



Miami, FL 33131, as Temporary Receiver, with full powers of an equity receiver, an accounting, and other equitable relief. On November 16, 2018, the Court entered an Order for Preliminary Injunction and Other Ancillary Relief Against Defendants Jay Passerino and Gasher, Inc. and a Consent Order for Preliminary Injunction and Other Ancillary Relief Against Defendants Timothy Joseph Atkinson and All In Publishing, LLC.

## II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendants Atkinson and AIP (collectively the “Atkinson Defendants”), without a trial on the merits or any further judicial proceedings, the Atkinson Defendants:

1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against the Atkinson Defendants (“Consent Order”);
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledge service of the summons and Complaint;
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);
5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act;
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e);

7. Waive:

- (a) Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this action;
- (b) Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–53, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this action;
- (c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and
- (d) Any and all rights of appeal from this action;

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if the Atkinson Defendants now or in the future reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waives any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. The Atkinson Defendants shall comply

with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

11. Consent to the entry of this Consent Order without admitting or denying the allegations of the Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which they admit;

12. Consent to the use of the findings and conclusions in this Consent Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof;

13. Do not consent, however, to the use of this Consent Order, or the findings and conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party, other than a: statutory disqualification proceeding, proceeding in bankruptcy, or receivership, or proceeding to enforce the terms of this Order;

14. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 60 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States; and

15. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against the Atkinson Defendants in any other proceeding, except that as to All In Publishing, LLC, leave of Court is necessary to pursue any action against that entity now under the exclusive control of the Permanent Receiver.

### III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein. The findings and conclusions in this Consent Order are not binding on any other party to this action.

#### **THE COURT HEREBY FINDS:**

##### **A. Findings of Fact**

16. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, and the Regulations.

17. Defendant **Timothy Joseph Atkinson** (“Atkinson”) is an individual who resides in Miami, Florida. From October 2013 through November 2016 (the “Relevant Period”), Atkinson was the sole owner and president of AIP. Atkinson was also a signatory to and controlled AIP’s bank accounts, and otherwise controlled and supervised all AIP business. Atkinson has never been registered with the Commission in any capacity.

18. Defendant **All In Publishing, LLC** (“AIP”) was established as an Arizona limited liability company in 2012. On or about February 19, 2014, AIP became a Florida limited liability company with its principal place of business in Miami, Florida. At all times relevant, Defendant Atkinson has been the owner, member, and president of AIP. AIP has never been registered with the Commission in any capacity.

**B. Conclusions of Law**

**Jurisdiction and Venue**

19. This Court possesses jurisdiction over this action pursuant 28 U.S.C. § 1331 (2012) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), provides that the Commission may bring actions for injunctive relief or to enforce compliance with the Act or any rule, regulation, or order thereunder in the proper district court of the United States whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

20. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because the Atkinson Defendants reside in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

**Options Fraud**

21. By the conduct described above and in the Complaint, the Atkinson Defendants intentionally or recklessly used fraudulent solicitations in emails, websites and fictitious VSLs promising free access to Trading Systems to induce prospective customers to open and fund binary options trading accounts with a recommended Broker so that the Atkinson Defendants could earn commissions in violation of Section 4c(b) of the Act and CFTC Regulation 32.4, 7 U.S.C. § 6c(b) (2012) and 17 C.F.R. § 32.4 (2018).

**CTA Fraud**

22. By the conduct described above and in the Complaint, the Atkinson Defendants acted as commodity trading advisors (“CTAs”) by disseminating for compensation numerous and varied marketing materials which advised customers and prospective customers to open binary options accounts and use purportedly successful trading systems to trade those accounts.

