

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

DANIEL FINGERHUT, DIGITAL
PLATINUM INC., DIGITAL PLATINUM,
LTD., HUF MEDIYA, LTD., TAL
VALARIOLA, AND ITAY BARAK

Defendants,

and

AICEL CARBONERO,

Relief Defendant.

Case No. 20-Civ-21887

**CONSENT ORDER FOR PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY, AND OTHER EQUITABLE RELIEF
AGAINST DEFENDANT DANIEL FINGERHUT**

I. INTRODUCTION

On May 5, 2020, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendants Daniel Fingerhut, Digital Platinum, Ltd (“DPL”), Digital Platinum, Inc. (“DPI”), Huf Mediya, Ltd., Tal Valariola, and Itay Barak (collectively “Defendants”), and Relief Defendant Aicel Carbonero, seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1–26 (2018), and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pts. 1–190 (2020). (ECF No. 1.) On May 6, 2020, the Commission sought the appointment of a temporary receiver and entry of a preliminary

injunction. (ECF Nos.12, 13.) The Court entered a Temporary Receiver Order on May 8, 2020, ordering appointment of Melanie Damian of Damian & Valori LLP, 1000 Brickell Ave., Suite 1020, Miami, FL 33131, as Temporary Receiver, with full powers of an equity receiver, an accounting, and other equitable relief. (ECF No. 33.) The Commission filed an Amended Complaint on June 12, 2020. (ECF No. 101.)¹ The Commission also sought a statutory restraining order under Section 6c(b) of the Act, 7 U.S.C. § 13a-1(b) (2018), which the Court granted on July 13, 2020. (ECF Nos. 58, 129.) On January 7, 2021, the Court entered an Order for Preliminary Injunction and Other Ancillary Relief Against all Defendants that had been served as of that date.² (ECF No. 199.)

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Amended Complaint against Defendant Daniel Fingerhut without a trial on the merits or any further judicial proceedings, Defendant Fingerhut:

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendant Fingerhut (“Consent Order”);
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the CFTC or any member, officer, agent, or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service of the summons and Amended Complaint;

¹ The Amended Complaint added only allegations concerning service of process.

² The CEA contemplates entry of “permanent or temporary injunction[s]” as well as “restraining order[s].” 7 U.S.C. § 13a–1(b). Only a preliminary injunction can stay in place until a trial on the merits. *Id.*; see Fed. R. Civ. P. 65. Defendant Huf Mediya had not yet been served and was not included within the scope of the Preliminary Injunction.

4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018);

5. Admits the jurisdiction of the CFTC over the conduct and transactions at issue in this action pursuant to the Act;

6. Admits that venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e);

7. Waives:

a) Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this action;

b) Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–53, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this action;

c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

d) Any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Defendant Fingerhut now or in the future resides outside this judicial district;

9. Agrees that he will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waives any objection based thereon;

10. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any

allegation in the Amended Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Amended Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the CFTC is not a party. Defendant Fingerhut shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement;

11. Consents to the entry of this Consent Order without admitting or denying the allegations of the Amended Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which he admits;

12. Consents to the use of the findings and conclusions in this Consent Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof;

13. Does not consent, however, to the use of this Consent Order, or the findings and conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party, other than a: statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Order;

14. Agrees to provide immediate notice to this Court and the CFTC by certified mail and email, in the manner required by paragraph 53 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

15. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendant Fingerhut in any other proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), as set forth herein. The findings and conclusions in this Consent Order are not binding on any other party to this action.

THE COURT HEREBY FINDS:

A. Findings of Fact

The Parties to this Consent Order

16. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act and the Regulations.

17. Defendant **Daniel Fingerhut** is 37 years old and resides in Miami Beach, Florida. Fingerhut has never been registered with the Commission in any capacity.

B. Conclusions of Law

Jurisdiction and Venue

18. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2018) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2018), provides that the Commission may bring actions for injunctive relief or to

enforce compliance with the Act or any rule, regulation, or order thereunder in the proper district court of the United States whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

19. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because Defendant Fingerhut resides in this judicial district and the acts and practices in violation of the Act occurred within this District.

