

**IN THE UNITED STATES DISTRICT COURT  
FOR THE 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

**SIXTH REPORT OF THE RECEIVER**

Kelly M. Crawford, as the court-appointed Receiver (“Receiver”), submits the following sixth report pursuant to this Court’s *Statutory Restraining Order* [Docket No. 13] (the “SRO”).<sup>1</sup> The Receiver filed his Initial Report on December 8, 2021 covering the period from the inception of the receivership on October 13, 2021 through December 7, 2021. The Receiver’s Second Report covered the period from December 8, 2021 through February 4, 2022. The Receiver’s Third Report covered the period from February 5, 2022 through April 14, 2022. The Receiver’s Fourth Report covered the period from April 15, 2022 through June 14, 2022. The Receiver’s Fifth Report covered the period from June 15, 2022 through August 15, 2022. This Receiver’s Sixth Report covers the period from August 16, 2022 through October 31, 2022.

<sup>1</sup> The *SRO* was continued in force by Consent Orders entered by the Court regarding the Defendant entities and the individual Defendant Abner Alejandro Tinoco [Docket Nos. 28 – 29]. The Receiver requests the Court to take judicial notice of the pleadings on file in this lawsuit.

## I.

**ASSETS RECOVERED TO DATE**

The assets recovered to date by the Receiver are as follows:

Wells Fargo Bank:	\$838,752.98 <sup>2</sup>
Los Arboles property	Sold – net \$184,501.39 to receivership
Sharondale property	Sold – net \$148,692 to receivership
Office furnishings <sup>3</sup> :	Sold for \$500
Audi	\$0 (abandoned/lien exceeds estimated FMV)
GMC Truck	\$0 (lien exceeds estimated FMV)
2017 Lexus IS 200t	Sold for \$20,000
2020 Bentley	Received \$40,000 for equity in lease
Furniture	Not yet determined
Jewelry <sup>4</sup>	\$20,000 approximately (appraised values)
APAH Stallion Paint Horse	Sold for \$3,500.00
Quarter Horse “The Perfect Pair”	Sold for \$45,000
Return of Charitable Contribution	\$4,583.27
ATV - 2021 Can-am	Sold for \$24,000
O’Gara Coach Company	\$20,000 return of deposit
Return of commissions	\$3,000
Settlement monies received	\$58,708

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<sup>2</sup> The Receiver opened a receivership bank account in which to deposit monies and assets received.

<sup>3</sup> Includes a couch, TV, desks, chairs, office supplies, etc.

<sup>4</sup> See *infra* part II, E.

Rolex watch received	\$31,950 (appraised value)
Loose diamonds received	\$45,000 (appraised value)

The balance in the receivership account as of October 31, 2022 is **\$1,068,145**.

## II.

### **POTENTIAL SOURCES OF RECOVERY**

The Receiver identified the following sources for recovery of investor monies.

#### **A. REAL PROPERTY**

During the Receiver's investigation, the Receiver discovered that in June 2021, the Defendants purchased three single family homes described below. The Receiver filed in the real property records of El Paso County, Texas a Notice of Lis Pendens, including a copy of the Court's *SRO*, with respect to each of the three (3) properties.

##### **1. 712 Emerald View Drive, El Paso, Texas 79932 (the "Emerald View Property")**

The Emerald View Property was purchased on June 14, 2021 by Mr. Tinoco and his wife Zoe Rachelle Hackett. The property is subject to a lien in the amount of approximately \$479,000. The Receiver discovered the interior of the house was gutted by the Defendants in anticipation of a complete remodel. The Receiver obtained an appraisal of the fair market value of the house in its current condition. The appraiser determined the fair market value of the property was \$660,488, but the appraiser discounted the appraisal to \$210,000 because of the significant costs to finish out the house. Since the fair market value is substantially below the amount of the lien on the property, the Receiver surrendered his interest in the property.

**2. 6082 Via De Los Arboles, El Paso, Texas (the “Los Árboles Property”)**

The Los Arboles Property was purchased on June 28, 2021 by Kikit & Mess Investments, LLC. with a payment at closing of \$181,141 and a mortgage lien in the principal amount of \$305,045.

