

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No. 12-81311-CIV-MIDDLEBROOKS/BRANNON

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

vs.

HUNTER WISE COMMODITIES, LLC,
et al.,
Defendants.

**SPECIAL MONITOR AND CORPORATE MANAGER'S
SECOND STATUS REPORT**

Melanie E. Damian, Esq., the court-appointed Special Monitor and Corporate Manager (the "Monitor") for the Entity Defendants¹ in the above-captioned enforcement action, submits her second report (the "Report") concerning the status of the Monitorship established pursuant to this Court's *Order Temporarily Appointing Special Corporate Monitor* (the "Appointment

¹ The entity defendants ("Entity Defendants") include the following: Hunter Wise Commodities, LLC ("HW Commodities"), Hunter Wise Services, LLC ("HW Services"), Hunter Wise Credit, LLC ("HW Credit"), Hunter Wise Trading, LLC ("HW Trading"), Lloyds Commodities, LLC ("Lloyds Commodities"), Lloyds Commodities Credit Company, LLC ("Lloyds Credit"), Lloyds Services, LLC ("Lloyd Services"), C.D. Hopkins Financial, LLC ("CD Hopkins"), Hard Asset Lending Group, LLC ("Hard Asset"), Blackstone Metals Group, LLC ("Blackstone"), Newbridge Alliance, Inc. ("Newbridge"), and United States Capital Trust, LLC ("US Capital").

HW Commodities, HW Services, HW Credit and HW Trading, collectively shall be referred to herein as the "HW Entities." Lloyds Commodities, Lloyds Credit, and Lloyd Services, collectively shall be referred to herein as the "Lloyds Entities." Hard Asset, CD Hopkins, Blackstone, New Bridge, and US Capital, collectively shall be referred to herein as the "Dealer Entities" and each one as a "Dealer Entity."

Additionally, the above-captioned action was also commenced against the following individual defendants ("Individual Defendants"): Edward Martin, Fred Jager, James Burbage, Baris Keser, Frank Gaudino, John King, David Moore, and Chadwick Hopkins.

Order”) [ECF # 77] that was subsequently expanded by the *Order on Plaintiff’s Motion for Preliminary Injunction* (“Injunction Order”) [ECF #78], covering the period from March 23, 2013, through June 30, 2013 (the “Reporting Period”).

I. INTRODUCTION

The Appointment Order and Injunction Order were entered on February 22, 2013 and February 25, 2013, respectively, following the Commodity Futures Trading Commission’s (“CFTC”) motion for preliminary injunction and for the Appointment of a receiver over the Entity Defendants [ECF #4]. In the Appointment Order, the Monitor was directed to submit her conclusions and recommendations as to the viability of the Entity Defendants’ operations within thirty (30) days after entry of that order (by March 22, 2013). *See* Appointment Order at ¶ 36. The Injunction Order, which was entered two days later, required the Monitor to submit her initial report summarizing her activities in carrying out her duties, within ninety (90) days of its entry (or by May 26, 2013). The Monitor met both of those deadlines by filing her initial report on March 22, 2013 (“Initial Report”) [ECF #102]. The Initial Report described the Monitor’s initial efforts to carry out her duties, and provided her recommendations, including the conversion of the Monitorship to a receivership with authority to liquidate assets and institute a claims administration process.

Since filing her Initial Report, the Monitor has continued to fulfill her duties under the Appointment Order and Injunction Order: After concluding that the physical sale and delivery of precious metals was *de minimis*, the Monitor wound down the Entity Defendants’ operations, marshaled the known assets of the Monitorship estate (the “Monitorship Estate”), and continued investigating and recovering additional assets belonging to the Monitorship Estate. *See* Injunction Order at ¶ 21(A) – (L). Pursuant to Paragraph 24 of the Injunction Order, the Monitor is required to “periodically ... as directed by the Court, file with the Court and serve on the

parties a report summarizing efforts to marshal and collect assets, administer the [Monitorship Estate], and otherwise perform the duties mandated by [the] Order.” Accordingly, the Monitor provides herein a detailed description of her efforts and accomplishments during the Reporting Period.

