

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 FIRST STATUS REPORT**

Melanie E. Damian, the court-appointed temporary Receiver (the "Receiver") in the above-captioned enforcement action, submits her first 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 the date of appointment through November 30, 2018.

**TABLE OF CONTENTS**

I. INTRODUCTION .....4

II. PROCEDURAL BACKGROUND AND THE APPOINTMENT AND DUTIES OF RECEIVER..... 7

    A. Entry of Statutory Restraining Order and Appointment of Temporary Receiver ..... 7

    B. Atkinson and AIP’s Consent to Entry of Preliminary Injunction ..... 8

    C. Entry of Preliminary Injunction ..... 9

III. THE RECEIVER’S ACTIVITIES AND EFFORTS TO DATE..... 11

    A. Employment of Professionals ..... 11

    B. Obtaining Information and Records from Defendants..... 12

    C. Recovery of Defendants’ Records and Assets from Third Parties ..... 15

        1. Freezing and Recovering Funds in Various Accounts..... 16

        2. Credit Cards ..... 17

        3. Other Potential Bank and Credit Card Accounts ..... 17

    D. Securing Real Property of the Defendants..... 18

    E. Securing Personal Property and Other Assets of the Defendants ..... 19

    F. Preliminary Analysis of Accounts ..... 20

        1. Accounts at Financial Institutions..... 20

        2. Digital Devices..... 23

        3. Email, Cloud Computing and Vendor Accounts ..... 24

    G. Investigation of the Defendants’ Business Operations ..... 25

    H. Identifying and Communicating with Customers and Creditors Of the Defendants ..... 28

    I. Ongoing Legal Proceedings Involving Defendants ..... 29

    J. The Estate’s Potential Claims Against Third Parties ..... 29

    K. Transfers to Individual Defendants..... 30

L. Insurance Policies Applicable to the Defendants' Conduct.....30

IV. CASH ON HAND AND ADMINISTRATIVE EXPENSES.....30

IV. CONCLUSION.....31

## I. INTRODUCTION

Since her appointment, the Receiver has worked diligently with counsel for the Commodity Futures Trading Commission (the “CFTC”) and counsel for Defendants 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, files stored with cloud storage providers, and emails sent and received through email service providers. Specifically, immediately following her appointment, the Receiver sent demand letters with the Statutory Restraining Order and Subpoenas to all financial institutions where the Defendants are known to have or have had accounts, requesting the freezing and turnover of funds and investments and the production of records for the accounts during the time period relevant to the CFTC’s Complaint. The Receiver received confirmation from these institutions that \$2,979,630.90 in funds held in accounts at multiple financial institutions were frozen pursuant to the Statutory Restraining Order and has effected the transfer of \$2,615,399.09 of those funds to the fiduciary accounts she opened for the Receivership Estate. The Receiver gained online access to all known accounts of the Defendants at financial institutions and is monitoring the activity of those accounts, with particular attention to the accounts containing frozen funds and investments that have not yet been transferred to the Estate’s fiduciary accounts. The Receiver is working with the financial institutions (at which Defendants hold investments that will not be liquidated at this time due to the procedural posture of this matter) to have the Receiver designated as the sole signatory on the accounts containing investments. With respect to her duties to marshal the Defendants’ financial records, the Receiver has obtained account statements from 9 different financial institutions at which the Defendants maintained more than 76 accounts. The Receiver, with the assistance of her

forensic accountants, has performed a preliminary analysis of most of those statements for purposes of identifying assets of the Defendants and third parties from which they may be recovered, determining whether the accounts were used in connection with the Defendants' businesses, and determining whether a more extensive forensic analysis is necessary to fulfill the Receiver's duties under the Orders of this Court.