The Receiver retained a broker with Coldwell Banker in El Paso to list the Los Arboles Property for sale, and the Receiver ordered appraisals of the property as required by the Court and pursuant to 28 U.S.C §2001(b). The average of the three appraisals of the property of the Los Arboles property was \$540,000, and the Receiver entered into a contract to sell the property for \$550,000.

On March 29, 2022, the Court conducted a hearing on the Receiver’s motion to sell the property for \$550,000, and without objection, the Court entered an order approving the sale. The Receiver closed on the sale of the property on April 14, 2022, and after payment of the mortgage on the property and broker fees, the net to the receivership was \$184,752.98.

**3. 425 Sharondale Drive, El Paso, Texas 79912 (the “Sharondale Property”)**

The Sharondale Property was purchased for \$418,000 on June 30, 2021 by Kikit & Mess Investments, LLC. The Receiver retained a broker with Coldwell Banker to sell the Sharondale Property. As required by 28 U.S. C. § 2001(b), the Receiver obtained three appraisals of the Sharondale Property. The property has an average appraised value of \$431,000 and is subject to a lien in the amount of approximately \$282,000. The Receiver listed the property for sale for \$429,500 and entered into a contract to sell the property for \$475,000.

On June 30, 2022, the Court conducted a hearing on the Receiver’s motion to sell the property for \$475,000, and without objection, the Court entered an order approving the sale. The

Receiver closed on the sale of the property on July 12, 2022, and after payment of the mortgage on the property and broker fees, the net to the receivership was \$148, 692.

**B. VEHICLES AND DIAMONDS**

The Receiver identified the following ATV's that were purchased by the Defendants but put in the name of Sarah Nollner:

2020 Yamaha Quad (title was put in the name of Sarah Ann Nollner)

2020 Polaris RZR (title was put in the name of Sarah Ann Nollner)

According to Mr. Tinoco, the ATV's are in storage in Santa Teresa, New Mexico, but to date have not been found by the Receiver. The Defendants also purchased two trailers that have not been turned over to the Receiver.

In addition, the Receiver determined through tracing of monies that shortly before the receivership Defendant Tinoco exercised the purchase option of a leased 2018 Lamborghini and received title to the Lamborghini. The Receiver made demand upon Mr. Tinoco to turn the Lamborghini over to the Receiver. Mr. Tinoco claimed he gave the Lamborghini to Eli Noor in exchange for jewelry/diamonds.

The Receiver contacted Eli Noor and spoke with a representative of Mr. Noor's diamond company. The representative confirmed Mr. Noor's receipt of the Lamborghini and provided the Receiver with documents and details regarding the exchange of jewelry/diamonds for the Lamborghini and a Mercedes received from Tinoco. In addition, the Receiver traced more than \$159,600 to Mr. Noor's company Ely & Co. Fancy Diamonds, Inc. ("Fancy Diamonds"). Mr. Noor's representative provided an accounting for the monies received and identified certain jewelry delivered to Mr. Tinoco, including two watches dressed with diamonds at the request of Mr. Tinoco. In addition, Mr. Noor's representative identified a Rolls Royce Flying Lady Spirit

of Ecstasy hood ornament that Mr. Tinoco commissioned Fancy Diamonds to cover with diamonds.

The Receiver made demand upon Mr. Tinoco to turn over the two watches dressed in diamonds and the other pieces of jewelry provided to Mr. Tinoco by Mr. Noor. To date, Mr. Tinoco turned over to the Receiver one of the two watches dressed in diamonds and a few of the jewelry items. The other watch was in the possession of Mr. Tinoco's friend Humberto Estrada, who turned over the watch to the Receiver.

The Receiver continued his investigation into the relationship between Mr. Noor, his son, and their company Fancy Diamonds with Mr. Tinoco. After obtaining additional information regarding the relationship, the Receiver agreed to accept the loose diamonds Mr. Noor was holding in his vault for Mr. Tinoco in satisfaction of the Receiver's claims against Mr. Noor, his son, and their company Fancy Diamonds. In addition, Mr. Noor agreed to dismiss his claim to recover \$160,000 from Mr. Tinoco that Mr. Noor claims is owing by Mr. Tinoco. The Receiver obtained an appraisal of the loose diamonds of \$45,000 that are now in the Receiver's possession.

