

IN THE UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:18-cv-23992-JEM

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

TIMOTHY JOSEPH ATKINSON, JAY
PASSERINO, ALL IN PUBLISHING, LLC,
& GASHER, INC.,

Defendants.

RECEIVER'S SECOND STATUS REPORT

Melanie E. Damian, the court-appointed temporary Receiver (the "Receiver") in the above-captioned enforcement action, submits her second status report setting forth her activities and efforts to fulfill her duties under the Orders pursuant to which she was appointed for the period from December 1, 2018 through March 31, 2019.

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I. INTRODUCTION

Since her appointment, the Receiver has worked diligently with counsel for the Commodity Futures Trading Commission (the “CFTC”) and counsel for Defendants and through judicial process to identify and marshal all known assets and records of the Defendants, including without limitation substantial funds held in multiple bank accounts and investment accounts, bank records, and electronic data comprising files stored on Defendants’ computer hard drives, digital tablets and mobile phones, and with cloud storage providers, and emails sent and received through email service providers. As a result, the Receiver froze \$2,979,630.90 in funds held in accounts at multiple financial institutions and transferred \$2,615,399.09 of those funds to the fiduciary accounts she opened for the Receivership Estate. The only frozen assets Receiver did not transfer to the Estate’s fiduciary accounts are investments which the Receiver is monitoring and will liquidate when the District Court authorizes to the Receiver to liquidate personal property of the Estate.

With respect to her duties to marshal the Defendants’ financial records, the Receiver has obtained account statements and other account records from 9 different financial institutions at which the Defendants maintained at least 76 accounts. The Receiver performed a preliminary analysis of those records and provided all of them to her forensic accountants at Kapila Mukamal, LLP, who have reviewed and made substantial progress analyzing the account activity, including transfers in and out of the accounts, and creating consolidated reconstructions of the known accounts for each Defendant and certain affiliated entities. This has enabled the Receiver to (i) identify and locate potential assets of the Defendants, (ii) investigate Defendants’ business operations and dealings with customers, insiders, and affiliated persons and entities, (iii) determine the sources of funds transferred into the accounts for purposes of identifying customers of the

Defendants, among other things, (iv) identify transfers from those accounts to affiliates, insiders, relatives and third parties and the accounts of such transferees for purposes of bringing actions to recover for the benefit of the Receivership Estate any improperly transferred funds, (v) identify customers and potential customers of the Defendants who may be eligible to file claims in the receivership to recover their losses, and (vi) formulate an appropriate claims process and distribution plan which the Receiver will propose to the Court for purposes of administering their claims and making distributions to claimants with allowed claims.

With respect to real and personal property of the Defendants, the Receiver has inspected, taken control over, insured and secured all known real property of the Defendants and all known personal property of the Defendants having significant value. She has also sold a residence belonging to Defendant Atkinson with his consent and leased out Defendant Passerino's condominium unit with his consent. And, with the exception of Defendant Passerino's turnover of that unit, which he refused to do until the Receiver filed a motion for order to show cause, the Defendants by and large have cooperated in connection with turning over their property to the Receiver. An inventory of all known assets the Receiver has marshaled to date is attached hereto as **Exhibit A**.

The Receiver also has worked with the Defendants to image their computer hard drives, tablet devices, mobile phones, email accounts, cloud accounts, and accounts with vendors and she has reviewed and analyzed those records to learn more about Defendants' operations, assets, vendors, customers and potential third-party transferees. Further, the Receiver has sought and obtained records and information from the Defendants, the CFTC, banks at which Defendants held accounts, and vendors through which the Defendants conducted their businesses, for purposes of investigating their operations and identifying the customers of the Defendants. And, the Receiver

has requested that the Defendants provide the sworn accountings required by this Court's Orders, which accountings will, among other things, facilitate the Receiver's fulfillment of her duties thereunder. The Defendants have not provided sworn accountings, invoking their Fifth Amendment rights against self-incrimination; however, they have provided, through their respective counsel, lists of assets and accounts at financial institutions and cryptocurrency exchanges while expressly reserving their Fifth Amendment rights. Further, Defendants Atkinson and Passerino appeared in person for interviews by the Receiver and her counsel and answered questions regarding foregoing matters and other subjects relevant to the Receiver's investigations, while reserving their Fifth Amendment right against self-incrimination.

Finally, the Receiver and her counsel have worked with counsel for the CFTC, counsel for the SEC and counsel for Defendant Atkinson to finalize the terms of the proposed Consent Final Judgment and Permanent Injunction, which the CFTC has submitted to the Court for its consideration and entry.

