

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 THIRD STATUS REPORT

Melanie E. Damian, the court-appointed temporary Receiver (the "Receiver") in the above-captioned enforcement action, submits her third 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 April 1, 2019 through July 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. The Receiver located and froze funds held in accounts at multiple financial institutions totaling \$2,979,630.90, of which \$2,615,399.09 was transferred to the fiduciary accounts for the Receivership Estate. The only frozen assets the Receiver did not transfer to the Estate’s fiduciary accounts are Defendants’ investments and certain funds in a foreign account, all of which the Receiver has been monitoring since the institutions confirmed the accounts were frozen. Now that the Court has entered the Order authorizing the Receiver to liquidate the personal property of the Estate, the Receiver will liquidate the investments to the extent they are not exempt assets.

The Receiver has obtained account statements and other records from 9 different financial institutions at which the Defendants maintained at least 76 accounts. The Receiver’s forensic accountants at Kapila Mukamal, LLP (the “Forensic Accountants”) have analyzed those records and prepared analyses of the transfers in and out of those accounts. The forensic analysis 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.

The Receiver has taken control of all known real property of the Defendants and all known personal property of the Defendants having significant value. During the initial reporting period, the Receiver sold a residence in North Carolina belonging to Defendant Timothy Joseph Atkinson with his consent. During the second reporting period, the Receiver leased Defendant Jay Passerino's condominium unit with his consent and marketed for sale and for rent two condominium units in Miami Beach owned by companies wholly owned by Defendant Atkinson. During this Reporting Period, the Receiver sold one of Atkinson's Miami Beach condominium units with Court approval, leased the second Miami Beach condominium unit, sought and obtained Court approval to sell all personal property of the Estate, and began marketing for sale the most valuable items of tangible personal property. An inventory of all known assets the Receiver has marshaled to date is attached hereto as **Exhibit A**.

The Receiver also has obtained and reviewed all known records in Defendants' possession related to Defendants' operations, assets, vendors, potential customers, and persons and entities with which Defendants transacted business and exchanged transfers of funds. Further, the Receiver has obtained and reviewed records and information from Defendants, the CFTC, banks at which Defendants held accounts, and vendors for purposes of investigating their operations and identifying the customers of Defendants. The Receiver and her counsel have interviewed Defendants Atkinson and Passerino and obtained explanations regarding the foregoing matters and other subjects relevant to the Receiver's investigations. Based on the foregoing information, the Receiver prepared lists of potential customers who may have claims against the Estate and of persons and entities that received from Defendants funds the Receiver may be able to recover.

During the Reporting Period, the Receiver sent out letters to many of the transferees who received funds from Defendants All In Publishing, LLC or Atkinson, demanding the return of those funds based on the Receiver's fraudulent transfer and unjust enrichment claims against them. The Receiver's counsel is discussing the Receiver's claims and attempting to negotiate a settlement with some of the transferees or their respective counsel and has reached an agreement with one of them for the return of most of the funds he received from AIP. Further, the Receiver prepared and filed fraudulent transfer complaints against other transferees who received significant sums.

Finally, the Receiver and her counsel, on behalf of AIP, worked with counsel for the CFTC, counsel for the SEC and counsel for Defendant Atkinson to finalize the terms of the Consent Final Judgment and Permanent Injunction against Defendants AIP and Atkinson, which this Court recently entered.

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, "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 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. Further, the Statutory Restraining Order required the Receiver to file with the Court periodic status reports that describe the performance of her duties, including her efforts to marshal and secure assets and administer the Receivership Estate.

B. Entry of Preliminary Injunctions

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.

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. Defendant Atkinson has been cooperating with the Receiver as required in the Consent Injunction. *See id.* at p.19.

Also on November 16, 2018, 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 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.

C. Entry of Permanent Injunction Against Atkinson and AIP

On May 22, 2019, the Court granted the CFTC’s *Motion to Approve Consent Judgment Against Defendants Timothy Atkinson and All In Publishing LLC* [ECF Nos. 204 and 205] and entered the *Consent Order For Permanent Injunction, and Other Statutory and Equitable Relief Against Atkinson and AIP* (the “Permanent injunction”). *See* ECF No. 206. The Permanent Injunction found that Mr. Atkinson, as sole shareholder and President, controlled and operated AIP as a means to carry out the fraudulent scheme, thereby causing AIP to commit violations of commodities trading laws and rules, in breach of his fiduciary duties to AIP. *See* Permanent Injunction [ECF No. 206] at ¶¶ 17, 18. The Permanent Injunction authorizes and directs the Receiver to, among other things, bring fraudulent transfer recovery actions to increase the value

of the Receivership Estate of AIP and Atkinson. *See id.* at Section V, ¶ 30.