23. By the conduct described above and in the Complaint, the Atkinson Defendants, while acting as CTAs, fraudulently solicited members of the public and created and/or disseminated fraudulent websites and emails to induce members of the public to go through the their funnel on their website to open and fund new binary options trading accounts with a recommended Broker to access the advertised Trading System. For each of the Atkinson Defendants’ binary options campaigns, including but not limited to the twenty (20) which the Atkinson Defendants launched and nine (9) others they disseminated, the Atkinson Defendants repeatedly misrepresented, among other things: (i) hypothetical and fictitious trading results as real results; (ii) actors as true users of the Trading Systems; (iii) the fictitious experience, background and skill of the “creators” of the Trading Systems; (iv) fabricated testimonials; and/or (v) that the Trading Systems traded automatically in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012).

#### **Fraudulent Advertising**

24. By the conduct described above and in the Complaint, the Atkinson Defendants, while acting as CTAs, disseminated promotional materials, including emails, websites and VSLs referring to testimonials in their binary options campaigns. The Atkinson Defendants did not, however, prominently disclose for each testimonial that it may not represent the experience of other users of the marketed Trading System, that the testimonial was not a guarantee of future performance or that the testimonial was entirely fake and represented by paid actors or

misappropriated images from the internet in violation of CFTC Regulation 4.41(a)(1)-(3), 17 C.F.R. § 4.41(a)(1)-(3) (2018).

25. By the conduct described above and in the Complaint, the Atkinson Defendants, while acting as CTAs, disseminated promotional materials, including emails, websites and VSLs, further depicting fabricated performance results of binary options transactions in, among other instruments, commodity futures, options, swaps and forex, without displaying the required disclosure in immediate proximity to those statements. To the contrary, the VSLs repeatedly referred to trading performance, activity and results as “real” and depicted “live,” in violation of CFTC Regulation 4.41(b)(1) and (2), 17 C.F.R. § 4.41(b)(1),(2) (2018).

**Manipulative and Deceptive Device, Scheme or Artifice**

26. By the conduct described above and in the Complaint, the Atkinson Defendants’ campaigns marketed free access to Trading Systems for trading swaps, as defined by the Act. The Atkinson Defendants intentionally or recklessly used fraudulent solicitations in emails, websites, and fictitious VSLs promising free access to their Trading Systems to induce prospective customers to go through their funnel and open and fund a binary options trading account with their recommended Broker to earn commissions. The Atkinson Defendants worked with other Affiliates and Broker intermediaries to carry out their fraudulent solicitation scheme.

27. By the conduct described above and in the Complaint, the Atkinson Defendants further disseminated fraudulent solicitations on behalf of other affiliates and earned commissions as a result of their activities. The Atkinson Defendants intentionally or recklessly knew those solicitations were fictitious, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012) and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2018).



#### IV. PERMANENT INJUNCTION

##### IT IS HEREBY ORDERED THAT:

28. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Atkinson Defendants are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Offering to enter into, entering into, confirming the execution of, maintaining positions in, or otherwise conducting activities relating to binary options;
- b. Acting as an affiliate marketer in any capacity that involves binary options or any commodity interest (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018));
- c. Offering autotrading systems or services that purport to trade binary options or any commodity interest (as that term is defined in 17 C.F.R. § 1.3);
- d. (1) Cheating or defrauding, or attempting to cheat or defraud any other person;  
(2) making or causing to be made false reports or statements to any person; or  
(3) deceiving or attempting to deceive any person in, or in connection with, an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction in interstate commerce that is a commodity option transaction, by using fraudulent solicitations in emails, websites and fictitious VSLs that promise free access to Trading Systems to induce prospective customers to open and fund binary options trading accounts with a recommended Broker so that the Atkinson Defendants can earn commissions, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 32.4, 17 C.F.R. § 32.4 (2018);