Also, the Receiver traced more than \$600,000 that was paid by the Defendants to O'Gara Coach Company. O'Gara Coach Company provided the Receiver with information regarding a number of exotic automobiles purchased or leased by the Defendants, and turned over to the Receiver the sum of \$20,000 received by O'Gara Coach Company from the Defendants as a deposit toward the purchase of a new vehicle.

The Receiver learned that Defendant Tinoco leased a 2019 McLaren 600LT Coupe from Redline Acceptance for a 12 month term beginning June 1, 2021. The lease included an option for Tinoco to purchase the McLaren for \$176,112. Based on the Receiver's investigation, it

appears that rather than turn over the McLaren to the Receiver as required by the *SRO*, Defendant Tinoco returned the McLaren to Evan Paul Leasing. The Receiver also discovered that from a sale of the McLaren by Evan Paul Leasing, \$45,887.40 was transferred from Evan Paul Leasing to Roadstarr Motors. That same amount was also transferred to an account in the name of Defendant Tinoco's wife after the receivership. The Receiver informed Defendant Tinoco's of this transaction that the Receiver contends violates the *SRO* and made demand upon Defendant Tinoco to reimburse the receivership for these funds. Defendant Tinoco, in settlement of this alleged contemptuous act, along with others discovered by the Receiver, agreed to pay to the receivership the sum of \$100,000 by January 15, 2023.

In addition, Defendant Tinoco turned over to the Receiver a black 2020 Bentley Continental GT. Defendant Tinoco leased the Bentley for a 12 month term beginning in September, 2021. The lease includes an option for Defendant Tinoco to purchase the Bentley for \$186,142. The Receiver had the Bentley transported to Dallas. The investor who financed the lease of the Bentley to Tinoco paid the receivership \$40,000 for the equity in the lease and the Bentley was turned over by the Receiver to the lienholder.

The Receiver took possession of a 2017 Lexus IS 200T from Sarah Nollner that was purchased by the Defendants. The Receiver had title to the vehicle transferred from Sarah Nollner to the Receiver and obtained an offer from Carmax to purchase the Lexus for \$20,000. The Receiver filed with the Court notice of his intent to sell the Lexus for \$20,000 and received no objection. The Receiver sold the Lexus to Carmax for \$20,000.

### **C. COMMISSIONS AND PAYMENTS TO ASSOCIATES**

The law is well established that a Receiver may recover commissions received by third parties for their role in soliciting investor monies for an unlawful scheme. *Warfield v. Byron*,

436 F.3d 551, 560 (5<sup>th</sup> Cir. 2006). In such instance, third parties are not being paid with profits earned from a legitimate enterprise, but instead are being paid commissions from the principal amount received from investors in the scheme. Regardless of whether the third parties knew or should have known that Kikit & Mess was being operated illegally, the payments the third parties received are recoverable as fraudulent conveyances. *Id.* As the recipient of a fraudulent transfer, the third parties must be able to show that he or she received the payments in good faith *and* in exchange for reasonably equivalent value. While a third party may be able to claim he or she received the payment in good faith, the third party cannot show he or she provided reasonably equivalent value in exchange for the money received. Facilitating the addition of more investors to a fraudulent scheme does not provide value, but rather only enlarges the number of victims.

The Receiver traced commissions paid to the following third parties, and on September 27, 2022, filed a lawsuit against these parties seeking the recovery of \$24,662 in false profits. See *Crawford v. Zamora*, Case No. 3:22-cv-00354-DCG in the United States District Court for the Western District of Texas, El Paso Division (the “Clawback Lawsuit”):

Andrea Zamora	\$10,262.00
Nyesha “Kai” Bento	\$3,400.00
Samuel Tinajero	\$11,000.00
<b>TOTAL:</b>	<b>\$24,662.00</b>

#### **D. FALSE PROFITS PAID TO INVESTORS**

As part of the claims process, the Receiver identified investors who received a return of their principal investment, plus profits. Because Defendant Kikit operated as a Ponzi scheme, there were no legitimate profits to distribute. As a result, the “profits” paid to investors in excess



of their principal investment were monies from other investors, and are recoverable as a matter of law by the Receiver as a fraudulent transfer. The Receiver made demand upon those investors to return the false profits. On September 27, 2022, the Receiver filed the Clawback Lawsuit against 22 defendants seeking the recovery of \$554,340 in false profits. See *Crawford v. Zamora*, Case No. 3:22-cv-00354-DCG in the United States District Court for the Western District of Texas, El Paso Division. A list of the defendants named in the Clawback Lawsuit and the false profits they received is shown in **Exhibit A** attached hereto. The Receiver is in settlement discussions with many of the defendants who have been served with the lawsuit. Indeed, the Receiver recently settled his claim of \$14,828 against Judge J. Scott for \$10,000.

