

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

_____ )	
Commodity Futures Trading Commission, )	
)	
Plaintiff, )	Case No. EP-21-CV-00237-
)	DCG
v. )	
)	Hon. David C. Guaderrama
Abner Alejandro Tinoco, and Kikit & Mess )	
Investments, LLC, )	
)	
Defendants. )	
)	
_____ )	

**CONSENT ORDER OF PERMANENT INJUNCTION AND OTHER STATUTORY AND  
EQUITABLE RELIEF AGAINST DEFENDANT ABNER ALEJANDRO TINOCO and  
KIKIT & MESS INVESTMENTS, LLC**

I. INTRODUCTION

On September 28, 2021, Plaintiff Commodity Futures Trading Commission (the “Commission” or “CFTC”) filed a Complaint against Defendants Abner Alejandro Tinoco (“Tinoco”) and Kikit & Mess Investments, LLC (“Kikit”) (collectively, “Defendants”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1–26, and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pts. 1–190 (2021). The Court entered an *ex parte* statutory restraining order against Defendants on October 13, 2021 (“SRO”). On October 26, 2021, the Court entered a Consent Order of Preliminary Injunction against Defendant Tinoco (“Tinoco PI Order”) and entered a separate Consent Order for Preliminary Injunction against Defendant Kikit & Mess Investments, LLC (“Kikit PI Order”) or (“PI Orders”). The PI Orders froze assets under Defendants’ control, prohibited further violations of the Act and the

Regulations, ordered an accounting of assets, permitted CFTC access to all of Defendants' books and records, and prohibited the destruction of documents.

## II. CONSENTS AND AGREEMENTS

To effect partial settlement of the matters alleged in the Complaint against Defendants Tinoco and Kikit without a trial on the merits or any further judicial proceedings, Defendants Tinoco and Kikit:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Relief Against Tinoco and Kikit ("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;
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 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2021), 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, §§ 201–253, 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 Consent Order;

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and carrying out the terms and conditions of all orders and decrees, including orders setting the appropriate amounts of restitution, disgorgement and civil monetary penalty, that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of the Court, to assure compliance with this Consent Order and for any other purpose relevant to this action, even if 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 by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waive 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 the Findings of Fact or Conclusions of Law in this Consent Order, 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. Defendants shall comply with this agreement, and shall undertake all

steps necessary to ensure that all of their agents 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 83 of Part VII of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States;

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 Defendants in any other proceeding;

16. Consent to pay restitution, plus post-judgment interest, in an amount to be determined upon subsequent consent order or motion by the CFTC and/or hearing before this Court;

17. Consent to pay disgorgement, plus post-judgment interest, in an amount to be determined upon subsequent consent order or motion by the CFTC and/or hearing before this Court; and

18. Consent to pay a civil monetary penalty, plus post-judgment interest, in an amount to be determined in a subsequent consent order or motion by the CFTC and/or hearing before this Court.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

19. 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, as set forth herein.

#### **THE PARTIES AGREE AND THE COURT HEREBY FINDS:**

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

###### **The Parties to this Consent Order**

20. 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.

21. Defendant Tinoco, a resident of El Paso, Texas, has never been registered with the Commission in any capacity.

22. Defendant Kikit, is a Texas limited liability corporation, formed in September 2020 and has its office in El Paso, Texas. Tinoco is the Managing Member of Kikit, which has never been registered with the CFTC in any capacity.

### **Statutory Background**

23. Section 1a(12) of the Act, 7 U.S.C. § 1a(12), defines a commodity trading advisor (“CTA”), in relevant part, as any person who for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as the value of or advisability of trading in: (I) any contract of sale of a commodity for future delivery, security futures product, or swap; or (II) any agreement, contract, or transactions in foreign currency as described in Section 2(c)(2)(C)(i) of the Act, 7 U.S.C. § 2(c)(2)(C)(i). In addition, a CTA for purposes of forex transactions, is defined by Regulation 5.1(e)(1), 17 C.F.R. § 5.1(e)(1) (2021), as “any person who exercises discretionary trading authority or obtains written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant [“ECP”] as defined in Section 1a(18) of the Act, in connection with retail forex transactions.”

24. An ECP is defined by Section 1a(18)(A)(v)(I) and (xi) of the Act, 7 U.S.C. § 1a(18)(A)(v)(I), (xi), in relevant part, as: a corporation, partnership, proprietorship, organization, trust, or other entity that has total assets exceeding \$10 million; or an individual who has invested on a discretionary basis, the aggregate of which is in excess of (a) \$10 million, or (b) \$5 million and who enters the transaction “to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.”

