictly construed against the objecting creditor and liberally in favor of the
6 debtor.”].)

7 When a non-dischargeability complaint is based on fraud or defalcation in a
8 fiduciary relationship, the creditor must prove: 1) the debtor was acting in a
9 fiduciary capacity; and 2) while acting in that capacity, the debtor engaged in fraud
10 or defalcation. (*In re Stanifer*, 236 BR 709, 713 (9th Cir. BAP 1999).) “Fiduciary
11 capacity” under section 523(a)(4) is narrowly construed to apply only to express
12 trust relationships. (*Id.* at 713.) Section 523(a)(4) does not apply within the context
13 of constructive, resulting or implied trusts. (*Id.* at 713-714.) And, the trust giving
14 rise to a fiduciary relationship must be imposed prior to (and without reference to)
15 any wrongdoing by the debtor. (*In re Lewis*, 97 F.3d 1182, 1185 (9th Cir. 1996).)
16 Although the concept of fiduciary is to be narrowly defined as a matter of federal
17 law, state law is to be consulted to determine when a trust in this strict sense exists.
18 (*Ragsdale v. Haller*, 780 F.2d 794, 796 (9th Cir. Cal. 1986).)

19 So, who is Mr. Gray’s claimed fiduciary duty owed to? California corporate
20 officers are generally not deemed to be fiduciaries within the meaning of section
21 523(a)(4) with respect to corporate assets. (*In re Cantrell* (9th Cir. 2003) 329 F.3d
22 1119, 1126.) The only fiduciary relationship possibly applicable would be between
23 Mr. Gray and the FXLQ shareholders (consisting of himself and his sister) and the
24 FXLQ customers. But the evidence presented demonstrated, and the Receiver
25 readily admits, that all of the FXLQ customers have been paid. (*See*, Reporter’s
26 Transcript of July 15, 2009 proceeding, p. 99:9-13 [NFA compliance officer
27 Jennifer Sunu testified that all customers have been paid].) Thus, the customers
28 have suffered no damage to support a fiduciary fraud judgment.

1 The only outstanding debt of FXLQ is claimed to be owed to the company's
2 unidentified but allegedly "legitimate" creditors and the Receiver himself (for
3 receivership fees). (See, Renewed Motion for Sanctions, Memorandum of Points
4 and Authorities, p.10:1-7; Kane Decl. ¶5.) A typical creditor/debtor relationship
5 does not satisfy the strict federal standard of giving rise to a fiduciary duty:

6 The meaning of "fiduciary" in § 523(a)(4) is an issue of
7 federal law. [Citations.] The broad, general definition of
8 fiduciary – a relationship involving confidence, trust and
9 good faith – is inapplicable in the dischargeability context.
10 [Citations.] The trust giving rise to the fiduciary
11 relationship must be imposed prior to any wrongdoing; the
12 debtor must have been a "trustee" before the wrong and
13 without reference to it. [Citation.] These requirements
14 eliminate constructive, resulting or implied trusts.
15 [Citation.]

16 (*Ragsdale v. Haller*, 780 F.2d 794, 796 (9th Cir. Cal. 1986).)

17 Thus, in order to prove Mr. Gray committed non-dischargeable fraud on the
18 FXLQ creditors, the Receiver would need to first identify the creditor and then
19 establish actual fraud. (*In re Roussos*, 251 BR 86, 91 (9th Cir. BAP 2000) ["Fraud"
20 in the context of § 523(a)(4) means actual fraud, not fraud that is implied by law]; *In*
21 *re Preston*, 47 B.R. 354, 357 (E.D. Va. 1983) ["To bar a discharge under 11 U.S.C.
22 §523(a), the party alleging fraud must prove actual or positive fraud, not merely
23 fraud implied by law."]; see also, *In re Dakota*, 284 BR 711, 723, fn. 10 (BC ND
24 CA 2002).) The receiver has failed to even attempt to meet this burden. The
25 objecting creditor must prove (a) the debtor made the representations, (b) that at the
26 time he knew they were false, (c) that he made them with the intention and purpose
27 to deceive the creditor, (d) that the creditor relied on such representations, and (e)
28 that the creditor sustained the alleged loss and damage as the proximate result of the
representations having been made. (*In re Dakota, supra*, 284 BR at 721.) The
Receiver has presented no evidence in support of any of the foregoing elements with
respect to FXLQ's creditors. The specific creditors and the nature of the obligations
have never been identified, either at the contempt hearing or in connection with the