#### **E. SETTLEMENT WITH HUMBERTO ESTRADA**

The Receiver discovered that Kikit & Mess transferred \$70,190 to H& E Pecan Group, LLC in excess of its investments, as “net profits”; \$163,000 in commissions to Shajea Investments, LLC; and \$142,200 to Humberto Estrada in net profits and commissions (collectively, the “Estrada Parties”). On September 26, 2022, the Receiver entered into a settlement agreement with the Estrada Parties whereby Humberto Estrada paid to the Receiver \$30,208 and turned over to the Receiver a Rolex watch appraised at \$31,950. In addition, Humberto Estrada, Sr., the father of Humberto Estrada, filed two claims in the receivership (a claim in the name of Humberto Estrada, Sr. in the amount of \$1 million and a claim in the name of 4M Pecans in the amount of \$378,421.57), and assigned both claims to the Receiver.<sup>5</sup> As a result of this assignment, the total amount of claims is reduced and the pro rata amount available to be distributed to claimants is increased.

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<sup>5</sup> For purposes of the settlement, the parties agreed the assignment of claims had a present value to the Receiver of \$137,842.

**F. HORSES**

The Receiver discovered that Mr. Tinoco purchased an American Paint Horse named “Velvet Jac” for the sum of \$7,500. The Receiver tracked down the location of the horse, conferred with the person boarding and caring for Velvet Jac, and obtained an offer from such person to purchase Velvet Jac from the Receiver for \$3,500. Based on the Receiver’s investigation into the resale value of Velvet Jac, and considering the condition of Velvet Jac, the Receiver determined it was in the best interest of the Receiver to accept the offer. Consequently, on November 12, 2021 the Receiver filed with the Court a Notice of Intended Disposition of Horse and Office Contents [Docket No. 37]. In the absence of any objections, Velvet Jac was sold for \$3,500.

The Receiver also discovered that on or about September 7, 2021, Mr. Tinoco purchased a quarter horse named “The Perfect Pair” for \$80,000. The Receiver obtained Mr. Tinoco’s signature on the paperwork required to transfer title to the horse to the Receiver. The Receiver worked with the American Quarter Horse Association to have title to The Perfect Pair put in the Receiver’s name. The Receiver engaged the original owner of The Perfect Pair, Kirk Goodfellow of Dreams Come True Ranch in Nacogdoches, Texas to broker the horse for sale. Mr. Goodfellow obtained bids for the purchase of the horse and the horse was sold for \$45,000.

**G. JEWELRY**

The Receiver took possession of four watches found at the Sharondale Property. The watches had designer names such as Patek Phillippe and Prada. If the watches were real, they would have had a value of several hundred thousand dollars. The Receiver had the watches professionally examined and appraised and the watches are not originals. Instead, they are knock-offs of the high priced designer watches and therefore have nominal value.

The Receiver also took possession of a gold bracelet at the Sharondale Property. The Receiver had the bracelet appraised and the resale value is approximately \$3,500.

In his investigation, the Receiver discovered a number of payments to Cartier. The Receiver served Cartier with the *SRO* and asked Cartier to produce documents regarding any jewelry purchased by the Defendants. The Receiver received from Cartier documentation identifying specific jewelry purchased by Defendant Tinoco as follows:

1. Yellow gold ring purchased for \$1,853.30 on March 15, 2021
2. Yellow gold ring purchased for \$1,883.40 on April 20, 2021
3. Yellow gold wedding band purchased for \$1,215.46 on April 20, 2021
4. Yellow gold diamond ring purchased for \$4,215.76 on July 5, 2021
5. Yellow gold bracelet purchased for \$12,154.50 on July 5, 2021
6. White gold ring purchased for \$2,823.64 on July 23, 2021
7. Yellow gold wedding band purchased for \$1,181.16 on July 23, 2021
8. Yellow gold bracelet purchased for \$2,723 on July 24, 2021
9. Yellow gold bracelet purchased for \$4,872.75 on July 24, 2021

The foregoing jewelry purchases total \$32,922.97. The Receiver provided this information to Mr. Tinoco's counsel and made demand upon Mr. Tinoco to turn over the jewelry or provide information to the Receiver regarding the disposition of the jewelry.

