

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 SIXTH STATUS REPORT

Melanie E. Damian, the court-appointed Receiver (the "Receiver") in the above-captioned enforcement action ("CFTC Enforcement Action"), submits her sixth 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 February 1, 2022, through July 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, 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. The Receiver is also 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 \$45,769 was credited towards that obligation.

Further, the Receiver advanced and entered into Court-approved settlements of the two fraudulent transfer actions she had commenced during a prior reporting period against various defendants. *See* ECF Nos. 265, 304.

Finally, the Receiver implemented the Court-approved claims process, collected and reviewed claims from defrauded investors, sent out initial and final determinations of allowed and disallowed claims, and is now at the appeal stage of that claims process. *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 periodically 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.

The Receiver has filed five 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 and 308.

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 conferences with Defendant Fingerhut and Relief Defendant Carbonero held during the prior reporting period ended in impasse, and, 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. 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, 284.

During the Reporting Period, the CFTC and Aicel Carbonero engaged in briefing on the CFTC's Motion for Summary Judgment against Ms. Carbonero. *See* ECF No. 279]. The Court vacated the trial date pending resolution of that Motion for Summary Judgment and set a status conference for June 8, 2022 and subsequently reset it for September 7, 2022. *See* ECF Nos. 309, 310 and 319.

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

The Permanent Injunction against Defendant Fingerhut, among other things, set his 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 against the Israeli Defendants set their disgorgement obligation at \$3,000,000 of which \$2,234,202.82 has been paid to the Estate, leaving a current outstanding disgorgement amount of \$706,294.18.¹ *See id.*

**III. STATUS AND ACTIVITIES OF THE RECEIVERSHIP
(FEBRUARY 1, 2022, THROUGH JULY 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 July 31, 2022, the Receiver held funds totaling \$2,362,075.11 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 has not been fully determined);
- Condominium unit located at 7276 Gary Avenue, Miami Beach, Florida 33141 (the "Residence") (current market is estimated to exceed \$470,000²), and personal

¹ During the Reporting Period, the Israeli Defendants paid \$36,200.00 to the Estate towards their disgorgement obligation.

² 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

property therein including without limitation furniture and electronics (value has not been determined but is estimated to be insignificant);³

- 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).
- 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 by focusing on collecting the disgorgement obligations from the Receivership Defendants to facilitate the terms of 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. In total, prior to the Reporting Period, \$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

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.

³ An inventory of the Residence was attached to the Receiver's Initial Report as Exhibit C [ECF No. 125].

Receiver has requested that Defendant Fingerhut provide updated disclosures of his assets and income and make payment towards his disgorgement obligation, but the Receiver has not received a response as of the filing of this Report. As such, the Receiver will seek formal discovery in aid of collecting the disgorgement amount and employ other measures to collect that amount.

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 \$36,200 transferred from those Defendants in 12 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.*

3. Settlement of the Estate's Claims Against Third Parties and Affiliates

During the Reporting Period, the Receiver continued to litigate the Estate's claims against certain third parties or affiliates that had received fraudulent or otherwise recoverable funds from the Receivership Defendants prior to the commencement of the CFTC Enforcement Action. On February 15, 2022, the Receiver filed her unopposed motion to approve the settlement with one fraudulent transfer defendant and, on February 22, 2022, the Court granted the Receiver's motion. *See ECF Nos. 304, 305.* On February 17, 2022, the Receiver collected the \$27,000 lump sum settlement payment from that defendant, as reflected on Exhibit A. Then, in April 2022, the Receiver settled her fraudulent transfer claims against a second recipient of transfers from the Receivership Defendants and filed an unopposed motion to approve that settlement. *See ECF No. 312.* On April 7, 2022, the Court granted the Receiver's motion. *See ECF No. 314.* On May 5, 2022, the Estate received the \$35,000 lump sum settlement payment from that defendant, as shown on Exhibit A.

On March 21, 2022 the Receiver obtained a default final judgment against Conversion Universe, Ltd. in the amount of \$365,370 and a default final judgment against Global Marketing Solutions in the amount of \$140,725. The Receiver is exploring selling those final judgments rather than seeking to execute on them given that the judgment debtors are located in Bulgaria (Conversion Universe, Ltd.) and Poland (Global Marketing Solutions) respectively. When the Receiver receives a reasonable offer to purchase the judgments, she will present it to the Court for approval.

