

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT FOR ILLINOIS**

**Power Vanguard Ltd., Brian Pannkuk,
Jordan Robinson, Paul Lagudi, Patricia
Benvenuto, OE Technical Services,
Courtney May, and Werner Stapelfeldt,**

Plaintiffs,

vs.

**Russell R. Wasendorf, Sr., Russell R.
Wasendorf, Jr., Neil J. Aslin, Brenda
Cuypers, Susan O'Meara, Veraja-Snelling
Company, Jeannie Veraja-Snelling, and
John Does 1-10,**

Defendants.

Civil Action No: 12-cv-05727

Hon. Joan B. Gotschall

Magistrate Michael T. Mason

Jury Trial Demanded

(CORRECTED)¹ CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This action is brought on behalf of approximately 24,000 futures account customers of Peregrine Financial Group, Inc. ("PFG") whose segregated customer funds were stolen. Plaintiffs and the Class whom they seek to represent are the victims of a brazen fraud and theft of over \$215 million, conceived and carried out over a period of approximately 20 years by Russell R. Wasendorf, Sr. ("Wasendorf Sr."), the sole shareholder and CEO of the now bankrupt PFG.

¹ Non-substantive correction solely to include certain pages inadvertently excluded from the original Complaint. This Corrected Class Action Complaint is not intended to be an amendment within the meaning of Federal Rule of Civil Procedure 15(a).

2. On July 9, 2012, believing that after 20 years of failed regulatory oversight, the National Futures Association (“NFA”), PFG’s primary regulator, was finally on the cusp of discovering his fraud and theft, Defendant Wasendorf Sr. admitted to his unlawful conduct and attempted unsuccessfully to commit suicide. Defendant Wasendorf Sr. has since been arrested by the FBI for the illegal conduct alleged in this Complaint, including the theft of hundreds of millions of dollars of money belonging to Plaintiffs and the Class.

3. Defendant Wasendorf Sr.’s massive fraud and theft was largely made possible by a failure of reasonable oversight, inquiry and diligence by PFG’s primary regulator, the NFA, and PFG’s senior officers and independent auditors. Accordingly, Plaintiffs Power Vanguard Ltd. (“Power Vanguard”), Brian Pannkuk (“Pannkuk”), Jordan Robinson (“Robinson”), Paul Lagudi (“Lagudi”) and Patricia Benvenuto (“Benvenuto”), OE Technical Services (“OE Technical Services”), Courtney May (“May”), Wen Chia Chang (“Chang”), Werner Stapelfeldt (“Stapelfeldt”) (collectively “Plaintiffs”) file this class action complaint against Russell R. Wasendorf, Sr. (“Wasendorf Sr.”), Russell R. Wasendorf, Jr., (“Wasendorf Jr.”), Neil J. Aslin (“Aslin”), Brenda Cuypers (“Cuypers”), Susan O’Meara (“O’Meara”), Veraja-Snelling Company (“Veraja-Snelling Co.”), Jeannie Veraja-Snelling (“Veraja-Snelling”) and John Does 1-10 (“John Does”) (collectively “Defendants”) to redress the unlawful conduct alleged in this Complaint. Plaintiffs allege the following upon personal knowledge as to their own acts, and as to all other matters upon information and belief, based upon the investigation made by and through their attorneys.

4. Defendant PFG was a registered futures commission merchant (“FCM”). FCMs receive money, securities and other property (“customer funds”) from their customers to margin, guarantee, or secure the customers’ futures and options trades. Under the Commodity Exchange

Act (the “CEA”), 7 U.S.C. §§ 1 *et seq.* (2006), the CEA, as amended,² to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commodity Futures Trading Commission’s (“CFTC”) Regulations (the “Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011), FCMs are required to segregate and separately account for and maintain all customer funds.

5. From as early as 1992 through the present (“Relevant Time”), PFG and Defendant Wasendorf, Sr., failed to maintain adequate customer funds in segregated accounts because Defendant Wasendorf Sr. intentionally stole and misappropriated those funds. During some or all of the Relevant Time, Defendants Wasendorf Jr., Aslin, Cuypers, O’Meara, Veraja-Snelling Co, and Jeannie Veraja-Snelling, negligently and/or recklessly facilitated and failed to detect the unlawful conduct. During at least this same period, PFG and Wasendorf Sr. filed false reports with the CFTC regarding the amount of customer segregated funds held by PFG.

6. According to the CFTC, the current shortfall in PFG customer funds exceeds and has exceeded \$200 million. PFG and Wasendorf Sr. have used customer funds for purposes other than those intended by its customers, and directed by longstanding federal law and, consequently, have misappropriated these funds. The whereabouts of the funds is currently unknown. However, Defendant Wasendorf Sr. has admitted to the alleged fraud and to stealing money belonging to Plaintiffs and the Class.

II. NATURE OF THE ACTION

7. Plaintiffs bring this action to redress Defendants’ violations of the the “CEA, 7 U.S.C. §§ 1 *et seq.*, the CFTC regulations promulgated thereunder, and violations of common

² The Commodity Exchange Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008) and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203 (“Dodd-Frank Act”), Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 16, 2010).

law as alleged, with respect to money that Defendant Wasendorf Sr. failed to cause to be deposited into the PFG segregated futures customer accounts of Plaintiffs and the Class and failed to maintain the accounts and funds, or that was unlawfully taken from those accounts, and/or that Defendant Wasendorf Sr. unlawfully failed to segregate or otherwise misappropriated and which have not been returned to them.

8. The proper and efficient functioning of markets for commodities futures and option contracts is an important aspect of many industries in the United States such as farming, energy, food processing and investing. Risk control, price stability and predictability in these markets, among other things, can be managed through commodity futures and options contracts and trading thereof. In the wake of the financial panic that led to the Great Depression and the staggering losses suffered by commodity account holders and those investing in commodities contracts, Congress enacted the CEA in 1936 to update and replace the Grain Futures Act of 1922.

9. In 1974 Congress established the CFTC, a federal regulatory agency with jurisdiction over commodity futures and options trading. The same legislation authorized the creation of “registered futures associations,” giving the futures industry the opportunity to create a nationwide self-regulatory organization. The CFTC provides government oversight for the entire industry. Each U.S. futures exchange operates as a self-regulatory organization, governing its floor brokers, traders and member firms. Pursuant to that legislative grant of authority, the futures industry created the National Futures Association (“NFA”), which regulates every firm or individual who conducts futures trading business with public customers.

10. With certain exceptions, all persons and organizations that intend to do business as futures professionals must register under the CEA. In addition, all individuals and firms that

wish to conduct futures-related business with the public must apply for NFA Membership or Associate status.

11. The safety of the customer accounts is not insured by the federal government in the way that, for example, the safety of deposits in banks is insured by the Federal Deposit Insurance Corporation. Instead, the CEA ensures the safety of client funds and fosters confidence within the marketplace by mandating that customer funds be segregated and not commingled or used by the firm itself, absent certain stringent restrictions.

12. The essence of the CEA's strict segregation requirement is that when client accounts are properly segregated, there will be no risk of the loss of customer funds even in the event that a commodities firm fails, as PFG did. As a result, for the past 75 years, commodities account holders (including Plaintiffs and Class Members) have relied on the CEA's regulatory scheme and the industry's efforts to self-regulate to protect their assets and have not viewed the financial peril of brokerage firms as a risk to the funds in their customers' accounts.

