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UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

BILLION COUPONS, INC. (aka
BILLION COUPONS INVESTMENT)
and MARVIN R. COOPER,

Defendants.

Case No. 09-00068 JMS LEK
Case No. 09-00069 JMS LEK

**JUDGMENT AGAINST
DEFENDANTS BILLION
COUPONS, INC. AND
MARVIN R. COOPER**

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

vs.

BILLION COUPONS, INC., a/k/a
BILLION COUPONS INVESTMENT,
a Hawaii Corporation, and MARVIN
R. COOPER, an individual,

Defendants.

**JUDGMENT AGAINST DEFENDANTS BILLION COUPONS, INC.
AND MARVIN R. COOPER**

This case having come before the court on the motion of Plaintiff Securities and Exchange Commission (“SEC”) for an order of disgorgement, prejudgment interest, and civil penalties against defendants Billion Coupons, Inc. (“BCI”) and Marvin R. Cooper (“Cooper”) (jointly “Defendants”), and for entry of final judgment against Defendants, and the motion of Plaintiff U.S. Commodity Futures Trading Commission (“CFTC”) for summary judgment against Defendants BCI and Cooper, and the court having considered all argument and briefing related to the motions, and granted the motions of the SEC and CFTC, final judgment against Defendants BCI and Cooper is hereby entered as follows.

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants BCI and Cooper, and each of their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants BCI and Cooper, and each of their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants BCI and Cooper, and each of their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive

actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act, 15 U.S.C.

§ 77e, by, directly or indirectly:

- (a) unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

IV.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants BCI and Cooper are permanently restrained, enjoined and prohibited from directly or indirectly:

- (a) cheating or defrauding or attempting to cheat or defraud other persons 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, made, or to be made for or on behalf of any other person;
- (b) willfully making or causing to be made to such other person any false report or statement thereof or willfully entering or causing to be entered for others any false record thereof; or
- (c) willfully deceiving or attempting to deceive any other persons by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such persons

in violation of Sections 4b(a)(1)(A)-(C) and 4b(a)(2)(A)-(C) of the Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the reauthorization Act (“CRA”), §§ 13101-13204, 122 Stat. 1651 (effective June 18, 2008), to be codified at

7 U.S.C. §§ 6b(a)(1)(A)-(C) and 6b(a)(2)(A)-(C) (“Act, as amended by the CRA”).

Defendants BCI and Cooper are also permanently prohibited from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (“commodity interest”), including but not limited to, the following:

- (a) trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
- (b) engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- (c) soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest;
- (d) applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9);

- (e) entering into any commodity interest transactions for their own personal accounts, for any account in which they have a direct or indirect interest and/or having any commodity interests traded on their behalf; and
- (f) engaging in any business activities related to commodity interest trading.

Defendants BCI and Cooper are further permanently restrained, enjoined and prohibited from filing a petition in bankruptcy without providing the CFTC with prompt notice by Certified Mail of such filing, as required by this Judgment.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants BCI and Cooper are jointly and severally liable for disgorgement in the amount of \$3,478,552, together with prejudgment interest thereon in the amount of \$515,616.86, for a total of \$3,994,168.86 (the “Disgorgement Obligation”), such amount to be paid within 14 days of entry of this Final Judgment. The Disgorgement Obligation represents disgorgement of ill-gotten gains from the conduct alleged in the Complaints, which is the same amount as restitution for the losses suffered by the customers as a result of the conduct as alleged in the Complaints. For purposes of this judgment, only, because the disgorgement and restitution amounts are the same, the Disgorgement Obligation also represents

Defendants' restitution obligation. The SEC and/or CFTC may enforce the court's judgment for disgorgement, with prejudgment and post-judgment interest, by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Judgment. In response to any such civil contempt motion by the SEC and/or CFTC, Defendant(s) may assert any legally permissible defense. Payments under this paragraph shall be made to the Clerk of this court, together with a cover letter identifying the defendant(s) as a defendant in this action; setting forth the title and civil action number of this action and the name of this court; and specifying that payment is made pursuant to this Judgment. Defendant(s) shall simultaneously transmit photocopies of each such payment and letter to counsel for the SEC and CFTC in this action. Defendant(s) relinquishes all legal and equitable right, title, and interest in such payments, and no part of the funds shall be returned to Defendant(s). The Clerk of Court shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is utilized by the court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk of Court is directed, without further order of this court, to deduct from the

income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The SEC, CFTC and/or the court-appointed receiver (“Receiver”) in this matter, Barry A. Fisher, may propose a plan to distribute the Fund, including to Defendants' customers, subject to the court approval. Defendant(s) shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that funds recovered by the Receiver attributable to Defendants shall be credited against the Disgorgement Obligation, and shall be held by the Receiver pending approval of a distribution plan, including to Defendants’ customers, by the court. Any amount paid to any of Defendants’ customers shall not limit the ability of any customer from independently proving in a separate action that a greater amount is owed from any person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under federal, state, or common law to assert a claim for recovery against Defendants subject to any offset or credit that Defendants may be entitled to claim under the law governing that customer's claim. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Defendants is explicitly made an intended third-party beneficiary to this Judgment

