

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:20-CV-21887-DPG

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

DANIEL FINGERHUT,
DIGITAL PLATINUM, INC., DIGITAL
PLATINUM, LTD., HUF MEDIYA
(A/K/A HOOF MEDIA), TAL VALARIOLA,
and ITAY BARAK

Defendants,

and

AICEL CARBONERO,

Relief Defendant.

_____ /

RECEIVER'S EIGHTH STATUS REPORT

Melanie E. Damian, the court-appointed Receiver (the "Receiver") in the above-captioned enforcement action ("CFTC Enforcement Action"), submits her eighth status report concerning the status of the Receivership, established pursuant to the Court's Order Appointing Temporary Receiver [ECF No. 33] (the "Appointment Order"). This interim report sets forth the Receiver's activities and efforts to fulfill her duties under the Appointment Order for the period from January 1, 2023, through October 31, 2023 (the "Reporting Period").

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I. INTRODUCTION

Since her appointment on May 8, 2020, the Receiver, with the assistance of her retained professionals, has worked diligently to continue to fulfill her duties and obligations as set forth in the Appointment Order, to preserve the assets and records of the Receivership Estate (“Receivership Estate” or “Estate”) and to collect disgorgement funds from the Defendants in accordance with the Consent Order for Permanent Injunction as to Defendant Daniel Fingerhut (“Fingerhut”) [ECF No. 283] and the Consent Order for Permanent Injunction as to Defendants Digital Platinum LTD and Tal Valariola and Itay Barak (collectively the “Israeli Defendants” and together with Fingerhut, the “Receivership Defendants”) [ECF No. 284] (collectively the “Permanent Injunctions”). The Receiver will continue to seek payment of Receivership Defendants’ remaining disgorgement obligations and the disclosure of their financial activities to ensure they are making all reasonable efforts to meet those obligations and comply with this Court’s Orders in a timely manner.

From the entry of the Permanent Injunction through the end of this Reporting Period, the Israeli Defendants have paid \$2,503,023.28 of their \$3 million disgorgement obligation, making several periodic payments towards their disgorgement obligation during the first half of the Reporting Period. The Israeli Defendants did not make payments during the past few months but their counsel indicated that they would resume making payments in short order. During the same time period, only \$50,188.49 was credited towards Defendant Fingerhut’s \$400,011 disgorgement obligation based on the \$45,769 in cash that the Receiver recovered and the \$4,419.49 in proceeds from the liquidation of his investment account during a prior reporting period. Defendant Fingerhut has claimed, through his counsel, that from May 2020 until the present he has not had a

job, income, or funds to make any disgorgement payments and thus has not made any payments during the Reporting Period. Pursuant to order to show cause why Fingerhut should not be held in contempt of Court for failing to provide to the Receiver financial disclosures to support his claims, Fingerhut provided satisfactory financial disclosures and agreed to provide periodic updated financial disclosures upon request by the Receiver. *See* ECF No. 337.

During the Reporting Period, the Court entered a Final Judgment against Relief Defendant Aicel Carbonero (“Carbonero”), requiring her to disgorge and pay to the Estate \$389,000 plus post-judgment interest. Prior to entry of the Final Judgment, the Receiver had recovered \$126,088.22 from Carbonero’s accounts, which amount was applied to her disgorgement obligation. But, Carbonero did not make any further payments to the Estate or respond to counsel’s inquiries regarding the timing of payments. Accordingly, the Receiver filed a motion to impose a constructive trust over Carbonero’s residence in favor of the Estate, which resulted in Carbonero agreeing to pay the entire balance of her disgorgement obligation within six (6) months. Thereafter, Carbonero made the first payment of \$100,000 and the second payment in the amount of \$30,000.

Finally, during a prior reporting period, the Receiver implemented the Court-approved claims process, collected and reviewed claims from defrauded investors, sent out initial and final determinations of allowed and disallowed claims, and sent out the initial distribution to claimants with allowed claims. During this Reporting Period, the Receiver continued to respond to claimant inquiries and requests to replace lost or expired distribution checks in accordance with the Court-approved Distribution Plan. *See* ECF Nos. 301 and 307.

