

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

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

COMMODITIES 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,

AICEL CARBONERO,

Relief Defendant.

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RECEIVER'S FIFTH STATUS REPORT

Melanie E. Damian, the court-appointed Receiver (the "Receiver") in the above-captioned enforcement action ("CFTC Enforcement Action"), submits her fifth 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 September 1, 2021, through January 31, 2022 (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, including her lead counsel, forensic IT professionals, and financial advisor and forensic accountant, 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 further identify and marshal all known assets and records of the Defendants not previously secured, including without limitation all funds in accounts of the Defendants, all account records, and all books and records of the corporate Defendants.

During the Reporting Period, Consent Orders for Permanent Injunction were entered against several of the Defendants leaving only the CFTC’s claims with respect to Relief Defendant, Aicel Carbonero, to be adjudicated. In particular, on November 17, 2021 the Court entered a Consent Order for Permanent Injunction as to Defendant Daniel Fingerhut (“Fingerhut”) [ECF No. 283] and a separate Consent Order for Permanent Injunction as to Defendants Digital Platinum LTD and Tal Valariola and Itay Barak (collectively the “Israeli Defendants”) [ECF No. 284] (each a “Permanent Injunction” and collectively the “Permanent Injunctions”) which, among other things appointed the Receiver as a permanent Receiver over the assets of Defendant Fingerhut and the Israeli Defendants, imposing disgorgement obligations on those Defendants, and directing them to make the disgorgement payments to the Receiver. *See id.* Thereafter, the Receiver worked with counsel for the Israeli Defendants to have those Defendants make payments towards their disgorgement obligations and collected \$1,061,540 from them. Further, the Receiver requested that the Israeli Defendants provide periodic financial disclosures reflecting their business activities and receipts and disbursements, as required under the Permanent Injunction, and propose a

monthly payment plan to satisfy their outstanding disgorgement obligations. The Israeli Defendants proposed a monthly payment plan and, after the Reporting Period, provided incomplete financial information to the Receiver. The Receiver will continue to seek payment of 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. Likewise, the Receiver is seeking updated financial disclosures from Defendant Fingerhut. Since entry of the Permanent Injunction, Fingerhut has not made any payments towards his disgorgement obligation except that his investment account was liquidated and nearly \$4,500.00 was credited towards that obligation.

Further, with the assistance of her counsel and forensic accountants, the Receiver continued to pursue her claims against third parties, affiliates, and insiders of the Defendants who improperly received significant recoverable transfers to increase the fund from which distributions will be made to Defendants' defrauded customers and creditors, pursuant to the claims process and distribution plan that is approved by this Court. In particular, the Receiver advanced the two fraudulent transfer claims she had commenced during the prior reporting period against various defendants and negotiated a settlement with one of them, for which the Receiver sought this Court's approval shortly after the Reporting Period. *See* ECF Nos. 265, 304.

Finally, the Receiver continued to work on her proposed claims process and plan of distribution and, shortly after this Reporting Period, filed a Motion to approve that process and plan, which this Court subsequently granted. *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”), Digital Platinum, LTD (“DPL”), Huf Mediya, LTD (a/k/a Hoof Media, LTD) (“Huf”), Tal Valariola (“Valariola”), and Itay Barak (“Barak”) (collectively, the “Receivership Defendants” or “Defendants”), naming Aicel Carbonero as a relief defendant, commencing the above-captioned CFTC Enforcement Action. *See* ECF No. 1.¹ On May 6, 2020, the CFTC also filed an Expedited Motion for Preliminary Injunction [ECF No. 11] and an Expedited Motion for Appointment of Temporary Receiver [ECF No. 12] (the “Appointment Order”) to preserve the status quo during the pendency of litigation in the CFTC Enforcement Action and to secure the assets and documents of the Defendants. *See* ECF No. 12. 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, found good cause to continue the appointment of the Receiver as a permanent Receiver for the duration of the case. *See* ECF No. 199. The Court’s Preliminary Injunction further 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].” *Id.* at p. 34.

The Court’s entry of the November 17, 2021 Permanent Injunctions did not eliminate any of the Receiver’s duties or authority under the Preliminary Injunction. Rather, as explained above,

¹ On June 12, 2020, the CFTC filed its first Amended Complaint. *See* ECF No. 101.

the Permanent Injunctions appointed the Receiver as permanent Receiver and directed and authorized her to, among other things, collect the disgorgement amounts from Fingerhut and from the Israeli Defendants.

B. The Receiver's Periodic Status Reports

The Appointment Order requires the Receiver to periodically file with the Court and serve on all parties periodic reports, the first of which was due sixty (60) days following entry of the Appointment Order, 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. On July 7, 2020, the Receiver filed her Initial Status Report (“Initial Report”) which described in detail, among other things, the Receiver’s initial efforts to carry out her duties and obligations as set forth in the Appointment Order as well as the status of the Receivership Estate. *See* ECF No. 125.