1 instant Motion for Sanctions. All that was ever established in finding Mr. Gray in
 2 contempt was that he was aware of and bound by the Court's Order and that he
 3 violated it. (*See, generally*, Court's July 23, 2009 Order, pp. 9-13.) For example, as
 4 appropriately noted by the Court at the hearing, "there is no means rea requirement
 5 on Mr. Gray's part for violations of my orders..." (Reporter's Transcript of July 15,
 6 2009 Hearing, p.43:11-12.) Thus, the Receiver never presented evidence of, nor did
 7 the Court making a finding that, Mr. Gray possessed the requisite "intent to deceive"
 8 required to support a finding of actual fraud.

9 Accordingly, because a pre-determination of dischargeability is beyond the
 10 jurisdiction of the Court and, even if it was within the Court's jurisdiction, the
 11 Receiver has failed to satisfy its burden of proving fiduciary fraud in this context,
 12 the Receiver's request that such a finding be made in connection with this contempt
 13 proceeding should be denied.

14 **IV. THE RECEIVER FAILED TO RECTIFY THE EVIDENTIARY**
 15 **DEFICIENCIES PLAGUING ITS INITIAL MOTION FOR**
 16 **SANCTIONS AS REQUIRED BY THE COURT**

17 As noted in the motion, the Court denied the initial Motion for Sanctions filed
 18 by the Receiver without prejudice on January 27, 2010, indicating that the motion
 19 lacked sufficient evidence to support the damages claimed. (*See*, Motion for
 20 Sanctions, Memorandum of Points and Authorities, p.8:2-4.) The initial motion was
 21 supported only by the Declaration of Brick Kane, the Receiver's representative, to
 22 support the \$2.8 Million judgment represented to constitute the estate's shortfall.
 23 The Court's January 26, 2010 Minute Order noted:

24 Mr. Kane has only provided a general description of
 25 FXLQ's current assets and liabilities and stated that
 26 FXLQ's current shortfall is \$2,725,463.70. (Decl. B. Kane
 27 ¶¶2-3.) ... The Receiver and the Commission must submit
 28 more detailed records before the Court can grant their
 request for such a substantial fine. These records should
 include, *but are not limited to*, the balance sheets for
 FXLQ

1 (January 26, 2010 Minute Order, p.2 [emphasis added].) The Receiver has failed to
2 provide the Court with any further evidentiary support to justify the \$2,725,971.43 it
3 now seeks in connection with its renewed Motion for Sanctions.

4 The Receiver again supports the Motion for Sanctions with the Declaration of
5 Brick Kane, the receiver's representative. But the new declaration provides no more
6 detail regarding, and no more evidentiary support for, the amount of damages
7 sought. Mr. Kane attaches a conclusory "balance sheet" which amounts to no more
8 than a chart summary of the information stated in paragraph 5 of his declaration.
9 There is no documentary backup or evidentiary support provided to substantiate the
10 amounts listed on the balance sheet. For example, the Receiver includes as part of
11 the balance sheet "Estimated Future Receivership Expenses" of \$350,000. No
12 foundation or evidence whatsoever is offered along with this out of court statement
13 to justify or explain this amount.

14 Although Mr. Kane goes into great detail about the types of information
15 typically relied on in creating a balance sheet, there is no indication of what specific
16 information was relied on in preparation of the balance sheet offered in this case.
17 (See, Kane Decl., ¶¶3-4.) Nor is there any indication of who specifically did the
18 legwork and reviewed the laundry list of document categories to determine the
19 accuracy of amounts indicated on the balance sheet. Mr. Kane only indicates that it
20 was done at his direction. (Kane Decl., ¶4.)