II. STATUS OF MONITORSHIP SUBSEQUENT TO THE FILING OF MONITOR’S INITIAL REPORT

a. Administration of the HW Entities

i. Reduction of Expenses

In the initial months following the Monitor’s appointment (after the period covered in the Initial Report), the Monitor and her professionals, the law firm of Damian & Valori, LLP (the “Firm”) and the forensic accountants, Soneet Kapila and Kapila & Co. (the “Forensic Accountants”), wound down the Entity Defendants’ operations.

Effective March 30, 2013 and April 2, 2013, the Monitor terminated the office leases in Las Vegas, Nevada and Irvine, California, respectively, after moving the contents of those offices to secure, insured storage facilities. The Monitor also terminated all leases for the equipment that the Entity Defendants used in those offices and returned all leased equipment to the appropriate vendors.² Further, effective July 3, 2013, the Monitor terminated the lease of the apartment located at 9 MacArthur Place, #2205, Santa Ana, California, which the HW Entities had leased for Individual Defendant Edward Martin (“Martin”), reducing the monthly expenses of the Estate by more than \$3,800. The Monitor has moved the contents of the condominium to a secure, insured storage facility pending their sale, as discussed below. The monthly costs to

² The Monitor is aware of a postage machine that US Capital leased from Pitney Bowes, which was scheduled to be returned to that company. However, despite having notice of both Appointment Order and the Injunction Order, US Capital’s landlord inexplicably disposed of the machine without seeking authority from the Monitor or notifying her of the same.

maintain the contents of the offices and the condominium in storage facilities are a fraction of the monthly rental costs for the offices and condominium.

While the Monitor sought to eliminate as many expenses of the Entity Defendants' as possible in the process of winding down their operations, the Monitor did recognize the need for HW Entities' employees to have sufficient time to arrange for alternative health insurance plans.³ As such, based upon her business judgment, the Monitor provided all HW Entities' employees with one additional month's worth of health insurance, terminating their health insurance on March 30, 2013.

ii. Taxes

The Monitor with the assistance of the Forensic Accountants provided to the tax accounting firm of Haskell and White, LLP ("Haskell") all the necessary documents relevant to the HW Entities' income taxes. By doing so, the Monitor and the Forensic Accountants ensured that annual income taxes for the HW Entities were filed with the United States Internal Revenue Service ("IRS") by the April 15, 2013 deadline. At the time of the Monitor's appointment, Haskell had already been employed by the HW Entities as their tax accounting firm and was in advance stages of preparing the HW Entities' annual tax filings. As such, the Monitor determined that it was in the best interest of the Monitorship to continue the engagement.

Following the tax filings for the Entity Defendants, the IRS communicated with the Monitor, requesting additional documents in connection with the tax filings. Haskell and the Forensic Accountants are presently assisting the Monitor in complying with the IRS's request.

³ The Lloyd Entities and the Dealer Entities did not provide health insurance to their employees.

iii. Precious Metals

As detailed in the Initial Report, the Monitor identified limited quantities of physical precious metals belonging to certain Entity Defendants that are presently being stored at Baird & Associates (“Baird”), Delaware Depository Services (“DDS”), and International Depository Services of Canada (“IDS”).⁴ The quantity of precious metals held by each of these bailees has remained unchanged since the filing of the Initial Report, and each has assured the Monitor that it will continue the freeze on these metals until further direction from the Monitor or order of this Court. Attached hereto as **Exhibit “A”** is a detailed report of the quantities and present market values of the precious metals stored at DDS.

Further, the precious metals that the Monitor transferred from the Irvine office of the HW Entities remain stored at a secured Via Mat International (“Via Mat”) facility in Miami, Florida. The quantity of the metals at Via Mat has remained the same since their arrival at the facility. As reflected in Exhibit J to the Monitor’s Initial Report, the total appraised (numismatic) value of those metals as of March 6, 2013 was \$256,057.04, however, that total value has likely decreased since then in light of the subsequent reduction in the market values of certain precious metals. *See* Initial Report, Exhibit J [ECF #102-J].