- e. While acting as CTAs, using the instrumentalities of interstate commerce to:
  - (1) employ any device, scheme, or artifice to defraud clients or prospective clients; or (2) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon clients or prospective clients, by fraudulently soliciting members of the public and creating and/or disseminating fraudulent websites and emails to induce members of the public to go through their website funnel and open and fund binary options trading accounts with a recommended Broker to access the advertised Trading System, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012);
- f. While acting as CTAs, advertising in a manner which:
  - (1) employs any device, scheme or artifice to defraud any client or prospective client; (2) involves any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client; or (3) refers to any testimonial in an advertisement or sales literature that fails to prominently disclose that the testimonial: (i) may not represent the experience of other users of the marketed Trading System; (ii) is no guarantee of future performance; or (iii) uses paid actors or misappropriated images from the internet, in violation of Regulation 4.41(a)(1)-(3), 17 C.F.R. § 4.41(a)(1)-(3) (2018);
- g. While acting as CTAs, disseminating promotional materials including emails, websites and VSLs depicting fabricated performance results of binary options transactions in, among other instruments, commodity futures, options, swaps and forex, without displaying the required disclosures in immediate proximity to those

statements, in violation of Regulation 4.41(b)(1)-(2), 17 C.F.R. §4.41(b)(1)-(2);  
and

- h. (1) Using or employing, or attempting to use or employ, manipulative devices, schemes, and artifices to defraud; (2) making, or attempting to make, untrue or misleading statements of a material fact; (3) omitting to state material facts necessary in order to make statements made not untrue or misleading; or (4) engaging, or attempting to engage, in acts, practices, and courses of business, which operate or would operate as a fraud or deceit upon any person in connection with swap transactions, by using fraudulent solicitations in emails, websites and fictitious VSLs that promise free access to Trading Systems to induce prospective customers to go through their website funnel and open and fund a binary options trading account with their recommended Broker to earn commissions, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2018).

29. The Atkinson Defendants are also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in 17 C.F.R. § 1.3), for his own personal account or for any account in which he has a direct or indirect interest;
- c. Having any commodity interests traded on their behalf;

- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2018); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

#### **V. STATUTORY AND EQUITABLE RELIEF**

30. During the Receivership, the Court-appointed Temporary Receiver is hereby appointed Permanent Receiver with respect to the Atkinson Defendants' assets, subject to the exemptions below, and is granted the full powers of a federal equity receiver, including without limitation, (i) all powers granted to the Temporary Receiver in this Court's Consent Order for Preliminary Injunction and Other Ancillary Relief Against Defendants Timothy Joseph Atkinson and All In Publishing, LLC [ECF No. 127], (ii) the right, upon Court approval, to market and sell all assets of the Atkinson Defendants except as noted in Paragraph 37 and 59 below, and (iii) the right and discretion to pursue (a) any actions necessary to recover assets, wheresoever located, of

the Atkinson Defendants and/or of the Receivership Estate, and (b) any actions on behalf of the creditors of the Receivership Estate and/or the Atkinson Defendants. However, Atkinson's earnings, "funds, assets, or other property" (as these terms are defined in ECF No. 127) that are considered "exempt" under federal law and/or the law of the state in which he resides are neither subject to the Permanent Receiver's powers above nor this paragraph. This Consent Order shall not preclude Atkinson from seeking any additional exemptions from the Permanent Receiver's powers above, and shall be without prejudice to Atkinson's ability to otherwise seek any exemption from, or modification to, this paragraph; the Commission and the Permanent Receiver reserve the right to oppose any such exemption or modification.

**A. Restitution**

31. The Atkinson Defendants shall pay, jointly and severally, restitution in the amount of twelve million seven hundred and fifty thousand dollars (\$12,750,000) ("Restitution Obligation"). If the Restitution Obligation is not paid immediately, then post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

32. The Permanent Receiver shall pursue and collect Restitution Obligation payments from the Atkinson Defendants and make distributions as set forth below.