On November 24, 2020, the Receiver filed her second status report that covered the period from July 1, 2020, through October 31, 2020. *See* ECF No. 192. The Receiver filed her third and fourth status reports on April 1, 2021 and September 29, 2021, respectively. *See* ECF Nos. 242, 270. The Receiver’s second, third and fourth status reports detailed the Receiver’s continued efforts to carry out her duties and obligations as set forth in the Appointment Order. *See* ECF Nos. 192, 242, 270.

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. The settlement conference with Defendant Fingerhut and Relief Defendant Carbonero held during

the prior reporting period ended in impasse. *See id.* On May 13, 2021, after a second settlement conference involving the CFTC, Defendant Fingerhut, and Relief Defendant Carbonero, the parties filed a joint status report indicating that they had reached an agreement in principle on terms that will resolve the CFTC's claims against Fingerhut as set forth in the Complaint. *See* ECF No. 259. On May 13, 2021, the Court entered an order administratively closing the case in light of the parties' joint status report [ECF No. 259], indicating that the matter had settled in full. *See* ECF No. 260. The status report also indicated that a resolution of the issues involving Relief Defendant Carbonero may be forthcoming. *See id.* However, on August 2, 2021, the CFTC filed a motion to reopen the case as to Relief Defendant, Carbonero, which motion the Court granted. *See* ECF Nos. 266, 267. On October 19, 2021, the Court entered an amended scheduling order setting the trial date as to Relief Defendant Carbonero for April 11, 2022 and the calendar call for April 6, 2022.² *See* ECF No. 278.

D. Permanent Injunctions and Disgorgement Obligations of Fingerhut and Israeli Defendants

On October 6, 2021 the CFTC filed its motion for entry of proposed consent orders for permanent injunction against Defendant Fingerhut and the Israeli Defendants. *See* ECF No. 273. The CFTC's motion stated that entry of the proposed consent orders would end the CFTC's case against Defendant Fingerhut and the Israeli Defendants while the case remained pending as to Relief Defendant Carbonero and the defaulted defendants, Huf and DPI.³ *See id.* On November

² On January 12, 2022, following a status conference hearing, the Court entered an order staying the pre-trial deadlines of the amended scheduling order pending a resolution of the CFTC's motion for summary judgment as to Relief Defendant Carbonero. *See* ECF No. 295. However, the date for trial and calendar call remained unchanged.

³ On December 20, 2021, the CFTC filed a motion for final judgment by default as to Huf and DPI. *See* ECF No. 288.

17, 2021, the Court entered the Permanent Injunctions against Fingerhut and the Israeli Defendants. *See* ECF Nos. 283, 284. The Permanent Injunction, among other things, set Defendant Fingerhut's disgorgement obligation at \$400,011 and acknowledged that the \$45,769 that Fingerhut had paid to the Estate would be credited towards this obligation, leaving an outstanding disgorgement amount of \$354,242. *See id.* Further, the Permanent Injunction as to the Israeli Defendants set their disgorgement obligation at \$3,000,000 and acknowledged that the \$1,195,965.82 that they had paid to the Estate would be credited towards this obligation, resulting in a then-outstanding disgorgement amount of \$1,804,034.18.⁴ *See id.*

III. STATUS AND ACTIVITIES OF THE RECEIVERSHIP (SEPTEMBER 1, 2021, THROUGH JANUARY 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 January 31, 2022, the Receiver held funds totaling \$2,350,186.85 in her fiduciary account for the Receivership Estate at City National Bank in Miami, Florida. *See* Receivership Receipts and Disbursements 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 have not yet been fully determined);
- Condominium unit located at 7276 Gary Avenue, Miami Beach, Florida 33141 (the

⁴ As stated above and detailed below, during the Reporting Period, the Israeli Defendants paid \$1,061,540.00 to the Estate towards their disgorgement obligation, leaving a current outstanding disgorgement amount of \$742,494.18.

“Residence”) (value has not yet been determined⁵), and personal property therein including, but not limited to furniture and electronics (value has not yet been determined but is not estimated to be significant);^{6 7}

- Businesses owned by Defendants Fingerhut, DPI, DPL, Huf, Valariola, and Barak (nature, location and value have not yet been determined).

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 to locate and marshal assets and records of the Defendants while investigating the Defendants’ business operations that are the subject of the CFTC’s Complaint and to facilitate the terms of the Permanent Injunctions.

1. Liquidating Assets of Defendant Fingerhut in Compliance with the Terms of the Permanent Injunctions

Upon entry of the Permanent Injunctions directing the Receiver to marshal certain of the Defendants’ assets, the Receiver sent correspondence to financial institutions and third parties that held various assets of the Defendants demanding the liquidation and/or transfer of those assets to

⁵ 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 claim against the property. While the Residence’s exact current market value is unknown at this time, the Receiver obtained a detailed report dated September 23, 2021 from Miami-Dade County’s Office of the Property Appraiser which lists the Residence’s 2021 assessed value as \$456,705. *See* Detailed Report of Office of the Property Appraiser attached to the Receiver’s prior status report [ECF No. 270] as Exhibit B. As of March 8, 2022, the 2021 assessed value of the Residence remains unchanged. The Detailed Report of the Office of the Property Appraiser further details that the Residence’s 2020 assessed value was \$450,400. The Receiver previously had obtained a detailed report from the Property Appraiser dated May 12, 2020 listing the Residence’s 2019 assessed value as \$445,400.00, and attached that report to the Receiver’s Initial Report as Exhibit B [ECF No. 125].