Soon after the metals’ arrival at the Via Mat facility, the Monitor’s lead counsel visited the facility to witness the unpacking of the metals, to carefully inspect each of them, and to conduct an inventory to verify the types and quantities of precious metals shipped to and stored at that facility. The visit re-confirmed that three coins, with numismatic value in excess of

⁴ While the bulk of the physical precious metals are being held at DDS, IDS and Baird each hold a single 1000 oz. bar of silver, each of which has a present market value of \$19,560.

\$2,000.00 each, were missing.⁵ Following the Monitor's counsel's verification that the three coins, in fact, were missing, counsel proceeded to file a report of missing property with the Irvine Police Department, and file a claim with Hugh Wood, Inc., the insurance broker for the insurance policy covering the precious metals at the time of their disappearance.

iv. Requests by End-Customers For Release of Metals

Although the Monitor is routinely contacted by end-customers inquiring about the status of the Monitorship and their investments, as explained below, two of the end-customers residing in the United Kingdom have demanded that the Monitor authorize the release to them of certain precious metals that are being stored with Baird and DDS, respectively, which they claim were specifically allocated to and paid for by them. According to those two end-customers, the precious metals at issue, which all together are valued at more than \$400,000, should be released to their custody because those customers, through Hunter Wise International, Ltd., a Cayman Islands company ("HWIC Cayman"), fully paid for and acquired the metals. The Monitor and her professionals are in the process of confirming the end-customers' respective claims to ownership of the metals, the source of the funds used to purchase the metals, and the end-customers' affiliation, if any, with the HW Entities and the Individual Defendants. The Monitor and her professionals are conducting a thorough investigation and due diligence of the transactions underlying the purchase of the requested metals to confirm that they, in fact, were purchased with funds (i) provided by the end-customers and (ii) unrelated to the Defendants or HWIC Cayman, or any of their respective principals, associates, subsidiaries or affiliates.

⁵ The Monitor initially discovered that three coins were missing after they were inventoried and appraised at the Irvine office, and while the Monitor was packaging them, immediately prior to shipment from Irvine, California to the Via Mat facility in Miami, Florida. Due to the limited time available to her at the time, the Monitor decided in her business judgment, to transport the metals to Miami, Florida, and upon their arrival to conduct a thorough secondary inspection to verify that the three metal coins were indeed missing.

Further the Monitor is seeking to confirm that the end-customers, upon receiving the requested metals, will not transfer them to (i) any of the Individual Defendants or their family members, friends, associates and affiliates or (ii) HWIC Cayman or any of its principals, associates, subsidiaries or affiliates.

b. Information from Insurance Carriers, Banks, and Other Parties

During the Reporting Period, the Monitor and her professionals continued gathering information concerning the Entity Defendants' operations. In particular, the Monitor issued subpoenas to various insurance companies and brokers, seeking information regarding the existence of policies other than those known to the Monitor. However, to date, the Monitor has not learned of any additional insurance policies. The Monitor will continue researching the existence of potential insurance policies that may have been in effect during the relevant time period. Additionally, the Monitor received information and documents from various financial institutions, including SunTrust Bank and Bank of America, regarding bank accounts owned by the Entity Defendants, Individual Defendants, and their wholly owned entities. In particular, the Monitor discovered and froze accounts belonging to Individual Defendant Frank Gaudino ("Gaudino") and his wholly owned entity, Gaudino Financial, and Individual Defendant James Burbage ("Burbage") and his wholly owned entity, Xcel Financial ("Xcel").⁶

In total, \$192,004.80 remains frozen at various bank accounts in the names of various Defendants and/or their wholly owned entities or affiliates, as detailed in **Exhibit "B"** attached hereto.