33. The Atkinson Defendants shall make Restitution Obligation payments, and any post-judgment interest payments, under this Consent Order to the Permanent Receiver in the name "AIP Receivership Estate" and shall send such payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, to the Permanent Receiver at the office of Damian & Valori LLP, 1000 Brickell Avenue, Suite 1020,

Miami, Florida 33131 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. The Atkinson Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

34. The Permanent Receiver shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to the Atkinson Defendants' customers identified by the Commission or through her investigation and as approved by the Court or may defer distribution until such time as the Permanent Receiver deems appropriate. The Permanent Receiver shall propose a claims process to the Court within ninety (90) days of the date of entry of this Order. In the event that the amount of the Restitution Obligation payments to the Permanent Receiver are of a *de minimis* nature such that the Permanent Receiver determines that the administrative cost of making a distribution to eligible participants is impractical, the Permanent Receiver may, in her discretion, treat such restitution payments as civil monetary penalty payments, which the Permanent Receiver shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part C below.

35. Subject to any applicable privilege, the Atkinson Defendants shall cooperate with the Permanent Receiver as appropriate to provide such information as the Permanent Receiver deems necessary and appropriate to identify the Atkinson Defendants' customers to whom the Permanent Receiver, in her sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. The Atkinson Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial

institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

36. Until discharged, the Permanent Receiver shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to the Atkinson Defendants' customers during the previous year. The Permanent Receiver shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

37. The amounts payable to each customer shall not limit the ability of any customer from proving that a greater amount is owed from the Atkinson Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law, except absent leave of this Court no action may be initiated against All In Publishing, LLC or Melanie E. Damian as the Permanent Receiver of All In Publishing, LLC.

38. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of the Atkinson Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may, upon approval by the Permanent Receiver during the Receivership, seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Timothy Atkinson to ensure continued compliance with any provision of this Consent Order and to hold Timothy Atkinson in contempt for any violations of any provision of this Consent Order.

39. To the extent that any funds accrue to the U.S. Treasury for satisfaction of the Atkinson Defendants' Restitution Obligation, such funds shall be transferred to the Permanent Receiver for disbursement in accordance with the procedures set forth above.

**B. Disgorgement**

40. The Atkinson Defendants shall pay, jointly and severally, disgorgement in the amount of twenty seven million two hundred eight thousand nine hundred eighty seven dollars and twenty seven cents, \$27,208,987.27 ("Disgorgement Obligation"), in connection with their violations. If the Disgorgement Obligation is not paid immediately, then post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

41. The Permanent Receiver shall receive disgorgement payments from the Atkinson Defendants and make distributions as set forth below.

42. The Atkinson Defendants shall make Disgorgement Obligation payments, and any post-judgment interest payments, under this Consent Order to the Permanent Receiver in the name "AIP Receivership Estate" and shall send such payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, to the Permanent Receiver at the office of Damian & Valori LLP, 1000 Brickell Avenue, Suite 1020, Miami, Florida 33131 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. The Atkinson Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.



43. The Permanent Receiver shall oversee the Disgorgement Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to the Atkinson Defendants' customers identified by the Commission or through her investigation and as approved by the Court or may defer distribution until such time as the Permanent Receiver deems appropriate. The Permanent Receiver shall propose a consolidated plan for the distribution of both the restitution and disgorgement amounts to the Court within **ninety (90) days** of the date of entry of this Order. In the event that the amount of Disgorgement Obligation payments to the Permanent Receiver are of a *de minimis* nature such that the Permanent Receiver determines that the administrative cost of making a distribution to eligible participants is impractical, the Permanent Receiver may, in its discretion, treat such disgorgement payments as civil monetary penalty payments, which the Permanent Receiver shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part C below.

44. Subject to any applicable privilege, the Atkinson Defendants shall cooperate with the Permanent Receiver as appropriate to provide such information as the Permanent Receiver deems necessary and appropriate to identify the Atkinson Defendants' customers to whom the Permanent Receiver, in her sole discretion, may determine to include in any plan for distribution of any Disgorgement Obligation payments. Subject to any applicable privilege, the Atkinson Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Disgorgement Obligation.

