

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 HOOV MEDIA), TAL VALARIOLA,  
and ITAY BARAK

Defendants,

and

AICEL CARBONERO,

Relief Defendant.

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**RECEIVER'S SEVENTH STATUS REPORT**

Melanie E. Damian, the court-appointed Receiver (the "Receiver") in the above-captioned enforcement action ("CFTC Enforcement Action"), submits her seventh 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 August 1, 2022, through December 31, 2022 (the "Reporting Period").

**TABLE OF CONTENTS**

**I. INTRODUCTION**..... 3

**II. PROCEDURAL BACKGROUND AND THE APPOINTMENT AND DUTIES OF RECEIVER** ..... 4

*A. The Appointment and Duties of Receiver Under the Court’s Orders* ..... 4

*B. The Receiver’s Periodic Status Reports*..... 5

*C. Settlements with Israeli Defendants and Fingerhut, Administrative Closure, and Reopening of Case as to Relief Defendant* ..... 5

**III. STATUS AND ACTIVITIES OF THE RECEIVERSHIP (AUGUST 1, 2022 THROUGH DECEMBER 31, 2022)**..... 6

*A. Receivership Receipts, Disbursements and Assets* ..... 6

*B. Receiver’s Continued Efforts to Locate and Marshal Records and Assets of the Defendants*..... 7

        1. *Defendant Fingerhut’s Failure to Make Payments Towards His Disgorgement Obligation*..... 7

        2. *Israeli Defendants’ Payments Towards Their Disgorgement Obligation*..... 7

*C. Receiver’s Implementation of Court-Approved Claims Process* ..... 8

*D. Receiver’s Financial Advisor, Forensic Accountants, and Tax Professionals*..... 10

**IV. EXPENSES AND DISBURSEMENTS OF THE ESTATE** ..... 10

**V. RECEIVER’S RECOMMENDATIONS AND CONCLUSION** ..... 10

## 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] (each a “Permanent Injunction” and 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 \$2,469,119.56 of their \$3 million disgorgement obligation, making several periodic payments towards their disgorgement obligation during the Reporting Period. 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, to not have funds to make any disgorgement payments and thus has not made any payments during the Reporting Period. The Receiver has requested but not yet obtained updated financial disclosures from Fingerhut to confirm such claim.

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. During this Reporting Period, the Receiver reviewed all requests for reconsideration of disallowed claims and made final determinations on those requests, sought and obtained Court approval of the allowed claims and carried out the Distribution Plan. *See* ECF Nos. 301 and 307.

## **II. PROCEDURAL BACKGROUND AND THE APPOINTMENT AND DUTIES OF RECEIVER**

### ***A. The Appointment and Duties of Receiver Under the Court's Orders***

On May 5, 2020, the CFTC filed a Complaint for injunctive relief and for restitution against Fingerhut, Digital Platinum, Inc. (“DPI”), and the Israeli Defendants, naming Aicel Carbonero as a relief defendant, commencing the above-captioned CFTC Enforcement Action. *See* ECF No. 1, amended by ECF No. 101.

On May 8, 2020, the Court entered the Appointment Order appointing Melanie E. Damian, Esq. as temporary Receiver of the Receivership Defendants named in the CFTC’s Complaint and of all the funds, properties, premises, accounts, income, now or hereafter due or owing to the Receivership Defendants, and other assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants. *See* ECF No. 33.

On January 7, 2021, the Court entered a Preliminary Injunction Order (“Preliminary Injunction”) as to all Defendants that, among other things, held that, “[d]uring the pendency of this action or until further ordered by this Court, Melanie Damian shall continue as the Receiver and shall execute the powers vested within the Order Appointing Temporary Receiver. [ECF No. 33].” ECF No. 199 at p. 34.

On November 17, 2021, the Court entered the Permanent Injunctions, which appointed the

Receiver as permanent Receiver and directed and authorized her to, among other things, collect the disgorgement amounts from the Receivership Defendants.

***B. The Receiver's Periodic 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 six 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, and 320.

***C. Settlements with Israeli Defendants and Fingerhut, Administrative Closure, and Reopening of Case as to Relief Defendant***

On February 16, 2021 [ECF No. 230] and February 19, 2021 [ECF No. 232], the CFTC, the Israeli Defendants, and the Receiver took part in a settlement conference that resulted in a settlement in principle of the CFTC's claims against the Israeli Defendants. *See* ECF No. 232. Subsequently, the CFTC and Defendant Fingerhut reached a settlement of the CFTC's claims against him. On October 6, 2021, the CFTC filed its motion for entry of proposed consent orders for permanent injunction against the Israeli Defendants and Defendant Fingerhut. *See* ECF No. 273. On November 17, 2021, the Court entered the Permanent Injunctions against those Receivership Defendants. *See* ECF Nos. 283 and 284.

During the Reporting Period, the CFTC and Relief Defendant Aicel Carbonero engaged in briefing on the CFTC's Motion for Summary Judgment against Ms. Carbonero. *See* ECF No. 279. The Court entered summary judgment against Ms. Carbonero on February 8, 2023. *See* ECF No. 332.