II. PROCEDURAL BACKGROUND AND THE APPOINTMENT AND DUTIES OF RECEIVER

On September 27, 2018, the CFTC filed a Complaint for Injunctive Relief and Demand for Jury Trial (the "Complaint") against Timothy Joseph Atkinson ("Atkinson") and his business All In Publishing, LLC ("AIP"), and Jay Passerino ("Passerino") and his business Gasher, Inc. ("Gasher"), (collectively, the "Defendants"), commencing the above-captioned enforcement action (the "CFTC Action"). The CFTC also filed an Emergency Motion for Statutory Restraining Order [ECF No. 6], an Emergency Motion for Preliminary Injunction (the "Injunction Motion") [ECF No. 7], and an Emergency Motion for Appointment of Temporary Receiver [ECF No. 9] seeking to enjoin the Defendants from continuing their operations and further violations of the

Act, an inspection of Defendants' records, the freeze of their assets, the appointment of a receiver, and other equitable relief.

A. Entry of Statutory Restraining Order and Appointment of Temporary Receiver

On October 5, 2018, the Court entered an Order Granting Plaintiff's Motion for Statutory Restraining Order, Appointment of Receiver, an Accounting and Other Equitable Relief (the "Statutory Restraining Order"). ECF No. 48. Pursuant to the Statutory Restraining Order, the Defendants' assets were frozen, all records of Defendants' activities and assets were ordered to be preserved, and Melanie E. Damian was appointed Temporary Receiver of the entity Defendants and the assets of the individual Defendants in the CFTC Action.

The Receiver's mandate was to, *inter alia*, take possession, custody and control of all Defendants' assets, establish control of the entity Defendants' businesses (to the extent they exist and continue to operate), prevent the withdrawal or misapplication of Defendants' funds, collect funds due to the Defendants, obtain documents and records pertaining to Defendants' assets, transactions and business operations, and perform all acts necessary to preserve the value of the Receivership Estate. *See* Statutory Restraining Order at pp. 10-13.

The Statutory Restraining Order required the Receiver to provide the Court with this Report, which not only summarizes the performance of her duties and responsibilities established in the Statutory Restraining Order, but also thoroughly details the Receiver's efforts to marshal and secure assets and administer the Receivership Estate.

B. Atkinson and AIP's Consent to Entry of Preliminary Injunction

On October 11, 2018, Defendants Atkinson and AIP consented to the Court's entry of a Preliminary Injunction against them. Accordingly, that same day, the Receiver terminated the employment of counsel for AIP and requested that such counsel turn over to the Receiver all

documents and communications in their possession, custody and control as a result of their representation of AIP. On October 17, 2018, former counsel for AIP produced the requested documents and communications. Subsequently, counsel for AIP filed a Motion to withdraw as counsel for AIP. And the Receiver and her counsel filed a Notice of Appearance on behalf of AIP.

C. Entry of Preliminary Injunctions

On November 16, 2018, the Court entered the agreed upon *Consent Order for Preliminary Injunction and Other Ancillary Relief Against Defendants Timothy Joseph Atkinson and All in Publishing, LLC* (the “Consent Injunction”), extending the injunctive relief, asset freeze and directives ordered in the Statutory Restraining Order and continuing the Receiver’s appointment. *See* ECF No. 127. Atkinson is cooperating with the Receiver as required in the Consent Injunction. *See id.* at p.19.

On that same date, the Court entered the Order for Preliminary Injunction and Other Ancillary Relief Against Defendants Jay Passerino and Gasher, Inc. [ECF No. 125] (the “Preliminary Injunction” and together with the Consent Injunction, the “Preliminary Injunctions”). The Preliminary Injunction extended the injunctive relief, asset freeze and directives as to Defendants Passerino and Gasher, Inc. ordered in the Statutory Restraining Order and continued the Receiver’s appointment until final disposition of the CFTC’s claims against those Defendants. *See id.* at pp. 17-30. The Receiver terminated the employment of Gasher, Inc.’s counsel, who were also representing Defendant Passerino; nevertheless such counsel, on behalf of both of those Defendants, filed a Notice of Appeal of the Preliminary Injunction and a Motion to stay the Preliminary Injunction pending their appeal in both the District Court and the Circuit Court for the Eleventh Circuit Court of Appeals (the “Appellate Circuit”). During this Reporting Period, the District Court and the Appellate Court denied the Motions to stay pending appeal, counsel for

Passerino and Gasher, Inc. moved to withdraw as counsel, and because the Receiver, not intending to pursue the appeal, did not file a notice of appearance in the appeal, the Appellate Court dismissed the appeal for failure to retain counsel. *See* ECF No. 195. Accordingly, the District Court's Preliminary Injunctions are in full force and effect, and the Receiver continues to fulfill her duties thereunder.

