

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	
	)	
PEREGRINE FINANCIAL GROUP, INC.,	)	Chapter 7
	)	
Debtor.	)	Case No. 12-27488
	)	
_____	)	Honorable Carol A. Doyle
	)	
RICHARD STANDISH,	)	
And CHARLES SIZEMORE, on behalf of	)	
Themselves and on behalf of all persons and	)	
Entities similarly situated,	)	
	)	
Plaintiffs,	)	
	)	Adv. Pro. No.
v.	)	
	)	<b>TRIAL BY JURY DEMANDED</b>
IRA BODENSTEIN, not individually but solely	)	
As the duly appointed Chapter 7 Trustee of the	)	
Estate of Peregrine Financial Group, Inc.,	)	
	)	
Defendant.	)	

**ADVERSARY COMPLAINT**

Plaintiffs, Richard Standish (“Standish”) and Charles Sizemore (“Sizemore”), on behalf of themselves and other persons similarly situated, for their Adversary Complaint (the “Complaint” in this “Adversary Proceeding”) against Ira Bodenstein, as Chapter 7 Trustee (the “Trustee”) for the Estate of the Debtor, Peregrine Financial Group, Inc., state as follows:

**NATURE OF THE CASE**

1. This is a class action, brought pursuant to Rule 23(b) (3) of the Federal Rules of Civil Procedure as applied in adversary bankruptcy proceedings. Plaintiffs are customers of the Debtor and seek to represent a class of Futures Account Holders whose money was held in segregated accounts with the Debtor as of July 10, 2012 (the “Petition Date”) and who failed

to submit claims for reimbursement of the funds in the estate of the Debtor's segregated funds account on or before the Bar Date. The funds of Plaintiffs and the class are being held in a constructive trust because the Debtor, prior to the Petition Date, obtained their funds through fraud; funds which can be readily traced because PFG maintained a separate account for each Plaintiff and Class member and which the Trustee has acknowledged are property of the Plaintiffs and the Class.

### **PARTIES**

2. Each of the Plaintiffs is a former customer and Futures Account Holder who maintained an account with the Debtor. Each of the Plaintiffs was contacted by the Trustee and given a claim form for monies held in their accounts which the Trustee has acknowledged is the property of the Plaintiffs and members of the Class and each Plaintiff and Class member failed to submit their claim on or before the Bar Date.

A. Plaintiff Standish had \$2,446.00 in undistributed funds in his account. His Claim 13911 was rejected by the Trustee as being untimely.

B. Plaintiff Sizemore had \$100.00 in undistributed funds in his account. Mr. Sizemore did not submit a claim.

3. Peregrine Financial Group, Inc. ("PFG"), which did business as PFG Best, was a Futures Commission Merchant ("FCM") registered with the U.S. Commodity Futures Trading Commission ("CFTC") and an FCM Member and Forex Dealer Member of the National Futures Association ("NFA").

4. The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "Code") on the Petition Date.

5. Ira Bodenstein (the "Trustee") is the duly appointed Chapter 7 Trustee of the Debtor's estate, authorized to operate the Debtor's business.

### **JURISDICTION AND VENUE**

6. On the Petition Date, the Debtor filed a voluntary petition for relief under Chapter 7 of the Code in the United States Bankruptcy Court for the Northern District of Illinois ("the Court"). The filing of the Debtor's Chapter 7 petition commenced a bankruptcy case pending before this Court, styled as *In re Peregrine Financial Group Inc.*, Case No. 12-27488 (the "Case").

7. This Court has statutory subject matter jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b) and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois.

8. This Adversary Proceeding is a non-core proceeding within the meaning of one or more subsections of 28 U.S.C. § 157(b) (2). Plaintiffs do not consent to the Court entering a final judgment or order pursuant to 28 U.S.C. § 157 (c) (2).

9. Venue of this Adversary Proceeding is proper in this judicial district pursuant to 28 U.S.C. § 1409(a).

### **FACTUAL BACKGROUND**

10. Prior to the Petition Date, Plaintiffs and members of the Class opened accounts with the Debtor to trade, *inter alia*, commodities. The Class, including Plaintiffs, each executed a standard form customer agreement with Debtor for trading in commodity futures contracts ("futures"). A sample copy of the PFGBEST Customer Agreement (the "Agreement") is attached hereto as Exhibit A.