The Receiver met with Mr. Tinoco and his counsel in El Paso on January 5, 2022 and at such meeting Mr. Tinoco turned over two gold bands, a bracelet, and a chain.

The Receiver engaged an appraiser who appraised 6 pieces of jewelry in the Receiver's possession as having a collective fair market value of \$12,800 as follows:

Men's Cartier gold band	\$1,000
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Ladies' Cartier gold band	\$800
14k yellow, rose and yellow gold necklace	\$6,000
14k yellow, rose and white gold bracelet	\$2,000
14k rose gold bracelet	\$1,500
14k rose gold bracelet	\$1,500

Other than the two Cartier gold bands listed above, the remainder of the jewelry purchases from Cartier remain unaccounted for to date.

The Receiver discovered that Eli Noor dressed a green dial Patek Phillippe watch in diamonds for Defendant Tinoco that Mr. Noor valued at approximately \$100,000. According to Mr. Noor, the watch was delivered to Defendant Tinoco on October 2, 2021. The Receiver made demand upon Defendant Tinoco to turn over the watch and he did. The Receiver had the watch appraised. The appraiser determined the watch was, like the other watches, a knock-off. As such, it has limited resale value. Even dressed in diamonds, the fake watch as a fair market value of approximately \$3,500.

In communications with the representative of Mr. Noor, the Receiver identified the following pieces of jewelry sold to Defendant Tinoco that to date have not been turned over to the Receiver:

14K Rose Gold Necklace with matching bracelet that Fancy Diamonds valued at \$49,700; and

14K rose Gold Necklace that Fancy Diamonds valued at \$25,975

#### **H. MONIES PAID TO THIRD PARTIES**

Mr. Tinoco advised the Receiver that shortly before the receivership he transferred more than \$100,000 to the Aidan James Agency for branding work that was never done. The Receiver confirmed the transfer of these monies to the Aidan James Agency and by letter dated January

31, 2022, the Receiver's attorney made demand upon the Aidan James Agency to turn the monies over to the receivership. The Aidan James Agency claimed it had insufficient assets to return the \$100,000 and provided the Receiver with financial information regarding the company's assets. Based on this information, the Receiver and the Aidan James Agency entered into a settlement agreement whereby the Aidan James Agency has agreed to pay the receivership over the course of six months the sum of \$50,000 in exchange for a release from the Receiver.

### III.

#### DISPOSITION OF MONIES BY THE DEFENDANTS

Based upon a preliminary review of the bank records obtained from Bank of America and Wells Fargo regarding the activities of the Defendants, it appears that of the \$10,117,982 deposited into the accounts, the monies were disposed of by the Defendants as follows:

Expense Categories	Bank of America	Wells Fargo	Combined Total
American Express	\$136,644.67	\$28,625.63	\$165,270.30
Abner Tinoco Payments	\$301,246.93	\$163,640.00	\$464,886.93
Accounting Fees:	\$61,103.93	\$11,000.00	\$72,103.93
Audi Loan:	\$34,061.56	\$1,813.00	\$35,874.56
Auto Service/Repair:	\$97,183.67	\$0.00	\$97,183.67
Clothing	\$115,751.00	\$25,810.40	\$141,561.40
Diamonds	\$0.00	\$48,000.00	\$48,000.00
Food/Entertainment/Gas:	\$171,706.01	\$1,991.26	\$173,697.27
GMC Loan Payments	\$14,107.94	\$1,282.54	\$15,390.48
Gustavo Escobar	\$19,790.00	\$0.00	\$19,790.00
Home Improvements	\$269,676.27	\$0.00	\$269,676.27
Horse	\$22,425.00	\$80,000.00	\$102,425.00
Hotels/Luxury Rentals	\$231,241.76	\$72,000.00	\$303,241.76
Humberto Estrada/HE			
H&E Pecan/Shajaea	\$334,364.43	\$219,711.35	\$445,075.78
Investors	\$2,118,356.02	\$729,938.36	\$2,507,999.55
Jewelry	\$177,582.42	\$25,000.00	\$202,582.42
Legal Fees	\$20,300.00	\$0.00	\$20,300.00
Marketing/Office Expenses	\$48,975.45	\$39,997.65	\$88,973.10