III. THE RECEIVER'S ACTIVITIES AND EFFORTS TO DATE

A. Employment of Professionals

Immediately upon her appointment and review of relevant documents and discussions with counsel for the CFTC and counsel for certain of the Defendants, the Receiver conducted the necessary planning and determined her need to employ certain professionals to assist her in carrying out her duties and responsibilities under the Statutory Restraining Order and the Preliminary Injunctions. Pursuant to the Court's Orders, the Receiver was granted the authority to "[m]anage and administer the Receivership Defendants and Receivership Estate by performing all acts incidental thereto that the Temporary Receiver deems appropriate, including ... (1) the retention and employment of investigators, attorneys, or accountants . . . of the Temporary Receiver's choice, including without limitation members and employees of the Temporary Receiver's firm." *See* Statutory Restraining Order, ¶ 27(F); Consent Preliminary Injunction, ¶ 29 (F); Preliminary Injunctions, ¶ 59 (F).

Accordingly, the Receiver engaged Damian & Valori LLP ("Lead Counsel") as her lead counsel, and Kapila Mukamal LLP (the "Forensic Accountants") as her forensic accountants and tax consultants.¹

¹ Counsel for the CFTC has approved the Receiver's hiring of Lead Counsel and the Forensic Accountants to provide forensic accounting and tax consultation services.

The foregoing professionals have been instrumental to the Receiver's success in this case thus far, helping her to marshal and secure the various Defendants' assets, communicating with financial institutions, vendors and other third-parties, and counsel for the Defendants to obtain information and records, and coordinating with counsel for the CFTC and counsel for the Defendants on various matters in connection with fulfilling the duties of the Receiver and Defendants under the Court's Orders.

B. Obtaining Information and Records from Defendants

The Statutory Restraining Order required the Defendants, within five (5) business days following its entry, to provide the Receiver with a detailed accounting of all funds, assets, and documents of the Defendants. *See* Statutory Restraining Order at ¶ 28; *see also* Consent Injunction at p. 17, and Preliminary Injunction at p. 26 (restating this mandate). The Statutory Restraining Order and the Preliminary Injunctions further require the Defendants to provide to the Receiver records regarding all assets, accounts and business operations of the Defendants. *See id.*; Consent Injunction at p. 18, and Preliminary Injunction at p. 28 (restating this mandate).

As mentioned above, while none of the Defendants have provided detailed sworn accountings, invoking their Fifth Amendment rights against self-incrimination, they have directly and through counsel (i) provided information and records regarding their assets and accounts, (ii) facilitated the Receiver's online access to bank, credit card, email, cloud computing, and vendor accounts by, among other things, providing usernames and passwords and assisting with resolving two-factor authentication issues, so the Receiver could access and capture forensic images of those accounts, (iii) granted access to certain laptop computers, tablet devices and mobile phones and provided passwords so the Receiver could have the CFTC's IT Department capture forensic images of those devices, and (iv) participated in interviews with the Receiver and her counsel

concerning various matters relevant to the Receiver's investigations.

With respect to the Defendants' bank and credit card accounts, the Receiver has been able to gain online access to those accounts and has frozen all funds and investment accounts and transferred the funds from nearly all accounts to the fiduciary accounts the Receiver opened for this receivership.²

During this Reporting Period, the Receiver was able to gain access to and image all email, cloud computing and vendor accounts of both individual Defendants, and the Receiver has reviewed many of those records. During the initial reporting period, Defendants Atkinson and AIP granted the Receiver access to one MacBook Pro, one iPad and one iPhone and Defendants Passerino and Gasher, Inc. granted the Receiver access to one MacBook Pro and one iPhone, and the Receiver (through the CFTC's IT Department) has captured images of those devices and the Receiver's counsel reviewed and analyzed the content on those devices. Further, Defendant Passerino's counsel delivered to the Receiver the forensic images of the MacBook Pro and iPhone that its computer forensic vendor captured, and the Receiver's counsel reviewed and compared those images to the images of those devices that the CFTC's IT Department captured and determined that they were the same. Also, during the Reporting Period, the Receiver engaged a computer forensic professional to copy all of the images captured by the CFTC's IT Department and convert the copies into a format that can be viewed and searched. Further, the Receiver's computer forensic professional accessed and imaged the hard drive of Digital Platinum's computer, which Defendant Passerino had turned over to the Receiver, and the Receiver's professionals reviewed that image.

² The Receiver did not liquidate the Defendants' investment accounts because the District Court has not yet authorized the Receiver to liquidate the personal property of the Defendants.