11. Paragraph #2 of the Agreement states:

**TRANSACTIONS SUBJECT TO  
INDUSTRY REGULATIONS AND  
STANDARDS.**

All transactions shall be subject to the regulations of all applicable government authorities and self-regulatory agencies including, but not limited to, the constitutions and rules of the clearinghouse, exchange, or market where trades are executed. Customer understands that PFGBEST is obligated to comply with all applicable laws and regulations including those of regulatory and self-regulatory organizations and agrees that PFGBEST shall not be liable to Customer as a result of any action taken by PFGBEST to comply with any ruling, interpretation or directive of such organization...

In all transactions under this agreement, customer shall be bound by all applicable laws, rules and regulations, including the Commodity Exchange Act, as amended, the Commodity Futures Trading Commission regulations thereunder, and the rules, regulations, customs, usages, rulings and interpretations of the National Futures Association (“NFA”), and to the extent applicable, the Securities and Exchange Commission, National Association of Securities Dealers, and the exchange or market and the clearing house, if any, where the transactions are executed by PFGBEST or PFGBEST’s agents.

12. Plaintiffs and members of the Class each supplied all of the funding for the creation of their commodities accounts with PFG. PFG supplied none of the funds in their accounts. Prior to the Petition Date, all Plaintiffs and members of the Class had full control and management of their individual accounts, making deposits and withdrawals without impairment. Each Plaintiff and Class member paid all of the taxes on profits through their account.

13. The Commodity Exchange Act (“CEA”) regulations require that all futures customer funds must be segregated and that such funds remain customer property. Specifically, 17 CFR §1.20(a) states:

*(a) General.* A futures commission merchant must separately account for all futures customer funds and segregate such funds as belonging to its futures customers. A futures commission merchant shall deposit futures customer funds under an account name that clearly identifies them as futures customer funds and shows that such funds are segregated as required by sections 4d(a) and 4d(b) of the Act and by this part. A futures commission merchant must at all times maintain in the separate account or accounts money, securities and property in an amount at least sufficient in the aggregate to cover its total obligations to all

futures customers as computed under paragraph (i) of this section. The futures commission merchant must perform appropriate due diligence as required by § 1.11 on any and all locations of futures customer funds, as specified in paragraph (b) of this section, to ensure that the location in which the futures commission merchant has deposited such funds is a financially sound entity.

14. CEA regulation 17 CFR §120(e)(2) requires that a futures commission merchant shall not commingle futures customer funds with its own funds. The regulation states:

A futures commission merchant shall not commingle futures customer funds with the money, securities or property of such futures commission merchant, or with any proprietary account of such futures commission merchant, or use such funds to secure or guarantee the obligation of, or extend credit to, such futures commission merchant or any proprietary account of such futures commission merchant; *provided, however*, a futures commission merchant may deposit proprietary funds in segregated accounts as permitted under § 1.23.

15. PFG maintained all of the customer futures funds in a segregated futures customer account as liabilities in its financial statements and never commingled the assets of the futures accounts with its operating account or any other account.

16. Plaintiffs and members of the Class signed their contracts with PFG, unaware of any fraud or embezzlement taking place by any officer or director of PFG. Had Plaintiffs or members of the Class become aware of fraud or embezzlement being perpetrated by any PFG officer or director, Plaintiffs and Class members would have not signed their Amendments with PFG or would have ceased doing business immediately and withdrawn all funds from their accounts.

17. Russell L. Wasendorf, Sr. (“Wasendorf”) was the Chief Executive Officer and Chairman of the Board of PFG from its inception.

18. On or about July 8, 2012, the CFTC notified Wasendorf that PFG's bank accounts were going to be electronically monitored.

19. On July 9, 2012, Wasendorf attempted suicide in Cedar Falls, Iowa. Prior to his attempted suicide, Wasendorf drafted two notes and a signed statement in which he admitted to embezzling millions of dollars over a period of nearly 20 years by using falsified bank statements, intercepting balance confirmation forms from regulators, forging a bank officer's signature, and intentionally misreporting information to regulators.

20. Wasendorf was arrested on July 13, 2012 and charged with numerous crimes, including lying to federal regulators and defrauding customers out of more than \$100 million in a 20-year fraud. The U.S. District Attorney for the Northern District of Iowa filed a criminal complaint against Wasendorf in the United States District Court for the Northern District of Iowa, Case No. CR 12-2021 (the "Criminal Case"), regarding Wasendorf's fraudulent conduct.

21. In September of 2012, Wasendorf entered into a voluntary plea agreement in the Criminal Case, whereby Wasendorf pled guilty to four criminal charges, including lying to regulators, embezzlement and mail fraud. In the plea agreement, Wasendorf admitted to embezzling and misappropriating in excess of \$100,000,000 in PFG's customer funds by, among other things, secretly withdrawing money from the "Customer Seg Account," a PFG account at U.S. Bank for futures customers, and falsifying account statements. On January 23, 2013, Wasendorf was sentenced to 50 years in prison and ordered to pay more than \$215 million in restitution.