45. Until discharged by the Court, the Permanent Receiver shall also provide the Commission at the beginning of each calendar year with a report detailing the disbursement of

funds. The Permanent Receiver shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

46. The amounts payable to each participant shall not limit the ability of any participant from proving that a greater amount is owed from the Atkinson Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law, except that absent leave of Court no action may be initiated against All In Publishing, LLC or Melanie E. Damian as the Permanent Receiver of All In Publishing, LLC.

47. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of the Atkinson Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may, upon approval by the Permanent Receiver during the Receivership, seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the disgorgement that has not been paid by Timothy Atkinson to ensure continued compliance with any provision of this Consent Order and to hold Timothy Atkinson in contempt for any violations of any provision of this Consent Order.

48. To the extent that any funds accrue to the U.S. Treasury for satisfaction of the Atkinson Defendant's Disgorgement Obligation, such funds shall be transferred to the Permanent Receiver for disbursement in accordance with the procedures set forth above.

**C. Civil Monetary Penalty**

49. The Atkinson Defendants shall pay, jointly and severally, a civil monetary penalty in the amount of twenty seven million two hundred eight thousand nine hundred eighty seven dollars and twenty seven cents (\$27,208,987.27) ("CMP Obligation"). If the CMP Obligation is

not paid immediately, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

50. The Atkinson Defendants shall pay their CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326  
Commodity Futures Trading Commission  
Division of Enforcement  
6500 S. MacArthur Blvd.  
HQ Room 181  
Oklahoma City, OK 73169  
(405) 954-6569 office  
(405) 954-1620 fax  
9-AMC-AR-CFTC@faa.gov

If payment by electronic funds transfer is chosen, the Atkinson Defendants shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. The Atkinson Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies the Atkinson Defendants and the name and docket number of this proceeding. The Atkinson Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

51. With regard to funds accumulated by the Permanent Receiver, the funds shall be distributed first to satisfy the Restitution and Disgorgement Obligations, and second to satisfy the CMP if funds are available. The Permanent Receiver shall provide written notice in accordance

with Paragraph 60 to the Atkinson Defendants of any partial and/or complete satisfaction of these obligations.

**D. Provisions Related to Monetary Sanctions**

52. Partial Satisfaction: Acceptance by the Commission or the Permanent Receiver of any partial payment of the Atkinson Defendants' Restitution Obligation, Disgorgement Obligation or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

**E. Cooperation of Atkinson Defendants**

53. Subject to any applicable privilege, the Atkinson Defendants shall cooperate fully and expeditiously with the the CFTC, including the CFTC's Division of Enforcement, in this action and in any current or future Commission investigation or related to the subject matter of this action. As part of such cooperation, subject to any applicable privilege, the Atkinson Defendants shall comply, to the full extent of their abilities, promptly and truthfully with any inquiries or requests for information including but not limited to, requests for production of documents and authentication of documents, shall provide assistance at any trial, proceeding, or investigation related to the subject matter of this action, including but not limited to, requests for testimony, depositions, and/or interviews. Should the CFTC file any additional actions related to the subject matter of this action, the Atkinson Defendants are directed to appear in the judicial district in which such actions are pending, or in a suitable judicial district agreed to by the parties, to provide deposition testimony and trial testimony, subject to any applicable privilege, should such testimony be necessary.

54. The Atkinson Defendants shall also cooperate, subject to any applicable privilege, in any investigation, civil litigation or administrative matter related to, or arising from, this action with the CFTC, the Securities and Exchange Commission and the Permanent Receiver.

55. The Atkinson Defendants and all other persons or entities served with a copy of this Order shall, subject to any applicable privilege, cooperate fully with all reasonable requests of the Permanent Receiver including transferring funds at the Permanent Receiver's direction and producing records related to the Atkinson Defendants' accounts as well as providing such information as the Permanent Receiver deems necessary and appropriate to identify the Atkinson Defendant's customers to whom the Permanent Receiver, in her sole discretion, may determine to include in any plan for distribution of any restitution or disgorgement payments.

