

ROBB EVANS & ASSOCIATES, LLC

Receiver of

Forex Liquidity LLC

11450 Sheldon Street

Sun Valley, California 91352-1121

Telephone No.: (818) 768-8100

Facsimile No.: (818) 768-8802

U.S. Commodity Futures Trading Commission v. Forex Liquidity LLC
CASE No. SACV-07-01437 CJC (RNBx)

Order Re:
Further Contempt Proceedings

Filed September 14, 2009

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**UNITED STATES COMMODITY
FUTURES TRADING COMMISSION**

Plaintiff,

vs.

FOREX LIQUIDITY LLC,

Defendant.

Case No.: SACV 07-01437-CJC(ANx)

**ORDER RE FURTHER CONTEMPT
PROCEEDINGS**

The Court found Robert Gray in civil contempt on July 15, 2009. The Court imposed a deadline on Mr. Gray to: (1) pay to the Receiver the sum of \$7,127,469 belonging to Forex Liquidity LLC (“Forex”) and (2) deliver to the Receiver all of the books and records of Pro Fi, a San Marino company owned and controlled by Mr. Gray. After Mr. Gray failed to meet the Court’s deadline, the Court conditionally

1 fined him \$10,000 per day until he complied with the Court's order to turn over the
2 Forex funds and Pro Fi's books and records. The Court ordered Mr. Gray to appear
3 on July 30, 2009 and stated that it hoped Mr. Gray would be in compliance with the
4 Court's order by that date. At the July 30, 2009 hearing, Mr. Gray appeared but did
5 not produce the funds, books or records. The Court then ordered Mr. Gray remanded
6 to the custody of the U.S. Marshals and advised Mr. Gray that his incarceration would
7 be purged upon compliance with the Court's order. On August 10, 2009, Mr. Gray
8 appeared during a status conference and promised the Court that, upon his release, he
9 would be able to access the funds, books and records. The Court then released him
10 from custody. On August 24, 2009, the Court held a status conference during which
11 Mr. Gray reported that he was still unable to obtain the funds, books and records. Mr.
12 Gray's counsel also withdrew. Mr. Gray has since been unable to acquire new
13 counsel due to a reported lack of funds. Mr. Gray has also represented to the Court
14 that he is no longer able to access the approximately 7.1 million dollars. He has
15 presented emails and correspondence with parties in San Marino who refuse to
16 cooperate with him concerning his attempts to comply with the Court's order. Mr.
17 Gray appears to have few available assets in the United States, and he has even
18 expressed concern about being able to afford gas for his car.

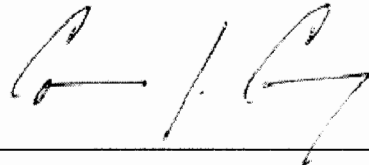
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20 The Court has reviewed the papers that the Receiver and Mr. Gray submitted
21 regarding further civil contempt proceedings against Mr. Gray, including an
22 evidentiary hearing regarding his ability to comply with the Court's order. In light of
23 the current posture of the case, the Court has determined that further contempt
24 proceedings would be futile and not in the interests of justice. The Receiver and the
25 Commission request that the Court continue to use the threat of incarceration to
26 encourage Mr. Gray to comply with the Court's order, and they have even gone so far
27 as to suggest that the Court could incarcerate Mr. Gray indefinitely until he purges
28 himself of his contempt. Our society closed debtor's prisons long ago, *U.S. v. Big*

1 *Crow*, 327 F.3d 685, 689 (8th Cir. 2003) (citation omitted), and the Court is unwilling
2 to blur the distinction between civil and criminal proceedings by wielding the threat of
3 indefinite incarceration as a weapon in this civil proceeding.

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5 Though the Court will not be going forward with further contempt proceedings,
6 the Court will entertain a motion for an additional fine to be paid by Mr. Gray to the
7 Receiver and the Commission so that they may be reimbursed for the damages that
8 they have suffered due to Mr. Gray's contempt and violations of the Court's prior
9 orders.

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11 Accordingly, the Receiver shall submit a motion for further fines and
12 supporting memoranda, declarations or other extrinsic evidence by January 10, 2010.
13 Mr. Gray shall submit his opposition and supporting documentation by January 17,
14 2010. The Receiver shall submit a reply by January 24, 2010. The hearing on the
15 motion will be on January 31, 2010, at 1:30 p.m.

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17 DATED: October 16, 2009



18 CORMAC J. CARNEY
19 UNITED STATES DISTRICT JUDGE
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