

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 HOOF MEDIA), TAL VALARIOLA,
and ITAY BARAK

Defendants,

AICEL CARBONERO,

Relief Defendant.

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RECEIVER'S FOURTH STATUS REPORT

Melanie E. Damian, the court-appointed Receiver (the "Receiver") in the above-captioned enforcement action ("CFTC Enforcement Action"), submits her fourth 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 April 1, 2021, through August 31, 2021 (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.

Additionally, the Receiver assisted the parties in preparing for the Court-ordered settlement conferences conducted by Magistrate Judge McAlily by, among other things, (i) providing information regarding revenues and expenses of Defendant Digital Platinum, Ltd., which were prepared by the forensic accountant engaged in Israel, (ii) outlining the Defendants’ assets including those in the possession of the Receiver, and (iii) providing reports and analyses of the flow of funds between and among the Defendants, for the purpose of facilitating settlement negotiations and formulating disgorgement figures between the parties. The Receiver also attended the settlement conferences to offer assistance if requested.

Further, with the assistance of her forensic accountants, the Receiver continued to identify and pursue claims against third parties, affiliates, and insiders of the Defendants who improperly received significant recoverable transfers to establish a fund for the benefit of defrauded consumers and creditors of the Estate upon the Court’s approval of the Receiver’s forthcoming proposed claims process and distribution plan.

II. PROCEDURAL BACKGROUND AND THE APPOINTMENT AND DUTIES OF RECEIVER

A. *The Appointment Order and Receiver's Periodic Status Reports*

On May 5, 2020, the CFTC filed a Complaint for injunctive relief and for restitution against Daniel Fingerhut (“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.

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”)

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

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. The Initial Report further detailed the Receiver's efforts to marshal and secure assets, steps the Receiver intended to take in the future to protect Receivership Estate assets, and recommendations as to the continuation of the Receivership. *See id.*

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's second status report detailed the Receiver's continued efforts to carry out her duties and obligations as set forth in the Appointment Order while further detailing the Receiver's efforts to obtain the Defendants' compliance with the mandates of the Appointment Order, specifically, the Defendants' obligation to provide financial information as well as the Receiver's initial analysis of the flow of funds between and among the Defendants. *See id.* On April 1, 2021, the Receiver filed her third status report which covered the period from November 1, 2020, through March 31, 2021. *See* ECF No. 242. The Receiver's third status report similarly detailed the Receiver's continued efforts to carry out her duties and obligations as set forth in the Appointment Order. *See id.*

B. Entry of Preliminary Injunction Order and Continuation of Receivership

During the previous reporting periods [*see* ECF Nos. 125, 192], the Court held numerous hearings and heard arguments from the parties regarding the CFTC's motion for preliminary injunction ("CFTC's Motion") [ECF No. 11]. On September 17, 2020, at the final hearing on the CFTC's Motion, the Court entered an order requiring the parties to file their proposed detailed findings of fact and conclusions of law for the Court to consider in issuing a ruling on the CFTC's Motion. *See* ECF No. 178. On January 7, 2021, the Court granted the CFTC's Motion and 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.

C. Mediation, Settlement, and Administrative Closure

During the prior reporting period, on February 16, 2021 [ECF No. 230] and February 19, 2021 [ECF No. 232], the CFTC, Defendants Itay Barak, Tal Valariola, and DPL (collectively, 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.² *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.*

During this Reporting Period, 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 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 has 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, during a status conference hearing held on July 7, 2021, the CFTC and counsel for Carbonero indicated that the case is not resolved as to Carbonero. On August 2, 2021, the CFTC filed a motion to reopen the case as to Relief Defendant, Carbonero.

² The parties are finalizing the settlement agreement.

See EFC No. 266. On August 17, 2021, the Court granted the CFTC's motion to reopen the case as to the Relief Defendant, Carbonero, and established the following pre-trial deadlines: fact discovery shall be completed on or before September 17, 2021; any motion for summary judgment shall be filed on or before November 5, 2021; any response to a motion for summary judgment shall be filed on or before November 19, 2021; and any reply in opposition to a response to a motion for summary judgment shall be filed on or before December 3, 2021. See ECF No. 267.