The Receiver also has made efforts to gain a more thorough understanding of the Defendants' assets, liabilities, business operations and relationships, and dealings with customers, by conducting in-person interviews of Defendants Atkinson and Passerino. While both Defendants reserved the right to invoke the Fifth Amendment in response to any particular question by the Receiver or her counsel, they each provided information that substantially assisted the Receiver in fulfilling her duties where possible.³

The Receiver and her professionals will continue to work with counsel for the Defendants, counsel for the CFTC, and various third parties to obtain additional records and information regarding the Defendants' assets, accounts, business dealings and customers.

C. Obtaining Defendants' Records and Recovering Assets from Third Parties

Following her appointment, the Receiver and her professionals swiftly took action to review all available documents associated with the Defendants for the purpose of identifying and investigating their assets and business operations. Immediately thereafter, the Receiver issued demand letters and subpoenas to numerous financial institutions, vendors, and other service providers with which the Defendants conducted business during the time period relevant to the CFTC's Complaint, attaching a copy of the Statutory Restraining Order or the Preliminary Injunction, and requesting the freezing and turnover of assets and accounts and the production of records. In particular, the Receiver demanded (i) the freezing of all accounts and assets, (ii) turnover of the control and ownership of the accounts to the Receiver, (iii) exclusive access to the accounts and account records including online access, (iv) detailed information concerning the history, nature and value (where applicable) of each account as required by the Statutory

³ Defendants were unable to provide certain requested information where accounts had been closed and access terminated.

Restraining Order, (v) direction of future correspondence regarding the accounts to the Receiver, and (vi) records concerning each account including, without limitation, account statements, communications between the Defendants and the recipient of the letters, asset transfer records, and account opening documents.

In some instances, the Receiver received reasonably prompt responses from the recipients of the demand letters and the production of some or all of the requested information and records. In many cases, the Receiver sent subsequent letters, made telephone calls, and issued follow-up subpoenas to the financial institutions and vendors seeking additional records or providing additional identifying information to assist with locating the accounts for which records were requested. The Receiver and her professionals will continue to seek full responses, documents, data, and/or funds from those third parties.

In a small number of cases, recipients of the Receiver's demand letters or subpoenas objected to the Receiver's requests for information and records. In those cases, the Receiver's counsel contacted the objecting parties or their counsel to attempt to resolve their objections. There are also twelve third parties that have not responded to the subpoenas at all, and the Receiver's counsel is working to make contact with those third parties. The Receiver's counsel has been able to resolve most of the objections, but if they are unable to resolve the remaining objections, the Receiver will file appropriate motions seek assistance from this Court.

1. Freezing and Recovering Funds in Various Bank and Investment Accounts

The Receiver had previously identified 67 accounts held by the Defendants at various institutions, including one international bank located in St. Lucia.

After sending demand letters and the Statutory Restraining Order to the financial institutions, the Receiver received confirmation that a total of \$2,979,630.90 was frozen in the

Defendants' accounts. And the Receiver was able to confirm this by accessing the Defendants' accounts online. Of those funds, \$963,842.51 was in the accounts of Defendants Atkinson and/or AIP, and \$2,006,086.18 was in accounts of the accounts of Defendants Passerino and/or Gasher, Inc. To date, the Receiver has secured the transfer of \$2,615,399.09 of those funds to the fiduciary accounts she opened for these two groups of Defendants. *See* Exhibit A.

Some of the Defendants' accounts that have been frozen are investment accounts containing illiquid investments. Rather than seeking to liquidate those investments at this time, the Receiver believes it prudent to keep those accounts frozen while she investigates the sources of the funds with which the investments were acquired. During this investigation, the Receiver will monitor those accounts to confirm that they remain frozen until the Receiver confirms the source of the funds used to acquire the investments and is authorized by the Court, or by consent of the Defendants, to liquidate them.

2. Recovering Records from Credit Card Companies

The Receiver has identified and frozen credit card accounts associated with the Defendants. With the assistance of her professionals, the Receiver is analyzing the account records received to date for purposes of identifying assets purchased with credit cards and other transfers to third parties that may be recoverable for the benefit of the Estate.

3. Other Potential Bank and Credit Card Accounts

In light of the Defendants' failure to provide sworn financial disclosures, the Receiver must continue to search for additional bank and credit card accounts of the Defendants. If any additional accounts of the Defendants or their affiliates are identified, the Receiver will send demand letters or subpoenas requesting account records from the financial institutions at which such accounts are held. If necessary, the Receiver will send subpoenas directly to, and schedule the depositions of,

any affiliates believed to have accounts or records of, or any substantive involvement with, the Defendants.