22. On September 17, 2013, the Trustee filed an adversary proceeding with this Court styled *Bodenstein v. Halyard Capital Advisors, LLC, et al.* in which he sought to recover some of the funds embezzled by Wasendorf. That pleading admitted that Wasendorf had embezzled millions of dollars of customer funds prior to Plaintiffs' signing their customer agreements with the Debtor and prior to their depositing their property with Debtor.

23. Some time prior to November 12, 2012, (the original “Bar Date”), the Trustee determined that Plaintiffs and the Class had an unfettered and unencumbered right to possession to their funds held by Chase in their subaccounts. Consistent with that determination, on September 5, 2012, the Trustee filed a Motion for an Order Approving Interim Distributions to Certain Commodity Customers, including all putative class members. The Motion was granted and the Trustee made the partial distribution of funds to the identified Commodities Customers. No “Proof of Claim” accompanied the distribution.

24. By order dated September 26, 2012, the Court granted the Trustee’s “Motion for Entry of an Order Establishing Claims Processes for Customer Claims and General Claims...” (“Claims Process Motion”) The order set November 16, 2012 as the “Original Bar Date.” By order dated November 14, 2012, the Original Bar Date was extended to December 14, 2012. (“Extended Bar Date”) The Trustee, consistent with those orders, mailed out Proofs of Claim forms to Plaintiffs and the Class.

25. Each of the Plaintiffs either sent in a Proof of Claim after the Extended Bar Date or did not submit any Proof of Claim.

26. Based upon their failure to timely file a Proof of Claim, the Trustee has asserted a right to the property of Plaintiffs and the Class. However, because the Estate has no claim to the money held in the segregated funds account of Plaintiffs and the Class, the Trustee holds these funds in constructive trust for the benefit of Plaintiffs and the Class.

#### **CLASS ALLEGATIONS**

27. Plaintiffs seek to represent a class that consists of all persons and entities who were Commodities Futures Account Holders who held accounts with the Debtor as of the

Petition Date for the purpose of trading commodities and whose account funds the Debtor has wrongfully refused to release.

28. A class action is appropriate in this case pursuant to Federal Rules of Bankruptcy Procedure 7023(a) and 7023(b) because:

a. The putative class is so numerous – numbering at least in the hundreds – and so geographically dispersed throughout the world so that joinder of all members is impractical.

b. There are questions of both law and fact common to the class arising out of the Trustee's wrongful claim of an equitable interest in the accounts of the class members, the Trustee's refusal to release their funds, the fact that the Estate has been unjustly enriched and the fraud perpetrated on class members by the Debtor. In addition, the relevant contract language is identical, or substantially identical with respect to each member of the class. All of the members of the class supplied all of the consideration for their accounts, had complete control over their accounts and were liable for taxes on any profits generated by their accounts. Despite these facts, the Defendant has refused to release Plaintiffs' funds to Plaintiffs, alleging that their funds constituted property of the Debtor and were subject to the claims of creditors of the bankruptcy estate.

c. Plaintiffs' claims are typical of the claims of all Class members because (1) Plaintiffs and other members of the class each signed PFGBEST Customer Agreements which were identical in all material respects, (2) Plaintiffs and other members of the Class were treated in the same manner by PFG insofar as their contracts and the management of their accounts, and (3) Plaintiffs and other members of the Class deposited their funds with PFG without any disclosure or knowledge that Wasendorf had

been embezzling over \$100 million from PFG futures accounts during a twenty year period prior to the bankruptcy, and (4) the Trustee refuses to release their funds because they either filed late claims or did not file claims.

d. Plaintiffs will fairly, adequately, and vigorously protect the interests of the Class. Plaintiffs' interests are the same as those of other Class members, and Plaintiffs have retained counsel experienced in class action litigation with adequate qualifications and ability to conduct this litigation on their behalf.

e. This action may be maintained as a class pursuant to Bankruptcy Rule 7023(b)(1) because the prosecution of separate actions by members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Debtor and/or adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

## **COUNT I**

### **BREACH OF FIDUCIARY DUTY**

29. Plaintiffs restate and incorporate herein by reference the allegations asserted in the preceding and succeeding paragraphs as though fully set forth herein.