Miscellaneous/Unknown Payments	\$834,183.67	\$150,046.19	\$984,229.86
Motor Sports Equipment	\$240,329.14	\$0.00	\$240,329.14
Payroll/Commissions	\$244,180.69	\$44,479.63	\$288,660.32
Private Jets / Air Fare	\$930,989.27	\$144,658.00	\$1,075,647.27
Tinoco Family Members	\$115,613.80	\$14,012.00	\$129,625.80
Title Companies / Real Property	\$348,745.75	\$11,575.32	\$360,321.07
Transfers Between Companies	\$607,002.43	\$523,500.00	\$1,130,502.43
Vehicle/Exotic Car Leases	\$805,813.00	\$230,151.82	\$1,035,964.82
<b>TOTALS</b>	<b>\$8,301,374.81</b>	<b>\$2,567,233.15</b>	<b>\$10,868,607.96</b>

This is a *preliminary* accounting only and is subject to revision as additional information is obtained by the Receiver

From the foregoing preliminary accounting, the Receiver determined the following expenses were either for entertainment, services rendered or did not result in the acquisition of tangible assets to be recovered and liquidated:

Accounting Fees:	\$61,103.93	\$11,000.00	\$72,103.93
Auto Service/Repair:	\$97,183.67	\$0.00	\$97,183.67
Food/Entertainment/Gas:	\$171,706.01	\$1,991.26	\$173,697.27
Hotels/Luxury Rentals	\$231,241.76	\$72,000.00	\$303,241.76
Legal Fees	\$20,300.00	\$0.00	\$20,300.00
Marketing/Office Expenses	\$48,975.45	\$39,997.65	\$88,973.10
Private Jets / Air Fare	\$930,989.27	\$144,658.00	\$1,075,647.27
<b>TOTAL:</b>			<b>\$1,831,147</b>

With total deposits of \$10,868,608 as set forth above, \$1,130,502 are transfers between accounts. Thus, the remaining \$9,738,106 is at issue. From that amount, \$2,508,000 was paid to investors, leaving a balance of \$7,230,106. Of that amount, as set forth above, \$1,831,147 was spent on consumable assets (entertainment and services) that cannot be recovered, leaving a balance of \$5,398,959 to recover. To date, assets worth approximately \$1,390,737 have been

recovered.<sup>6</sup> In addition, the Receiver has jewelry in his possession that is worth approximately \$97,000, and has entered into settlement agreements to date that will bring in another \$130,000 to the receivership. Accordingly, subtracting the total value of the assets recovered or to be recovered from the \$5,398,959 balance, the sum of approximately \$3,781,222 remains unrecovered.

Of the \$3,781,222 that remains unrecovered, the Receiver is aware of the following monies paid to third parties that have not yet been settled or adjudicated and that are sources for recovery:

\$24,662 in commissions

\$539,511 in false profits to investors

The most significant sources for recovery of additional monies for the receivership estate are: 1) obtaining repayment of commissions; 2) obtaining repayment of false profits; 3) selling jewelry and diamonds that have been turned over to the receivership.

#### IV.

#### **RECEIVERSHIP PROCEEDINGS IN THE LAWSUIT**

The Receiver conferred with counsel for the parties to the lawsuit, and with their agreement that they did not oppose the relief sought, requested the Court to enter orders establishing procedures for the receivership and for investor and creditor claims to be handled.

##### **A. PROCEDURES FOR RECEIVERSHIP**

On November 2, 2021, the Receiver filed his *Unopposed Motion for Order Governing the Administration of the Receivership, Procedures Governing the Sale of Personal Property* [Docket 32]. By this Motion, the Receiver requested this Court to establish procedures for the

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<sup>6</sup> See Assets Recovered in Part I.

Receiver to efficiently administer the receivership estate and sell personal and real property. On November 2, 2021, the Court entered an *Order Granting Receiver's Unopposed Motion for Order Governing the Administration of the Receivership, Procedures Governing the Sale of Personal Property* [Docket 33].