The Monitor and her professionals issued subpoenas to dealers suspected of being affiliates of the Entity Defendants as well as third parties such as Domain by Proxy, Inc., which

⁶ The Monitor discovered an additional \$51,387.18 in bank accounts held in the name of Gaudino or Gaudino Financial at Bank of America, N.A. and Chase Bank, N.A.

through their responses provided critical information concerning suspected dealer affiliates that may have continued their operations and potentially fraudulent activities. At present, the Monitor and her professionals are investigating any and all leads that may result in the discovery of additional information regarding the extent of HW Entities' operations.

c. Potential Legal Actions

i. Insurance Demands and Potential Malpractice Claims Against Professionals

The Monitor and her professionals sent demand letters to 127 known dealers who conducted business with the HW Entities. The demand letters requested that those dealers provide detailed insurance information in accordance with applicable law. The purpose behind the demand letters was to determine whether any of the dealers maintained insurance policies during the relevant time period, against which the Monitor could pursue claims arising from the conduct of the HW Entities and those dealers. All of the dealers that have responded to these demand letters to date have informed the Monitor that they did not maintain insurance policies during the relevant time period.

Additionally, the Monitor and her professionals investigated potential legal actions against law firms employed by the HW Entities. An initial review and analysis of correspondence by and between the HW Entities and their various legal counsel, and the sworn testimony of certain Individual Defendants, revealed the need for the Monitor to further investigate whether the HW Entities have a substantive legal basis to commence actions for malpractice against those counsel.⁷ Accordingly, in light certain applicable statutes of limitations, the Monitor contacted such counsel and requested that they enter into tolling

⁷ The Monitor terminated the representations of all legal counsels for the Entity Defendants within days after the Monitor's appointment or the Monitor's learning of such counsel's representation.

agreements to provide the Monitor and her counsel with additional time to gather the necessary documents from counsel and complete her investigations regarding the existence and merit of those potential malpractice claims.

ii. Hunter Wise Financial Group, LLC, Hunter Wise Holdings, LLC and South Peak Texas Investments, LLC

After the entry of the Injunction Order, the Monitor and her professionals learned that, prior thereto, at least \$2,659,804 was transferred from the HW Entities' accounts to Individual Defendant, Fred Jager ("Jager"), and his entities, Hunter Wise Holdings, LLC ("HW Holding") and Hunter Wise Financial Group, LLC ("HW Financial").⁸ Subsequently, the Monitor entered into a stipulation with Jager, HW Holdings, and HW Financial ("Jager Stipulation") [ECF # 93], which was approved by this Court in an Agreed Order Unfreezing Certain Bank Accounts, entered on March 7, 2013 (the "Unfreeze Order") [ECF #94]. As detailed in the Initial Report, within days after entry of the Unfreeze Order, Jager, HW Financial and HW Holdings, each made initial payments to the Monitor towards the sums owed.⁹

Pursuant to the Jager Stipulation and the Unfreeze Order, HW Financial and HW Holdings were required to obtain authorization from the Monitor for all disbursements made by either company. In keeping with this requirement, Jager submitted to the Monitor requests for approval of all disbursements from HW Financial and HW Holdings and expense reimbursements to Jager and employees of those companies. The Monitor's counsel obtained declarations attesting to the legitimacy of certain reimbursements for which HW Financial

⁸ Jager, HW Financial and HW Holdings collectively received transfers from the HW Entities of at least \$2,659,804.50 (the "Jager Transfers"). Pursuant to the Jager Stipulation and the Unfreeze Order, Jager, HW Financial and HW Holdings agreed to pay back the Jager Transfers to the Monitor and subject their accounts to the Monitor's oversight.

⁹ On March 8, 2013, the Monitor received three (3) wire transfers into her fiduciary account in the total amount of \$200,000 in satisfaction of the initial payment requirement under the Unfreeze Order.

sought approval. The Monitor and her counsel reviewed and analyzed all such requests and determined (based on the documents provided in support of each request and the declarations provided in support of certain requests) that all but one expense for which reimbursement was sought were legitimate and in furtherance of HW Financial's business operations. As such, except for that one expense reimbursement, the Monitor approved all disbursement requests submitted during the Reporting Period.