Options Fraud

20. By the conduct described in this Consent Order and in the Amended Complaint, Defendant Fingerhut intentionally or recklessly used fraudulent solicitations in emails, websites and fictitious video sales letters (“VSLs”) promising free access to purported automated trading systems (the “Trading Systems”) to induce prospective customers to open and fund binary options trading accounts with a recommended broker (“Broker”) so that Defendant Fingerhut could earn compensation, including commissions, in violation of Section 4c(b) of the Act and CFTC Regulation 32.4, 7 U.S.C. § 6c(b) (2018) and 17 C.F.R. § 32.4 (2020).

Commodity Trading Advisor Fraud

21. By the conduct described in this Consent Order and in the Amended Complaint, Defendant Fingerhut acted as an unregistered Associated Person (“AP”) of an unregistered commodity trading advisor (“CTA”) by disseminating for compensation numerous and varied marketing materials which advised customers and prospective customers to open binary options accounts and use purportedly successful Trading Systems to trade those accounts.³

³ Defendant Fingerhut acted as an unregistered AP from no later than June 2014 through no earlier than October 2016 while employed by All In Publishing (“AIP”), which acted as an unregistered CTA during

22. By the conduct described in this Consent Order and in the Amended Complaint, Defendant Fingerhut, while acting as an unregistered AP of an unregistered CTA, fraudulently solicited members of the public and created and/or disseminated fraudulent emails to induce members of the public to go through AIP's "sales funnel" on websites linked-to in the fraudulent emails for the purpose of opening and funding new binary options trading accounts with a recommended Broker to access the advertised Trading System. For each of the binary options campaigns for which Defendant Fingerhut performed work, Defendant Fingerhut repeatedly misrepresented, among other things: (i) hypothetical and fictitious trading results as real results; (ii) actors as true users of the Trading Systems; (iii) the fictitious experience, background, and skill of the "creators" of the Trading Systems; (iv) fabricated testimonials; and/or (v) that the Trading Systems traded automatically, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2018).

Manipulative and Deceptive Device, Scheme, or Artifice

Binary Options Swaps Fraud

23. By the conduct described in this Consent Order and in the Amended Complaint, while employed at AIP, Defendant Fingerhut participated in marketing campaigns that touted free access to Trading Systems for trading swaps, as defined by the Act. Defendant Fingerhut intentionally or recklessly used fraudulent solicitations in emails, websites, and fictitious VSLs promising free access to Trading Systems to induce members of the public to go through AIP's "sales funnel" on websites linked-to in the fraudulent emails for the purpose of opening and funding new binary options trading accounts with a recommended Broker to access the

that time period. AIP and its principal were two Defendants in *CFTC v. Atkinson*, No. 18-cv-23992-JEM (S.D. Fla.), which has been fully resolved.

advertised Trading System. Defendant Fingerhut earned compensation, including commissions, in return for his work on behalf of AIP in connection with the fraudulent marketing campaigns described in this Consent Order and in the Amended Complaint.

24. Defendant Fingerhut intentionally or recklessly created and disseminated fraudulent solicitations while an employee of AIP, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018) and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2020).

Digital Assets Commodity and Swaps Fraud

25. By the conduct described in this Consent Order and in the Amended Complaint, while employed at DPI from no later than October 2016 through no earlier than August 2018, Defendant Fingerhut participated in marketing campaigns that touted free access to Trading Systems for trading swaps, as defined by the Act, and contracts of sale of a commodity in interstate commerce, namely digital assets.

26. While working on behalf of DPI, Defendant Fingerhut intentionally or recklessly used fraudulent solicitations in emails, websites, and fictitious VSLs promising free access to Trading Systems to induce members of the public to open and fund new trading accounts with a recommended Broker to access the advertised Trading System for the purpose of trading swaps or digital assets. Defendant Fingerhut earned compensation, including commissions, in return for his work on behalf of DPI in connection with the fraudulent marketing campaigns described above and in the Amended Complaint.

27. Defendant Fingerhut intentionally or recklessly created and disseminated fraudulent solicitations while an employee of DPI, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018) and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2020).