II. THE RECEIVER’S STATUS REPORTS

The Appointment Order requires the Receiver to file with the Court and serve on all parties

periodic reports summarizing efforts to marshal and collect assets, administer the Receivership Estate, and otherwise perform the duties mandated by the Appointment Order. *See* ECF No. 33 at p. 4.

Prior to filing this Report, the Receiver filed seven status reports detailing the Receiver's continued efforts to carry out her duties and obligations as set forth in the Appointment Order. *See* ECF Nos. 125, 192, 242, 270, 308, 320, and 334. This Report covers the period from January 1, 2023 through October 31, 2023.

A. Final Judgment against Relief Defendant Establishing Disgorgement Obligation

During the Reporting Period, on February 8, 2023, the Court granted the CFTC's Motion for Summary Judgment against Relief Defendant Aicel Carbonero. *See* ECF No. 332. In its Motion, the CFTC argued that summary judgment should be granted in its favor because there are no genuine issues of material fact as to whether Fingerhut transferred at least \$389,000 in illegally obtained funds to Carbonero and that Carbonero has no legitimate claim to the funds and Residence transferred to her. *See* ECF No. 280 at 14. The Court agreed with the CFTC finding that Carbonero has no legitimate claim to the \$389,000 in illegal funds that she received from Fingerhut because the funds were not transferred pursuant to a pre-existing formalized agreement or valid contract. *See* ECF No. 332 at pp. 9-10. On April 11, 2023, the CFTC filed its Motion for Final Judgment, pursuant to Federal Rule of Civil Procedure 58, against Carbonero. *See* ECF No. 336. On May 11, 2023, the Court entered the Final Judgment against Carbonero, setting her disgorgement obligation at \$389,000 plus post-judgment interest at the statutory rate. *See* ECF No. 341. And, the Court charged the Receiver with collecting that disgorgement obligation and incorporating any amount collected into the Estate for the benefit of its claimants. *See id.*

The Receiver's counsel attempted to negotiate with Carbonero's counsel a plan for

Carbonero to pay her disgorgement obligation, but Carbonero did not propose any plan and her counsel was unresponsive to the Receiver's counsel's requests for a proposal. Subsequently, on September 7, 2023, the Receiver filed a Motion for Imposition of Constructive Trust on Judgment Debtor Aicel Carbonero's Residence and Certain Funds and for Turnover of Residence and Funds to the Estate [ECF No. 345] (the "Constructive Trust Motion"), based on Carbonero's having invested the ill-gotten gains she had received from Fingerhut in her residence. The Court held a hearing on that motion and heard argument from the Receiver's counsel, but Carbonero's counsel, who had filed a motion to withdraw as Carbonero's counsel, did not present argument in opposition to the motion, and the Court set a second hearing on the motion to provide Carbonero with additional time to respond to the motion. Prior to the second hearing, new counsel for Carbonero contacted the Receiver's counsel to discuss a plan to pay her entire disgorgement obligation and Carbonero and the Receiver reached an agreement pursuant to which Ms. Carbonero would pay her disgorgement obligation through a six-month payment plan. At the second hearing on the Constructive Trust Motion, the Court approved that payment plan. Soon thereafter, Ms. Carbonero made her first payment for \$100,000 and approximately one month later timely made the second payment for \$30,000.

B. Default Final Judgment and Permanent Injunction against Digital Platinum, Inc. and Huf Mediya, Ltd., Establishing Disgorgement Obligation and Civil Monetary Penalty

On February 8, 2023, the Court granted the CFTC's Motion for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties and Other Statutory and Equitable Relief against Defendants Digital Platinum, Inc. and Huf Mediya, Ltd. *See* ECF No. 288. The Court also entered Default Final Judgment against those Defendants, jointly and severally, establishing the disgorgement amount and civil monetary penalty, as described *supra*, and charging the Receiver

with collecting the disgorgement amount. *See* ECF No. 333.

III. STATUS AND ACTIVITIES OF THE RECEIVERSHIP (JANUARY 1, 2023, THROUGH OCTOBER 31, 2023)

The Receiver provides herein a detailed description of the status of the operations and assets of the Receivership Estate and her efforts and accomplishments with respect to her duties under the Court's Orders during the current Reporting Period.