Since filing the Initial Report, the Monitor discovered that Jager also received transfers from the HW Entities through South Peak Texas Investments, LLC ("South Peak"). Soon after the appointment of the Monitor, all bank accounts associated with Jager were frozen, including the accounts of SPTI. In order to facilitate the transfer of additional funds from Jager and his companies to the Monitorship Estate, including repayment of the amounts Jager received through SPTI, the Monitor and her counsel negotiated another agreement with Jager, HW Financial, HW Holdings and SPTI (the "South Peak Agreement") for the entry of an order (the "South Peak Order") unfreezing the accounts of South Peak, but also subjecting South Peak to financial oversight of the Monitor. The proposed South Peak Order would require South Peak, HW Financial and HW Holdings to immediately transfer certain amounts to the Monitor as well as require South Peak to make a good faith effort to pay the more than \$1,800,000 that it received from the HW Entities. In particular, South Peak agreed to transfer a portion of its profits to the Monitor. Pursuant to the prospective South Peak Agreement and the previously entered Unfreeze Order, HW Financial transferred \$37,500 to the Monitor. Further, South Peak and the Monitor coordinated efforts to deposit a check payable to South Peak in the amount of \$22,517 into the frozen South Peak account at First Foundation Bank. The payment to the Monitor, that is provided for in the South Stipulation, will be made from this South Peak account, which, including this latest deposit, has a current balance of \$60,489.97.

d. Ancillary Litigation / Stay of Proceedings

The Appointment Order provided for a stay of all litigation ("Ancillary Proceedings") against the Entity Defendants. *See* Appointment Order at ¶ 25. However, because of a perceived ambiguity in certain language in the Appointment Order, the Monitor's counsel was required to appear at hearings and status conferences in certain of the Ancillary Proceedings to argue that the stay applied to all actions in which the Entity Defendants are parties. To avoid the need for further appearances in the Ancillary Proceedings and conserve the Estate's resources, the Monitor filed an unopposed Motion for limited modification of the Appointment Order. On May 8, 2013, the Court entered its *Order Granting Special Monitor's Unopposed Motion for Limited Modification of Order Temporarily Appointing Special Corporate Monitor* (the "Modification Order") [ECF # 132].¹⁰ The Modification Order modified the language of the stay to ensure that it is clear and not subject to disparate interpretations.

Following entry of the Modification Order, the Monitor reached an agreement with six plaintiffs in the Ancillary Proceedings, memorialized in a stipulation (the "Ancillary Proceeding Stipulation"), which she recommended that this Court approve (the "Recommendation") [ECF # 148]. On June 17, 2013, the Court approved her recommendation and the Stipulation Regarding Ancillary Proceedings (the "Approval Order") [ECF #151].¹¹

The Stipulation Regarding Ancillary Proceedings provided that the plaintiffs in the Ancillary Proceedings (a) shall dismiss without prejudice all pending actions against the Entity Defendants; and (b) could proceed against the Individual Defendants and other defendants that are not subsidiaries or affiliates of the Entity Defendants through final judgment, but must refrain

¹⁰ The Modification Order required the Monitor to provide her recommendation as to the Ancillary Proceedings within 30 days after entry of that Order (by June 7, 2013), and authorized the Monitor, without further order of the Court, to enter into agreements that are substantially similar in form and substance to that stipulation approved by the Court.

from seeking to enforce the judgment or execute against any assets of the Monitorship Estate. The plaintiffs in the Ancillary Proceedings further agreed in the Ancillary Proceeding Stipulation that if this Court adopts the Monitor's recommendation to convert the Monitorship to a receivership with an established claims process, they would file a claim that would be subject to review and approval by the appointed Receiver and this Court. A list of Ancillary Proceedings that were settled and those that are presently pending is attached hereto as **Exhibit "C."**

The Monitor included in her Recommendation a request for continuation of the stay until such time as she may reach substantially similar agreements with the plaintiffs in the remaining Ancillary Proceedings. Accordingly, the Monitor and her counsel continued to negotiate with counsel for those plaintiffs entering into stipulations substantially similar in form and substance to that which the Court previously approved.¹² Finally, the Recommendation included a request for additional time within which to make a determination as to the viability of the claims asserted by the Lloyds entities in the Sabertooth action and locate counsel who will represent her on a contingency fee basis.¹³ The Monitor intends to file her recommendation as to that action as required by the Approval Order.

e. Status of the Declaratory Action Pending in Northern District of Illinois

Prior to commencement of the above-captioned proceeding, HW Commodities filed an action for declaratory relief against the CFTC in the U.S. District Court for the Northern District of Illinois, Case No. 1:12-CV-07656 (the "N.D. Ill. Action") which is still pending before that Court.