## **B. CLAIMS PROCESS FOR INVESTORS**

There are sufficient assets to justify the Court's implementation of a claims process. On November 11, 2021, the Receiver filed his *Unopposed Motion for Order Establishing Claims Adjudication Process* and on November 12, 2021 the Court entered an *Order Establishing Claim Adjudication Process* [Docket 36]. The Order 1) approves a proof of claim form to be sent by the Receiver to all known investors and creditors; 2) establishes a bar date or deadline by which all proof of claim forms with supporting documentation must be submitted by investors and creditors to the Receiver; 3) establishes a process for the Receiver to inform the Court regarding the claims received, make recommendations regarding the claims, and provide an opportunity for investors or creditors to object to the Receiver's recommendation regarding claims; and 4) allows for a hearing date, if necessary, for the Court to rule upon the claims submitted by the Receiver and consider any objections to the Receiver's recommendations regarding the claims.

Pursuant to the *Order Establishing Claim Adjudication Process*, the Receiver mailed out a notice of right to file claim and proof of claim (in both English and Spanish) to 351 investors and creditors known to the Receiver. Specifically, when the Receiver seized the office of Defendant Kikit & Mess Investments, LLC, the Receiver took possession of two boxes of files with names and contracts of investors. The Receiver used this information to develop a database of investors to receive proofs of claim. In addition, the Receiver posted notice of the receivership on the door of the former office of Defendant Kikit & Mess and several investors



saw the notice and contacted the Receiver. Also, the Receiver posted a copy of the *Order Establishing Claim Adjudication Process*, as well as the Notice of Right to File Claim and Proof of Claim on the receivership website, [www.kikit&messreceivership.com](http://www.kikit&messreceivership.com).

The Receiver published on the *El Paso Herald* website notice of the right to file a claim in the receivership. The notice was posted on December 14, 2021 and continued on the website until December 23, 2021. In addition, the Receiver placed an advertisement with the *El Paso Times* of the right of investors to file a claim in the receivership.

The bar date for filing claims was February 15, 2022. On March 15, 2022, the Receiver filed the Receiver's Claims Report with the Receiver's recommendation regarding the claims of investors and creditors. The Receiver received claims from 212 investors totaling \$9,782,993.23, but the Receiver's claim recommendations total \$7,048,806.06. The Receiver served the claimants with a copy of the Receiver's Claims Report and informed the claimants that the Court established a deadline of April 15, 2022 for claimants to file with the Receiver any objections to the Receiver's recommendations.

On May 13, 2022, the Receiver filed with the Court a copy of all objections received and addressed the objections. [Docket No. 82]. The Court is conducting a hearing at 11:00 a.m. on Thursday, December 8, 2022, to consider the objections to the Receiver's claims recommendations and to consider the Receiver's request for authority to make an interim distribution.

## V.

### TAXES

The Receiver retained the Bakertilly accounting firm to prepare and file the federal income tax return for the receivership for 2021. The Receiver filed the return prior to the

deadline in October, and no taxes were due or paid. The Receiver discovered that federal withholding taxes were not paid to the United States Treasury for the W-2 employees of Kikit & Mess. The Receiver believes that between \$30,000 and \$40,000 in withholding taxes must be paid to the United States Treasury.

## VI.

### **RECOMMENDATIONS FOR THE RECEIVERSHIP**

The Receiver makes the following recommendations for the receivership:

#### **A. INSURE DEFENDANTS' COMPLIANCE WITH THE *SRO***

The Receiver identified for Mr. Tinoco and his counsel a number of assets that were hidden from the Receiver by Mr. Tinoco and used by Mr. Tinoco in violation of the *SRO*. After numerous discussions between the Receiver and Tinoco's counsel, on October 26, 2022 Defendant Tinoco entered into a Consent Order Resolving Defendant Abner Alejandro Tinoco's Contempt [Dkt. 105]. Pursuant to this Order, Defendant Tinoco is required to pay \$100,000 to the Receiver prior to January 15, 2023, as restitution for the alleged contemptuous acts that diverted monies from the receivership estate.

#### **B. TIMELINE FOR THE RECEIVERSHIP**

The Receiver recommends continuation of the receivership to complete the liquidation of assets (primarily diamonds and jewelry); pursuit of claims against recipients of fraudulent transfers in the Clawback Lawsuit; completion of the claims process described above; and distribution of the assets recovered to the approved claimants. With the scope of the receivership, number of investor victims, and amount of loss, the Receiver estimates it will be necessary to continue the receivership in place through at least the Spring of 2023.