False Statements to the Commission

28. By the conduct described in this Consent Order and in the Amended Complaint, Defendant Fingerhut made knowingly false statements to the Commission in connection with the Commission's investigation of AIP and prosecution of its case against AIP and its principals. In responding to questions from CFTC Division of Enforcement staff, Defendant Fingerhut: (i) did not provide a complete and accurate list of the email addresses that he used to conduct the fraudulent business activities described in this Consent Order and in the Amended Complaint; (ii) inaccurately described his role in the fraud schemes described in this Consent Order and in the Amended Complaint; and (iii) falsely stated that he returned a laptop computer to DPI upon terminating his relationship with that company in August 2018.

29. By the conduct described in this Consent Order and in the Amended Complaint, Defendant Fingerhut made knowingly false statements to the Commission, in violation of Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2018).

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

30. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), Defendant Fingerhut is permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. (1) Cheating or defrauding, or attempting to cheat or defraud any other person;
- (2) making or causing to be made false reports or statements to any person; or
- (3) deceiving or attempting to deceive any person in, or in connection with, an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction in interstate commerce, by using fraudulent

solicitations in emails, websites or fictitious VSLs that promise free access to Trading Systems to induce prospective customers to open and fund binary options or digital assets trading accounts so that Defendant Fingerhut can earn revenue, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2018), and Regulation 32.4, 17 C.F.R. § 32.4 (2020);

- b. While acting as an AP of a CTA, using the instrumentalities of interstate commerce to: (1) employing any device, scheme, or artifice to defraud clients or prospective clients; or (2) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon clients or prospective clients, by fraudulently soliciting members of the public and creating and/or disseminating fraudulent websites and emails to induce members of the public to go through their website funnel and open and fund binary options or digital assets trading accounts to access an advertised Trading System, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2018);
- c. (1) Using or employing, or attempting to use or employ, manipulative devices, schemes, and artifices to defraud; (2) making, or attempting to make, untrue or misleading statements of a material fact; (3) omitting to state material facts necessary in order to make statements made not untrue or misleading; or (4) engaging, or attempting to engage, in acts, practices, and courses of business, which operate or would operate as a fraud or deceit upon any person in connection with swap transactions or transactions in contracts of sale of any commodity in interstate commerce, by using fraudulent solicitations in emails, websites and fictitious VSLs that promise free access to Trading Systems to

induce prospective customers to open and fund a binary options or digital assets trading account to earn revenue, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2020).

- d. Making any false or misleading statement of a material fact to the Commission, or omitting to state any material fact that is necessary to make any statement of a material fact to the Commission not misleading in any material respect, if Defendant Fingerhut knows, or reasonably should know, the statement to be false or misleading, in violation of Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2018).

Defendant Fingerhut is also permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. Offering to enter into, entering into, confirming the execution of, maintaining positions in, or otherwise conducting activities relating to binary options or digital assets;
- b. Acting as an affiliate marketer in any capacity that involves digital assets or any “commodity interest” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2020), which encompasses binary options);
- c. Offering autotrading systems or services that purport to trade digital assets or any commodity interest;
- d. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018));
- c. Entering into any transactions involving commodity interests, for his own personal account or for any account in which he has a direct or indirect interest;
- d. Having any commodity interests traded on his behalf;

- e. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- f. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- g. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2020); and/or
- h. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2020)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from registration, or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

V. DISGORGEMENT AND CIVIL MONETARY PENALTY

31. The current Court-appointed Temporary Receiver is hereby appointed Permanent Receiver with respect to Defendant Fingerhut's assets, subject to the exemptions below, and is granted the full powers of a federal equity receiver, including without limitation: (i) all powers previously granted to the Temporary Receiver in this Court's Consent Order for Preliminary Injunction and Other Ancillary Relief Against Defendant Daniel Fingerhut (ECF No. 199); (ii) the right, upon Court approval, to market and sell all assets of Defendant Fingerhut except as noted below; and (iii) the right and discretion to pursue (a) any actions necessary to recover assets, wheresoever located, of Defendant Fingerhut and/or of the

Receivership Estate, and (b) any actions on behalf of the creditors of the Receivership Estate and/or Defendant Fingerhut. However, Defendant Fingerhut's earnings, "funds, assets, or other property" (as these terms are defined in ECF No. 199) that are considered "exempt" under federal law are not subject to the Permanent Receiver's powers above nor this paragraph. This Consent Order shall not preclude Defendant Fingerhut from seeking any additional exemptions from the Permanent Receiver's powers above, and shall be without prejudice to Defendant Fingerhut's ability to otherwise seek any exemption from, or modification to, this paragraph; the Commission and the Permanent Receiver reserve the right to oppose any such exemption or modification.