¹³ The action styled, *Lloyds Commodities, LLC v. Sabertooth Interactive, LLC*, Case No. CV-13-00375-JEM, pending in the United States District Court for the Middle District of California, was commenced by the Lloyds Entities against a media company that Lloyds Commodities, LLC engaged to create an online game that the principals of Lloyds believed would generate substantial revenues.

J. B. Grossman, Esq., the HW Entities' former counsel, filed several pleadings with the Illinois Court alleging he has standing to continue pursuit of the N.D. Ill. Action on behalf of the HW Entities. The Monitor sought and obtained Court approval to employ Fay Feinstein and Quarles & Brady, LLP as local counsel in the Northern District of Illinois to represent her in the N.D. Ill. Action and assist with the preparation of court filings and attendance at court hearings and status conferences. The CFTC filed responses in opposition to Mr. Grossman's filings and the Monitor joined in one of them.¹⁴ Further, the CFTC filed a motion to dismiss the N.D. Ill. Action and a motion to transfer the action to this Court. The filings of Mr. Grossman and the CFTC are all still pending before the N.D. Ill. Court, which has set and rescheduled two status conferences in the case.

As the Monitor recommended in her Initial Report, the Monitor believes dismissal of the N.D. Ill. Action or transfer of that action to this Court is in the best interest of the Monitorship. Pursuant to the authority and powers that the Court granted to her as corporate manager of the Entity Defendants, the Monitor does not believe it to be prudent to pursue the claims alleged in the N.D. Ill. Action, and certainly not in the Northern District of Illinois, given the excessive fees and costs the Estate would incur by doing so and the fact that the same claims will be determined in this action.

f. Miscellaneous Claims and Enforcement of Stay Provision

The Monitor and her professionals continued to invoke the stay provision of the Appointment Order against attempts to collect and/or enforce rights by third parties against the Entity Defendants. In particular, the Monitor's counsel successfully asserted the stay in a California Labor Commission hearing on a request for additional compensation brought by a

¹⁴ The Joinder was filed by the Monitor's court-approved local counsel, Quarles & Brady, LLP. [ECF #114].

former employee of the HW Entities. The hearing was swiftly cancelled upon receipt of the Appointment Order. Further, the Monitor's counsel halted attempts to demand money from the Entity Defendants by third parties such as Getty Images (for alleged copyright violations).

g. Individual Defendants & Discovery Efforts

The Injunction Order required the Individual Defendants to provide their financial information to the CFTC and the Monitor by March 4, 2013. *See* Injunction Order at ¶ 13-15. To facilitate and standardize the collection of this requested information, the CFTC provided each of the Individual Defendants with a form (the "CFTC Form") that requested detailed information concerning all of the Individual Defendants' personal assets, liabilities and accounting of sums received from and transferred to the Entity Defendants and third parties. Despite the CFTC's request for standardized information, only Individual Defendants Martin, Baris Keser ("Keser") and John King ("King") utilized the CFTC Form for their financial disclosures, which were still incomplete and/or lacking sufficient detail. In fact, none of Individual Defendants provided a complete accounting of their finances as required in the Injunction Order. As a result, the Monitor and her professionals were required to review and analyze the limited information and documents that were provided and attempt to reconstruct the finances of the Individual Defendants. Accordingly, the Monitor took the depositions and propounded document requests to three of the Individual Defendants.

To date, the Monitor and her professionals have taken the depositions of Individual Defendants Martin, Gaudino and Burbage. These depositions yielded significant information regarding each of these individuals' assets, liabilities, present financial conditions, past and present financial and business dealings, and involvement with the Entity Defendants.