13. The PFG bankruptcy follows the recent unprecedented bankruptcy of MF Global in that it is only the second time in history of the commodity futures industry (now within only 9 months of the loss of over \$1.6 billion of commodities customer funds formerly held by MF Global) that there has been a loss of customer segregated funds as result of the improper handling and misappropriation or theft of such funds.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1334(b), 7 U.S.C. § 1 *et seq.*, and 18 U.S.C. § 1961 *et seq.* This Court also has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) in that Plaintiffs and Defendants are citizens of different states, at least one member of the Class is a citizen of a state different than any

Defendant, and the matter in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs.

15. Venue in this District is proper under 28 U.S.C. § 1391 (b), 18 U.S.C. § 1965, 7 U.S.C. § 1, *et seq.*, and 7 U.S.C. § 25(c) because Defendants' unlawful course of conduct occurred in large part in this District and because the alleged conduct included violations of the CEA.

IV. PARTIES

16. This action is brought by the following Plaintiffs, on behalf of the Proposed Class:

a) Power Vanguard Ltd. is a limited liability entity domiciled in Hong Kong. Power Vanguard was a customer of PFG, and incurred losses and/or damages as a result of the activities alleged in this Complaint. Power Vanguard has suffered injury-in-fact for which he is entitled to seek monetary damages and/or equitable relief.

b) Brian Pannkuk is an individual residing in Las Vegas, Nevada. Pannkuk was a customer of PFG, and incurred losses and/or damages as a result of the activities alleged in this Complaint. Pannkuk has suffered injury-in-fact for which he is entitled to seek monetary damages and/or equitable relief.

c) Jordan Robinson is an individual residing in Miami, Florida. Robinson was a customer of PFG, and incurred losses and/or damages as a result of the activities alleged in this Complaint. Robinson has suffered injury-in-fact for which he is entitled to seek monetary damages and/or equitable relief.

d) Paul Lagudi is an individual residing in Henderson, Nevada. Lagudi was a customer of PFG, and incurred losses and/or damages as a result of the activities alleged in this Complaint. Lagudi has suffered injury-in-fact for which he is entitled to seek monetary damages and/or equitable relief.

e) Patricia Benvenuto is an individual residing in Phoenixville, Pennsylvania. Benvenuto was a customer of PFG, and incurred losses and/or damages as a result of the activities alleged in this Complaint. Benvenuto has suffered injury-in-fact for which she is entitled to seek monetary damages and/or equitable relief.

f) OE Technical Services is a corporation domiciled in the State of New Jersey. OE Technical was a customer of PFG, and incurred losses and/or damages as a result of the activities alleged in this Complaint. OE Technical has suffered injury-in-fact for which it is entitled to seek monetary damages and/or equitable relief.

g) Courtney May is an individual residing in Eagleville, Pennsylvania. May was a customer of PFG, and incurred losses and/or damages as a result of the activities alleged in this Complaint. May has suffered injury-in-fact for which he is entitled to seek monetary damages and/or equitable relief.

h) Werner Stapelfeldt is an individual residing in Rodenbach, Germany. Stapelfeldt was a customer of PFG, and incurred losses and/or damages as a result of the activities alleged in this Complaint. Stapelfeldt has suffered injury-in-fact for which he is entitled to seek monetary damages and/or equitable relief.

17. Defendant Russell R. Wasendorf, Sr. served as the CEO and sole owner of PFG at all relevant times. He has been registered with the Commission as an associated person (“AP”) of PFG since 1992. Defendant Wasendorf Sr. is named in this action solely to toll the statute of limitations pursuant the Court’s Order of July 10, 2102 (Dkt. 11), in *CFTC v. Peregrine Financial Group, Inc. et al*, 1:12-cv-05383, N.D. Ill. He is not required to answer this Complaint until that Order is modified or revoked.

18. Defendant Russell R. Wasendorf, Jr., is President and Chief Operating Officer of PFG. Wasendorf Jr. is the son of Defendant Wasendorf Sr. Part of Wasendorf Jr.'s duties and responsibilities as an officer of PFG was to monitor and safeguard customer segregated funds.

19. Neil J. Aslin is President of Peregrine Asset Management, Inc. (PAM) and Vice Chairman of PFG which he joined 1998. Part of Aslin's duties and responsibilities as an officer of PFG was to monitor and safeguard customer segregated funds.

20. Brenda Cuypers is Chief Financial Officer of PFG which she joined in 1994. From approximately 1994 to 2000, Cuypers began her career at PFG as a staff accountant responsible for account balancing and producing a daily segregated funds report. In or about the year 2000, Cuypers was promoted to Controller of the firm and served in that capacity for six years. In or about the year 2006, Cuypers was then promoted to CFO of the company. Part of Cuypers' duties and responsibilities as an officer of PFG was to monitor and safeguard customer segregated funds.

21. Susan O'Meara served as the Chief Compliance Officer of PFG which she joined in 1997. O'Meara was responsible for the overall compliance of PFG, its branches and introducing brokers. According to PFG, O'Meara possessed "extensive regulatory knowledge" and "[led] PFG to impeccable annual reviews from the self regulatory body of the futures industry, the National Futures Association (NFA)." Prior to joining PFG, O'Meara worked at the NFA in Chicago as senior compliance auditor. During her tenure at the NFA, she was pivotal in developing computerized audits. She began her career in the futures industry as a staff auditor with the NFA. In her role at the NFA, O'Meara audited member firms, reviewed financial statements and investigated compliance issues. Part of O'Meara's duties and responsibilities as an officer of PFG was to monitor, and safeguard customer segregated funds.

22. Veraja-Snelling Company is an accounting firm located in Glendale Heights, Illinois. According to PFG's financial statement ended Dec. 31, 2010, Veraja-Snelling Co. served as PFG's auditor during some or all of the relevant period and certified that PFG was in compliance with federal commodities regulations governing the segregation of customer money.

23. Jeannie Veraja-Snelling is the sole owner of Veraja-Snelling Co. and a resident of Glendale Heights, Illinois. Part of Veraja-Snelling Company and Veraja-Snelling's duties and responsibilities as outside auditors of PFG was to ensure that the proper procedures and safeguards were in place and followed in order to safeguard customer segregated funds.

24. In addition to the Individual Defendants, Plaintiffs allege, upon information and belief, that certain persons whose precise identities are presently unknown, referred to in this Complaint as John Does 1-10, failed to segregate, commingled or otherwise misappropriated the funds of Plaintiffs and/or members of the Class with the funds of PFG or the funds of its subsidiaries, affiliates or other unknown persons or entities, in violation of the CEA, 7 U.S.C. §§ 1 et seq., or improperly converted, dissipated, accepted, used, transferred, took possession of, or failed to retain such funds, or improperly borrowed, pledged, repledged, transferred, hypothecated, rehypothecated, loaned, or invested (including to purchase or sell securities pursuant to repurchase agreements or reverse repurchase agreements) such funds in violation of multiple provisions of law as alleged in this Complaint. Plaintiffs are presently unaware of the names and identities of those Defendants identified and sued as John Does 1-10 in this Complaint. Unless otherwise stated, all references to the Defendants collectively in this Complaint include each of the John Does 1-10.

