

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

ABNER ALEJANDRO TINOCO, and  
KIKIT & MESS INVESTMENTS, LLC,

Defendants

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CASE NO.: EP-21-CV-00237-DCG

**ORDER ESTABLISHING CLAIM ADJUDICATION PROCESS**

The Receiver’s Unopposed Motion to Establish a Claims Adjudication Process (the “Motion”), having been considered by the Court, and the Court having noted the pleadings on file, the Court finds the Receiver’s Motion should be granted.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

**1. DEFINITIONS**

Unless the context otherwise requires, the following terms shall have the meanings specified below:

**1.1 Administrative Claim:** Every cost or expense of the Receiver or his attorneys or other agents incurred in the administration of the Receivership, including but not limited to, any actual and necessary expenses of accounting for, preserving, or disposing of the Receivership Assets.

**ORDER ESTABLISHING CLAIMS ADJUDICATION PROCESS**

**1.2 Approved Claim:** An Investor Claim, Unsecured Creditor Claim, or Secured Creditor Claim that has been timely filed with the Receiver and has been approved by the Court.

**1.3 Creditor Claim:**

- a. Any right of a Creditor to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, which right arose or accrued prior to the date the assets of the Receivership Defendants were placed in receivership, October 13, 2021; or
- b. Any right to an equitable remedy for breach of performance if such right gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, where such right arose or accrued prior to October 13, 2021; or
- c. Any right to payment arising from the rejection by the Receiver of an executory contract or as a result of the failure of Receivership Defendants in receivership completing their obligations under a lease.

**1.4 Creditor:** A person entitled to assert a Claim against any Receivership Defendant in receivership as of October 13, 2021. This definition does not include persons who invested with any Receivership Defendant. This definition includes both Unsecured Creditors and Secured Creditors.

**1.5 Claims Bar Date:** The deadline by which Claims must be received by the Receiver shall be February 15, 2022.

**1.6 Claims Report:** The Receiver's report filed with the Court describing the Claims received by the Receiver and setting forth his recommendations concerning those Claims.

**1.7 Court:** The United States District Court for the Western District of Texas, El Paso Division, assigned Civil Action EP-21-CV-00237-DCG.

**1.8 Investor Claim:** A person or entity who invested with any of the Receivership Defendants and was not fully repaid such investment by on or before October 13, 2021.

**1.9 Proof of Claim:** The Proof of Claim form attached as Exhibit C to the Receiver's Motion and hereby approved.

**1.10 Receiver:** Kelly M. Crawford.

**1.11 Receivership Defendants:** Receivership Defendants are the Defendants Abner Tonic and Kikit & Mess Investments, LLC, Kikit & Mess Real Estate, LLC and Kikit & Mess Exotics, LLC.

**1.12 Receivership Assets:** The "assets" in receivership, as defined by the Orders of the Court, including, but not limited to, chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, lines of credit, contracts, insurance policies, funds wherever located, and any real or personal property in which the Receivership Defendants have any legal or equitable interest in, right to, or claim to, and wherever located.

**1.13 Receivership Date:** October 13, 2021, the effective date of the order of the Court placing the assets of the Defendants and the affiliates or entities they own or control in receivership.

**1.14 Secured Claim:** A Claim that is secured by a properly-perfected lien on Receivership Assets, but not including an Investor Claim or Unsecured Claim.

## **2. NOTICE OF RIGHT TO FILE CLAIMS AND CLAIMS BAR DATE**

**2.1 Notice to Investors and Creditors:** The Receiver shall notify each known Investor and Creditor (Secured and Unsecured) of the Claims Bar Date and their right to file a Claim as provided herein in a form substantially similar to Exhibit A attached to the Receiver's Motion. Notices to Investors and Creditors shall be accompanied by a copy of the Proof of Claim form, a copy of this order, and any other information the Receiver deems appropriate. The Notice to Investors and Creditors shall be deposited in the United States mail, postage pre-paid, addressed to the Creditor at the most-recent address contained in the records of the Receiver by no later than December 15, 2021.

**2.2 Notice by Publication:** No later than December 15, 2021, the Receiver shall also publish at least once in the El Paso Times a copy of the Notice by Publication in a form substantially similar to Exhibit B attached to the Receiver's Motion.