A. Disgorgement

32. Defendant Fingerhut shall pay disgorgement in the amount of four hundred thousand and eleven dollars (\$400,011) ("Disgorgement Obligation"), representing the gains received in connection with such violations. If the Disgorgement Obligation is not paid immediately, then post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2018).

33. The Permanent Receiver shall receive disgorgement payments from Defendant Fingerhut and make distributions as set forth below.

34. Defendant Fingerhut shall make Disgorgement Obligation payments, and any post-judgment interest payments, under this Consent Order to the Permanent Receiver in the name "Fingerhut Receivership Estate" and shall send such payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, to the Permanent Receiver at the office of Damian & Valori LLP, 1000 Brickell Avenue, Suite 1020,

Miami, Florida 33131, under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendant Fingerhut shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

35. The CFTC and the Permanent Receiver acknowledge that before the date of this Consent Order, the Receiver took possession of approximately \$45,769 worth of cash from financial accounts under Defendant Fingerhut's control, which shall be applied immediately toward Defendant Fingerhut's Disgorgement Obligation and shall be deemed a partial satisfaction thereof.

36. The CFTC and the Permanent Receiver acknowledge that before the date of this Consent Order, the Receiver froze approximately \$6,297 worth of securities in a financial account under Defendant Fingerhut's control, which securities shall be liquidated within ten days of the date of this Consent Order and the proceeds shall be immediately applied toward Defendant Fingerhut's Disgorgement Obligation and shall be deemed a partial satisfaction thereof.

37. The Permanent Receiver shall oversee the Disgorgement Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to the victims of the fraud described in the Amended Complaint who have been or are identified by the Commission or through her investigation and as approved by the Court or may defer distribution until such time as the Permanent Receiver deems appropriate. The Permanent Receiver shall propose a consolidated plan for the distribution of the disgorgement amount to the Court within ninety days of the date of entry of this Order. In the event that the amount of Disgorgement Obligation payments to the Permanent Receiver are of a *de minimis* nature such

that the Permanent Receiver determines that the administrative cost of making a distribution to eligible participants is impractical, the Permanent Receiver may, in her discretion, treat such disgorgement payments as civil monetary penalty payments, which the Permanent Receiver shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part B below.

38. Funds or assets obtained by the Permanent Receiver through settlement with, or disgorgement or clawback proceedings against, third party recipients or transferees of Defendant Fingerhut (“clawbacks”), less the Permanent Receiver’s costs and fees incurred in obtaining each respective clawback, shall be applied first toward Defendant Fingerhut’s Disgorgement Obligation, and upon satisfaction of the Disgorgement Amount shall thereafter be applied toward Defendant Fingerhut’s CMP Obligation as described below.

39. Subject to any applicable privilege, Defendant Fingerhut shall cooperate with all reasonable requests of the Permanent Receiver in the discharge of her duties in connection with this matter, including executing any documents or providing any information necessary to release funds that he has in any repository, bank, investment, or other financial institution, wherever located, in order to make partial or total payment toward the Disgorgement Obligation.

40. Until discharged by the Court, the Permanent Receiver shall also provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds. The Permanent Receiver shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

41. The amounts payable to each participant shall not limit the ability of any participant from proving that a greater amount is owed from Defendant Fingerhut or any other

person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law, except that absent leave of Court no action may be initiated against Melanie E. Damian as the Permanent Receiver.

42. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Daniel Fingerhut who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may, upon approval by the Permanent Receiver during the Receivership or otherwise after termination of the Receivership, seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the disgorgement that has not been paid by Defendant Fingerhut to ensure continued compliance with any provision of this Consent Order and to hold Defendant Fingerhut in contempt for any violations of any provision of this Consent Order.

43. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendant Fingerhut's Disgorgement Obligation, such funds shall be transferred to the Permanent Receiver for disbursement in accordance with the procedures set forth above.

44. All funds retrieved from or paid by Defendant Fingerhut shall accrue towards the Disgorgement Obligation until such time as the Disgorgement Obligation has been satisfied, before any funds retrieved from or paid by Defendant Fingerhut will be directed toward satisfying the CMP Obligation described below in paragraph 35.