V. OTHER RELEVANT NON-DEFENDANT PARTIES

25. The NFA is a not-for-profit industry membership corporation formed as a registered futures association authorized under Section 17 of the CEA, 7 U.S.C. § 21, that

operates under the supervision of the CFTC. Its membership is comprised of FCMs and other futures professionals registered with the CFTC. The NFA is responsible, under CFTC oversight, for certain aspects of the regulation of these futures entities and their APs. It focuses primarily on the qualifications and proficiency, financial condition, retail sales practices, and business conduct of its members. At all relevant times to this Complaint, the NFA was PFG's designated self-regulatory organization ("DSRO") responsible for monitoring and auditing PFG for compliance with the minimum financial and related reporting requirements of the domestic exchanges of which PFG was a member.

26. PFG is and was at all relevant times a registered FCM located at 311 South Monroe St., Suite 1300, Chicago, Illinois, and was one of the nation's largest non-bank, non-clearing FCM.

VI. STATUTORY BACKGROUND

27. A futures commission merchant or "FCM" is defined in Section 1a(28) of the CEA, as amended, to be codified at 7 U.S.C. § 1a(28), as any individual, association, partnership, corporation or trust that is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery and, "in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom."

28. Customer funds are defined in Regulation 1.3(gg), 17 C.F.R. § 1.3(gg) (2012), as "all money, securities, and property received by a futures commission merchant or by a clearing organization from, for, or on behalf of customers or options customers."

29. Under Regulation 1.10(b), 17 C.F.R. § 1.10(b) (2012), with limited exception, FCMs must file monthly financial reports with the Commission through CFTC Form 1-FR-FCM, commonly known as a "1-FR" or "financial report." Pursuant to Regulation 1.32, 17 C.F.R. §

1.32 (2012), FCMs must also monitor and compute their segregation requirements and customer funds on deposit in segregated accounts on a daily basis and maintain copies of these reports, commonly known as a “daily segregation computation.”

VII. PFG AND WASENDORF FAILED TO SEGREGATE CUSTOMER FUNDS AND MISAPPROPRIATED THOSE FUNDS

A. Background

30. Throughout the Relevant Time, PFG, by and through Defendant Wasendorf Sr., and with the assistance of defendants Wasendorf Jr, Aslin, Cuypers, O’Meara, Veraja-Snelling Co., Veraja-Snelling, purported to maintain segregated funds on behalf of its customers, including Plaintiffs and the Class, in account XXXX1845 (“1845 Customer Segregated Account”) at a U.S. Bank branch in Cedar Falls, Iowa.

31. Although Defendant Wasendorf Sr. was one of three signatories to the 1845 Customer Segregated Account, he exercised complete dominion and control over all aspects of the account with the knowledge and consent of defendants Wasendorf Jr, Aslin, Cuypers, O’Meara, Veraja-Snelling Co., and Veraja-Snelling.

32. Each of the defendants, Wasendorf Jr, Aslin, Cuypers, O’Meara, Veraja-Snelling Co., Veraja-Snelling, facilitated and enabled Defendant Wasendorf Sr. to carry out the fraud and theft from Plaintiffs and the Class, to which he has admitted, as a direct and proximate result of their individual knowing and willful failures to adequately exercise reasonable and independent oversight, inquiry and diligence as PFG’s senior officers and independent auditors.

B. Assurances to PFG Customers

33. During the relevant time period, PFG, by and through defendants Wasendorf Sr., Wasendorf Jr, Aslin, Cuypers, O’Meara, and John Does 1-10, assured PFG’s customers, including Plaintiffs and members of the Class that:

PFGBEST strives to be an industry leader in innovation while at the same time recognizing that its success is absolutely driven by the diligent and respectful care of customers and their accounts.

PFGBEST is not only customer-centric, but compliance-focused. We consider it a privilege to have your business and to represent your interests in extensive industry thought leadership in the media, at global conferences, as published authors, spokespersons and partners.

34. In the immediate wake of the collapse of MF Global which resulted in the loss of over \$1.6 billion in segregated funds, Defendant Wasendorf Jr. further assured PFG clients, including Plaintiffs and the Class, that:

Dear PFGBEST customers:

In the wake of MF Global Holdings Ltd. filing for Chapter 11 protection yesterday, and continuing investigation into whether and how MF Global failed to keep clients' collateral separate from its own accounts, I would like to reaffirm the absolute dedication of PFGBEST to protect you and your PFGBEST accounts.

PFGBEST is not only customer-centric, but compliance-focused. We consider it a privilege to conduct business with you and to be an advocate for you. ***We abide by all regulations mandated by the CFTC and the rules of NFA to hold customer funds in segregated accounts that are always separate from operational funds. PFGBEST reports daily and monthly to the regulators concerning customer segregated funds.*** An independent, certified audit is conducted annually in addition to periodic, regular audits by NFA and information requests from the CFTC and exchange representatives.

It is our policy to keep extra funds on deposit in our customer segregation accounts to protect you.

PFGBEST has significant excess capital. Currently, PFGBEST holds 169% of the net capital required by the CFTC and NFA. All PFGBEST capital is held in cash or U.S. Treasury bills. PFGBEST does not use subordinated debt as capital.

PFGBEST does not clear customer transactions with MF Global, and it is not a counterparty for PFGBEST.

PFGBEST does not do proprietary trading; the only trading done by PFGBEST is in specific instances by emerging CTAs that PFGBEST allocates funds to (always less than \$100k) so that they can become "products" that the PFGBEST Managed Futures Division can then offer to customers. The total amount of funds currently allocated is less than \$400k.

PFGBEST is in communication with regulators and exchanges to assist in any way with solutions for the MF Global customers impacted by recent events.

Thank you.

Russ Wasendorf, Jr.
President and Chief Operating Officer

(Emphasis added).

35. PFG further assured PFG's clients, including Plaintiffs and the Class, that PFG:

certainly understand[s] any hesitation after the MF Global debacle. PFGBEST has significant excess capital. Currently, PFGBEST holds 169% of the net capital required by the CFTC and the NFA. All PFGBEST capital is held in cash or U.S. Treasury bills. PFGBEST also does not do proprietary trading; the only exception to this is that in specific instances, we allocate funds (always less than \$100K) to emerging CTAs so that they can become "products" that we in turn are able to offer to customers as part of the PFGBEST Managed Futures Division.

C. PFG Customer Funds Were Not Held in Segregation and At Least \$200 Million of Customer Funds Have Been Misappropriated

36. Despite the foregoing assurances, since at least 1992 PFG knowingly failed to maintain adequate customer funds in segregated accounts and permitted defendant Wasendorf, Sr. to misappropriate those customer funds for purposes other than intended by its customers.

37. At various times during the Relevant Time, each of the defendants, Wasendorf Jr, Aslin, Cuypers, O'Meara, Veraja-Snelling Co., Veraja-Snelling and John Does 1-10, facilitated and enabled PFG and Defendant Wasendorf Sr. to fail to maintain adequate customer funds in segregated accounts and misappropriate those customer funds for purposes other than intended by its customers (as Defendant Wasendorf Sr. has admitted), as a direct and proximate result of their individual knowing and willful failures to adequately exercise reasonable and independent oversight, inquiry and diligence as PFG's senior officers and independent auditors.