III. STATUS AND ACTIVITIES OF THE RECEIVERSHIP (APRIL 1, 2021, THROUGH AUGUST 31, 2021)

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 August 31, 2021, the Receiver held funds totaling \$1,386,864.48 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:

- \$1,602.90, €15,945.17, and €51,372.90 in cash, frozen in accounts of DPL³ and \$6,292.55 in securities frozen in an investment account of Defendant Fingerhut;
- Assets of Defendants Valariola and Barak in Israel, where they reside (value of assets have not yet been fully disclosed or determined);
- Condominium unit located at 7276 Gary Avenue, Miami Beach, Florida 33141 (the

³ Following entry of the Preliminary Injunction, the Receiver sent correspondence to each of the financial institutions at which DPL has accounts and demanded that the funds be turned over to the Receiver.

“Residence”) (value has not yet been determined⁴), 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);⁵

- Personal motorboat (value has not yet been determined);⁶
- 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.

1. Records from Financial Institutions

During the Reporting Period, financial institutions continued to respond to the Receiver’s correspondence and subpoenas and provide copies of the records requested by the Receiver. Further, the Receiver and her counsel continued to work with the responding financial institutions to ensure full compliance with the Receiver’s subpoenas. The Receiver has provided and will continue to provide copies of all records to her forensic accounting professionals to analyze and

⁴ 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 hereto as **Exhibit B**. The Detailed Report of the Office of the Property Appraiser attached as Exhibit B further details that the Residence’s 2020 assessed value was \$450,400. *See id.* 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].

⁵ An inventory of the Residence was attached to the Receiver’s Initial Report as Exhibit C [ECF No. 125].

⁶ The current resale value of the motorboat is less than the amount remaining on the personal loan utilized to purchase the vessel. Therefore, there is no equity in the motorboat that could benefit the Estate.

incorporate in their account reconstructions for each Defendant and facilitate the tracing of funds for purposes of identifying assets of the Estate, potential sources of recovery, Defendants' customers and creditors, and information regarding Defendants' business operations.

2. *Securing Real and Personal Property and Other Assets of the Defendants and Proposed Partial Payment of Defendants' Attorneys' Fees*

During the prior reporting period, the Receiver detailed her efforts to have Estate funds frozen in DPL's accounts in Spain and Bulgaria. As of the filing of this Report, while the funds remain frozen, the banks in Spain and Bulgaria have not yet transferred the funds to the Estate. In light of the difficulties and delay in having these funds transferred to the Estate, and the pending motion of Defendants Valariola and Barak for payment of a portion of their attorneys' fees from funds held in the Receiver's fiduciary account for this receivership [ECF No. 197], the Receiver proposed and Defendants Valariola and Barak agreed that \$97,179.30 of the funds in DPL's accounts in Spain and Bulgaria should be transferred to counsel for those Defendants in partial satisfaction of the attorneys' fees and costs they incurred in connection with the CFTC Enforcement Action, and that any remaining funds in those accounts be transferred to the Estate as required under the Court's Orders. On July 16, 2021, counsel for Defendants Valariola and Barak submitted to the Court a proposed Consent Order approving the foregoing transfer of DPL's funds in foreign accounts to counsel as described above.

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

The Receiver and her professionals continue 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.

During the current Reporting Period, with the assistance of her counsel and forensic accountants, the Receiver identified claims against several third parties that received funds from the Defendants and prepared and filed Complaints stating fraudulent transfer and unjust enrichment claims to recover those transfers for the benefit of the Receivership Estate. *See Melanie E. Damian, as Receiver of Digital Platinum, Ltd. And Digital Platinum, Inc. v. Maxbounty Inc. et al.*, Case No. 21-cv-21711; *see also Melanie E. Damian, as Receiver of Digital Platinum, Ltd. and Digital Platinum, Inc. v. Conversion Universe, Ltd. et al.*, Case No. 21-cv-21728. The Receiver commenced these actions in the United States District Court for the Southern District of Florida pursuant to the Appointment Order and, in particular, this Court's exclusive jurisdiction over assets and claims of the Receivership Estate, and the fact that the Receivership Defendants operated their business, and many of the transfers were made from accounts maintained, in this District. *See* ECF No. 33, at Sec. V(F). Because several of the defendants to those actions are located in foreign countries, the Receiver and her counsel worked on having those defendants served through the Hague Service Convention, which required having the Complaints translated in certain foreign languages based on the country in which each defendant is located, and then served through international process servers in accordance with the procedures set forth in the Convention.