A. Receivership Receipts, Disbursements, and Assets

As of October 31, 2023, the Receiver held funds totaling \$581,478.28 in her fiduciary account for the Receivership Estate at City National Bank in Miami, Florida. *See* Receivership Receipts and Disbursements set forth in the Standardized Fund Accounting Report attached hereto as **Exhibit A**. In addition to this cash on hand, the Estate includes the following assets:

- Assets of Defendants Valariola and Barak in Israel, where they reside (value of assets has not been fully determined);
- A springing interest in condominium unit located at 7276 Gary Avenue, Miami Beach, Florida 33141 (the "Residence") (current market value is estimated to exceed \$850,000) if Carbonero does not pay the remaining balance of her disgorgement obligation set forth above, based on amount that Fingerhut transferred to pay down mortgage on the unit, and personal property therein including without limitation furniture and electronics (value has not been determined but is estimated to be insignificant);¹
- Motorboat titled in Defendant Fingerhut's name (current resale value is less than the amount due on the personal loan utilized to purchase it, therefore, there is no equity in the motorboat that could benefit the Estate); and
- The right to collect the balances of the disgorgement obligations of Defendants Digital Platinum LTD Valariola, Barak, and Fingerhut and of Relief Defendant Carbonero, as set forth above.

¹ An inventory of the Residence was attached to the Receiver's Initial Report as Exhibit C [ECF No. 125].

B. Receiver's Continued Efforts to Locate and Marshal Records and Assets of the Defendants

During the Reporting Period, the Receiver continued to fulfill her duties and obligations under the Appointment Order by focusing on collecting the disgorgement obligations from the Receivership Defendants pursuant to the Permanent Injunctions and Final Judgment against them and from Relief Defendant Carbonero pursuant to the Final Judgment against her.

1. Defendant Fingerhut's Failure to Make Payments Towards His Disgorgement Obligation

Prior to the Reporting Period and the entry of the Permanent Injunction against Defendant Fingerhut, the Receiver had taken possession of \$45,769 in cash held by or for the benefit of Fingerhut and had frozen an investment account of Fingerhut, pursuant to the Preliminary Injunction and the Appointment Order. After the Court entered the Permanent Injunction, the Receiver, pursuant thereto, had Fingerhut's investment account liquidated and the sale proceeds totaling \$4,419.49 transferred to the Estate. To date, a total of \$50,188.49 of Defendant Fingerhut's assets was credited towards his \$400,011 disgorgement obligation established in the Permanent Injunction. Since then, including during the Reporting Period, Defendant Fingerhut has not made any further payments towards his disgorgement obligation. The Receiver requested, pursuant to the Permanent Injunction, that Defendant Fingerhut provide updated financial disclosures of his assets and income and make payment towards his disgorgement obligation, but the Receiver did not receive a response. Accordingly, on May 2, 2023, the Receiver filed a Motion for Order to Show Cause why Defendant Fingerhut should not be held in contempt of Court for failing to provide the required disclosures and/or make any payments towards his remaining disgorgement obligations as required by the Permanent Injunction. *See* ECF No. 337. Fingerhut failed to file a response to that Motion, and on September 14, 2023, the Court held a hearing at which it granted the Receiver's Motion and ordered Defendant Fingerhut to appear before the

Court on September 27, 2023 and show cause why he should not be held in contempt of court.

During the Reporting Period, the Receiver was able to settle the matter with Defendant Fingerhut who provided updated financial disclosures and a declaration concerning his lack of employment and current inability to pay his disgorgement obligation. Further, Fingerhut agreed to cooperate with the Receiver, including by responding to future requests for financial information, in connection with her efforts to collect the remaining balance of his disgorgement obligation. *See* Notice of Compliance filed by the Receiver [ECF No. 362].