⁶ An inventory of the Residence was attached to the Receiver’s Initial Report as Exhibit C [ECF No. 125].

⁷ A motorboat is also titled in Defendant Fingerhut’s name. However, its 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.

the Estate, including liquidating an investment account owned by Fingerhut and transferring the proceeds totaling \$4,419.49 to the Estate on November 30, 2021. *See* Exhibit A. This amount was credited towards Fingerhut's disgorgement obligation.

2. Voluntary Disgorgement Payments of Israeli Defendants to Estate

During the Reporting Period, the Receiver worked with counsel for the Israeli Defendants to have \$1,000,000 transferred from Defendant DPL's bank accounts to the Receiver's fiduciary account for the Estate in partial satisfaction of their disgorgement obligation under the Permanent Injunctions. *See* Exhibit A. In particular, Defendant DPL transferred \$845,000.00 to the Estate on December 1, 2021 and \$155,000.00 to the Estate on December 3, 2021. Further, on September 13, 2021, Hope Street Owner, a third-party that owed money to the Israeli Defendants, transferred to the Estate \$2,037 on behalf of the Israeli Defendants and on January 5, 2022, the Israeli Defendants transferred an additional \$59,503.00 to the Estate. *See id.* These amounts were credited towards the Israeli Defendants' disgorgement obligation.

3. The Estate's Claims Against Third Parties, Affiliates, and Insiders

During the Reporting Period, the Receiver and her professionals continued to work to identify all potential sources from which the Receivership Estate can recover funds and other assets belonging to, or improperly transferred from, the Defendants, including their affiliates, insiders, relatives, and third parties, who received funds or other assets traceable to the Defendants' businesses and/or customers that are the subject of the CFTC's Complaint.

With the assistance of her counsel and forensic accountants, the Receiver continued to litigate the Estate's claims against several third parties that received recoverable funds from the Defendants for the benefit of the Estate. During the prior reporting period, the Receiver had

commenced two fraudulent transfer actions against various third parties, insiders and affiliates of the Defendants and reached and obtained this Court's approval of a settlement with, and received the settlement payment from, one of the defendants. *See* ECF Nos. 265 (Order approving settlement). During the Reporting Period, the Receiver continued to pursue her claims against the other defendants and negotiated a settlement with one defendant. After the current Reporting Period, on February 15, 2022, the Receiver filed her unopposed motion to approve settlement with that defendant and, on February 22, 2022, the Court granted the Receiver's motion. *See* ECF Nos. 304, 305.

The Receiver will seek to engage in settlement negotiations with each remaining defendant and will advance the recovery actions to the extent settlements cannot be reached.

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

During the initial reporting period, the Receiver retained Kapila Mukamal ("Kapila") as her financial advisor, forensic accountants, and tax professionals to assist her to fulfill her duties under the Appointment Order.

During the current Reporting Period, Kapila's work was limited. The firm prepared and filed 1099-NEC, Non-Employee Compensation and Form 1096, Annual Summary and Transmittal of U.S. Information Returns forms for 2021 for the Receivership Estate.

IV. EXPENSES AND DISBURSEMENTS OF THE ESTATE

During the Reporting Period, the Receiver made disbursements from her fiduciary account for the Receivership Estate in the amount of \$98,347.33 to pay professional fees and costs as authorized by this Court [ECF No. 282], \$825.00 to pay the IT company maintaining the records of the Estate, \$1,575.00 to pay the fee associated with the services of the American Arbitration Association, and minimal bank fees to City National Bank to maintain the fiduciary account. *See*

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 recover assets and create a significant fund for the benefit of creditors of the Estate, the Receiver recommends that the Receivership continue until the Receiver has fulfilled all of her duties under this Court's Orders.

After the current Reporting Period, on February 9, 2022, the Receiver filed her Motion to Approve (A) Noticing and Claims Administration Process and (B) Plan of Distribution [ECF No. 301] which the Court granted on March 2, 2022 [ECF No. 307]. Accordingly, the Receiver recommends that the Receivership continue to permit the Receiver to implement and complete the Court-approved Claims Process and Distribution Plan.

The Receiver will continue to work with her team of professionals to locate, marshal and preserve all known and potential assets of the Estate and pursuing the pending fraudulent transfer action to maximize the recoveries by the Estate and the eventual distribution to allowed claimants in the claims process. Further, the Receiver will continue to work with counsel for the various Defendants to collect amounts sufficient to satisfy their disgorgement obligations under the Permanent Injunctions and, as necessary, will 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 17th day of March, 2022.

Respectfully submitted,

/s/ Kenneth Dante Murena
Kenneth Dante Murena, Esq.
Florida Bar No.: 147486
DAMIAN & VALORI LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
Telephone: (305) 371-3960
Facsimile: (305) 371-3965
Email: kmurena@dvllp.com
*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 March 17, 2022, 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*