38. Recently, for example, on or about February 28, 2010, PFG records showed a balance of approximately \$207 million in the 1845 Customer Segregated Account. PFG had

received at least that amount from customers. However, the actual balance in the account was less than \$10 million.

39. On or about March 30, 2011, PFG records showed a balance of approximately \$218 million in the 1845 Customer Segregated Account. PFG had received at least that amount from customers. However, the actual balance in the account was less than \$10 million.

40. In July 2012, NFA conducted an audit of PFG. In connection with the audit, Wasendorf Sr. falsely represented to NFA that it held in excess of \$220 million in the 1845 Customer Segregated Account, when, in fact, that account held approximately only \$5.1 million.

41. On or about July 9, 2012, PFG records showed a balance of approximately \$225 million in the 1845 Customer Segregated Account. PFG had received at least that amount from customers. However, the actual balance in the account was approximately \$5 million.

42. In its capacity as an FCM, PFG filed monthly 1-FR statements with the CFTC. One section of the 1-FR statements requires the reporting of “funds in segregation for customers trading on U.S. Commodity Exchanges.” Those statements are filed electronically. Since August 15, 2011, PFG and Defendant Wasendorf Sr. filed and or caused to be filed at least three 1-FR statements on behalf of PRG which falsely reported the amount of funds in customer segregated accounts.

43. Each of the defendants Wasendorf Jr, Aslin, Cuypers, O’Meara, Veraja-Snelling Co., Veraja-Snelling and John Does 1-10, PFG and Defendant Wasendorf Sr. filed, or caused to be filed or permitted to be filed at least three 1-FR statements on behalf of PFG which inaccurately reported the amount of funds in customer segregated accounts (as Defendant Wasendorf Sr. has admitted), as a direct and proximate result of their individual knowing and

willful failures to adequately exercise reasonable and independent oversight, inquiry and diligence as PFG's senior officers and independent auditors.

D. Wasendorf Sr.'s Admission of the Alleged Fraud

44. According to the sworn Affidavit of FBI Special Agent William F. Langdon:
- a) On July 9, 2012, at approximately 8:05 a.m., a 911 call reported a possible suicide attempt at Peregrine Financial Group, Inc., One Peregrine Way, Cedar Falls, Iowa.
 - b) Upon arrival, emergency personnel found Defendant Wasendorf Sr. unresponsive in his automobile at PFG's headquarters in Cedar Falls.
 - c) Inside the vehicle in which Defendant Wasendorf Sr. was found emergency personnel also found an apparent suicide note to his wife of approximately 9 days and a signed statement detailing the fraud alleged in this Complaint.
 - d) At approximately the same time, Defendant Wasendorf, Jr., arrived at his office located at One Peregrine way, Cedar Falls, Iowa, and found an exact copy of the signed statement found in Defendant Wasendorf Sr's vehicle along with a suicide note addressed to Defendant Wasendorf Jr.

45. Special Agent Langdon's Affidavit sets forth, in part, Defendant Wasendorf Sr.'s admission of the fraud and unlawful conduct alleged in this Complaint as follows:

I [Defendant Wasendorf Sr.] have committed fraud. For this I feel constant and intense guilt. I am very remorseful that my greatest transgressions have been to my fellow man. Through a scheme of using false bank statements I have been able to embezzle millions of dollars from customer accounts at Peregrine Financial Group, Inc. The forgeries started nearly twenty years ago and have gone undetected until now. I was able to conceal my crime of forgery by being the sole individual with access to the US Bank accounts held by PFG. No one else in the company ever saw an actual US Bank statement. The Bank statements were always delivered directly to me when they arrived in the mail. I made counterfeit statements within a few hours of receiving the actual statements and gave the forgeries to the accounting department.

. . . I had no access to additional capital and I was forced into a difficult decision: Should I go out of business or cheat? I guess my ego was too big to admit failure. So I cheated, I falsified the very core of the financial documents of PFG, the Bank Statements. At first I had to make forgeries of both the Firststar Bank Statements and the Harris Bank Statements. When I choose [sic] to close the Harris Account I only had to falsify the falsify the Firststar statements [elsewhere in the signed statement Wasendorf noted that Firststar "eventually became US Bank"]. I also made forgeries of official letters and correspondence from the bank, as well as transaction confirmation statements.

Using a combination of Photo Shop, Excel, scanners, and both laser and ink jet printers I was able to make very convincing forgeries of nearing [sic] every document that came from the Bank. I could create forgeries very quickly so no one suspected that my forgeries were not the real thing that had just arrived in the mail.

With careful concealment and blunt authority I was able to hide my fraud from others at PFG. PFG grew out of a one man shop, a business I started in the basement of my home. As I added people to the company everyone knew I was the guy in charge. If anyone questioned my authority I would simply point out that I was the sole shareholder. I established rules and procedures as each new situation arose. I ordered that US Bank statement were to be delivered directly to me unopened, to make sure no one was able to examine an actual US Bank Statement. I was also the only person with online access to PFG's account using USBank's online portal. On US Bank side, I told representatives at the Bank that I was the only person they should interface with at PFG.

When it became a common practice for Certified Auditors and the Field Auditors of the Regulators to mail Balance Confirmation Forms to Banks and other entities holding customer funds I opened a post office box. The box was originally in the name of Firststar Bank but was eventually changed to US Bank. I put the address "PO Box 706, Cedar Falls, IA 50613-0030" on the counterfeit Bank Statements.³ When the auditors mailed Confirmation Forms to the Bank's false address, I would intercept the Form, type in the amount I needed to show, forge a Bank Officer's signature and mail it back to the Regulator or Certified Auditor.

³ The FBI has alleged that according to the United States Postal Inspection Services, Post Office Box 706 in Cedar Falls, Iowa, was opened by Defendant Wasendorf Sr. on October 11, 2006, and has remained under his control since that time. Defendant Wasendorf Sr. presented his driver's license and a vehicle registration renewal form bearing his name in order to open the Post Office Box. While in control of the Post Office Box, Wasendorf added "U.S. Bank Fund LLC", as an addressee receiving mail at the Post Office Box.

When online Banking became prevalent I learned how to falsify online Bank Statements and the Regulators accepted them without question.

46. On July 9, 2012, according to Special Agent Langdon's Affidavit, Defendant Wasendorf Sr. was interviewed by law enforcement at the University of Iowa Hospital in Iowa City, Iowa. During the course of that interview, Defendant Wasendorf Sr. acknowledged that he wrote the signed statement set forth above using a computer at his residence and that the information contained in the statement was true. Defendant Wasendorf Sr. estimated the amount of loss due to his fraud exceeded \$100 million.