2. Israeli Defendants' Payments Towards Their Disgorgement Obligation

During the Reporting Period, the Receiver worked with counsel for the Israeli Defendants to collect payments totaling \$27,856.72 transferred from those Defendants in 18 periodic transfers to the Receiver's fiduciary account for the Estate in partial satisfaction of their disgorgement obligation under the Permanent Injunctions. *See* Exhibit A. During the past few months of the Reporting Period, the Israeli Defendants did not make payments towards their disgorgement obligation, so the Receiver's counsel made demand for their continued payments and their counsel reported that they would resume making periodic payments.

C. Receiver's Implementation of Court-Approved Claims Process

During a prior reporting period, on February 9, 2022, the Receiver filed her Motion to Approve (A) Noticing and Claims Administration Process (the "Claims Process") and (B) Plan of Distribution (the "Distribution Plan") [ECF No. 301] ("Motion to Approve Claims Process"), which the Court granted on March 2, 2022 [ECF No. 307]. The Receiver has now completed the Claims Process by processing a total of 223 claims, with 148 allowed claims totaling \$4,087,125.96 from claimants of this Receivership Estate and claimants of the related receivership estate for All In Publishing, LLC and Gasher, Inc. – defendants in a related CFTC enforcement

action which had defrauded many of same customers in an overlapping scheme. No claimant appealed the Receiver's Final Determination by filing an appeal with this Court.

As of the close of the prior reporting period, claimants from this Estate were sent distributions totaling \$1,838,576.38 (representing 80% of the Estate's cash-on-hand) which provided amounts equal to 45% of each claimant's unpaid, allowed claim. *See* ECF No. 327. During this Reporting Period, the Receiver assisted claimants who did not receive their checks to locate their payments and cancel lost checks and issued wire transfers or PayPal payments to those claimants.

The Receiver also continued to assist any claimant who did not receive timely notice of the Claims Process and/or had difficulty obtaining documentation of their losses to compile a claim that may be approved as a late-filed claim by this Court. The Receiver recently filed a motion to approve a late-filed claim [ECF No. 342] after working with a foreign claimant who had not received timely notice of the Claims Process or an online Claim Form. The Receiver also requested this Court's authorization to make an initial distribution to that late claimant that would result in the claimant receiving a percentage recovery equal to all other claimants holding allowed claims. *See* ECF No. 342. The Court approved that late claim and initial distribution and the Receiver has sent the claimant the approved distribution. *See* ECF No. 343.

D. Receiver's Financial Advisor, Forensic Accountants, and Tax Professionals

During the initial reporting period, the Receiver retained Kapila Mukamal LLP ("Kapila") as her financial advisor, forensic accountants, and tax professionals to assist her to fulfill her duties under the Appointment Order. Kapila did not render any services on behalf of the Receiver during the Reporting Period.

IV. EXPENSES AND DISBURSEMENTS OF THE ESTATE

On April 3, 2023, the Receiver filed Receiver's Seventh Interim Application for an Order Approving and Authorizing Payment of Fees and Expenses of Receiver and Her Professionals [ECF No. 335], seeking approval and authorization of payment for professional fees and expenses for the five-month period from August 1, 2022, through December 31, 2022. On May 10, 2023, the Court granted that fee motion and the Receiver made a disbursement for professional fees and expenses of \$31,939.70. *See* ECF NO. 340. During the Reporting Period, the Receiver made disbursements from her fiduciary account for the Receivership Estate in the amount of \$36,471.56 for payment of expenses for the Claims Process and Distribution Plan and document storage. *See* Exhibit A.

V. RECEIVER'S RECOMMENDATIONS AND CONCLUSION

In light of her ongoing efforts to fulfill her duties under the Appointment Order and to carry out the terms of the Permanent Injunctions, including collecting the Defendants' and the Relief Defendant's respective disgorgement amounts, as well as her efforts to complete the Court-approved Plan of Distribution [*see* ECF Nos. 301, 307] and make a final distribution, the Receiver recommends that the Receivership continue to permit the Receiver to complete this work.

The Receiver will continue to work with her team of professionals and with counsel for the Defendants and the Relief Defendant to collect amounts sufficient to satisfy their disgorgement obligations under the Court's Orders, confirm Defendant Fingerhut's claimed inability to pay his disgorgement obligation, and, as necessary, work with counsel for the CFTC to enforce the Permanent Injunctions in Israel and other countries in which such Defendants may hold assets in accordance with applicable international law.