45. Defendant Fingerhut's Disgorgement Obligation shall be credited on a dollar for dollar basis for any amounts recovered from Relief Defendant Aicel Carbonero.

B. Civil Monetary Penalty

46. Defendant Fingerhut shall pay a civil monetary penalty in the amount of six hundred thousand dollars (\$600,000) ("CMP Obligation"). If the CMP Obligation is not paid

immediately, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2018).

47. Defendant Fingerhut shall pay his CMP Obligation and any post-judgment interest, by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment by electronic funds transfer is chosen, Defendant Fingerhut shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant Fingerhut shall accompany payment of the CMP Obligation with a cover letter that identifies Defendant Fingerhut and the name and docket number of this proceeding. Defendant Fingerhut shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

C. Provisions Related to Monetary Sanctions

48. Partial Satisfaction: Acceptance by the Commission or the Receiver of any partial payment of Defendant Fingerhut's Disgorgement Obligation or CMP Obligation shall not be

deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

49. Asset Freeze: On January 7, 2021, the court entered an asset freeze order prohibiting the transfer, removal, dissipation and disposal of Defendant Fingerhut's assets ("Asset Freeze Order"). The court hereby lifts the Asset Freeze Order as it relates to Defendant Fingerhut. Except as otherwise provided in this Consent Order, Defendant Fingerhut's assets acquired and/or earned prior to the date of the entry of this Consent Order and during the Relevant Period, as described in the Amended Complaint, shall remain frozen pending further order of the Court.

D. Cooperation

50. Defendant Fingerhut shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Defendant Fingerhut shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action. The obligations described in this paragraph 39 are subject to any applicable privilege, including the Fifth Amendment privilege against self-incrimination.

E. Cooperation of Third Parties

51. During the Receivership, any financial or brokerage institution, business entity, or person that receives actual notice of this Order by personal service or through other means (including without limitation by U.S. Mail, overnight courier, email, or facsimile) and holds, controls, or maintains custody of any account, asset, records, or other property titled in the name of, held for the benefit of, or otherwise under the control of Defendant Fingerhut, or has held, controlled, or maintained custody of any such account, asset, records or other property of

Defendant Fingerhut at any time since June 2014, except as directed by further order of the Court, and after the Permanent Receiver provides at least three business days' notice to Defendant Fingerhut, shall not:

- a. permit Defendant Fingerhut or other persons or entities to withdraw, transfer, remove, dissipate, or otherwise dispose of Defendant Fingerhut's assets or records deposited into an account in the name of, or acquired by Defendant Fingerhut prior to the entry of this Consent Order;
- b. directly or indirectly destroy, alter, or dispose of, in any manner, any records relating to the business activities and business and personal finances of the Israeli Defendants; and
- c. deny a request by the Commission or the Permanent Receiver to inspect all records pertaining to every account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant Fingerhut, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, safe deposit box logs, and all communications with Defendant Fingerhut. As an alternative to allowing inspection of records, a financial or brokerage institution, business entity or other person may provide copies of records requested by the Commission or the Permanent Receiver.

52. Furthermore, during the Receivership, any such financial or brokerage institution, business entity, or person that receives actual notice of this Order, within ten business days of a request by the Permanent Receiver, or such longer period specified by the Permanent

Receiver, and after the Permanent Receiver has provided at least three business days' notice to Defendant Fingerhut, shall:

- a. turn over to the Permanent Receiver possession and custody of all funds, assets, and other property owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant Fingerhut, either individually or jointly that were deposited into an account in the name of, or acquired between June 1, 2014 and August 31, 2018 and prior to the date of this Consent Order;
- b. provide the Permanent Receiver with copies of all records pertaining to any account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendant Fingerhut, either individually or jointly, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, safe deposit box logs, and all communications with Defendant Fingerhut;
- c. provide the Permanent Receiver with all usernames and passwords to all accounts, to gain or secure access to any of the assets or records, created, acquired, used and/or maintained by any of Defendant Fingerhut prior to the entry of this Consent Order, and provide the Permanent Receiver with view-only access to all accounts created, acquired, used and/or maintained by Defendant Fingerhut on or after the date this Consent Order is entered, and report to the Permanent Receiver by e-mail on a monthly basis until the Disgorgement Obligation is fulfilled setting forth income received or assets acquired; and

- d. cooperate with all reasonable requests of the Permanent Receiver relating to implementation of this Order.