4. Recovering Records from Vendors and Service Providers

The Receiver issued subpoenas to the affiliate networks and other vendors and service providers through which the Defendants operated their businesses, requesting records regarding the Defendants' accounts, customers and transactions. Some of the vendors produced records, which the Receiver and her professionals are still reviewing, and other have not. But none of them provided lists of or information regarding the Defendants' customers, including customers who clicked on or viewed advertisements for binary options trading products or services or who executed binary options trades after being directed to the binary options trading firm or platform by one of the Defendants. The Receiver and her professionals will continue to follow up with the vendors who have not yet produced records or provided a complete production and, for those based in foreign jurisdictions, will explore other means of compelling their production of records, access to accounts, and other cooperation.

5. Recovering Records from Former Counsel for Defendants

The Receiver sent letters and/or subpoenas to various attorneys and law firms that previously represented the Defendants, requesting records related to the Defendants and their businesses and all communications involving the entity Defendants, of which the Receiver stands in the shoes for all purposes and for which the Receiver holds all privileges, including the attorney-client privilege. Most of the attorneys and law firms produced records, with some productions containing thousands of documents, including numerous documents regarding Defendants' business operations and affiliate marketing for binary options trading products and services. The Receiver's counsel has devoted significant time to reviewing and analyzing these documents to

fulfill the Receiver's duties to investigate the Defendants' businesses, assets and customers.

One law firm has refused to turn over any records or the case file, claiming work product and attorney-client privilege on behalf of their former clients Defendants Atkinson and AIP, and asserting a charging lien for unpaid bills. Similarly, a law firm that previously represented Defendants Passerino and Gasher, Inc. has refused to turn over any client documents, also asserting the work product and attorney-client privileges. The Receiver's counsel is working on resolving the privilege issues. However, the Receiver may need the Court's assistance if she is unable to resolve these issues.

D. Securing Real Property of the Defendants

During the initial reporting period, the Receiver took possession of Defendant Atkinson's real property, including one house in North Carolina and two condominium units in Miami Beach, Florida. During this Reporting Period, the Receiver marketed the North Carolina property for sale at \$865,000, negotiated the sale terms with the buyer and closed the sale for \$845,000 with the approval of this Court. *See* ECF ## 164 (Motion) and 172 (Order). The Estate netted \$60,790.88 from that sale after payment of various liens and commissions. Prior to closing the sale of the North Carolina residence, the Receiver also sold some of the furniture and personalty located in that residence using the auction company Pure and Simple that conducted a public auction inside the residence. The Estate received net proceeds in the amount of \$2,565.48 from the auction.

The Receiver also listed and marketed Defendant Atkinson's condominium unit, located at 911 Meridian Avenue in Miami Beach, for sale through an experienced real estate broker. During this Reporting Period, she negotiated and entered into a contract for the sale of the unit and filed a motion to approve that sale, but the prospective buyer was unable to obtain the necessary financing to close the sale, so the Receiver withdrew her motion and cancelled the sale. Her realtor continues

to market that unit for sale. With respect to Defendant Atkinson's second Miami Beach condominium unit, the Receiver initially did not attempt to sell it so that Mr. Atkinson's mother-in-law to continue to live in it for a limited period of time. Mr. Atkinson's mother-in-law has since moved out of the unit and the Receiver began actively marketing it for sale through the same broker who is marketing the other unit.

During the initial reporting period, Defendant Passerino disclosed that he owns one condominium unit in Fort Lauderdale, Florida. The Receiver permitted Defendant Passerino to continue to live in that unit for a limited period of time, first, while he and the CFTC attempted to reach an agreement regarding the living expenses that would be exempt from the receivership Estate and, then, while the District Court and the Appellate Court considered Defendant Passerino's Motion to stay the Preliminary Injunction pending his appeal thereof. But Mr. Passerino and the CFTC were unable to reach an agreement and the District Court and the Appellate Court denied Mr. Passerino's motion for stay pending appeal. As such, because Mr. Passerino remained unemployed and could not afford to make the mortgage payments for the condominium unit or pay the building's monthly maintenance fees, so the Receiver requested that Mr. Passerino vacate the unit by a date certain, pursuant to the Preliminary Injunction. When Mr. Passerino failed to do so, the Receiver filed a Motion for an order to show cause why Mr. Passerino should not be held in contempt of court. Soon thereafter, Mr. Passerino vacated the unit. Upon taking possession of the unit, the Receiver engaged a real estate broker, listed the condominium unit for rent, negotiated a rental agreement and entered into a six-month lease on the unit for a monthly rental price of \$5,700, which is slightly above the market value for similar rental units in the area and sufficient to cover all of the monthly expenses of the unit. In anticipation of the CFTC and Mr. Passerino reaching an agreement regarding the CFTC's claims and Mr. Passerino

consenting to the sale of the condominium unit, the Receiver has begun marketing it for sale in an attempt to have a buyer lined up by the time the lease term expires so the Estate does not have to cover the carrying costs of the unit. When the Receiver locates a buyer who has agreed to pay fair market value for the unit, assuming Mr. Passerino consents to the sale (or the Court authorizes the Receiver to sell his personal property), the Receiver will submit the purchase agreement to the Court for approval.