Because all of the accounts the Receiver has analyzed thus far appear to be connected to the Defendants' businesses that are the subject of the CFTC's Complaint, the Receiver provided all of the account records received to date to her forensic accountants at KapilaMukamal, LLP, who have reviewed and performed a preliminary analysis of most of those records and made substantial progress analyzing the account activity and transactions and creating consolidated reconstructions of the known accounts for each Defendant and certain affiliated entities. This will enable 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, and (v) identifying potential claimants and formulating an appropriate claims process and distribution plan for 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. And the Defendants by and large

have cooperated in connection with turning over such property to the Receiver.<sup>1</sup> An inventory of all known assets the Receiver has marshalled 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.<sup>2</sup> 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 the required accountings, invoking their Fifth Amendment rights against self-incrimination;

---

<sup>1</sup> Mr. Passerino is the sole owner of a condominium unit in Fort Lauderdale, Florida, which is property of Receivership Estate. He has not turned over to the Receiver that unit and continues to reside in it. Further, he has not made the November and December 2018 mortgage payments to First Bank, which holds the mortgage on the property, claiming that the asset freeze in the Court's October 5, 2018 Order Granting Plaintiff's Emergency Motion for Statutory Restraining Order, Appointment of Receiver, an Accounting, and Other Equitable Relief [ECF No. 48] (the "SRO"), has prevented him from making those payments because has no source other than the frozen funds from which to do so. Pursuant to the SRO, to preserve the value of that property and prevent irreparable loss to the Estate, the Receiver will use the funds she obtained from Mr. Passerino's accounts to make the November and December payments and seek to convince First Bank not to move for stay relief to foreclose on the property pursuant to the loan documents which, according to the Bank, provide that the institution of a receivership over Mr. Passerino's property constitutes a default. *See* ECF No. 48, at ¶ 27. D. and K. In the event this Court denies Mr. Passerino's Motion to stay the effect of the SRO pending his appeal thereof, the Receiver will request that Mr. Passerino vacate the condominium unit and relinquish exclusive control of it to the Receiver and, should he not comply, the Receiver will ask this Court to compel him to do so.

<sup>2</sup> Mr. Passerino initially failed to turn over computer files and, when the Receiver arrived at his condominium unit with Ft. Lauderdale police officers and computer forensic specialists, a computer forensic specialist hired by Mr. Passerino's counsel was already in the process of imaging Mr. Passerino's MacBook computer and iPhone. The Receiver later obtained copies of those images by agreement. The Receiver has not yet determined if any data on those two devices was altered between the entry of the SRO and the date those images were captured.

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. The Receiver is also working on scheduling an in-person interview of Defendant Atkinson to discuss the foregoing matters and other subjects within the scope of the Receiver's appointment, with Mr. Atkinson reserving his Fifth Amendment right against self-incrimination. The interview will likely be scheduled for a date later this month or in January 2019. Defendant Passerino will not agree to such an interview before the Court rules on his Motion to stay the effect of the Preliminary Injunction pending his appeal of that Preliminary Injunction.

## **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 requires the Receiver to provide the Court with this Report, which not only summarizes the performance of her duties and responsibilities described 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.

### **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 and AIP consented to the entry of the Consent Injunction without admitting the allegations in the CFTC’s Complaint and are 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 sets forth the Court’s findings that the CFTC has shown a substantial likelihood that Passerino and Gasher, Inc. acted as commodity trading advisers, scamming customers and engaging in a binary options fraud by disseminating fraudulent solicitations and earned commissions from at least 29 fraudulent binary options advertising campaigns that went out to millions of prospective customers. *See* ECF No. 125 at pp. 5-12. As a result of that alleged misconduct, the Securities and Exchange Commission served Passerino and Gasher, Inc. with a subpoena seeking records of the advertising campaigns and those Defendants allegedly destroyed documents and evidence and conducted their business through foreign associates in an attempt to conceal their fraudulent activities. *See id.* at pp.12-13. Accordingly, the Court found that the CFTC had made a showing of a reasonable likelihood of success on the merits of its claims for violations of the Commodity Exchange Act and regulations promulgated thereunder. *See id.* at p. 13. Based on the aforementioned findings, 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.

Immediately following the entry of the Preliminary Injunction, Defendants Jay Passerino and Gasher, Inc. filed a notice of appeal. Soon thereafter, pursuant to the Preliminary Injunction and based on the Court's detailed findings, the Receiver terminated the employment of counsel for Gasher, Inc. 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 Gasher, Inc. As of the filing of this Report, counsel has not complied with that request.