Respectfully submitted, November 11, 2022.

**RECEIVER KELLY M. CRAWFORD**

/s/ Kelly M. Crawford

Kelly M. Crawford, Receiver  
State Bar No. 05030700  
SCHEEF & STONE, L.L.P.  
500 North Akard, Suite 2700  
Dallas, Texas 75201  
Tele: 214/706-4200  
Fax: 214/706-4242

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 11, 2022, I electronically filed the foregoing document with the clerk of the U.S. District Court, Western District of Texas, using the electronic case filing system of the court.

/s/ Kelly M. Crawford

KELLY M. CRAWFORD

RECEIVER'S DEMAND FOR CLAW BACK OF MONIES RECEIVED BY THIRD PARTIES					
Exhibit to Complaint	Payee	Invested Dollars	Total Dollars Received From Defendants	Total False Profits	Total Comm Received from Defendants
Exhibit D	Andrea Zamora	\$3,300.00	\$52,875.80	\$49,575.80	\$10,262.00
Exhibit E	Angelica Arreola	\$7,000.00	\$14,802.00	\$7,802.00	\$0.00
Exhibit F	Arturo Velarde Romo	\$15,000.00	\$116,030.00	\$101,030.00	\$0.00
Exhibit G	Bryan Moreno	\$5,000.00	\$32,249.06	\$27,249.06	\$0.00
Exhibit H	Bryant Rodriguez	\$10,000.00	\$30,886.00	\$20,886.00	\$0.00
Exhibit I	Carolina Jurarez aka Carolina J. Duran	\$20,000.00	\$55,541.50	\$35,541.50	\$0.00
Exhibit J	Cesar Azaeta	\$14,000.00	\$34,700.00	\$20,700.00	\$0.00
Exhibit K	Daniel Montoya Camacho	\$4,000.00	\$10,434.00	\$6,434.00	\$0.00
Exhibit L	Edgar Perpeuo Lucas Perez	\$7,000.00	\$14,386.00	\$7,386.00	\$0.00
Exhibit M	Efrain Quezada	\$10,000.00	\$41,631.00	\$31,631.00	\$0.00
Exhibit N	Eleazar Fierro	\$6,000.00	\$13,175.00	\$7,175.00	\$0.00
Exhibit O	Elijio Villalobos	\$10,000.00	\$20,304.95	\$10,304.95	\$0.00
Exhibit P	IBN Lopez	\$4,200.00	\$15,373.79	\$11,173.79	\$0.00
Exhibit Q	Janeth Adriana Sanchez	\$20,000.00	\$61,055.00	\$41,055.00	\$0.00
Exhibit R	Judge J. Scott	\$10,000.00	\$24,828.50	\$14,828.50	\$0.00
Exhibit S	Luis Carlos Rodriguez	\$2,000.00	\$17,620.55	\$15,620.55	\$0.00
Exhibit T	Miguel Zendejas	\$4,000.00	\$24,648.30	\$20,648.30	\$0.00
Exhibit U	Nyesha "Kai" Bento	\$1,300.00	\$43,052.80	\$41,752.80	\$3,400.00
Exhibit V	Olga Isela Rodriguez	\$6,000.00	\$25,052.80	\$19,052.80	\$0.00
Exhibit W	Ramiro Melendez	\$10,000.00	\$18,830.00	\$8,830.00	\$0.00
Exhibit X	Rene Alejandro Gallardo	\$8,104.00	\$18,572.00	\$10,468.00	\$0.00
Exhibit Y	Ruben Macias	\$6,000.00	\$15,551.60	\$9,551.60	\$0.00
Exhibit Z	Samuel Tinajero	\$5,000.00	\$12,597.85	\$7,597.85	\$11,000.00
Exhibit AA	Tara Livingston	\$1,000.00	\$10,677.00	\$9,677.00	\$0.00
Exhibit BB	Valeria Zaragoza	\$10,000.00	\$28,368.90	\$18,368.90	\$0.00
	<b>TOTALS</b>	<b>\$198,904.00</b>	<b>\$753,244.40</b>	<b>\$554,340.40</b>	<b>\$24,662.00</b>