Based upon the foregoing, and the resolution or dismissal of the Receiver's other fraudulent transfer claims during prior reporting periods, each of the fraudulent transfer claims brought by the Receiver have reached resolution and no further claims are expected to be advanced.

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 case. As reported in the Receiver's Motion to Approve Claims Process, Defendants' business records revealed that the marketing campaigns were operated in part with the assistance of the AIP and Gasher. From discussions with Gasher's principal, Jay Passerino, the Receiver's counsel learned that AIP had assisted the Receivership Defendants by providing "leads" (individuals to which solicitations were sent by email) and marketing services for the mass dissemination of the campaigns. Thus, there is a significant overlap between the AIP and Gasher claimants and the Receivership Defendants' claimants. Accordingly, the Receiver proposed, and this Court approved, sending notice of this Claims Process and Distribution Plan to all of the valid email addresses previously noticed in the AIP and Gasher claims process. *See* ECF No. 307. The Receiver also proposed,

and this Court approved, noticing those customers that have contacted the Receiver's office asking to participate in the claims process and all customer addresses contained in Defendants' business records and in records received from Defendants' marketing vendors. *See id.* The lists included approximately 1.5 million potential customers and leads of the Defendants, located all over the world, all of which were potential claimants for the Claims Process.

Given the overlap of customers of Defendants and customers of AIP and Gasher and the fact that allowed claimants in the AIP/Gasher claims process have not and likely will not receive 100% of their losses from the AIP/Gasher estate, 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.* 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 collected 128 claims prior to the expiration of the Claims Bar Date on May 1, 2022. The Receiver, with the assistance of her claims agent Stretto, reviewed and made determinations on all claims filed. In an effort to allow as many valid claims as possible, the Receiver contacted 12 claimants that seemed to have valid claims but were missing some supporting documentation. She then assisted those claimants in amending and completing their claims submissions to the extent they had the necessary documentation supporting their claimed losses. After reviewing all claims and supporting documentation, the Receiver sent her Initial Determinations of claims by email to all claimants on May 31, 2022. Claimants had until June 30, 2022, to file their requests for reconsideration of the Receiver's Initial Determinations. The Receiver then reviewed 44 requests for reconsideration. Again, the Receiver worked with claimants who seemed to have valid claims but were having difficulty assembling or uploading the correct or complete supporting documentation and allowed them to amend their claims submissions. Then, on July 30, 2022, the Receiver sent her Final Determinations by email to all claimants who had submitted a claim against the

Estate or who had an allowed claim in the AIP/Gasher estate. In addition, the Receiver deemed allowed the unpaid portion of 95 allowed claims from the AIP/Gasher estate.

At the conclusion of the Receiver's review of requests for reconsideration, on July 30, 2022, the Receiver emailed her Final Determinations of claims to all claimants who had submitted a claim in this receivership case. The Receiver processed a total of 223 claims, with 148 allowed claims totaling \$4,087,125.96. The claimants may appeal that Final Determination by filing an appeal with this Court by August 31, 2022. As of the filing of this Report, no claimant has filed an appeal or served on the Receiver an appeal or other request for reconsideration of the Receiver's Final Determination. If any appeals are filed, the Receiver will respond by filing a response by September 13, 2022.

During the next reporting period, the Receiver will file a motion requesting approval of the allowed claim amounts and authority to make an initial distribution to claimants holding allowed claims of approximately 75-80% of the cash-on-hand in the Estate.

D. 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 the tax trial balance and then prepared and filed with the Internal Revenue Service ("IRS") the Form 1120-SF and related disclosures for the Receivership Estate. Kapila also revised the Estate's Form 2848 filing based on correspondence with the IRS concerning the Estate's Form SS-4 EIN Application.

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 \$50,922.37 to pay professional fees and costs as

authorized by this Court [ECF Nos. 311 and 313], as well as other administrative expenses required to maintain the Estate. *See* Exhibit A.

V. RECEIVER'S RECOMMENDATIONS AND CONCLUSION

During the next reporting period, the Receiver will review and respond to the appeals of disallowed and partially disallowed claims, to the extent any are filed with the Court, and will implement the Plan of Distribution [ECF No. 301] which the Court approved on March 2, 2022 [ECF No. 307].

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 administer the claims process and distribute the recovered funds, 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 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 26th day of August, 2022.

Respectfully submitted,

/s/ Kenneth Dante Murena
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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 August 26, 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*