E. Securing Personal Property and Other Assets of the Defendants

Defendant Atkinson provided the Receiver with a list of his personal property. Included on that list were firearms and artwork, which the Receiver located at Mr. Atkinson's house in North Carolina. With the consent of Mr. Atkinson, the Receiver had the firearms appraised and sold them for their appraised value to a gun store in North Carolina so that she would not have to register them in the name of, or transfer ownership to, the Receiver or the Estate or expend resources to legally ship them to South Florida or transport them across state lines. The Receiver had the artwork insured and transported to Miami, Florida and is storing it at a secure location. Further, Mr. Atkinson turned over to the Receiver substantial jewelry, watches, and a collectible baseball card, all of which has substantial value. The Receiver obtained insurance for those assets and is storing them in a bank safe deposit box in Miami, Florida. Defendant Atkinson also informed the Receiver that he maintains one of his firearms in Miami, Florida. In accordance with the Receiver's instructions, Defendant Atkinson delivered the firearm and a firearm accessory to a local gun store, which has agreed to sell them both on consignment, with the net sale proceeds to be transferred to the Estate. The Receiver chose not to take possession of the firearm or the accessory because that would have required the creation of a gun trust and the transfer of title, which would needlessly deplete the Estate's resources.

Defendant Passerino also provided to the Receiver a list of his personal property. That list included the property the Receiver inspected and photographed in his condominium unit in Fort Lauderdale, Florida, including without limitation two large Sony televisions, furniture, a Tag Heuer watch, artwork and sports memorabilia. Given the minimal value of the watch and the expenses associated with storing and seeking to sell it, the Receiver determined that it would not be cost effective to demand its turnover to the Receiver. With respect to the televisions, furniture, artwork and sports memorabilia, the Receiver left those items in the condominium unit to attract renters willing to pay a premium for a well-appointed, fully-furnished unit.

The Receiver has performed asset searches for each of the Defendants, using sophisticated online asset, lien and background search tools. These searches did not reveal any assets of which the Receiver was not aware based on her investigations, information provided by the CFTC, and the disclosures the Defendants made directly and through counsel. The Receiver continues to search for assets of the Defendants, by, among other things, investigating the transfers and charges by the Defendants to or for the benefit of relatives, affiliates and third parties reflected in the statements for the Defendants' bank and credit card accounts and will seek to recover any such assets that are identified.

F. Preliminary Analysis of Accounts at Financial Institutions

As explained above, the Receiver obtained records of the Defendants' accounts at financial institutions from the Defendants and the institutions where the accounts were held. The Receiver also received account records that counsel for the CFTC had obtained and the database of transactions they had compiled during their investigation of the Defendants. The Receiver forwarded all these documents, including account statements, account opening documents, and the CFTC's transaction database, to the Receiver's Forensic Accountants for further review and

analysis. The focus of the Receiver's analysis of the Defendants' bank and credit card accounts is identifying the source of the funds transferred to the accounts (as deposits or credit card payments) and the transfers of funds from bank accounts, and the credit card charges, to or for the benefit of the Defendants, affiliates, relatives, vendors, service providers, and other third parties. Once the funds are traced in and out of the accounts, the Receiver will be able to identify (i) the customers of the Defendants or the affiliate networks and payment processors through which customer funds were transferred, and (ii) the recipients or beneficiaries of withdrawals or transfers from those accounts from which the Receiver may seek to recover fraudulent or otherwise voidable transfers for the benefit of the Receivership Estate and, ultimately, the customers who lost money trading in binary options through firms and platforms to which the Defendants directed them.

To assist the Receiver in this endeavor, her Forensic Accountants have prepared consolidated reconstructions of all identified accounts for each of the Defendants and their affiliates. The Forensic Accountants also have prepared an inventory of records for all known bank and credit card accounts to keep track of the records they have received and analyzed to date and the records they still need to complete the account reconstructions. The Receiver's Lead Counsel continue to follow up with certain financial institutions by informal request or subpoena to obtain the missing records, including cancelled checks, check registers, deposit slips, ACH and wire transfer confirmations, and communications they say take longer to locate and produce. Given the extensive nature of the Receiver's document requests, the Receiver has granted certain institutions extensions of time to produce the documents. Upon receipt of additional records, the Receiver will forward them to the Forensic Accountants to be analyzed and incorporated into the account reconstructions.