47. Also according to the sworn Affidavit of FBI Special Agent William F. Langdon:

- a) On July 9, 2012, Defendant Wasendorf Jr. reported to law enforcement that, to determine if Defendant Wasendorf Sr.'s statements in the signed statement set forth above were accurate, Wasendorf Jr. obtained a purported bank statement for PFG's US Bank account ending in 845, titled "Customer Segregated Acct," for the month ending December 31, 2011, i.e., the 1845 Customer Segregated Account.
- b) Defendant Wasendorf Jr. obtained the purported statement from PFG's accounting department. The ending balance on the purported bank statement was \$221,770,946.18.
- c) Defendant Wasendorf Jr. subsequently obtained the bank statement for the same period directly from US Bank personnel. The bank statement obtained from US Bank personnel indicated an ending balance as of December 31, 2011 of \$6,337,628.14.8.

48. Special Agent Langdon further swore in his Affidavit that in an interview with law enforcement on July 9, 2012, Defendant Cuypers, the Chief Financial Officer of PFG,

verified she used the purported bank statement from PFG's accounting department indicating a balance of \$221,770,946.18 as of December 31,2011 when she prepared PFG's year end financial statement. The financial statement upon which Defendant Cuypers allegedly relied reflected an inflated amount of customer segregated funds; those statements were also sent to PFG's regulators including the CFTC.

49. According to PFG, Cuypers was been instrumental in overseeing accounting and financial planning at the firm and led the company's worldwide staff of accountants and clerks. In addition to the firms' U.S. operations, brokers and Commodity Trading Advisors, Cuypers was responsible for accounting fulfillment for PFG Canada and PFG Asia. The theft and/or misappropriation of over \$100 million of customer funds by PFG and Defendant Wasendorf Sr. was the direct and proximate result of Defendant Cuypers' failure(s) of reasonable oversight, inquiry and diligence.

50. Special Agent Langdon's Affidavit also stated that in an interview with law enforcement on July 10, 2012, a PFG employee whose responsibilities included reconciling PFG's customer segregated funds confirmed that she used the US Bank customer segregated account balances as reflected in PFG's internal accounting system in calculating the amount of PFG's customer segregated funds for regulatory purposes.

51. PFG customer segregated account verification records in possession of the NFA (and obtained from the CFTC) include falsified US Bank statements and corresponding account confirmation forms purporting to be for PFG's 1845 Customer Segregated Account held at US Bank.

52. The US Bank statements falsified by Defendant Wasendorf Sr. and the corresponding account confirmation forms list US Bank's address as "P.O. Box 706, Cedar Falls, IA 50613-0030."

53. According to the FBI, one of the US Bank 1845 Customer Segregated Account statements falsified by Defendant Wasendorf Sr. is for the period ending February 28, 2010 and reports a total balance of \$207,260,962.28 in the account. The FBI further alleged that a corresponding account confirmation form reports the same balance and bears a purported signature of an authorized representative of US Bank. Another such US Bank statement is for the period ending March 31, 2011 and reports a total balance of \$218,650,550.98 in the account. A corresponding account confirmation form reports the same balance and bears a purported signature of an authorized representative of US Bank. Further, the FBI has alleged that, according to the CFTC, the foregoing US Bank 1845 Customer Segregated Account statements falsified by Defendant Wasendorf Sr. were sent to the NFA.

54. In his Affidavit, Special Agent Langdon stated that law enforcement obtained copies of actual statements for PFG's US Bank 1845 Customer Segregated Account for the time periods including February 28, 2010, and March 31, 2011. According to the actual statements from US Bank, on February 28, 2010, the account held a total of \$9,171,177.08, and on March 31, 2011, the account held total of \$7,181,336.36.

55. Upon information and belief, in addition to US Bank, customer funds belonging to Plaintiffs and the Class were also held in bank accounts at other financial institutions the identity of which has not yet been ascertained; including custodian accounts that held or continue to hold customer deposits and clearing accounts that held or continue to hold customer margin and cash.

56. On July 10, 2012, the CFTC instituted a civil action against Defendant Wasendorf Sr. and PFG. to enjoin the fraud to which Wasendorf Sr. has admitted.

57. As a result of the admitted fraud of Defendant Wasendorf Sr., on July 10, 2012, PFG filed for Chapter 7 liquidation in the United States Bankruptcy Court for the Northern District of Illinois.

58. On July 11, 2012, the Federal Bureau of Investigation (“FBI”), arrested Defendant Wasendorf Sr. in connection with the unlawful conduct alleged in this Complaint.

VIII. CLASS ACTION ALLEGATIONS

59. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(1)(B) and/or 23(b)(3) on behalf of all PFG futures account holders or customers who held open commodity futures or options positions, swaps, and/or cash collateral or cash deposits for future collateral in their PFG accounts and had not received a return of 100% of their funds from PFG, its affiliates, or the Defendants, as of close of business on July 10, 2012. Excluded from the Class are all Defendants (including John Does 1-10), all members of the immediate families of the Defendants, all other officers, directors, and managing agents of the Defendants including all PFG affiliates and subsidiaries. The four requisites for class certification in Fed. R. Civ. P. 23(a) have been satisfied, as have the requirements of Fed. R. Civ. P. 23(b)(1)(B) and 23(b)(3).

60. Each member of the Class has been affected by the Defendants’ misconduct in the same way. As a result of Defendant Wasendorf Sr.’s admitted fraud and the subsequent collapse of PFG, Plaintiffs and each member of the Class have had their PFG futures accounts frozen, all open positions have been liquidated and their funds have not been returned to them. The funds, if any, distributed by the Trustee will not provide any class member with a 100% recovery and, as a consequence, each class member will share pro rata in the shortfall in customer funds.

61. Members of the Class are so numerous that joinder of all members is impracticable. The size of the Class, which is estimated to consist of 24,000 individuals and business entities, can only be ascertained through appropriate discovery.

62. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful, illegal conduct.

63. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action litigation, and securities and commodities related litigation.

64. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the many questions of law and fact common to the Class are:

a) whether the funds of the members of the Class were improperly commingled with the funds of PFG by PFG and/or Defendant Wasendorf Sr.;

b) whether the funds of the members of the Class were misappropriated by PFG and/or Defendant Wasendorf Sr.;

c) whether Defendants Wasendorf, Jr., Aslin, Cuypers, O'Meara, Veraja-Snelling Co., and Jeannie Veraja-Snelling negligently and/or recklessly failed to detect or prevent the unlawful conduct alleged;

d) whether PFG violated the CEA;

e) whether any of the Individual Defendants violated the CEA;

f) the amount of money diverted out of segregated accounts by Defendants;

g) the proper measure of damages.

65. The Class should be certified under Fed. R. Civ. P. 23(b)(1)(B). Unless defendants' combined unencumbered assets are equal to the shortfall in the segregated customer accounts at PFG, the prosecution of separate actions by individual customers of PFG would create a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of other customers who are not parties to the individual adjudications, or would substantially impair or impede their ability to protect their interests.

66. The Class should also be certified under Fed. R. Civ. P. 23(b)(3). Questions of law or fact common to class members predominate over any questions affecting only individual members. Additionally, a class action under Fed. R. Civ. P. 23(b)(3) is superior to all other available methods for the fair and efficient adjudication of this controversy. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no unusual difficulty in the management of this action as a class action.