**F. Cooperation of Third Parties**

56. During the Receivership, any financial or brokerage institution, business entity, or person that receives actual notice of this Order by personal service or through other means (including without limitation by U.S. Mail, overnight courier, email, or facsimile) and holds, controls, or maintains custody of any account, asset, records, or other property titled in the name of, held for the benefit of, or otherwise under the control of either of the Atkinson Defendants, or has held, controlled, or maintained custody of any such account, asset, records or other property of either of the Atkinson Defendants at any time since January 2013, except as directed by further order of the Court, and after the Permanent Receiver provides at least three (3) business days notice to Atkinson shall not:

a. permit the Atkinson Defendants or other persons or entities to withdraw, transfer, remove, dissipate, or otherwise dispose of the Atkinson Defendants' assets or records deposited

into an account in the name of, or acquired by the Atkinson Defendants prior to the entry of this Consent Order;

b. directly or indirectly destroy, alter, or dispose of, in any manner, any records relating to the business activities and business and personal finances of either of the Atkinson Defendants; and

c. deny a request by the Commission or the Permanent Receiver to inspect all records pertaining to every account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of the Atkinson Defendants, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, safe deposit box logs, and all communications with either of the Atkinson Defendants. As an alternative to allowing inspection of records, a financial or brokerage institution, business entity or other person may provide copies of records requested by the Commission or the Permanent Receiver.

57. Furthermore, during the Receivership, any such financial or brokerage institution, business entity, or person that receives actual notice of this Order, within ten (10) business days of a request by the Permanent Receiver, or such longer period specified by the Permanent Receiver, and after the Permanent Receiver has provided at least three (3) business days notice to Atkinson, shall:

a. Turn over to the Permanent Receiver possession and custody of all funds, assets, and other property owned, controlled, managed, or held by, on behalf of, or for the benefit of the Atkinson Defendants, either individually or jointly that were

deposited into an account in the name of, or acquired during the Relevant Time Period and prior to the date of this Consent Order;

- b. Provide the Permanent Receiver with copies of all records pertaining to any account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of the Atkinson Defendants, either individually or jointly, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, safe deposit box logs, and all communications with either of the Atkinson Defendants;
- c. Provide the Permanent Receiver with all usernames and passwords to all accounts, to gain or secure access to any of the assets or records, created, acquired, used and/or maintained by either of the Atkinson Defendants prior to the entry of this Consent Order, and provide the Permanent Receiver with view-only access to all accounts created, acquired, used and/or maintained by either of the Atkinson Defendants on or after the date this Consent Order is entered; and
- d. Cooperate with all reasonable requests of the Permanent Receiver relating to implementation of this Order.

#### VI. MISCELLANEOUS PROVISIONS

58. The Court lifts and extinguishes any Orders freezing or restraining assets that Atkinson acquires and/or earns after the date of the entry of this Order; this includes the Orders at Docket Entries 111, 127, and 167. Except as otherwise provided in this Consent Order, Atkinson's assets acquired and/or earned prior to the date of the entry of this Consent Order and during the Relevant Time Period shall remain frozen pending further order of the Court.

59. During and after the Receivership, Atkinson shall maintain sole ownership of, control of, and interests in Bettercoach, LLC, a Florida limited liability company, (“Bettercoach”) and the following domain names for the business and/or commercial purpose of helping and encouraging clients and/or other life coaches on life-related matters, including, but not limited to, matters relating to their career, mindset, health, wealth, and overall personal challenges (“Life Coach-Related Business Purposes”):

- a. tatkinson.com;
- b. ImpactLife.com;
- c. BetterCoach.com;
- d. BetterClients.com;
- e. MoneyMindset.com;
- f. MillionaireMindset.com;
- g. BeyondMind.com; and
- h. ActionBuddy.com (collectively, “Domains”).