G. Investigation of the Defendants' Business Operations

At the beginning of this case, the Defendants, through their respective counsel, represented to the Receiver that the businesses that are the subject of the CFTC's Complaint are not presently operating and have not operated in more than one year. One of the Receiver's duties is to investigate and take control of the business operations that are the subject of the Complaint. As such, the Receiver has been investigating those businesses by reviewing the documents she obtained from the Defendants, the CFTC, various financial institutions and vendors through which the Defendants operated their business, and the Defendants' former counsel. And, that investigation will continue as the Receiver receives and reviews additional documents from financial institutions, vendors and former counsel. Thus far, the Receiver does not have any reason to believe that the businesses at issue in the Complaint are operating or have operated since August 31, 2018. Digital Platinum, Inc., a Florida corporation for which Defendant Passerino worked and is the registered agent, had offices in Miami and appears to have closed its Miami office on August 31, 2018.

The Receiver has made the following observations regarding Defendants' businesses. The Defendants operated affiliate marketing businesses that marketed products and services through email campaigns and other online tools that reached thousands of customers. And, the binary options trading that is the subject of the Complaint was among the products and services the Defendants marketed. Further, it is apparent that brokers paid the Defendants for referrals and the advertising that the Defendants provided. Indeed, the Receiver's analysis of the Defendants' bank records revealed that most of the funds that came into the Defendants' business accounts were from third-party affiliate networks and payment processors at which the Defendants maintained accounts and through which they operated their businesses. The Receiver has sent subpoenas

requesting records from those affiliate networks and payment processors to obtain more information regarding Defendants' business operations and the customers whose funds were transferred through those companies to the Defendants. Some of those companies have not responded to the subpoenas, and the Receiver's professionals are working on confirming their addresses and that they remain in business. The primary affiliate network utilized by the Defendants for their businesses is based outside the United States, so the Receiver is considering whether the benefit of obtaining the requested records outweighs the cost of seeking to compel their production through appropriate international procedures. The Receiver has also gained knowledge regarding the Defendants' businesses from the in-person interviews described above.

H. Identifying and Communicating with Customers and Creditors of the Defendants

Based on her discussions with counsel for the CFTC and the nature of the businesses that are the subject of the Complaint, the Receiver understands that the Defendants may have had tens of thousands if not hundreds of thousands of customers. The Receiver has compiled the list of Defendants' customers provided by the CFTC counsel with other lists of potential customers and leads, which the Receiver's professionals located among the Defendants' records, into one spreadsheet of customers and potential customers. The Receiver is currently formulating a proposed noticing and claims process to be implemented in conjunction with the noticing and claims process of other CFTC and SEC enforcement actions and receivership involving customers who lost money trading in binary options. One combined noticing and claims process for all binary options trading and affiliate marketing schemes that are the subject of government enforcement actions or investigations may be necessary given that numerous individuals were customers of more than one scheme and determining which affiliate marketer directed which customer to a given binary options trading firm or platform will be extremely difficult if not impossible. Also,

the noticing and claims process the Receiver will propose to the Commissions and the Court will call for a noticing and claims agent with the experience and technology to implement and manage a process that will require communicating with a significant number of claimants and storing and processing a high volume of claims and supporting documents. The Receiver's goal is to provide each customer with notice of and information regarding this Receivership and enforcement action and other receivership and enforcement actions involving binary options trading and affiliate marketing, and how they may stay informed of the status of the actions, how their rights may be affected, and how they may participate in the claims process and eventually receive distributions based on losses they may have sustained as a result of the actions of the defendants to the various enforcement actions.

Within one week of her appointment, the Receiver created a website for the Receivership (www.allinpublishingreceivership.com) and a dedicated email address for purposes of keeping the Defendants' customers and creditors and other interested parties apprised of the status of the Receivership and the CFTC's enforcement action, posting Court filings, notices, orders and important dates and deadlines, and answering frequently asked questions. Given the large number of customers, the Receiver has also set up a dedicated telephone number the customers may use to obtain information regarding the Receivership. As soon as the Receiver is able to compile a reliable list of the Defendants' customers and creditors, she will notify them of the website, email address and the telephone number and encourage them to visit the website and call the number if they have specific questions or concerns that are not addressed on the website. Customer and creditor inquiries will be responded to based on urgency and as deemed appropriate under the circumstances by the Receiver and her professionals.