III. THE RECEIVER'S ACTIVITIES AND EFFORTS TO DATE

A. 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 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 they are unable to resolve the remaining objections, the Receiver will file appropriate motions seeking assistance from this Court. Twelve recipients of demand letters or subpoenas have not responded, and the Receiver's counsel is working to make contact with those recipients.

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, most of which

the Receiver was able to confirm 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 Defendants Passerino and/or Gasher. To date, \$2,615,399.09 of those funds have been transferred to the fiduciary accounts she opened for these two groups of Defendants. *See* Exhibit A. The investments of the Defendants were not liquidated and transferred to the Estate because the Court had not yet authorized the Receiver to sell personal property of the Estate. During the Reporting Period, however, the Court granted the Receiver's Motion to sell the Defendants' personal property, which includes intangible assets such as investors. Therefore, the Receiver will begin liquidating the investments that are part of the Receivership Estate.

2. Analyzing Credit Card Account Transactions

The Receiver has identified and obtained records for a number of credit card accounts of the Defendants. The Receiver's counsel and Forensic Accountants have analyzed the transactions and identified certain assets purchased with credit cards, several third parties for whose benefit various charges were made, and other transfers to third parties. Further investigation is necessary before the Receiver can make demands or assert fraudulent transfer claims with respect to many of those credit card charges to recover funds or assets for the benefit of the Estate.

3. Other Potential Bank and Credit Card Accounts

Because Defendants failed to provide sworn financial disclosures, the Receiver continues her search for assets and 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 to the financial institution at which the accounts are held, requesting account records. 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. If and when the Receiver receives additional account records, she will have her

Forensic Accountants analyze them and incorporate any relevant information in the consolidated account reconstructions they have already prepared for the known accounts.

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 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. Most of the attorneys and law firms produced documents, and 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 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 has refused to turn over any client documents, also asserting the

work product and attorney-client privileges. During the Reporting Period, the Receiver determined that, based on the nature and extent of the work those law firms performed for the Defendants, the purportedly privileged records they do have would not shed light on matters relevant to the Receiver's investigations, including the assets, business operations and customers of the Defendants. Therefore, even though the Receiver is entitled to the production of those documents, the Receiver concluded it is not necessary, nor would it be cost effective, to seek Court intervention to compel the production.

B. Securing Real Property of the Defendants

During this Reporting Period, the Receiver marketed one of Atkinson's Miami Beach properties for sale at \$325,000, negotiated the sale terms with the buyer, and closed the sale for \$290,000 with the approval of this Court. *See* ECF Nos. 213 (Motion) and 218 (Order). The Estate netted \$262,787.34 from that sale after payment of various liens and realtor commissions.

The Receiver continues to market Defendant Atkinson's condominium unit, located at 911 Meridian Avenue in Miami Beach, for sale through an experienced real estate broker. The Receiver has leased the unit on a short-term basis to offset the carrying costs of that unit until it can be sold.

During the second reporting period, the Receiver took possession of Passerino's condominium unit in Fort Lauderdale, Florida. She then 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 bear the costs of carrying 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 this property), the Receiver will submit the purchase agreement to the Court for approval.

C. Securing Personal Property and Other Assets of the Defendants

Defendant Atkinson provided the Receiver with a list of his personal property. The Receiver took possession of the artwork that was located in Atkinson's North Carolina home, insured and transported it to Miami, Florida, and is storing it at a secure location. Mr. Atkinson also turned over to the Receiver jewelry, watches, and a collectible baseball card, all of which has significant value. The Receiver insured those assets and is storing them in a bank safe deposit box in Miami, Florida.