COUNT I
Violations of Section 4d(a) of the CEA and CFTC Regulation 1.20(a)
(Failure to Segregate Customer Funds)

67. Paragraphs incorporate and reallege each of their previous allegations as though fully set forth herein.

68. This claim is asserted against Defendants Wasendorf Sr., Wasendorf Jr., Aslin, Cuypers, O'Meara, and John Does 1-10.

69. Section 4d(a) of the CEA, as amended, 7 U.S.C. § 6d(a), makes it unlawful for an FCM to solicit or accept orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of

any contract market unless it treats and deals with all money, securities, and property received by it to margin, guarantee, or secure the trades or contracts of any customer, or accruing to such customer as the result of such trades or contracts, as belonging to such customer.

70. CFTC Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2012), requires in part that all customer funds be separately accounted for and segregated as belonging to commodity or option customers and deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the CEA and Regulations.

71. Under Section 25(a)(1) of the CEA, as amended, 7 U.S.C. § 25(a)(1), any person who violates the CEA, or who willfully aids, abets, counsels, induces or procures a violation of the CEA, is to be held liable for any actual damages resulting from, among other things, such violation to any person who deposited with or paid to such person money, securities, or property in order to engage in commodity futures or options contract trading.

72. From at least February 2010 through the present, PFG, by and through Defendant Wasendorf Sr., failed to treat customer funds as belonging to its customers and failed to segregate and separately account for customer funds. By this conduct, PFG and Defendant Wasendorf Sr. violated Section 4d(a) of the CEA, as amended, 7 U.S.C. § 6d(a), and CFTC Regulation 1.20(a) (2012).

73. Defendant Wasendorf Sr. controlled PFG and willfully aided, abetted, counseled, commanded, induced and procured the acts constituting PFG's violations alleged in this count. Defendant Wasendorf Sr. is therefore additionally liable for PFG's violations of Section 4d(a) of the CEA, as amended, 7 U.S.C. §6d(a), and CFTC Regulation 1.20(a), 17 C.F.R. §1.20(a) (2012), pursuant to Section 13c(a) of the CEA, 7 U.S.C. § 13c(a) (2006).

74. By their knowing and willful failures to adequately exercise reasonable and independent oversight, inquiry and diligence as PFG's senior officers and independent auditors defendants Wasendorf Jr., Aslin, Cuypers, O'Meara, and John Does 1-10 willfully aided, abetted, induced, counseled, or procured the acts constituting PFG's violations alleged in this count. Defendants Wasendorf Jr., Aslin, Cuypers, O'Meara, and John Does 1-10 are therefore additionally liable for PFG's violations of Section 4d(a) of the CEA, as amended, 7 U.S.C. §6d(a), and CFTC Regulation 1.20(a), 17 C.F.R. §1.20(a) (2012), as pursuant to Section 13c(a) of the CEA, 7 U.S.C. § 13c(a) (2006).

75. Each and every day that PFG, and/or defendants Wasendorf Sr., Wasendorf Jr., Aslin, Cuypers, O'Meara, and John Does 1-10 failed to segregate customer funds constitutes a separate and distinct violation of Section 4d(a) of the CEA Act, as amended, 7 U.S.C. §6d(a), and CFTC Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2012)

76. As a direct and proximate result of the wrongful conduct of the Defendants named in this Count, each of the Plaintiffs and the other proposed Class members, who deposited with or paid to PFG money, securities, or property in order to engage in commodity futures or options contract trading, suffered substantial actual damages as a result of the violations of Section 4d(a) of the CEA, as amended, 7 U.S.C. §6d(a), and CFTC Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2012)..

77. Plaintiffs and the Class are each entitled to recover for each of the Defendants, jointly and severally, the actual damages they suffered resulting from the the violations of the CEA and CFTC Regulations alleged herein.

COUNT II
Violations of Section 4b(a)(1)(A) and (C) of the CEA, as amended
(Fraud by Misappropriation)

78. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

79. This claim is asserted against Defendant Wasendorf Sr.

80. Section 4b(a)(1)(A), (C) of the CEA, as amended, 7 U.S.C. §6b(a)(1)(A), (C), makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person: (A) to cheat or defraud or attempt to cheat or defraud such other person; or (C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for such other person.

81. By misappropriating customer funds for purposes other than those intended by its customers, PFG, by and through Defendant Wasendorf Sr., and Defendant Wasendorf Sr. individually, violated Section 4b(a)(1)(A), (C) of the CEA, as amended, 7 U.S.C. § 6b(a)(1)(A), (C).

82. Defendant Wasendorf Sr. controlled PFG and willfully aided, abetted, counseled, commanded, induced and procured the acts constituting the violations by PFG alleged in this count. Defendant Wasendorf Sr. is therefore additionally liable for PFG's violations of Section 4b(a)(1)(A), (C) of the CEA, as amended, 7 U.S.C. § 6b(a)(1)(A), (C) pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13c(b) (2006).

83. Each and every day that PFG and/or Defendant Wasendorf Sr. misappropriated customer funds for purposes other than those intended by its customers constitutes a separate and

distinct violation of Section 4b(a)(1)(A), (C) of the CEA, as amended, 7 U.S.C. § 6b(a)(1)(A), (C).

84. As a direct and proximate result of the wrongful conduct of the Defendants named in this Count, Plaintiffs and the other proposed Class members suffered substantial damages.

85. Plaintiffs and the Class who deposited with or paid to PFG money, securities, or property in order to engage in commodity futures or options contract trading on or subject to the rules of a designated contract market in the United States are each entitled to actual damages for the violations of the CEA alleged herein.

COUNT III
Violation of Section 4b(a)(2)(A), (B) and (C) of the CEA
(Fraud in Connection with Commodity Futures Contracts)

86. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

87. This claim is asserted against Defendants Wasendorf Sr.

88. Section 4b(2)(A), (B) and (C) of the CEA, 7 U.S.C. § 6b(a)(2) makes it unlawful:

[F]or any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 7a (g) of this title, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market -- (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person....

89. Defendant Wasendorf Sr. and/or PFG, individually and/or in concert, in or in connection with commodity futures contracts made, or to be made, for or on behalf of other persons, cheated or defrauded, or attempted to cheat or defraud, customers and willfully deceived

or attempted to deceive customers by, among other things, knowingly making transfers of customer segregated funds in a manner designed to avoid detection, improperly diverting customers' cash and commingling it with PFG own funds, willfully making or causing to be made false reports or statements or willfully entering or causing to be entered false records, and converting customers funds for its own use in violation of 7 U.S.C. § 6b(a)(2)(A), (B), and (C).

90. As a direct and proximate result of the wrongful conduct of the Defendant Wasendorf Sr., Plaintiffs and the other proposed Class members suffered substantial damages.

91. Plaintiffs and the Class who deposited with or paid to PFG money, securities, or property in order to engage in commodity futures or options contract trading other than on or subject to the rules of a designated contract market in the United States are each entitled to actual damages for the violations of the CEA alleged herein.

COUNT IV
Breach of Fiduciary Duty

92. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

93. This claim is asserted against defendants Wasendorf Sr., Wasendorf Jr., Aslin, Cuypers, O'Meara, and John Does 1-10.

94. Defendants Wasendorf Sr., Wasendorf Jr., Aslin, Cuypers, O'Meara and John Does 1-10 exercised the power to direct the use commodity customers' money, securities, or other property which had been deposited with and entrusted to PFG to allow such customers to trade commodity futures and options contracts through PFG.