Finally, the Receiver will continue to perform all other duties as mandated by the Court's

Orders and will update the Court on a periodic basis as to the status of her efforts.

Respectfully submitted this 10th day of November, 2023.

Respectfully submitted,

/s/ Kenneth Dante Murena
Kenneth Dante Murena, Esq.
Florida Bar No. 147486
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*Counsel for Melanie E. Damian,
Court-Appointed Receiver*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission via this Court's CM/ECF filing system on November 10, 2023, on all counsel or parties who have appeared in the above-styled action.

/s/ Kenneth Dante Murena
Kenneth Dante Murena, Esq.
*Counsel for Melanie E. Damian,
Court-Appointed Receiver*

Melanie E. Damian, Esq., as Receiver
DAMIAN & VALORI, LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131

STANDARDIZED FUND ACCOUNTING REPORT
CIVIL – RECEIVERSHIP FUND FOR CFTC v. DIGITAL PLATINUM, INC, ET AL.
Reporting Period 1/1/2023 to 10/31/2023

		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 1/1/2023):	\$ -	\$ -	\$482,593.06
	Increases in Fund Balance:			
Line 2	Business Income	\$ -	\$ -	\$ -
Line 3	Cash and Securities	\$ -	\$ -	\$ -
Line 4	Interest/Dividend Income [1]	\$ 58.76	\$ 58.76	\$ 58.76
Line 5	Business Asset Liquidation [1]	\$ 167,439.72	\$ 167,439.72	\$ 167,439.72
Line 6	Personal Asset Liquidation	\$ -	\$ -	\$ -
Line 7	Third-Party Litigation Income	\$ -	\$ -	\$ -
Line 8	Miscellaneous - Other	\$ -	\$ -	\$ -
	Total Funds Available (Lines 1-8):			\$ 650,091.54
	Decreases in Fund Balance:			
Line 9	Disbursements to Investors			
Line 10	Disbursements for Business Operations [1]	\$ 36,673.56	\$ 36,673.56	\$ 36,673.56
Line 10a	Disbursements to Receiver or Other Professionals [1]	\$ 31,939.70	\$ 31,939.70	\$ 31,939.70
Line 10b	Business Asset Expenses		\$ -	
Line 10c	Personal Asset Expenses:	\$ -	\$ -	\$ -
Line 10d	Investment Expenses	\$ -	\$ -	\$ -
Line 10e	Third-Party Litigation	\$ -	\$ -	\$ -
Line 10f	Tax Administrator Fees and Bonds	\$ -	\$ -	\$ -
Line 10g	Federal and State Tax Payments	\$ -	\$ -	\$ -
	Total Disbursements for Receivership Operations	\$ 68,613.26	\$ 68,613.26	\$ 68,613.26
Line 11	Disbursements for Distribution Expenses Paid by the Fund:	\$ -	\$ -	\$ -
Line 11a	Distribution Plan Development Expenses:	\$ -	\$ -	\$ -
Line 11b	Distribution Plan Implementation Expenses:	\$ -	\$ -	\$ -
Line 12	Disbursements to Court/Other	\$ -	\$ -	\$ -

EXHIBIT A

Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees	\$ -	\$ -	\$ -
Line 12b	Federal Tax Payments	\$ -	\$ -	\$ -
	Total Disbursements to Court/Other			
	Total Funds Disbursed (Lines 9-11)			\$ 68,613.26
Line 13	Ending Balance (As of October 31, 2023)			\$ 581,478.28
Line 14	Ending Balance of Fund – Net Assets:			
Line 14a	Cash & Cash Equivalents			\$ 581,478.28
Line 14b	Investments			\$ -
Line 14c	Other Assets or Uncleared Funds			
	Total Ending Balance of Fund – Net Assets			\$ 581,478.28

[1] Funds were received and disbursed to administer the Receivership Estate and its assets. See Receipts and Expenses in Attachment 1 hereto.