30. As a CFTC-registered FCM, Debtor was at all relevant times subject to high statutory standards of good faith and fair dealing in its conduct toward its customers, including, *inter alia*, NFA Compliance Rule 2-4 requiring that FCMs and their Associates observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business and swaps business.

31. By the nature of its business as an FCM, PFG was in a position of higher power, knowledge, judgment and understanding relative to Plaintiffs as to the manner in which such business, including the purpose and handling of customer properties, was conducted, and Plaintiffs had no choice but to rely upon PFG, and to believe PFG's representations, in such regard.

32. In regard to PFG's solicitation and handling of customer property, due, *inter alia*, to its regulatory obligations and/or commercial advantages in its dealings with customers, PFG acted in the role of fiduciary with respect to Plaintiffs and the Class prior to, during, and after the time PFG induced Plaintiffs to open accounts with, and surrender their property to, PFG.

33. PFG owed Plaintiffs duties of disclosure, candor, care and loyalty. As a fiduciary, PFG had obligations to Plaintiffs including the obligation to clearly explain to Plaintiffs the actual legal and procedural basis on which PFG held their property, and the obligation to implement those procedures diligently and in good faith.

34. The disclosed bases upon which Plaintiffs' and the Class's properties were accepted and handled by PFG were untrue, misleading, or ambiguous, such statements constituted intentional, reckless, or negligent misrepresentations of facts, and/or promises made without the present intent to perform them. These representations and promises were material to Plaintiffs and the Class, and Plaintiffs and the Class reasonably and justifiably relied upon same, in making their decisions to deposit their property with PFG, and, therefore, Debtor's actions constitute fraud and/or misrepresentation.

35. In addition, the PFG's failure to disclose to Plaintiffs and the Class Wasendorf's embezzlement of customer funds as described herein prior to their signing customer agreements with Debtor was an omission of material fact. Plaintiffs would not have signed customer

agreements with Debtor and would not have deposited their property with the Debtor had they known of Wasendorf's fraud. Such an omission constituted a fraud upon Plaintiffs.

36. The oral and written representations of PFG to Plaintiffs and the Class regarding the basis upon which Plaintiffs' and the Class' properties were accepted and handled by PFG, taken together with the language of the Agreement, were untrue, misleading, or ambiguous, and/or to the extent PFG may have failed to hold the funds of Plaintiffs' and the Class in a separate and identifiable form, or otherwise in accordance with its representations and promises, or to the extent PFG may have otherwise acted to defeat or compromise Plaintiffs' equitable interest in their property, PFG's actions constitute breach of its fiduciary duty to Plaintiffs.

37. Because PFG has breached its fiduciary duties of disclosure, candor, care and loyalty to Plaintiffs and the Class and has been enriched thereby, the Debtor is not entitled to retain any compensation or other benefits belonging to Plaintiffs and the Class or other benefits the Debtor may have received, or may receive in the future from the accounts belonging to Plaintiffs and the Class or to profit in any way. To permit the Trustee to apply the property of Plaintiffs and the Class to its general obligations would be a manifest injustice, constituting, *inter alia*, the unjust enrichment of Debtor and its other direct and indirect obligees, the prevention of which requires the equitable intervention of this Court.

38. Accordingly, Debtor has been unjustly enriched in an amount of the funds in the accounts belonging to Plaintiffs and the Class, which represents the money PFG received from Plaintiffs and the Class.

39. Based upon the representations of the Trustee, PFG did in fact maintain one bank account with Chase for the deposits of Plaintiffs and members of the Class and that account has

been maintained and has not been distributed as of the date of the filing of this Adversary Complaint. Further, each Plaintiff and Class member had a designated account with PFG and the funds deposited for trading being required to be kept in a segregated account and, therefore, the funds of Plaintiffs and members of the Class may be directly traced to such specific accounts, or are otherwise subject to demonstration of an adequate nexus to the funds originally deposited by Plaintiffs and the Class, and, therefore, subject to impressment by this Court.

40. Debtor's fraud, misrepresentation, breach of its fiduciary duties, and/or other actions at the time it induced deposit of, accepted, and/or handled the funds of Plaintiffs and the Class, as well as its unjust enrichment require the imposition of a constructive trust over such properties by this Court as a matter of equity.

41. As a constructive trustee of the properties of Plaintiffs and the members of the Class, Debtor must be deemed to have had no equitable interest in such properties at that time it took possession of same, and to the extent that no equitable interest or right of offset in such properties has since accrued in Debtor's favor, pursuant to §541 of the Code Plaintiffs' funds do not constitute property of the estate, and cannot be utilized by the Trustee to satisfy the Debtor's obligations.