and may seek to enforce obedience of this Judgment to obtain satisfaction of any portion of the Disgorgement Obligation that has not been paid, to ensure compliance with any provision of this Judgment and to hold Defendants in contempt for any violations of any provision of this Judgment. Subsequent to the entry of this Judgment, Defendants shall provide the SEC and CFTC with immediate notice of any filing or compromise and settlement of any private or governmental actions relating to the subject matter of this Judgment in the manner required by this Judgment. To the extent that any funds accrue to the U.S. Treasury as a result of Defendants' Disgorgement Obligation, such funds shall be transferred to the CRIS and subject to any plan of distribution approved by the court.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants BCI and Cooper shall pay, jointly and severally, civil penalties in the total amount of \$2,416,941, consisting of a civil penalty in the amount of \$130,000 to the SEC pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and a civil monetary penalty in the amount of \$2,286,941 to the CFTC pursuant to Section 6c of the Commodity Exchange Act, 7 U.S.C. § 13a-1 (2006) and Regulation 143.8(a)(1)(I), 17 C.F.R. § 143.8(a)(1)(i)(2009), as set forth in Sections

VIII and IX below.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that of the civil penalties in the total amount of \$2,416,941, Defendants Cooper and BCI shall pay \$130,000 within 14 days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Cooper and BCI as defendants in this action; setting forth the title and civil action number of this action and the name of this court; and specifying that payment is made pursuant to this Final Judgment. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that of the civil penalties in the total amount of \$2,416,941, Defendants BCI and Cooper shall pay, jointly and severally, a civil monetary penalty ("CMP") in the amount of \$2,286,941, plus post-judgment interest, to the CFTC pursuant to Section 6c of the

Act, 7 U.S.C. § 13a-1 (2006) and Regulation 143.8(a)(1)(i), 17 C.F.R.

§ 143.8(a)(1)(i)(2009). Post-judgment interest shall accrue beginning on the 14th day after the date of entry of the judgment and shall be determined using the Treasury Bill rate prevailing on the date of entry of judgment pursuant to 28 U.S.C. § 1961. All CMP payments are immediately due and owing. Defendants shall submit payment of the CMP to the CFTC and sent to the following address:

United States Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman - AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Boulevard
Oklahoma City, Oklahoma 73169

If the payment is to be made by electronic funds transfer, Defendants shall contact Marie Bateman, or her successor, at (405) 954-6569 for payment instructions, and shall fully comply with those instructions. Defendants shall accompany the payment of the civil monetary penalty with a cover letter that identifies them and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, United States Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, DC 20581; and to the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all payments by Defendants pursuant to this Judgment or credits because of recovery by the Receiver shall first be applied to satisfaction of Defendants' Disgorgement Obligation. After satisfaction of Defendants' Disgorgement Obligation, any payments by Defendants pursuant to this Judgment shall be applied to satisfy Defendants' civil penalty to the SEC. After satisfaction of Defendants' Disgorgement Obligation and civil penalty to the SEC, any payments by Defendants pursuant to this Judgment shall then be applied to satisfy Defendants' civil monetary penalty to the CFTC. Any acceptance by the SEC, CFTC and/or Receiver of partial payment of Defendants' Disgorgement Obligation, civil penalty and/or civil monetary penalty shall not be deemed a waiver of Defendants' requirement to make further payments pursuant to this Judgment, or a waiver of the right of the SEC, CFTC and/or Receiver to seek to compel payment of any remaining balance.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the provisions of this Judgment shall be binding upon Defendants and any person who is acting in the capacity of officer, agent, employee, servant, or attorney of Defendants, and any person acting in active concert or participation with

Defendants who receives actual notice of this Judgment by personal service or otherwise. If any provision of this Judgment, or if the application of any provisions or circumstances is held invalid, the remainder of the Judgment and the application of the provisions to any other person or circumstance shall not be affected by the holding.

The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Judgment. No waiver in one or more instances of the breach of any provision contained in this Judgment shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Judgment.

XII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all notices required to be given by any provision in this Judgment shall be sent certified mail, return receipt requested, as follows:

Notice to SEC:

Securities and Exchange Commission
John B. Bulgozdy, Senior Trial Counsel
5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036

Notice to CFTC:

Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Notice to Defendant BCI:

Barry A. Fisher, Receiver
c/o Peter A. Davidson, Esquire
Ervin Cohen & Jessup LLP
9401 Wilshire Boulevard, 9th Floor
Beverly Hills, CA 90212-2974

Notice to Defendant Cooper:

Michael A. Glenn
1188 Bishop Street, Suite 3101
Honolulu, HI 96813

All such notices to the SEC and CFTC shall reference the name and docket number of this action. In the event that there is an address and/or telephone number change for any of the Defendants, the Defendant shall provide written notice of the new address(es) and/or numbers to the SEC and CFTC within twenty (20) calendar days thereof.

XIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment, and for all other purposes related to this action, including but not

limited to any matters under receivership.

IT IS FURTHER ORDERED that the Clerk of Court is directed to close this case.

Dated: Honolulu, Hawaii, August 26, 2010.



/s/ J. Michael Seabright

J. Michael Seabright
United States District Judge

Sec. and Exchange Comm. v. Billion Coupons et al, Civ. No. 09-00068 JMS/LEK, Civ. No. 09-00069 JMS/LEK; Judgment Against Defendants Billion Coupons, Inc. and Marvin R. Cooper