The Monitor and her counsel's investigation of Gaudino and Burbage, through depositions and forensic analysis by the Forensic Accountants, revealed that Gaudino's and

Burbage's wholly owned companies, Gaudino Financial and Xcel, were shell companies through which Gaudino and Burbage conducted nearly all of their personal and business financial affairs, including receiving their distributions from the Lloyds Entities (which received its revenues from the HW Entities) and paying all of Burbage's and Gaudino's respective personal and business expenses. Indeed, over at least a two-year period, Gaudino Financial and Xcel collectively paid more than \$800,000 to third parties on behalf of Gaudino and Burbage without receiving reasonably equivalent value in exchange for such transfers. Because the Monitor stands in the shoes of those wholly owned entities by virtue of the Injunction Order, the Monitor will investigate whether she has a claim for the return of any of the funds they transferred to those third parties for little or no consideration.

Further, the Monitor and the CFTC are negotiating with counsel for Gaudino and Burbage for the disgorgement of sums that they or their wholly owned entities received from the HW Entities and the Lloyds Entities. Moreover, the Monitor and her professionals are analyzing the information obtained prior to and during the depositions of Gaudino and Burbage so the Monitor may provide to the Court, if requested, her input regarding these individuals' request to unfreeze their bank accounts [ECF #92].

In connection with her investigations and efforts to marshal assets of the Estate, the Monitor or her counsel attended the deposition of certain former employees of the HW Entities (including Mr. Choi (trading), Ms. Morales (operations), and Mr. Shoemaker (IT)), certain suppliers of the HW Entities and certain end-customers.¹⁵ These depositions provided the Monitor with a greater understanding of the Entity Defendants' operations, their effects on end-customers, and the Individual Defendants' involvement.

¹⁵ The Monitor and/or her counsel attended by telephone the depositions of the following persons: Mr. Maartens, Mr. McElroy, Mr. Potts, Mr. Fitch, and Mr. Vrandenburg.

With the trial in this action presently set for August 26, 2013, the parties have engaged in extensive discovery including serving requests for production of documents on each other and the Monitor. In particular, Gaudino and Burbage propounded a request for production of documents on the Monitor. This request required the Monitor and her professionals to spend considerable time and effort gathering the documents necessary to respond and produce non-objectionable responsive documents.

h. Marshaling and Proposed Sale of Personal Property

During his deposition, Martin confirmed his title ownership of two motor vehicles, a marine vessel and various other items of personal property, all of which were acquired using funds he received from the HW Entities.¹⁶ As such, and following discussions between and among Martin, the CFTC and the Monitor, the parties negotiated a stipulation (the “Martin Stipulation”) that provides for the entry of an agreed order (the “Agreed Sale Order”) requiring Martin to immediately turn over the Martin Assets and authorizing the Monitor to liquidate them through either a private sale or an auction sale.¹⁷ A sale of the Martin Assets will allow her to maximize the value of those assets that are depreciating in value as time passes. The sooner they are sold, the more value the Monitorship Estate will ultimately realize. Accordingly, the Monitor

¹⁶ Martin is title owner of the following personal property (collectively, the “Martin Assets”): (i) 2007 Chrysler 300 automobile; (ii) a 2010 Centurion Surf rider watercraft; and (iii) various personal property, including without limitation furniture and electronic equipment, located in the Santa Ana apartment that the HW Entities leased for Martin.

¹⁷ Although the Monitor has not yet filed the Martin Stipulation and the Court has not yet entered the Agreed Sale Order, the Monitor has interviewed several Auctioneers, obtained detailed proposals for the storage, marketing and sale of the Martin Assets, and has selected one who she believes would provide the best services and generate the highest sale prices and recovery for the Estate (through an auction). Irrespective of the manner of the sale, provided the Court enters the Agreed Sale Order, all items will be sold pursuant to the highest and best offer free and clear of any and all liens, claims, encumbrances and other interests, subject to the procedures outlined in the Agreed Sale Order.

intends to file a motion to approve the Martin Stipulation and for entry of the Agreed Sale Order in short order.