21 Whether Mr. Kane's testimony is viewed as lay or expert testimony, it lacks
22 sufficient foundation support to render the balance sheet anything more than
23 inadmissible hearsay. An expert's conclusions are worth nothing more than the
24 facts on which those conclusions are based. Opinions that are merely conclusory
25 assertions, unsupported by specific facts, are inadmissible as evidence. (*Thomas v.*
26 *Christ Hosp. & Med. Ctr.*, 328 F.3d 890, 894 (7th Cir. 2003); *Thomas v. City of*
27 *Chattanooga*, 398 F.3d 426, 431 (6th Cir. 2005); *Nebraska Plastics, Inc. v. Holland*
28 *Colors Americas, Inc.*, 408 F.3d 410, 416-417 (8th Cir. 2005).) For Mr. Kane's

1 conclusions to be admissible as lay opinion, he would need to have personal
2 knowledge of the facts forming the basis for his opinion. (Fed. Rules of Evid., Rule
3 701.) In his Declaration, Mr. Kane simply states that the balance sheet was prepared
4 at his direction. He never states that he personally reviewed the underlying
5 documents nor are the underlying documents provided to the Court as evidence of
6 the shortfall.

7 Here, there are no facts or evidence presented which would provide
8 foundational support for Mr. Kane's conclusions, let alone the "detailed records"
9 specifically requested by the Court. Although the Court asked the Receiver to
10 provide a balance sheet, the "including but not limited to" language used by the
11 Court indicates that a balance sheet alone, without any back-up supporting
12 documents, would not be sufficient to prove up the shortfall in the receivership
13 estate. Because the Receiver failed to comply with the Court's request that it
14 provide "detailed records" and because the Receiver failed to do so, instead offering
15 foundationally void conclusions, the Motion for Sanctions should again be denied.

16 **V. IF THE COURT IS INCLINED TO CONSIDER GRANTING THE**
17 **RELIEF SOUGHT, A CONTINUANCE SHOULD BE GRANTED TO**
18 **EXAMINE THE EVIDENTIARY BASIS, IF ANY, FOR THE**
19 **RECEIVER'S CONCLUSIONS**

20 As the Court noted in denying the Receiver's initial Motion for Sanctions,
21 there needs to be some underlying evidentiary support for the damages claimed,
22 above and beyond the conclusory statements of the Receiver himself (and the
23 conclusory balance sheet presented in connection with the renewed motion). Thus,
24 if the Court is considering granting the Motion for Sanctions in any respect, some
25 discovery must be conducted into the underlying basis for the amount sought. As
26 set forth above, there is no indication of even what allegedly "legitimate" creditors
27 remain unpaid. Certainly Mr. Gray should be afforded the opportunity to discover
28 and test the legitimacy of the creditors' claims. Also, the Receiver presents

1 “Estimated Future Receivership Expenses” of \$350,000 without any foundation or
2 basis whatsoever. Surely Mr. Gray should be given the opportunity to test this
3 conclusory statement. The procedural dilemma presented is that Mr. Gray is not a
4 party to this action and cannot presently compel the Receiver to sit for a deposition,
5 by subpoena or otherwise. Mr. Gray is further hamstrung in that he has no ability to
6 conduct written discovery in this action. Accordingly, if the Court is inclined to
7 entertain granting the judgment sought, Mr. Gray requests an opportunity to conduct
8 discovery, including taking the Receiver’s deposition and examining all of the books
9 and records of the receivership estate, to either verify or refute the amount of
10 damages claimed.

11 **VI. CONCLUSION**

12 For the reasons set forth herein, Mr. Gray respectfully requests that the
13 Motion for Sanctions be denied. In the alternative, Mr. Gray respectfully requests
14 that the Court continue this Motion for Sanctions and afford Mr. Gray an
15 opportunity to conduct discovery into the amount of damages sought in the Motion
16 for Sanctions.