Counsel for Defendants Passerino and Gasher, Inc. then filed in both this Court and the Eleventh Circuit emergency motions to stay this action pending their appeal of the Preliminary Injunction. *See* ECF No. 128. In particular, they are seeking an emergency stay to prevent the Receiver from (i) terminating the employment of Gasher, Inc.'s counsel, (ii) dismissing the appeal as to Gasher, Inc., (iii) demanding that counsel turn over Gasher's documents, and (iv) negotiating a permanent injunction against Gasher, Inc. Mr. Passerino's counsel argues that the Court must permit them to protect Gasher, Inc. from the Receiver.

The Receiver notes that, in the Preliminary Injunction, the Court granted the Receiver exclusive authority and control over Gasher, Inc., dispossessing Mr. Passerino of any such authority or control. *See* ECF No. 25, at pp. 10-13. Therefore, Mr. Passerino is no longer authorized to take any action on behalf of Gasher, Inc., including without limitation engaging counsel to represent Gasher, Inc., appealing the Preliminary Injunction on behalf of Gasher, Inc., or filing the emergency stay motion on behalf of Gasher, Inc. Only the Receiver could take those actions and, based on this Court's findings in the SRO and the Preliminary Injunction, the Receiver

does not believe such actions are warranted. Of course, as an agent of the Court serving at its discretion, the Receiver will take all actions directed by the Court and will await the Court's ruling on the emergency stay motion before taking any affirmative action with respect to the subjects addressed in that motion. In the meantime, the Receiver will continue to fulfill her duties under the Preliminary Injunctions, including without limitation preserving assets and records for the benefit of Gasher, Inc.'s customers.

### **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.<sup>3</sup>

The foregoing professionals have been instrumental to the Receiver's success in this case thus far, helping her with marshaling and securing the various Defendants' assets, identifying and seeking to recover additional assets for the benefit of the Estate, communicating with financial institutions 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).

While none of the Defendants have provided the detailed accounting required in this Court's Orders, invoking their Fifth Amendment rights against self-incrimination, they have through counsel (i) provided to the Receiver information and records regarding many of 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

---

<sup>3</sup> Counsel for the CFTC has approved the Receiver's hiring of Lead Counsel and the Forensic Accountant to provide forensic accounting and tax consultation services.

forensic images of those accounts, and (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.

With respect to the Defendants' bank and credit card accounts, the Receiver has been able to gain online access to those accounts using the usernames and passwords provided by the Defendants to confirm the balances and freezing of the accounts and download recent account statements. Defendant Passerino disclosed that he has accounts with three cryptocurrency exchanges and/or wallets and provided the usernames and passwords for those accounts. Counsel for the Receiver attempted to log in to those accounts but the multi-layer security measures protecting those accounts prevented counsel from accessing them. Therefore, Defendant Passerino logged in to the accounts while on the telephone with counsel, took snap shots of the three accounts, and sent them to counsel. The snapshots revealed that Mr. Passerino held cryptocurrency in two of the accounts and, according to the unsigned financial disclosures he provided through counsel, the value of those cryptocurrencies as of about October 11, 2018 was \$6,924.13.

For email, cloud computing and vendor accounts, the Receiver has been able to access and image all such accounts of both individual Defendants with the exception of two webmail accounts and one vendor account of Defendant Atkinson. The Receiver continues to work with Defendants' respective counsel to gain access to those accounts. As for the digital devices, Defendants Atkinson and AIP have granted the Receiver access to one MacBook Pro, one iPad and one iPhone and Defendants Passerino and Gasher, Inc. have 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. 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 more

recently, Defendant Passerino delivered to the Receiver a computer he claims was owned by Digital Platinum, a company for which Mr. Passerino is the registered agent and the signatory on at least one bank account and one credit card. Evidence was presented at the Preliminary Injunction hearing that additional computers were used by Defendant Passerino and Digital Platinum. Mr. Passerino, through his counsel, initial denied that he had possession, custody or control of any such computers. Subsequently, however, Mr. Passerino located an Apple computer that was owned by Digital Platinum and had that computer delivered to the Receiver. The Receiver will engage a computer forensic professional to access and image that computer's hard drive.