III. ACCOUNTING OF MONITORSHIP FUNDS AND TOTAL VALUE OF ASSETS OF MONITORSHIP ESTATE

The Monitorship Estate currently has cash on hand in the amount of \$6,135,463.20, which the Monitor is holding in the Estate's trust accounts at Gibraltar Private Bank & Trust. *See* Receivership Receipts and Disbursements attached hereto as **Exhibit "D"**. Therefore, upon adding the cash on hand to the present market value of the metals being stored at DDS (\$891,708.89), the present market value of the two (2) silver bars being stored at IDS and Baird (together, \$39,120), and the numismatic value as of March 6, 2013 of the metals being stored at Via Mat (\$256,057.04), the total value of the assets of the Monitorship Estate is \$7,322,349.13.¹⁸

IV. END-CUSTOMERS AND/OR CREDITORS

The Monitor and her professionals routinely respond to telephone calls, mail and e-mail correspondence from end-customers, dealers and creditors seeking information concerning the status of the Monitorship. The Monitor and her professionals make every attempt to answer questions, and routinely refer parties to the Monitorship website located at www.hunterwisemanager.com. This website is continually updated with recent court filings, information regarding this action and the Monitor's efforts to fulfill her duties under the Court's Orders, questions frequently asked by end-customers, dealers and creditors, and the Monitor's answers thereto. The Monitor has compiled lists of all known end-customers, dealers and creditors of the Monitorship. The most current lists are attached hereto as **Exhibit "E"**.

¹⁸ This amount does not include the funds being held in frozen accounts of the Individual Defendants or their wholly owned entities, which have not yet been transferred to the Monitorship Estate's trust account.

V. ADMINISTRATIVE EXPENSES

The administrative expenses of the Monitorship Estate are the expenses that the Estate has incurred in connection with marshaling, maintaining and preserving the assets of the Estate, which are reflected among the Receipts and Disbursements listed on Exhibit D, as well as the fees and costs incurred by the Monitor and her professionals.

On May 8, 2013, the Monitor filed her First Application for Order Authorizing Payment of Fees and Expenses (“Fee Application”) [ECF #131], seeking approval and authority to pay the fees and costs incurred by the Monitor and her professionals during the period of February 22, 2013 through March 31, 2013, using the funds held in the Monitorship Estate. On June 7, 2013, this Court granted that Fee Application [ECF #142]. The fees and costs that the Monitor paid pursuant to the Court’s order are reflected in Exhibit D.

VI. CONCLUSION

The Monitor will continue to work with her team of professionals to locate, marshal and preserve all known and potential assets of the Monitorship Estate. Further, as authorized by the Appointment Order and the Injunction Order, the Monitor will continue to investigate and as appropriate pursue existing and potential claims against third parties on behalf of the Monitorship Estate. The Monitor will also continue to investigate and gather information regarding the Entity Defendants’ and Individual Defendants’ assets and transactions through subpoenas, depositions and other inquiries to financial institutions, related entities and persons connected to those entities to discover potential claims against third parties and other sources of recovery. Further, the Monitor and her professionals will continue to analyze all documents obtained and, with the assistance of her Forensic Accountants, will trace all transfers of funds for the purpose of determining the propriety of such transfers and, to the extent appropriate, recovering them. Of course, the Monitor will continue to perform all other duties as mandated

by the Appointment Order and Injunction Order, and will continue updating the Court on a regular basis as to the status of the Monitorship. Finally, the Monitor reaffirms her recommendation set forth in the Initial Report that, respectfully, this Court should convert the Monitorship to a Receivership, naming the Monitor as Receiver with all of the authority and powers granted to the Monitor in the Appointment Order and Injunction Order and the additional authority to liquidate assets, when appropriate, and establish a claims administration process for the benefit of the end-customers and creditors.

Respectfully submitted this 2nd day of July, 2013.

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/s/ Kenneth Dante Murena

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy Monitor's and Manager's Initial Report was served upon all counsels of record via CM/ECF, and via U.S. MAIL, to all parties listed in the attached Service List, this 2nd day of July, 2013.

/s/ Kenneth Dante Murena

KENNETH DANTE MURENA, P.A.
FLORIDA BAR NO. 147486

SERVICE LIST

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