95. As senior officer and/or directors of PFG, Defendants Wasendorf Sr., Wasendorf Jr., Aslin, Cuypers, O'Meara and John Does 1-10 were responsible for preserving the safety and

security of the property of Plaintiffs and members of the proposed Class by adopting and adhering to internal safeguard policies designed to ensure the preservation of customer property. As senior officers and/or directors PFG, each of the defendants were responsible for adopting and following stringent rules and procedures to segregate and separately maintain PFG's customers' assets from those used to fulfill PFG own obligations and liabilities and would hold its commodity customers assets in a separate account that would be legally and physically distinct from PFG's own accounts, and subject to rigorous accounting processes as well as regulatory reporting and auditing.

96. As such, the defendants and PFG owed PFG's commodity and option customers, including Plaintiffs and the members of the class, a fiduciary duty to preserve and protect their assets, to act solely in their customer's best interests in connection with its custody and control of their assets, and to avoid any self-dealing.

97. Defendants Wasendorf Sr., Wasendorf Jr., Aslin, Cuypers, O'Meara, John Does 1-10 knowingly breached their fiduciary duties to Plaintiffs and the members of the class by, among other things:

- a) failing to preserve the safety and security of their assets;
- b) failing to adopt and adhere to internal safeguard policies designed to preserve their property;
- c) commingling customer assets with those used to fulfill PFG own obligations and liabilities;
- d) failing to maintain the customer assets in separates account that were legally and physically distinct from PFG's own accounts;

- e) failing to subject its segregated customer funds account to rigorous accounting processes which would insure the integrity of the funds in such account; and
- f) allowing Plaintiffs' and class members' money and property to be used for improper and illegal purposes.

98. As the direct and proximate consequence of the conduct of Defendants Wasendorf Sr., Wasendorf Jr., Aslin, Cuypers, O'Meara, John Does 1-10 and PFG, described above, Plaintiffs and the members of the proposed Class have lost a substantial portion of the money, securities, or other property they deposited with PFG to trade commodity futures contracts, have been denied the use of their property, and have been substantially damaged as a result.

COUNT V
Aiding And Abetting Breach Of Fiduciary Duty

99. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

100. This claim is asserted against Defendants Wasendorf Sr., Wasendorf Jr., Aslin, Cuypers, O'Meara, Veraja-Snelling Co, and Jeannie Veraja-Snelling, and John Does 1-10.

101. Defendants Wasendorf Jr., Aslin, Cuypers, O'Meara and John Does 1-10. and PFG exercised complete dominion and control over its commodity customers' money, securities, or other property which had been deposited with and entrusted to PFG to allow such customers to trade commodity futures and option contracts through PFG.

102. PFG was responsible for preserving the safety and security of its customers' property by adopting internal safeguard policies designed to ensure the preservation of such property. PFG was also responsible for ensuring the integrity of its customers' funds, and enforcing stringent rules to segregate its customers' assets from those used to fulfill PFG's own obligations and liabilities, including maintaining its customers' assets in separate accounts that

would be legally and physically distinct from PFG own accounts, and subject to rigorous accounting processes as well as regulatory reporting and auditing.

103. As such, PFG owed its commodity customers, including Plaintiffs and the members of the class, a fiduciary duty to preserve and protect their assets, to act solely in their customer's best interests in connection with its custody and control of their assets, and to avoid any self-dealing.

104. PFG knowingly breached its fiduciary duty to Plaintiffs and the members of the class by, among other things:

- a) failing to preserve the safety and security of their assets;
- b) failing to adopt and adhere to internal safeguard policies designed to preserve their property;
- c) commingling customer assets with those used to fulfill PFG's own obligations and liabilities;
- d) failing to maintain customer assets in a separate account that was legally and physically distinct from PFG's own accounts;
- e) failing to subject its segregated customer funds account to rigorous accounting processes which would insure the integrity of the funds in such account; and
- f) allowing Plaintiffs' and Class members' property to be used for improper and illegal purposes.

105. Defendants Wasendorf Sr., Wasendorf Jr., Aslin, Cuyper, O'Meara, Veraja-Snelling Co, Jeannie Veraja-Snelling, and John Does 1-10, who were responsible for ensuring PFG's compliance with its own internal policies and procedures and the performance of its fiduciary duties to its customers, knowingly aided and abetted PFG's breach of its fiduciary

duties to Plaintiffs and the members of the class because they substantially assisted and knowingly induced and/or participated in the alleged breaches by, among other things:

- a) failing to properly supervise PFG to ensure that it was preserving the safety and security of its customers' assets;
- b) failing to require PFG to adopt and/or adhere to internal safeguard policies designed to preserve its customers' property;
- c) failing to require PFG to segregate its customers' assets from those used to fulfill PFG's obligations and liabilities;
- d) failing to require PFG to maintain its customers assets in separate accounts that were legally and physically distinct from PFG's own accounts;
- e) failing to subject PFG's segregated customer funds account to rigorous accounting processes which would insure the integrity of the funds in such account; and
- f) authorizing and allowing PFG's customer funds to be used for improper purposes.

106. As the direct and proximate consequence of the Defendants' conduct described above, Plaintiffs and the members of the proposed Class have lost a substantial portion of the money, securities, or other property they deposited with PFG to trade commodity futures and options contracts, have been denied the use of their property, and have been substantially damaged as a result.

COUNT VI
Unjust Enrichment

107. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

108. This claim is asserted against Defendant Wasendorf Sr.

109. During the Relevant Time, Defendant Wasendorf Sr., by and through PFG and/or one or more of the Defendants to this action or other persons whose identities are presently unknown, wrongfully caused approximately \$215 million in segregated cash (and/or assets) that lawfully belongs to Plaintiffs and/or members of the proposed Class to be transferred to Defendant Wasendorf Sr.

110. There now exists a substantial controversy between Defendant Wasendorf Sr. on the one hand and Plaintiffs and the proposed Class on the other hand as to the ownership of the \$215 million and/or as to any other cash (and/or assets) in the possession of Defendant Wasendorf Sr. and/or any third parties in receipt of any such money or property that lawfully belongs to Plaintiffs and members of the proposed Class, in an amount not yet ascertained and transferred at a time or times not presently known to Plaintiffs.

111. By reason of the conduct alleged in the Complaint, including the transfer and/or the receipt by Defendant Wasendorf Sr. of other amounts not yet ascertained at some other time relevant to the allegations in this Complaint that lawfully belongs to Plaintiffs and/or members of the proposed Class, Defendant Wasendorf Sr. has received a significant pecuniary benefit at the expense of Plaintiffs and members of the proposed Class.

112. Defendant Wasendorf Sr. has been unjustly enriched by the receipt of approximately \$215 million in cash (and/or assets) and/or other amounts not yet ascertained that lawfully belongs to Plaintiffs and/or members of the proposed Class.

113. Defendant Wasendorf Sr. and/or one or more of the Defendants to this action or other persons whose identities are presently unknown, delivered to Defendant Wasendorf Sr. cash (and/or assets) that lawfully belongs to Plaintiffs and/or members of the proposed Class,

and consequently, Defendant Wasendorf Sr. holds such assets in trust for the benefit of the Plaintiffs and members of the Class and has a lawful or equitable duty to return such funds to their proper owners.