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, including requesting in-person interviews of Defendants Atkinson and Passerino, in the presence of their respective counsel. As explained above, Defendant Passerino would not agree to an interview prior to the Court's ruling on his Motion to stay the effect of the Preliminary Injunction pending his appeal thereof. Defendant Atkinson, however, will likely agree to an interview provided that doing so would not constitute a waiver of his Fifth Amendment rights, and he would reserve his right to invoke the Fifth Amendment in response to any particular question by the Receiver or her counsel. The Receiver's interview of Mr. Atkinson would take place later this month or in January 2019.

Without the detailed accountings the Defendants are required to provide under the Court's Orders, the Receiver undoubtedly will expend more time and resources in fulfilling her duties under this Court's Orders. Nonetheless, the Receiver and her professionals have begun a thorough review of the thousands of pages of records they have obtained thus far, reflecting thousands of transactions, and will continue their diligent efforts to fulfill the Receiver's duties in the most cost-

effective manner possible. In particular, the Receiver and her professionals will continue to work with counsel for the Defendants, counsel for the CFTC, and various third parties, including banks, credit card companies and vendors through which Defendants operated their businesses, to obtain as much information as possible regarding the Defendants' assets, accounts, business dealings and customers, and will explore alternative methods of gathering information from the Defendants.

### **C. Recovery of Defendants' Records and 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 to numerous financial institutions, vendors, and other service providers with which the Defendants have had dealings during the time period relevant to the CFTC's Complaint, requesting the freezing and turnover of accounts and the production of records. To date, the Receiver has sent more than 15 letters providing each recipient with a copy of the Statutory Restraining Order and demanding (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 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 subpoenas to the financial institutions and vendors. The Receiver and her professionals are working to obtain full responses, documents, data and/or funds from those third parties, many of which have requested additional information to identify accounts held by or affiliated with the Defendants, which information the Receiver has provided to the extent possible.

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. The Receiver's counsel has been able to resolve most of the objections but if the Receiver is unable to resolve the remaining objections, she will seek assistance from this Court by filing appropriate motions.

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

Soon after her appointment, the Receiver and her professionals analyzed the information and records provided by the CFTC and the Defendants and created a spreadsheet database that details the Defendants' known and suspected accounts at financial institutions. The Receiver has identified 67 accounts held by the Defendants at various institutions, including one international bank located in St. Lucia. Specifically, the Receiver has identified 31 accounts associated with Defendants Atkinson and/or AIP, and 36 accounts associated with Defendants Passerino and/or Gasher, Inc.

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. Credit Card Accounts***

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 full financial disclosures, as required by the Court's Order, the Receiver must continue to search for additional bank and credit card accounts of the Defendants. In particular, the Receiver and her professionals continue their review and analysis of all account records obtained to date, many dating as far back as five years, in order to identify accounts associated with the Defendants that should be frozen and transferred to the Receiver's fiduciary accounts. 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.

***D. Securing Real Property of the Defendants***

After her appointment, the Defendants, through their respective counsel, informed the Receiver of certain real property they owned. Defendant Atkinson disclosed that he owned one house in North Carolina and two condominium units in Miami Beach, Florida. The Receiver visited the North Carolina property, changed the locks, took inventory and photographs of its contents, had a safe opened by a locksmith, confirmed that the property is insured, reviewed documents related to the mortgage on the property, and selected a realtor to market the property for sale. With the consent of Defendant Atkinson, the North Carolina property was listed for sale and the Receiver is attempting to sell it to pay off the mortgage, reduce the carrying expenses, and increase the net equity to the Estate. The Receiver also visited the two condominium units on Miami Beach, changed the locks to the unoccupied unit, took inventory and photographs of the contents of both units, and contacted the realtor who listed the units for sale to discuss continuing to market the units for sale. Upon learning that neither unit was insured, the Receiver obtained homeowner's and windstorm insurance on both properties. The Receiver did not change the locks on one of the units because she agreed to allow Defendant Atkinson's mother-in-law to continue to live in that unit for a limited period of time.