Respectfully submitted,

Damian & Valori LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
Telephone: 305-371-3960
Facsimile: 305-371-3965

/s/ Melanie E. Damian
Melanie E. Damian
Court-Appointed Receiver

Attachment 1 to Exhibit A to Receiver's Report**CFTC v. Digital Platinum LLC/Fingerhut et al. - Receipts of Fiduciary Account**

Date	From	Amount
1/5/2023	Transferwise Inc.	\$ 1,920.00
1/17/2023	Transferwise Inc.	\$ 2,130.00
1/25/2023	Transferwise Inc.	\$ 2,422.00
2/1/2023	Transferwise Inc.	\$ 1,773.00
2/9/2023	Transferwise Inc.	\$ 1,953.00
2/15/2023	Transferwise Inc.	\$ 1,856.00
2/22/2023	Transferwise Inc.	\$ 1,993.00
3/1/2023	Transferwise Inc.	\$ 1,520.00
3/7/2023	Transferwise Inc.	\$ 1,475.00
3/14/2023	Transferwise Inc.	\$ 1,100.00
3/20/2023	Transferwise Inc.	\$ 1,299.00
4/3/2023	Transferwise Inc.	\$ 1,590.00
4/7/2023	Transferwise Inc.	\$ 1,322.00
5/8/2023	Transferwise Inc.	\$ 1,323.00
5/22/2023	Transferwise Inc.	\$ 965.25
5/31/2023	Transferwise Inc.	\$ 1,220.47
6/14/2023	Transferwise Inc.	\$ 949.00
6/28/2023	Transferwise Inc.	\$ 1,046.00
7/12/2023	Transferwise Inc.	\$ 946.00
7/31/2023	Wise US	\$ 1,000.00
8/11/2023	Wise US	\$ 1,036.00
8/21/2023	Wise Us	\$ 1,015.00
9/5/2023	Wise Us	\$ 970.00
9/22/2023	Wise Us	\$ 1,080.00
9/27/2023	Mia Smile LLC	\$ 100,000.00
10/2/2023	Wise Us	\$ 980.00
10/16/2023	Wise Us	\$ 926.00
10/25/2023	Wise Us	\$ 1,630.00
10/30/2023	Mia Smile LLC	\$ 30,000.00
Total		\$ 167,439.72

Bank Interest

Date	Account	Amount
1/31/2023	City National Bank	\$ 6.39
2/28/2023	City National Bank	\$ 5.36
3/31/2023	City National Bank	\$ 5.98
4/30/2023	City National Bank	\$ 5.43
5/31/2023	City National Bank	\$ 6.13
6/30/2023	City National Bank	\$ 5.45
7/31/2023	City National Bank	\$ 5.65
8/31/2023	City National Bank	\$ 5.67
9/30/2023	City National Bank	\$ 5.45
10/31/2023	City National Bank	\$ 7.25
Total Interest		\$ 58.76

GRAND TOTAL OF RECEIPTS \$ **167,498.48**

Attachment 1 to Exhibit A to Receiver's Report**CFTC v. Digital Platinum LLC/Fingerhut et al. - Expenses of Fiduciary Account**

Date	Payable	Amount
1/6/2023	Teris	\$ 80.00
2/1/2023	Stretto	\$ 27,555.66
2/10/2023	Teris	\$ 80.00
3/9/2023	Teris	\$ 165.00
3/9/2023	Stretto	\$ 4,284.60
4/4/2023	Stretto	\$ 491.80
4/10/2023	Teris	\$ 165.00
4/27/2023	Stretto	\$ 1,048.00
5/23/2023	Teris	\$ 165.00
6/2/2023	Sretto	\$ 1,163.00
6/19/2023	Teris	\$ 165.00
7/6/2023	Stretto	\$ 613.50
7/19/2023	Teris	\$ 165.00
8/17/2023	Teris	\$ 165.00
9/17/2023	Teris	\$ 165.00
10/12/2023	Teris	\$ 165.00
10/20/2023	Stretto	\$ 37.00
Total		\$ 36,673.56

Professional Fees

Date	Payable	Amount
5/11/2023	Damian & Valori LLP	\$ 31,939.70
Total Professional Fees		\$ 31,939.70

GRAND TOTAL OF EXPENSES \$ **68,613.26**