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18 DATED: June 7, 2010

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20 By: /s/ _____
21 Dirk O. Julander,
22 Attorney for Respondent ROBERT GRAY
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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

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12 U.S. COMMODITY FUTURES
TRADING COMMISSION

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Plaintiff,

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vs.

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FOREX LIQUIDITY LLC,

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Defendant.

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CASE NO. SACV07-1437 CJC (RNBx)

[Honorable District Court Judge
Cormac J. Carney]

**EVIDENTIARY OBJECTIONS
SUBMITTED IN SUPPORT OF
OPPOSITION OF ROBERT GRAY
TO RENEWED MOTION BY THE
RECEIVER FOR AN ORDER
REQUIRING ROBERT GRAY TO
COMPENSATE THE
RECEIVERSHIP ESTATE AND
PLAINTIFF FOR LOSSES CAUSED
BY HIS CIVIL CONTEMPT**

Date: April 5, 2010
Time: 1:30 p.m.
Dept. Courtroom 9B

OBJECTIONS TO THE DECLARATION OF BRICK KANE

<u>OBJECTIONABLE MATTER</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING</u>
<p>1 Portion of ¶3 at p. 14:25-28 2 which states:</p> <p>3 “...the Receiver’s methods and 4 procedures for recording and 5 maintaining its computerized 6 records are reliable and accurate, 7 and that balance sheets derived 8 therefrom accurately reflect assets and liabilities of the receivership estate.”</p>	Lack of Foundation. (Fed. Rules of Evid., Rule 602.)	Grant: ____ Deny: ____
<p>9 Exhibit 1 Balance Sheet</p>	Lack of Foundation and Hearsay. (Fed. Rules of Evid., Rules 602, 802.)	Grant: ____ Deny: ____
<p>11 Portion of ¶4 at p. 15:3-5 which 12 states:</p> <p>13 “It [Exhibit 1] has been prepared 14 in accordance with the Receiver’s 15 methods and procedures 16 described above, and it accurately 17 reflects the assets and liabilities of 18 FXLQ as of December 31, 2009.. 19 ”</p>	Lack of Foundation and Improper Opinion. (Fed. Rules of Evid., Rules 602, 701, 702.)	Grant: ____ Deny: ____
<p>17 ¶5 at p. 15:9-20 in its entirety 18 which states:</p> <p>19 “The Balance Sheet accurately 20 reflects that the sole current asset 21 of FXLQ is cash in the sum of 22 \$499,407.88. With respect to 23 liabilities, FXLQ has unpaid 24 creditor claims of \$2,827,292.74, 25 which represent the unpaid 26 balance of approved creditor 27 claims (the Receiver previously 28 disbursed 30% of approved creditor claims; the sum of \$2,827,292.74 therefore represents the remaining 70% of approved but unpaid creditor claims). Other liabilities consist of current unpaid expenses (\$48,086.57) and projected expenses that will likely be incurred to wrap up the receivership estate (\$350,000). Total liabilities are therefore</p>	Lack of Foundation and Improper Opinion. (Fed. Rules of Evid., Rules 602, 701, 702.)	Grant: ____ Deny: ____

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<p>\$3,225,379.31 (i.e., \$2,827,292.74 in unpaid approved creditor claims, plus \$48,086.57 in current unpaid expenses, plus \$350,000 in projected expenses), which exceed its assets (cash in the sum of \$499,407.88) by \$2,725,971.43. The receivership estate therefore has a current shortfall in that amount.”</p>		
<p>Portion of ¶6 at p. 15:24-27 which states: “Such cooperation has not been forthcoming as is described in the accompanying declarations by Courtney J. Linn and Thomas S. Arthur, and Gray continues to hinder the Receiver's efforts to recover assets that belong to FXLQ.”</p>	<p>Lack of Foundation. (Fed. Rules of Evid., Rule 602.)</p>	<p>Grant: ____ Deny: ____</p>

DATED: June 7, 2010

By: /s/
Dirk O. Julander,
Attorney for Respondent ROBERT GRAY