Defendant Passerino disclosed that he owned one condominium unit in Fort Lauderdale, Florida. The Receiver visited that unit, took inventory and photographs of its contents, and confirmed that the property is insured. The Receiver agreed to allow Defendant Passerino to continue to live in that unit for a limited period of time provided that he continues to make the

mortgage payments using funds not subject to this Court's Orders.<sup>4</sup>

*E. Securing Personal Property and Other Assets of the Defendants*

Defendant Atkinson provided the Receiver with a list of personal property that he owned. 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. 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. 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 to a local gun store which will sell the gun on consignment, with the net sale proceeds to be transferred to the Estate.

Defendant Passerino also provided to the Receiver a list of his personal property. That list included the property the Receiver inspected and photographed in Defendant Passerino's 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 determined that that it would be more cost effective to allow Mr. Passerino to keep such property at the condominium

---

<sup>4</sup> Defendant Passerino has not met his obligation to make the mortgage payments and, as explained above, the Receiver will need to take action to preserve the asset.

unit than to have it transported to a secure facility and store it until the Receiver is authorized to sell personal property of the Estate.

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 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.

#### ***F. Preliminary Analysis of Accounts***

##### ***1. Accounts at Financial Institutions***

As explained above, the Receiver received 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, and worked with the Forensic Accountants to identify the account records that are still needed to complete the analysis. The Receiver and her Lead Counsel continue to follow up with several financial institutions to obtain the missing statements and, in particular, the cancelled checks, check registers, deposit slips, ACH and wire transfer confirmations, and communications that the institutions claim take longer to gather 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.

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 and investors of the Defendants (or the affiliate networks and marketers and payment processors through which customer/investor 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 and investors who may have been defrauded.

To assist the Receiver in this endeavor, her Forensic Accountants have begun preparing consolidated reconstructions of all identified accounts for each of the Defendants and their affiliates. Specifically, the Forensic Accountants have reviewed and analyzed the Defendants' account statements, account opening documents and the database provided by the CFTC and has made significant progress in reconstructing the transactions in 76 bank and credit card accounts that the Defendants and their affiliates maintained at 9 different financial institutions. The Forensic Accountants' account reconstructions for each Defendant and affiliate detail in an Excel spreadsheet all of the transfers in and out of each account, listing the dates, amounts, source and recipients of the transfers, the banks and accounts number to or from which the funds were transferred, the method of transfer, and any other identifying information for each transfer, and linking the supporting records to each entry in the spreadsheet. The Receiver, Lead Counsel, and the Forensic Accountants will utilize the data set forth in the account reconstructions to trace

customer and investor funds to the Defendants and to identify potential assets and transferees against which the Receiver can assert recovery claims.

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 counsel is following up with the financial institutions by informal request or subpoena to obtain the missing records. Upon receipt of additional records, the Receiver's counsel will forward them to the Forensic Accountants to be analyzed and incorporated into the account reconstructions.

The Forensic Accountants' account reconstructions cover the period from October 1, 2013 through April 16, 2018 (the period covered in the CFTC's Complaint). While the analysis is incomplete, the Receiver summarizes the forensic accountants' findings to date as follows:

With respect to the AIP bank records, the forensic analysis demonstrates the flow of \$35.7 million in and out of the AIP accounts during the above-referenced period. Moreover, the forensic analysis is consistent with the allegations in paragraph 120 of the Complaint – that between October 2013 and June 2016, AIP's accounts received more than \$27 million. Those funds came primarily from Digital Platinum Ltd. and Clicksure-Payoneer, Inc. Those funds were used to purchase real property for the benefit of Defendant Atkinson and also to pay his personal expenses and taxes. And, AIP transferred at least \$11 million to Defendant Atkinson, which funds were used to pay for personal expenses for him and his wife Joanna Atkinson.

Moreover, the forensic analysis is also consistent with the allegations in paragraph 121 of the Complaint – that \$1.8 million of those funds were used to pay Gasher, Inc. In addition to making payments to Gasher, Inc., AIP made significant payments to companies that provide

various email-marketing services such as software development, video production, digital media and online advertising materials.