VI. MISCELLANEOUS PROVISIONS

53. Notice: All notices required to be given by any provision in this Consent Order shall be sent by email and certified mail, return receipt requested, as follows:

Notice to Commission:

Deputy Director
Division of Enforcement
525 West Monroe
Chicago, IL 60661
rhowell@cftc.gov

Notice to Defendant Fingerhut:

Daniel Fingerhut
c/o Omar Johansson
15 NE 3 Street
Fort Lauderdale, FL 33301
omar@jloattorneys.com

All such notices to the Commission shall reference the name and docket number of this action.

54. Change of Address/Phone: Until such time as Defendant Fingerhut satisfies in full his Disgorgement Obligation and CMP Obligation as set forth in this Consent Order, Defendant Fingerhut shall provide written notice to the Commission by email and certified mail of any change to his telephone number and mailing address within ten calendar days of the change.

55. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

56. Invalidation: If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

57. Waiver: The failure of any party to this Consent Order or of any at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order 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 Consent Order.

58. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Defendant Fingerhut to modify or for relief from the terms of this Consent Order.

59. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendant Fingerhut, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendant Fingerhut.

60. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all

parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

61. Contempt: Defendant Fingerhut understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

62. Agreements and Undertakings: Defendant Fingerhut shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendant Daniel Fingerhut* forthwith and without further notice.

IT IS SO ORDERED on this ____ day of _____.

UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

Daniel Fingerhut
7276 Gary Ave
Miami Beach, FL 33141

Date: _____

Allison Passman
Chief Trial Attorney
Commodity Futures Trading Commission
525 West Monroe Street
Chicago, IL 60661
312-596-0704
apassman@cftc.gov

Dated _____

Approved as to form:

Omar Johansson
Attorney for Defendant Daniel Fingerhut

CONSENTED TO AND APPROVED BY:

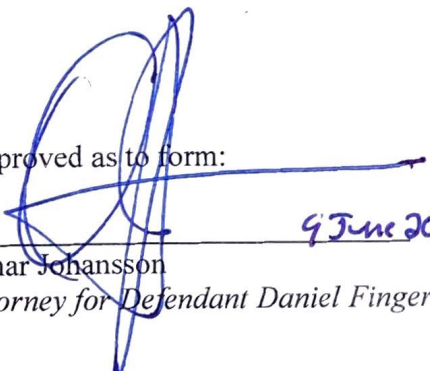
Daniel Fingerhut
7276 Gary Ave
Miami Beach, FL 33141

Date: _____

Allison Passman
Chief Trial Attorney
Commodity Futures Trading Commission
525 West Monroe Street
Chicago, IL 60661
312-596-0704
apassman@cftc.gov

Dated _____

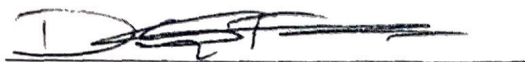
Approved as to form:



Omar Johansson
Attorney for Defendant Daniel Fingerhut

9 June 2021

CONSENTED TO AND APPROVED BY:




Daniel Fingerhut
7276 Gary Ave
Miami Beach, FL 33141

Date: 7/9/21

Allison Passman
Chief Trial Attorney
Commodity Futures Trading Commission
525 West Monroe Street
Chicago, IL 60661
312-596-0704
apassman@cftc.gov

Dated _____

Approved as to form:

 *Natalie Lopez Esq. For the Firm*
Omar Johansson
Attorney for Defendant Daniel Fingerhut

CONSENTED TO AND APPROVED BY:

Daniel Fingerhut
7276 Gary Ave
Miami Beach, FL 33141

Date: _____

/s/ Allison V. Passman

Allison Passman
Chief Trial Attorney
Commodity Futures Trading Commission
525 West Monroe Street
Chicago, IL 60661
312-596-0704
apassman@cftc.gov

Dated 10/6/2021_____

Approved as to form:

Omar Johansson
Attorney for Defendant Daniel Fingerhut