On April 26, 2021, the Receiver received a payment of \$42,500 from a defendant named in one of the fraudulent transfer actions, representing 100% of the amount that defendant had received from the Receivership Defendants. Accordingly, the Receiver voluntarily dismissed her claims against that defendant.

The Receiver's counsel commenced settlement negotiations with another one of the

defendants to the fraudulent transfer actions and swiftly reached a settlement and entered into a settlement agreement subject to this Court's approval. On July 6, 2021, the Receiver filed a motion in this action to approve that settlement. *See* ECF No. 263. On July 12, 2021, the Court approved the Receiver's settlement with that defendant. *See* ECF No. 265. And, on July 15, 2021, the Receiver received the \$15,000 settlement payment from the defendant.

The Receiver will continue her efforts to serve the foreign defendants to the fraudulent transfer actions through the Hague Service Convention, will seek to engage in settlement negotiations with each defendant that is served, and will pursue litigation to the extent settlements cannot be reached. Further, the Receiver will continue to investigate and pursue claims against additional third parties identified in her forensic accountant's reconstructions and analyses, as well as in the materials provided by the Israeli Defendants, to recover funds that were fraudulently or otherwise improperly transferred by the Defendants. The Receiver will consult with the CFTC before commencing any further actions and will only pursue those claims she believes are meritorious and likely to result in a significant recovery for the Receivership Estate.

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 period, Kapila provided litigation support services to the Receiver and assisted the Receiver and her counsel with identifying recipients of significant transfers from Defendants and gathering support for the Receiver's claims against third parties by providing, among other things, detailed reports of transfers of funds from Defendants to third parties. Upon request, Kapila also gathered and provided to the Receiver bank account records evidencing the

transfers to various third parties.

Kapila further received and reviewed documents provided by financial institutions in response to the Receiver's various subpoenas and continues to work with the Receiver to obtain the remaining bank documents needed to complete their forensic bank account reconstructions for the various Defendants. The Receiver, her counsel and Kapila have utilized and will continue to utilize these account reconstructions to trace funds transferred to and from the Defendants to identify, locate, and marshal assets of the Estate.

Finally, Kapila prepared and filed a request for an extension to file federal income tax returns for the Receivership entity Defendants to provide the Receiver and her tax professionals adequate time to fully and accurately determine the tax implications and status of the Receivership entity Defendants and prepare and file the necessary forms.

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 \$50,586.10 to pay professional fees and costs as authorized by this Court [ECF No. 257], \$2,097.50 to pay the IT company maintaining the records of the Estate, \$1,250.00 to pay Defendant Fingerhut's share of the mediator's fee pursuant to a Court-approved agreement of the parties [ECF No. 254], 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, including her efforts to recover assets for the benefit of the Estate and to create a 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.

The Receiver will continue to work with her team of professionals to locate, marshal and preserve all known and potential assets of the Estate. Further, as authorized by the Appointment Order, the Receiver will continue to investigate the Defendants' former business operations, identify their customers and creditors, and, at the appropriate time after consultation with the CFTC, pursue any additional claims against third parties, affiliates, insiders, relatives, and other sources that are likely to result in significant recoveries for the Estate. The Receiver will also continue to investigate and gather information regarding all Defendants' assets through cooperation, subpoenas, depositions, and other inquiries to financial institutions, and other entities and persons with any connection to the Defendants, to discover potential claims and sources of recovery. With respect to the Israeli Defendants, upon entry of a Permanent Injunction memorializing the settlement the CFTC reached with those Defendants, the Receiver will work with their counsel to recover for the benefit of the Estate any amount the Defendants are ordered to pay and will work with counsel for the CFTC to enforce that Order in Israel and other countries in which such Defendants may maintain assets in accordance with applicable international law.

The Receiver is formulating a claims administration process and distribution plan consistent with the process and plan approved by the Court in the companion case, *CFTC v. Atkinson, et al.*, Case No. 1:18-cv-23992-JEM. During the next reporting period, the Receiver will discuss the proposed process and plan with counsel for the CFTC and the respective counsel for the Defendants to obtain their input, after which she will seek this Court's approval thereof.

Finally, the Receiver will continue to perform all other duties as mandated by the Appointment Order and will update the Court on a regular basis as to the status of the Receivership.

Respectfully submitted this 29th day of September, 2021.

Respectfully submitted,

/s/ Kenneth Dante Murena

Kenneth Dante Murena, Esq.

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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 September 29, 2021, 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