### III. STATUS AND ACTIVITIES OF THE RECEIVERSHIP (AUGUST 1, 2022, THROUGH DECEMBER 31, 2022)

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 December 31, 2022, the Receiver held funds totaling \$482,593.06 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);
- Interest in condominium unit located at 7276 Gary Avenue, Miami Beach, Florida 33141 (the "Residence") (current market is estimated to exceed \$470,000<sup>1</sup>) 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);<sup>2</sup> and
- 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).

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<sup>1</sup> Relief Defendant Carbonero is the title owner of the Residence, but the Receiver has traced significant transfers from Fingerhut to pay down the mortgage on the Residence and, as such, the Estate has a constructive trust and/or equitable lien claim against the property. While the Residence's exact current market value is unknown at this time, the Miami-Dade County's Office of the Property Appraiser lists the Residence's 2022 assessed value as \$470,406.

<sup>2</sup> 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.

*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 has 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 has not received a response. In the event the Receiver does not receive updated disclosures from Defendant Fingerhut in short order, she will file 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.

*2. Israeli Defendants' Payments Towards Their Disgorgement Obligation*

During the Reporting Period, the Receiver worked with counsel for the Israeli Defendants

to have a total of \$40,558.14 transferred from those Defendants in 13 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.

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

During the 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 immediately implemented the claims process by emailing the Court-approved Notice and Claim Form to all customers reflected in the business records of Defendants and their marketing vendors and all customers for which the Receiver had obtained email addresses in the affiliated All In Publishing ("AIP") and Gasher Inc. ("Gasher") receivership arising from the CFTC enforcement action, Case No. 1:18-cv-23992-JEM, pending in the U.S. District Court for the Southern District of Florida. As reported in the Receiver's Motion to Approve Claims Process, Defendants' business records revealed that there is a significant overlap between the AIP and Gasher claimants and the Receivership Defendants' claimants. *See* ECF No. 301.

Given the overlap of customers of Defendants and customers of AIP and Gasher, the Receiver proposed, and this Court approved granting the AIP and Gasher claimants (with allowed claims in the AIP/Gasher claims process) allowed claims in this claims process for the balance of their losses after the distributions from the AIP/Gasher estate. *See id.* and ECF No. 307. Rather than requiring those claimants to submit a new claim in this Estate's Claims Process, the Receiver provided each such claimant with a notice setting forth the proposed amount of his or her allowed

claim with a request that the claimant accept that allowed amount or submit a request for reconsideration to the Receiver.

The Receiver processed a total of 223 claims, with 148 allowed claims totaling \$4,087,125.96 in claims from both this Receivership Estate and from the AIP/Gasher Estate. No claimant appealed the Receiver's Final Determination by filing an appeal with this Court.

During the Reporting Period, on September 28, 2022, the Receiver filed a motion seeking authority to make a *pro rata* initial distribution to this Estate's claimants, and the Court approved that Motion on October 13, 2022. *See* ECF Nos. 326 (Motion) and 327 (Order). The Court approved a distribution totaling \$1,838,576.38 (representing 80% of the Estate's cash-on-hand) which provided distributions equal to 45% of each claimant's unpaid, allowed claim. *See* ECF No. 327. So, during the Reporting Period, the Receiver worked with claimants to confirm their payment instructions and then sent the Court-approved distributions. Indeed, all distributions were sent from the Receiver's distribution account by November 13, 2022, by check, wire transfer, or PayPal transfer depending on the payment method selected by the claimant. As of the close of the Reporting Period, claimants from this Estate were sent distributions totaling \$1,838,576.38. The Receiver is assisting claimants who did not receive their checks to locate their payments and cancel lost checks, and is issuing wire transfers or PayPal payments to the claimants.

During the next reporting period, the Receiver will work with claimants to ensure that all Court-approved distributions are sent, received, and cashed. The Receiver also continues to assist two claimants who did not receive timely notice of the Claims Process and/or have 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 will seek authority from this Court prior to approving any such late-filed claims.

***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 August 29, 2022, the Receiver filed Receiver's Sixth Interim Application For An Order Approving And Authorizing Payment Of Fees And Expenses of Receiver And Her Professionals [ECF No. 321], seeking approval and authorization of payment for professional fees and expenses for the six-month period from February 1, 2022, through July 31, 2022. The Court granted the Receiver's Motion on September 14, 2022. *See* ECF No. 324. During the Reporting Period, the Receiver made disbursements from her fiduciary account for the Receivership Estate in the amount of \$72,811.19 to pay professional fees and costs, as authorized by this Court. *See* ECF No. 324; *see also* Exhibit A.

**V. RECEIVER'S RECOMMENDATIONS AND CONCLUSION**

In light of her ongoing efforts to fulfill her duties under the Appointment Order and Preliminary Injunction and to carry out the terms of the Permanent Injunctions, including collecting the Defendants' disgorgement amounts, as well as her efforts to complete the Court-approved Plan of Distribution [*see* ECF Nos. 301, 307], 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 Receivership Defendants to collect amounts sufficient to satisfy their disgorgement obligations under the Permanent Injunctions, confirm Defendant Fingerhut's claimed inability to pay his

disgorgement obligation, work to enforce the Court's Orders as they relate to Relief Defendant Carbonero, 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 regular basis as to the status of her efforts.

Respectfully submitted this 10<sup>th</sup> day of March, 2023.

Respectfully submitted,

/s/ Kenneth Dante Murena  
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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 March 10, 2023, on all counsel or parties who have appeared in the above-styled action.

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