The Gasher, Inc. account reconstruction for the Bank of America and First Bank accounts for the period from October 1, 2013 through September 27, 2018 reveals the flow of \$4.3 million in and out of Gasher, Inc.'s accounts. The funds flowing into those accounts were from AIP and Digital Platinum Inc. and Digital Platinum Ltd. The funds from these accounts were used to pay taxes for Defendant Passerino as well as business and personal expenses paid with credit cards held in the name of Gasher, Inc. and Defendant Passerino and legal expenses for both Defendants. Indeed, the analysis shows that Defendant Passerino received approximately \$1.2 million from Gasher, Inc.<sup>5</sup>

The Receiver and her Forensic Accountants will also continue to update the account reconstructions as the Receiver obtains more bank records pursuant to outstanding subpoenas issued and served by the Receiver's counsel, and the Receiver will provide updates to the Court as appropriate and consistent with her duties set forth in the Court's Orders.

## ***2. Digital Devices***

As explained above, the Receiver obtained copies of images of the Defendants' digital devices captured by the CFTC's IT Department and Defendant Passerino's counsel's computer forensic vendor, including Defendant Atkinson's MacBook Pro laptop computer and iPhone, and Defendant Passerino's MacBook Pro laptop computer, iPhone and iPad. The Defendants agreed to the imaging on the conditions that such agreement would not be deemed a waiver of their Fifth

---

<sup>5</sup> The bank reconstruction for Digital Platinum Inc.'s account at Bank of America is for the period from August 9, 2017 - August 6, 2018. This entity received over \$5 million in funds in international wire transfers. The Receiver and her forensic accountants will continue to investigate the recipients of and the bases for those transfers.

Amendment rights against self-incrimination and attorney-client privileges, which they expressly reserved, and the Receiver would agree to not share the images or any information obtained therefrom with counsel for the CFTC or any other party or non-party without an agreement of the Defendants or Order of the Court. The Receiver agreed to these conditions, and the Defendants provided the passwords to access the images. The Receiver, with the assistance of an inhouse IT professional, accessed certain of those images to confirm they are viewable and to get a general understanding of their contents. The Receiver will more thoroughly review those images for purposes of identifying and locating assets of the Defendants, investigating the Defendants' business operations and dealings with customers related to the subject of the CFTC's Complaint, and otherwise fulfilling her obligations under the Court's Orders.

### ***3. Email, Cloud Computing and Vendor Accounts***

The Defendants also agreed to the imaging of their email, cloud computing and vendor accounts on the conditions that such agreement would not be deemed a waiver of their Fifth Amendment rights against self-incrimination and attorney-client privileges, which they expressly reserved, and the Receiver would agree to not share the images or any information obtained therefrom with counsel for the CFTC or any other party or non-party without an agreement by the Defendants or Order of the Court. The Receiver agreed, and the Defendants provided the usernames and passwords to these accounts, so the Receiver could have the CFTC's IT Department image those accounts and provide the images to the Receiver. Accessing certain of these accounts required the assistance of Defendants Atkinson and Passerino to satisfy and disable two-factor authentication protocols, which assistance Defendants provided. The CFTC's IT Department is still working on imaging Defendant Passerino's iCloud account and one vendor account and two

webmail accounts that Defendant Atkinson plans to use for a new business venture unrelated to the subject of the CFTC's Complaint.

As the imaging of each account was completed, the Receiver's counsel notified the account holder's counsel, so the account holder could use the account and access any saved emails and other information. When the CFTC's IT Department has completed the imaging of all of the accounts, it will send the hard drive containing those images to the Receiver. Upon receiving that hard drive, the Receiver and her professionals will review the images to identify and locate assets of the Defendants, investigate the Defendants' business operations and dealings with customers related to the subject of the CFTC's Complaint, and otherwise fulfill the Receiver's obligations under the Court's Orders

#### ***G. Investigation of the Defendants' Business Operations***

According to the CFTC's Complaint, the Defendants, directly or indirectly operated an illegal binary options trading business. ECF No. 1, at p. 8. A binary option is a type of option contract in which the payout depends entirely on the outcome of a yes/no proposition. *See id.* The yes/no proposition typically relates to whether the price of a particular asset will rise above or fall below a specified amount at a specified date and time. *See id.* For example, the yes/no proposition might be whether the price of silver will be higher than \$33.40 per ounce at 11:17 am on a particular day. *See id.*