During the Reporting Period, the Receiver filed a motion seeking the Court's approval to sell the personal property of the Estate using the methods of sale that are most likely to maximize the sale proceeds for each particular item without requiring Court approval for the sale of each item. *See* ECF No. 214. The Court granted that motion. *See* ECF No. 220. Therefore, the Receiver began marketing for sale certain items of personal property, including the artwork, the watches, and certain items of jewelry. For the artwork, the Receiver has contacted art dealers and is working on contacting the artist of four pieces to obtain offers to purchase them. For the other pieces of artwork, the Receiver is in the process of setting up an online gallery that will be viewable worldwide and managed by a company that specializes in hosting online art galleries. With respect to the watches, the Receiver has obtained one offer to purchase them from the world's largest seller of pre-owned luxury watches and higher offer to purchase them from a retail customer. Once the Receiver's counsel has obtained one more offer to purchase the watches, the Receiver will sell them to the purchaser who made the highest and best offer. For the baseball card, the Receiver's

counsel is working on obtaining offers from baseball card collectors and dealers.

During a prior reporting period, Defendant Atkinson informed the Receiver that he maintains one of his firearms in Miami, Florida. In accordance with the Receiver's instructions, Defendant Atkinson delivered that 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. Neither the gun nor the accessory has been sold.

Defendant Passerino also provided to the Receiver a list of his personal property. That list included the personal 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. And, intends to include such personal property in the sale of Passerino's condominium unit to increase the sale price of that unit and avoid the costs and logistical difficulties associated with selling such items.

The Receiver has not discovered any other valuable personal property of the Defendants, but she continues to search for assets, 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 she may identify.

D. 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 from the institutions where the accounts were held. The Receiver's 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. During the Reporting Period, the Receiver used those reconstructions to identify recipients of recoverable transfers, generate forensic summaries of such transfers to attach to demand letters and fraudulent transfer complaints, and keep track of the account records underlying each of those transfers.

E. Investigation of the Defendants' Business Operations

One of the Receiver's duties was to investigate and take control of the business operations that are the subject of the Complaint. In carrying out that duty, the Receiver 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, brokers made payments to the Defendants for referrals and the advertising that the Defendants had 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.

During the Reporting Period, based upon the Receiver's review of AIP's bank records and

the records the Receiver received from Payoneer, Inc., and information the Receiver received from Defendant Atkinson, the Receiver brought a fraudulent transfer against that company, which appeared to have participated in, facilitated, and/or benefited from, AIP's business operations in conjunction with the primary affiliate network through which Defendants operated their businesses. Since filing the Complaint, counsel for Payoneer has contacted the Receiver's counsel to discuss its defenses to the Receiver's claims, Payoneer's relationship and dealings with AIP, and the records upon which the Receiver's claims were based. To facilitate settlement negotiations to resolve the Receiver's claims, the Receiver agreed to extend the deadline for Payoneer to respond to the Complaint.

The primary affiliate network through which the Defendants operated their businesses (Clicksure, Ltd.) is based outside the United States (in Mauritius). During a prior reporting period, the Receiver sent a request to Clicksure, Ltd. requesting the production of records regarding its dealings with Defendants, including records reflecting Defendants' customers. Clicksure, Ltd. has not responded to the Receiver's request. Given the remote location of Clicksure, Ltd., and the Receiver's counsel's inability to obtain any records from Clicksure, Ltd. as Receiver in another CFTC enforcement action against an affiliate marketer that utilized Clicksure, Ltd., the Receiver is weighing the benefit of obtaining the requested records against the significant time and resources that will be required to seek and obtain their production through appropriate international procedures.

F. Identifying and Communicating with Customers and Creditors of the Defendants and Formulating Noticing and Claims Process

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 lists of

Defendants' potential customers that the Receiver's professionals located among the Defendants' records into one spreadsheet comprising what the Receiver believes is a non-exhaustive list of Defendants' potential customers.

During the Reporting Period, the Receiver began formulating a noticing and claims process and distribution plan to be proposed to the CFTC and the Court for purposes of locating customers who may have claims against the Estate based on the losses they suffered as a result of Defendants' actions, inviting them to submit claims and supporting documentation, and making distributions to customers determined to have allowed claims based on certain parameters proposed by the Receiver and approved by the Court. Because the Securities and Exchange Commission ("SEC") is prosecuting a parallel enforcement action against certain of the Defendants and may be investigating other persons and entities that perpetrated similar binary options trading and affiliate marketing schemes, counsel for the SEC invited the Receiver to formulate and propose to the SEC and the CFTC a joint noticing and claims process for all customers of those schemes that the SEC would consider administering and funding.