I. Ongoing Legal Proceedings Involving the Defendants

At this time, the Receiver is unaware of any proceedings (other than this action) to which any of the Defendants are a party or by which their rights, interests or assets may be affected. In the event the Receiver learns of any such proceeding, she will discuss it with counsel for the CFTC and counsel for the Defendants and take any and all actions that are appropriate and necessary to preserve the interests of the Receivership Estate.

J. The Estate's Potential Claims Against Third Parties

Throughout this Reporting Period, the Receiver's professionals, including her Forensic Accountants, paid particular attention to all potential sources from which the Receivership Estate could recover funds belonging to the Defendants, including affiliates, relatives and third parties who received funds or other assets traceable to the Defendants' businesses or customers. The Receiver has already identified a number of persons and entities who received hundreds of thousands of dollars in transfers from the Defendants and will continue to gather evidence of additional transfers for purposes of developing and bringing claims to recover fraudulent and other voidable transfers. The Receiver will pursue those claims she believes are meritorious and likely to result in a significant recovery for the Receivership Estate.

K. Transfers to Individual Defendants

Based on the Receiver's investigation thus far, it is apparent that the entity Defendants transferred large sums of money to the individual Defendants. The Receiver and her professionals will further investigate the nature and source of those transfers and continue to analyze the records of all Defendants, including their bank and credit card account records, and obtain any additional records necessary to determine the amount, source and recipient of the transfers. During the Reporting Period, the Receiver and her professionals worked with counsel for the CFTC to

determine the appropriate disgorgement and restitution amounts that were included in the consent permanent injunction that the CFTC submitted to this Court for consideration and entry. In the event Defendant Passerino and counsel for the CFTC agree to the terms of a consent permanent injunction, the Receiver will consult with those parties regarding the appropriate disgorgement and restitution amounts to be proposed therein.

L. Insurance Policies Applicable to the Defendants' Conduct

To date, the Receiver has not identified any insurance policies that would cover any of the Defendants' conduct that is the subject of the CFTC's Complaint. The Receiver will continue to search for such policies and, in the event any are discovered, will analyze each policy and, if appropriate, assert a claim on behalf of the Receivership Estate.

IV. CASH ON HAND AND ADMINISTRATIVE EXPENSES

The Receiver presently holds a total of \$2,647,961.83 in cash on hand, in two fiduciary accounts at City National Bank in Miami, Florida, earning interest at 1.28% (APR) and segregated based on the owner(s) of the accounts from which the funds were transferred as follows:

| | |
|----------------------|------------------------------|
| Atkinson and AIP | \$ 1,020,228.97 |
| Passerino and Gasher | \$ 1,627,732.86 |
| <i>Total</i> | <i>\$2,647,961.83</i> |

Since the inception of the Receivership, the Receiver has made minimal disbursements (totaling \$48,537.09) from the Receiver's fiduciary accounts for necessary expenses to preserve and administer the Estate. Such expenses included maintenance fees and assessments for Defendant Atkinson's Miami Beach condominium units, mortgage payments and maintenance fees for Defendant Passerino's Ft. Lauderdale condominium unit, fees for certified copies of

certain Court Orders, and fees for bank account services and maintenance and check printing. Attached hereto as **Exhibit B** is a detailed statement of the Estate's Receipts and Disbursements during this Reporting Period.

Pursuant to the Statutory Restraining Order and the Preliminary Injunctions, the Receiver filed an application seeking approval of the fees and expenses and she and her professionals incurred during the initial reporting period and seeking payment of such fees and expenses from the funds the Receiver has marshaled and deposited into her fiduciary accounts pursuant to the Court's Orders. The Magistrate Judge to which such application was referred approved it in a Report and Recommendation, *see* ECF No. 196, to which no party has filed an objection. Similarly, the Receiver will file an application seeking approval and payment of the fees and expenses that she and her professionals incurred during the time period covered by this Report.

V. CONCLUSION

The Receiver and her professionals appreciate the opportunity to assist the Court in this matter. Significant progress has been made, but the Receiver and her professionals must continue their efforts, as discussed herein, to fulfill the Receiver's duties under the Court's Orders, with the focus on affording the most cost-effective protection to, and maximizing the ultimate recovery by, the Defendants' customers.

Respectfully submitted this 17th day of April, 2019.

Respectfully submitted,

/s/Kenneth Dante Murena

Kenneth Dante Murena, Esq.

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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 April 17, 2019 on all counsel or parties who have appeared in the above-styled action, listed on the attached Service List set forth below.

/s/Kenneth Dante Murena
Kenneth Dante Murena,
Counsel for Receiver

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