Once the option holder acquires a binary option through payment of a premium, there is no further decision for the holder to make as to whether or not to exercise the binary option because binary options exercise automatically. *See id.* at p. 9. When the binary option expires, the option holder is entitled to a pre-determined amount of money if the customer has made a correct prediction. *See id.* If the customer has made an incorrect prediction, he or she gets nothing and

loses the premium paid. *See id.*

Further, the CFTC's Complaint alleges that the Defendants were "affiliate marketers" for numerous illegal binary options websites. *See id.* at p. 12-14. Their goal as an affiliate marketer is to drive internet traffic (*i.e.*, customers) to these binary options websites. *See id.* Affiliate marketers use solicitation emails (mass spam) to lure in customers. The solicitation communications used by affiliates and sub-affiliates include an embedded link to a campaign website that is usually prepared by affiliates (or their partners). The first landing page for the campaign – that is, where the link in the email is directed – generally includes streaming sales video and an "opt-in" where a potential customer enters his or her name and email to get access to the full sales video and/or for more information. The affiliate marketer then mines all of this personal information and uses it to send additional solicitation emails for future campaigns. *See id.* at p. 11.

The Complaint goes on to explain that the trading systems are computer programs that automatically place trades on behalf of a customer in the customer's binary options account. *See id.* at p. 13-14. The CFTC alleges that the Defendants received commissions from the binary options websites as compensation for sending them customers. *See id.* at p. 17. In addition to commissions and advertiser profits, the CFTC alleges that the Defendants' campaigns generated the personal information of prospective customers and/or customers from their launches. *See id.* at pp. 17-18. Further, the CFTC alleges that the Defendants mined that data to use in future campaigns and/or sold it to other affiliate marketers. *See id.*

The Defendants, through their respective counsel, have 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 begun investigating those businesses by reviewing the documents she obtained from the Defendants, the CFTC, and various financial institutions and vendors through which the Defendants operated their business. And, that investigation will continue as the Receiver receives and reviews additional documents from financial institutions and vendors. 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 at least prior to 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's investigation into the structure and operations of the entity Defendants and the businesses that are the subject of the Complaint is in its preliminary stages and has been slowed by the Defendants failure to provide the full financial disclosures or provide testimony required under the Court's Orders. Nevertheless, the Receiver has been able to make the following preliminary observations. 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 investments that are the subject of the Complaint were among the products and services the Defendants marketed. Further, it is apparent that brokers paid the Defendants for referrals and for the advertising the Defendants provided. Indeed, the Receiver's preliminary analysis of the Defendants' bank records revealed that most of the funds that came into the Defendants' business accounts were from third-party affiliate network and marketing companies at which the Defendants maintained accounts and through which they operated their businesses. The Receiver is seeking to obtain records from those affiliate network and marketing companies which should shed more light on the operations of Defendants'

businesses and the customers whose funds were transferred through those companies to the Defendants. The Receiver has also sought unsworn interviews or attorney proffers from Defendants to better understand their businesses and fulfill her duties under the Court's Orders.

***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 thousands if not tens of thousands of customers. The Receiver will ask the CFTC's counsel to provide any customer lists they have compiled and will add them to any lists she locates to create a comprehensive list of customers of all Defendants. The Receiver will then provide each customer with notice of and information regarding the Receivership and the CFTC enforcement action and how they may stay informed of the status of the case, how their rights may be affected, and how they may participate in this Receivership and eventually receive distributions based on any losses they may have sustained as a result of the Defendants' actions.

Within one week of her appointment, the Receiver created a website for the Receivership ([www.allinpublishingreceivership.com](http://www.allinpublishingreceivership.com)) 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 will also set up a dedicated telephone number that will provide general information regarding the Receivership and allow callers to leave messages that may be transcribed and sent to the Receiver or her professionals. 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 and the telephone number and encourage them to visit the website frequently and call the number if they have specific questions

or concerns that are not addressed on the website or in the number's recorded message. 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***

During the initial days and weeks of the Receivership, much of the Receiver's and her professionals' efforts were spent identifying, securing and marshalling the Defendants' funds and other assets that were readily identifiable and recoverable. Throughout this Reporting Period, the Receiver's professionals, including her Forensic Accountant, 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 preliminary investigation, 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. And, the Receiver will work with the CFTC to determine whether disgorgement from the individual Defendants is appropriate and, if so, the amount of such disgorgement.