114. Defendant Wasendorf Sr. has failed and refused to return to Plaintiffs and members of the proposed Class the cash (and/or assets) that lawfully belongs to them.

115. It is unlawful and against equity and good conscience to permit Defendant Wasendorf Sr. to retain the \$215 million in cash (and/or assets) and/or other amounts not yet ascertained that lawfully belongs to Plaintiffs and/or members of the proposed Class.

116. As a direct and proximate result of the actions of Defendant Wasendorf Sr., PFG and/or one or more of the Defendants to this action or other persons whose identities are presently unknown, Plaintiffs and members of the proposed Class have suffered actual and substantial damages in an amount to be determined at trial.

117. Plaintiffs demand the return of all cash (and/or assets) received by Defendant Wasendorf Sr., or any third parties whose identities have not yet been ascertained, that lawfully belongs to Plaintiffs and members of the proposed Class.

COUNT VII
Theft, Conversion and Misappropriation

118. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

119. This claim is asserted against Defendant Wasendorf Sr.

120. Plaintiffs had the right to possess their accounts with PFG and the funds in them.

121. Defendant Wasendorf Sr. and PFG interfered intentionally with Plaintiffs' possession of their accounts with PFG and the funds in them.

122. Defendant's interference deprived Plaintiffs of possession and/or use of their accounts with PFG and the funds in them.

123. Defendant's interference caused substantial damage to Plaintiffs and members of the proposed Class.

124. Defendant Wasendorf Sr. and PFG, jointly and severally, stole, converted, and/or misappropriated portions of Plaintiffs' accounts (and those of members of the proposed Class), including their cash as alleged.

125. Defendant's tortious misconduct has substantially diminished the marketplace for futures and commodities in the United States and throughout the world. Defendant's misconduct is outrageous, a conscious and deliberate disregard of Plaintiffs' rights, a conscious and deliberate disregard of the rights of customers with cash and/or other items of value on deposit in their accounts and a fraud on the public generally. Punitive damages are required and appropriate to deter such misconduct.

COUNT VIII
Interference with Contract Rights

126. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

127. This claim is asserted against Defendant Wasendorf Sr.

128. Plaintiffs and the Class had deposited money in their accounts pursuant to a written agreement to secure, margin and/or guarantee trades and/or contract of Plaintiffs and the Class. Plaintiffs and Class members had contract rights with PFG stemming from the CEA and industry regulations that PFG would treat and deal with Plaintiffs' money in their accounts as belonging to Plaintiffs. Plaintiffs and the Class had contract rights that the money in their accounts would be separately accounted for and not commingled with or be used to margin or

guarantee the trades or contracts of, or to secure or extend the credit of, any person other than Plaintiffs and Class Members.

129. Defendant was aware of the existence of a contractual relationship between members of the Class and PFG and intentionally interfered with Plaintiffs' and Class Members' contract rights, directly and proximately causing damage to Plaintiffs and the Class.

130. Defendant's tortious interference with contract rights as aforesaid is outrageous and a conscious and deliberate disregard of the rights of Plaintiffs and the Class. Defendants Wasendorf Sr. interfered with the contract rights of others who had similar contracts with PFG.

131. Defendant's tortious misconduct has substantially diminished the marketplace for futures and commodities in the United States and throughout the world. Defendant Wasendorf Sr.'s misconduct is outrageous, a conscious and deliberate disregard of Plaintiffs' rights, a conscious and deliberate disregard of the rights of customers with cash and/or other items of value on deposit in their accounts and a fraud on the public generally. Punitive damages are required for such misconduct.

COUNT X
Aiding and Abetting Tortious Conduct

132. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

133. This claim is asserted against Defendants Wasendorf Jr., Aslin, Cuypers, O'Meara, Veraja-Snelling Co, and Jeannie Veraja-Snelling, and John Does 1-10.

134. Additionally, PFG stood in a fiduciary relationship with Plaintiffs. This status imposed on the PFG, in particular, an affirmative duty of utmost good faith, and full and fair disclosure of all material facts. PFG breached this fiduciary duty.

135. If and to the extent that a Defendant did not commit a tort as principal, such Defendant caused harm to Plaintiffs resulting from the tortious conduct of each other, PFG, as alleged, and each Defendant aided and abetted such tortious conduct and is subject to liability because such Defendant:

- a) recklessly disregarded that the conduct alleged in this Complain constituted a breach of duty and/or gave substantial assistance or encouragement to the other; and/or
- b) gave substantial assistance to each other and/or PFG in accomplishing a tortious result and such Defendant's own conduct, separately considered, constituted a breach of duty to Plaintiffs; among other things, each Defendant approved and facilitated the aforesaid unlawful conduct and had he or she properly performed his or her legal responsibilities he, she or it could and would have prevented the unlawful conduct alleged and each of them owed a fiduciary duty to Plaintiffs which he, she or it breached as alleged.

136. As the direct and proximate consequence of the Defendants' conduct described above, Plaintiffs and the members of the proposed Class have lost a substantial portion of the money, securities, or other property they deposited with PFG to trade futures contracts, have been denied the use of their property, and have been substantially damaged as a result.

COUNT XI
Negligence

137. Plaintiffs incorporate and re-allege each of their previous allegations as though fully set forth herein.

138. This claim is asserted against Defendants Wasendorf Jr., Aslin, Cuypers, O'Meara, Veraja-Snelling Co, and Jeannie Veraja-Snelling, and John Does 1-10.

139. Defendants Wasendorf Jr., Aslin, Cuypers, O'Meara, Veraja-Snelling Co, and Jeannie Veraja-Snelling, and John Does 1-10 had a duty to exercise reasonable care to examine the books and records of PFG, ensure the proper and safe handling of customer funds, and supervise the safety of customer funds. By virtue of Defendant Wasendorf Sr.'s admitted fraud and theft of customer funds from Plaintiffs and the Class, each of the defendants Wasendorf Jr., Aslin, Cuypers, O'Meara, Veraja-Snelling Co, and Jeannie Veraja-Snelling, and John Does 1-10, were negligent.

140. As the direct and proximate consequence of the Defendants' negligent conduct described above, Plaintiffs and the members of the proposed Class have lost a substantial portion of the money, securities, or other property they deposited with PFG to trade futures contracts, have been denied the use of their property, and have been substantially damaged as a result.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment:

- (a) ordering that this action proceed as a class action as to all claims previously alleged;
- (b) awarding money damages, including prejudgment interest, on each claim in an amount to be established at trial;
- (c) for punitive damages nine-fold the compensatory damages or in such other amount as shall be just and proper;
- (d) awarding statutory attorneys' fees and costs, and other relief;
- (e) impressing a constructive trust on the ill-gotten gains of PFG and/or the Defendants in the ultimate res of which each Class member shall have an undivided interest;

(f) directing further proceedings to determine the distribution of the trust among Class members, inter se, and award attorneys' fees and expenses to Plaintiffs' counsel; and

(g) granting such other relief as to this Court may seem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

Dated: July 23, 2012

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