If during the Receivership, Atkinson ceases to use Bettercoach and/or the Domains for Life Coach-Related Business Purposes, he shall notify the Receiver in writing and transfer and relinquish all of his ownership of, control of, and interests in Bettercoach and the Domains to her within a reasonable time period.

60. The Permanent Receiver shall continue to file periodic reports with the Court summarizing efforts to marshal and collect assets and administer the Receivership Estate.

Notice: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows:



Notice to Commission:

Deputy Director, Division of Enforcement  
Commodity Futures Trading Commission  
525 West Monroe Street, Suite 1100  
Chicago, IL 60661

Notice to Atkinson:

Jeffrey L. Cox  
Sallah, Astarita & Cox, LLC  
3010 North Military Trail, Suite 210  
Boca Raton, FL 33431

Notice to AIP:

Melanie Damian, Permanent Receiver  
Damian & Valori LLP  
1000 Brickell Avenue, Suite 1020  
Miami, FL 33131

All such notices to the Commission shall reference the name and docket number of this action.

61. Compensation for the Permanent Receiver: The Permanent Receiver and all personnel she hired as previously authorized by the Court, including counsel to the Receiver, remain entitled to reasonable compensation for the performance of duties pursuant to this Consent Order and for the cost of actual out-of-pocket expenses incurred by them for those services authorized by this Consent Order. However, the Permanent Receiver and any personnel she hired shall not be compensated or reimbursed by, or otherwise be entitled to, any funds from the Court or the CFTC. The Permanent Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation on at least a quarterly basis.

62. Change of Address/Phone: Until such time as the Atkinson Defendants satisfy in full their Restitution Obligation, Disgorgement Obligation and CMP Obligation as set forth in this Consent Order, the Atkinson Defendants shall provide written notice to the Commission and

the Permanent Receiver by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

63. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

64. Invalidation: If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

65. Waiver: The failure of any party to this Consent Order or of any participant at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or participant at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

66. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by the Atkinson Defendants to modify or for relief from the terms of this Consent Order.

67. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon the Atkinson Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this

Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with the Atkinson Defendants.

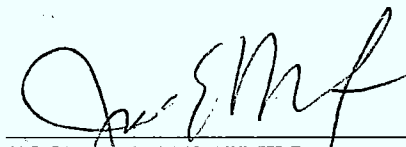
68. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

69. Contempt: the Atkinson Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

70. Agreements and Undertakings: the Atkinson Defendants shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this Consent Order for Permanent Injunction and other Ancillary Relief Against Timothy Joseph Atkinson and All In Publishing, LLC forthwith and without further notice.


IT IS SO ORDERED on this 22 day of May, 2019.



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JOSE E. MARTINEZ  
UNITED STATES DISTRICT JUDGE

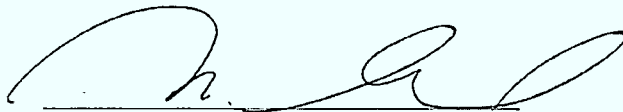
CONSENTED TO AND APPROVED BY:

  
Timothy Joseph Atkinson

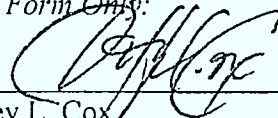
  
Susan Gradman  
Chief Trial Attorney  
Commodity Futures Trading Commission  
525 West Monroe, Suite 1100  
Chicago, IL 60661  
312-596-0523  
Sgradman@cftc.gov


Date: 3/14/19

Date: 3/20/19

  
Melanie Damian, Permanent Receiver  
On behalf of All In Publishing, LLC  
Damian and Valori LLP  
1000 Brickell Avenue, Suite 1020  
Miami, Florida 33131  
305-371-3960  
Date: 3/14/19

*As to Form Only:*

  
Jeffrey L. Cox  
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561-989-9080

  
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Miami, Florida 33131  
305-371-3960

Date: 3/19/19

Date: 3/14/19