***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 \$2,619,069.59 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     | \$969,510.16                 |
| Passerino and Gasher | \$1,645,888.93               |
| <b><i>Total</i></b>  | <b><i>\$2,615,399.09</i></b> |

Since the inception of the Receivership, the Receiver has made minimal disbursements (totaling \$3,373.96) from the Receiver's fiduciary accounts for necessary expenses to preserve and

administer the Estate. Such expenses included maintenance fees and assessments for Defendants Atkinson's Miami Beach condominium units, 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 will be filing an application seeking approval of the fees and expenses that she and her professionals incurred during the time period covered by this Report and seeking payment of such fees and expenses from the funds the Receiver has marshalled and deposited into her fiduciary accounts pursuant to the Court's Orders.

#### **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 alleged to have been defrauded.

Respectfully submitted this 5<sup>th</sup> day of December, 2018.

Respectfully submitted,

/s/Kenneth Dante Murena

Kenneth Dante Murena, Esq.

Florida Bar No.: 147486

DAMIAN & VALORI LLP

1000 Brickell Avenue, Suite 1020

Miami, Florida 33131

Telephone: (305) 371-3960

Facsimile: (305) 371-3965

Email: [kmurena@dvlp.com](mailto:kmurena@dvlp.com)

*Counsel for Melanie E. Damian,*

*Court-Appointed Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission via this Court's CM/ECF filing system on December 5, 2018 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*

**SERVICE LIST**

Susan Gradman  
**Commodity Futures Trading Commission**  
Division of Enforcement  
525 W. Monroe St., Suite 1100  
Chicago, IL 60661  
[sgradman@cftc.gov](mailto:sgradman@cftc.gov)  
*Via CM/ECF*

Rosemary Hollinger  
**Commodity Futures Trading Commission**  
525 W Monroe Street  
Suite 1100  
Chicago, IL 60661  
[rhollinger@cftc.gov](mailto:rhollinger@cftc.gov)  
*Via CM/ECF*

Allison V. Passman  
**Commodity Futures Trading Commission**  
525 W. Monroe, Suite 1100  
Chicago, IL 60661  
[apassman@cftc.gov](mailto:apassman@cftc.gov)  
*Via CM/ECF*

Scott R. Williamson  
**Commodity Futures Trading Commission**  
525 West Monroe Street  
Suite 1100  
Chicago, IL 60661  
[swilliamson@cftc.gov](mailto:swilliamson@cftc.gov)  
*Via CM/ECF*

Jeffrey L. Cox, Esq.  
James D. Sallah, Esq.  
**SALLAH ASTARITA & COX, LLC**  
3010 N. Military Trail, Ste. 210  
Boca Raton, FL 33431  
[jcox@sallahlaw.com](mailto:jcox@sallahlaw.com)  
[jds@sallahlaw.com](mailto:jds@sallahlaw.com)  
*Via CM/ECF*  
(Attorneys for Defendant Timothy Atkinson)

David M. Orta  
Derek L. Shaffer  
Brian H. Rowe  
**QUINN EMANUEL URQUHART &  
SULLIVAN, LLP**  
1300 I St NW Suite 900  
Washington, DC 20005  
[davidorta@quinnemanuel.com](mailto:davidorta@quinnemanuel.com)  
[derekshaffer@quinnemanuel.com](mailto:derekshaffer@quinnemanuel.com)  
[brianrowe@quinnemanuel.com](mailto:brianrowe@quinnemanuel.com)  
*Via CM/ECF*  
(Attorneys for Defendants Jay Passerino and Gasher, Inc.)

Alex Spiro  
**QUINN EMANUEL URQUHART &  
SULLIVAN, LLP**  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
[alexspiro@quinnemanuel.com](mailto:alexspiro@quinnemanuel.com)  
*Via CM/ECF*  
(Attorney for Defendants Jay Passerino and Gasher, Inc.)