Accordingly, the Receiver and her counsel (who is the Receiver in another CFTC enforcement action involving a binary options and affiliate marketing scheme) formulated a joint noticing and claims process and proposed it to the SEC and the CFTC for consideration. A joint noticing and claims process for all customers of binary options trading and affiliate marketing schemes who suffered losses may be effective because of the difficulty in linking a claimant to a specific binary options ad campaign and then determining the identity of the Defendant that prepared and distributed that ad. The Receiver proposed the employment of 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 SEC has not yet made a determination as to whether it

will participate in and fund the proposed joint noticing and claims process.

Regardless of whether the SEC implements a joint noticing and claims process for various binary options and affiliate marketing schemes or the Receiver implements a process for this Receivership only, the Receiver's goal is to provide each customer and creditor with notice of and information regarding this Receivership and the CFTC's enforcement action and how they may stay informed of the status of the action, 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 Defendants.

Within one week of her appointment, the Receiver created a website for the Receivership (www.allinpublishingreceivership.com) and set up a dedicated email address and telephone number for Defendants' customers and creditors to use to communicate with the Receiver and her counsel and stay apprised of the status of the Receivership and the CFTC's enforcement action. On the website, the Receiver has been posting Court filings, notices, orders and important dates and deadlines, and answering frequently asked questions. The Notice that the Receiver will propose to Court to be sent to all potential customers and creditors in connection with the noticing and claims process will include the website, email address and the telephone number and encourage potential customers and creditors to visit the website and send an email or 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.

G. Ongoing Legal Proceedings Involving the Defendants

At this time, the Receiver is unaware of any proceedings (other than this action and the parallel SEC enforcement 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 take any and all actions that are appropriate and necessary to preserve the interests of the Receivership Estate.

H. 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. During the Reporting Period, her counsel sent demand letters to several transferees and filed lawsuits against others seeking to recover fraudulent and otherwise avoidable transfers. Also, the Receiver discovered that Defendants made transfers to Defendant Atkinson's father, Ronald A. Atkinson, totaling \$69,700. The Receiver's counsel negotiated with Ronald A. Atkinson pre-suit, in good faith, and agreed to amicably resolve all claims against him for a lump sum payment of \$55,000 in order to avoid the uncertainties and expense of litigation. The Receiver filed a motion to approve that settlement and awaits approval from this Court prior to finalizing that settlement. *See* ECF No. 223. In anticipation of the Court's approval, Ronald A. Atkinson made the lump sum settlement payment.

I. 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 Permanent Injunction. *See* ECF No. 206. 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 for Passerino and Gasher to be proposed therein.

J. 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 \$2,523,718.54 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	\$ 1,418,549.11
Passerino and Gasher	\$ 1,105,169.43
<i>Total</i>	<i>\$2,523,718.54</i>

Since the inception of the Receivership, the Receiver has made disbursements from the Receiver's fiduciary accounts for necessary expenses to preserve and administer the Estate, pursuant to the authority granted to the Receiver in the Court's Orders. Such expenses included without limitation 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, fees for recording

the Permanent Injunction, and fees for bank account services and maintenance and check printing.

Pursuant to the Court's Orders, the Receiver has filed two applications seeking approval of the fees and expenses she and her professionals incurred during the first and second reporting periods 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. During a prior reporting period, the Court approved the Receiver's first fee application. And, during this Reporting Period, the Court approved the Receiver's second fee application and the Receiver disbursed the Court-approved amounts. *See* ECF No. 222. A detailed statement of the Estate's Receipts and Disbursements during this Reporting Period is attached hereto as **Exhibit B**. In short order, the Receiver will file an application seeking approval and payment of the fees and expenses that she and her professionals incurred during this Reporting Period.

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 will 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 9th day of August, 2019.

Respectfully submitted,

/s/Kenneth Dante Murena

Kenneth Dante Murena, Esq.

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*Counsel for Melanie E. Damian,
Court-Appointed Receiver*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission via this Court's CM/ECF filing system on August 9, 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

SERVICE LIST

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