## **3. FILING OF CLAIMS**

**3.1 Filing Claims:** Any Investor or Creditor asserting a Claim against the Receivership Defendants, the Receiver, or the Receivership Assets, regardless of whether the Claim has been acknowledged by the Receiver, shall file with the Receiver a Proof of Claim on or before the Claims Bar Date. The Proof of Claim shall be deemed filed on the date it is received by the Receiver. The Proof of Claim shall be on the form approved by the Court and provided by the Receiver and shall contain all of the information requested in the form.

**3.2 Place to File Claims:** All Claims shall be filed with the Receiver by emailing, mailing postage prepaid or otherwise delivering a properly-completed Proof of Claim with all required supporting documentation to the Receiver at the following address:

**Kelly M. Crawford, Receiver  
500 N. Akard Street, Suite 2700  
Dallas, Texas 75201  
kelly.crawford@solidcounsel.com**

**3.3 Prohibition Against Filing Claims with Court:** No Claim shall be filed with the Court and any Claim so filed shall not be considered properly-filed as required under this Order.

**3.4 Supporting Documentation:** Each Claim shall include as an attachment all documentation supporting the claim. Original documents should not be filed with the Claim. If a supporting document is not available, the Investor or Creditor must attach an explanation of why the document is not available.

**4. THE RECEIVER'S CLAIMS REPORT AND THE COURT'S ADJUDICATION OF CLAIMS**

**4.1 Receiver's Claims Report:** On or before March 15, 2022, the Receiver shall file with the Court his Claims Report setting forth all Claims, other than Administrative Claims, filed with the Receiver together with the Receiver's recommendations concerning all Claims. The Claims Report will also include a recommendation concerning the classification of Claims and the allocation of assets to be distributed toward payment of Claims.

**4.2 Notice to Investors and Creditors:** The Receiver shall provide to each Investor and Creditor who filed a claim with the Receiver, a copy of the Receiver's Claims Report. Services shall be made by email with a confirmation of receipt from the Investor or Creditor, or

by depositing the Claims Report in the United States mail, postage pre-paid, addressed to the Investor or Creditor at the most recent address contained in the records of the Receiver. The Claims Report shall be served upon the Investors and Creditors within two (2) days after the date the Receiver's Claims Report is filed with the Court.

**4.3 Objections:** All objections to any part of the Claims Report shall be filed with the Receiver and not with the Court. The objections shall be set forth in writing and deposited in the United States mail postage pre-paid, on or before April 15, 2022. The objection shall be addressed to the Receiver at:

**Kelly M. Crawford, Receiver**  
**500 N. Akard Street, Suite 2700**  
**Dallas, Texas 75201**  
**[kelly.crawford@solidcounsel.com](mailto:kelly.crawford@solidcounsel.com)**

**4.4 Filing of Objections by the Receiver:** On or before May 15, 2022, the Receiver shall file with the Court a copy of all timely objections received by the Receiver together with the Receiver's response to those objections and shall serve a copy of same on all persons appearing on the Certificate of Service and on all persons who served the Receiver with objections as provided above.

**4.5 Hearing Date:** If the Court deems it necessary, a hearing will be held on a date set by the Court regarding the Claims Report and the Receiver's recommendations and any objections thereto.

**4.6 Final Adjudication of Claims:** The Court shall enter an order approving or rejecting the Claims filed with the Receiver.

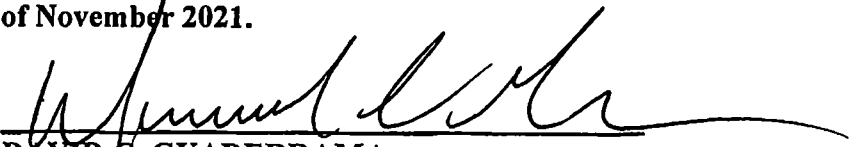
**5. MISCELLANEOUS**

**5.1** A Claim shall be filed on or before the Claims Bar Date, except that Administrative Claims by the Receiver or the Receiver's agents, regardless of the date incurred, shall not be subject to a Claims Bar Date.

**5.2** The Receiver, any Investor, or any Creditor (Unsecured or Secured) or other party-in-interest may file an objection to any Claim as provided in this Order.

**5.3** All Administrative Claims shall be paid by the Receiver in accordance with the prior orders of this Court or, where required, by motion and order of the Court. All Approved Claims, other than Administrative Claims, shall be paid as provided by further order of the Court.

So ORDERED and SIGNED this 12<sup>th</sup> day of November 2021.

  
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DAVID C. GUADERRAMA  
UNITED STATES DISTRICT JUDGE