42. Accordingly, the Trustee should immediately surrender title and possession of all property received from each member of the class, net of any demonstrable offsetting liabilities, pursuant to § 541(d) of the Code. Pursuant to FRBP 6007(b) Plaintiffs seek a declaratory judgment in such accord, and an order directing same, or such other relief as the Court may deem just and proper.

**COUNT II**

**COMMON LAW FRAUD**

43. Plaintiffs restate and incorporate herein by reference the allegations asserted in the preceding and succeeding paragraphs as though fully set forth herein.

44. The honesty and integrity of PFG was material to Plaintiffs and members of the Class in making their decision to contract with PFG, to open accounts with PFG and to continue trading through PFG. PFG had a duty to disclose all material facts relating to Wasendorf's conduct to Plaintiffs and members of the Class prior to the execution of their Agreements with PFG.

45. PFG knew of Wasendorf's conduct at the time it contracted with Plaintiffs and the Class and intended that Plaintiffs and members of the Class sign their Agreements believing in the honesty and integrity of PFG. Plaintiffs and members of the Class were induced to sign their Agreements ignorant of Wasendorf's conduct in stealing from its accounts as described herein. Had Plaintiffs and members of the Class known the truth they would not have signed their Agreements with PFG. As a direct result of PFG's failure to disclose Wasendorf's conduct, Plaintiffs and members of the Class have been damaged.

**COUNT III**

**UNJUST ENRICHMENT**

46. Plaintiffs restate and incorporate herein by reference the allegations asserted in the preceding and succeeding paragraphs as though fully set forth herein.

47. As a result of PFG's failure to disclose Wasendorf's conduct, PFG received the benefit of monies deposited by Plaintiffs and members of the Class. PFG has unjustly retained that benefit. PFG's retention of the funds was and continues to be detrimental to Plaintiffs and

members of the Class. PFG's retention of these funds violates fundamental principles of justice, equity and good conscience.

#### **COUNT IV**

#### **CONVERSION**

48. Plaintiffs restate and incorporate herein by reference the allegations asserted in the preceding and succeeding paragraphs as though fully set forth herein.

49. Plaintiffs and the Class have demanded the return of the funds which they deposited in their accounts in the face of the Trustee's insistence that PFG obtained the equitable interests retained by Plaintiffs and the Class at the time their accounts were created.

50. The Trustee's refusal to return the funds of Plaintiffs and the Class is an unauthorized and wrongful assumption of ownership. Plaintiffs and the Class have a right to their funds because they hold equitable interests in their accounts. Plaintiffs and the Class have a right to immediate possession of their funds, absolutely and unconditionally. Plaintiffs and the Class have demanded possession of their funds but the Trustee has refused to return the converted accounts of Plaintiffs and the Class despite this.

51. Plaintiffs and the Class are entitled to actual damages for the conversion of their accounts in the amounts they had on deposit on the Petition Date, and punitive damages for the Debtor's deliberate and malicious conversion of their accounts.

**WHEREFORE**, Plaintiffs and the Class pray for entry of a declaratory and monetary judgment in their favor and against the Trustee as follows:

1. Certify this case as a Class action, naming Plaintiffs as representatives of the Class and appointing Plaintiffs' counsel as counsel for the Class;

2. Grant Plaintiffs and the Class a declaratory judgment, pursuant to FRBP 6007(b) imposing a constructive trust in favor of Plaintiffs and the Class on the accounts of the all persons and entities who were Commodities Futures Account Holders who held accounts with the Debtor as of the Petition Date for the purpose of trading commodities and whose account funds the Debtor has refused to release.
3. Award Plaintiffs and the Class monetary damages in an amount consisting of all funds in their accounts as of the Petition Date, plus all interest earned on their accounts.
4. Award Plaintiffs and the Class punitive damages for breaches of fiduciary duty and fraud;
5. Award attorneys' fees and costs to counsel for the Class; and
6. Award the Class such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiffs demand trial by jury on all matters triable by jury.

Dated: January 26, 2017

Respectfully submitted,

RICHARD STANDISH and  
CHARLES SIZEMORE

/s/Terrence Buehler

Terrence Buehler  
The Law Office of Terrence Buehler  
17W220 22<sup>nd</sup> St. Suite 410  
Oakbrook Terrace, IL 60181  
Phone: (331) 225-2123

Thomas Burke

Thomas F. Burke, P.C.  
53 W. Jackson Blvd., Suite 1441  
Chicago, IL 60604  
Phone: (312) 362-1300