25. Regulation 5.1(m), 17 C.F.R. § 5.1(m) (2021), defines a “retail forex transaction” as any off-exchange agreement, contract or transaction in foreign currency offered to, or entered into with, non-ECPs, as described in Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C). In common parlance, forex or foreign exchange markets typically refers to Section 2(c)(2)(C) transactions that are leveraged, margined, or financed.

26. Section 2(c)(2)(C) of the Act delineates the Commission's jurisdiction over agreements, contracts and transactions in forex. In relevant part, 7 U.S.C. § 2(c)(2)(C)(vii) provides that the Commission shall have jurisdiction over an account that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause 2(c)(2)(C)(i). In addition, 7 U.S.C. § 2(c)(2)(C)(i)(I), in relevant part, applies to any agreement, contract or transaction in foreign currency that is offered to, or entered into with, a person that is not an ECP, unless the counterparty, or the person offering to be the counterparty, of the person that is not an ECP falls under one of the enumerated exceptions not applicable here.

27. Digital assets such as Bitcoin are encompassed in the definition of "commodity" under Section 1a(9) of the Act, 7 U.S.C. § 1a(9). In common parlance, cryptocurrency typically refers to digital assets.

#### **Derivative Liability Under the Act**

28. Section 13(b) of the Act, 7 U.S.C. § 13c(b), provides that any person who, directly or indirectly, controls any person who has violated the Act, or regulations promulgated thereunder, may be held liable for such violations to the same extent as the controlled person if the controlling person did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violation.

29. Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2021), provide that the act, omission, or failure of any official, agent, or other person acting for any . . . corporation . . . within the scope of his employment or office, shall be deemed the act, omission, or failure of such . . . corporation . . . , as well as such official, agent, or other person."

### **Solicitation Fraud, False Account Statements and Misappropriation**

30. In September 2020, Tinoco, formed Kikit, a Texas LLC, as an investment firm and designated himself as its Managing Member. Tinoco is also the owner and chief executive officer of Kikit.

31. In October 2020, Tinoco launched a website at [www.kikitnmessinv.com](http://www.kikitnmessinv.com). The website describes Kikit (“About Us”) as an investment firm:

Kikit & Mess Investments is a El Paso based investment firm that offers customized client portfolios in the cryptocurrency and foreign exchange markets. Operating in downtown El Paso, our experienced traders, account executives and customer service representatives serve clients throughout the Borderland, Southwest and into Mexico to give our clients access to top portfolios available in cryptocurrency. With a wealth of knowledge in the industry, we strive to educate our clients about the opportunities they have with us and provide them the security, trust and proven growth to build lasting relationships.

32. The Kikit website FAQ section functionally describes Kikit (“What do you do?”) as a CTA that manages individual client accounts:

We specialize in managing investment accounts based in the cryptocurrency and foreign exchange market. We offer customized investment plans tailored to our client’s investment needs so that they can experience financial freedom while not having to waste their time trading.

33. The Kikit website further explains that Kikit offers (“We Offer”) individualized trading advice:

Tailored portfolio strategies based on your individual risk tolerance. Our investment professionals can align your investment strategy for proper diversification to grow and protect your wealth.

34. In addition, as part of its client solicitations, the Kikit website offers the testimonial of a purportedly satisfied client:

“I studied Finance at UTEP but never did any trading or investments in the stock market. After watching how Kikit & Mess Investments operates in Forex, I immediately contacted them to learn more. I started with a 90-day investment and saw a profit in 2 weeks so I decided to extend my investment. I couldn’t be happier with investing with Kikit and Mess.” — Ruben



35. By referring to foreign exchange markets and forex and by marketing to retail (non-ECP) clients, Defendants invoked a commonly understood term that encompasses leveraged, margined, or financed retail forex transactions. Similarly, by referring to cryptocurrency, Defendants invoked a commonly understood term for digital assets, the most widely recognized of which is Bitcoin, which is traded on a regulated designated contract market (“DCM”).

36. Also, in October 2020, Tinoco opened a business bank account for Kikit and immediately began to receive deposits into that account from individual clients, with their trading funds coming via checks, wires and Zelle transfers. Tinoco was the sole signatory on this Kikit bank account.

37. From September 2020 through the present, Tinoco deposited more than \$7.2 million into Kikit’s bank accounts, most if not all of those funds coming from at least 322 individual clients. On information and belief, neither Kikit nor Tinoco nor any of the individual clients were ECPs.

38. Defendants did not use clients’ funds to trade forex or cryptocurrency, or any other trading in managed accounts as promised on its website. Defendants used the vast majority of funds from clients to pay for Tinoco’s personal expenses such as travel costs for the chartering of a private jet, luxury mansion, and car rentals, and, in recent months, the purchase or lease of a luxury automobile and real estate in the El Paso area.

39. Defendants also used some of the deposited client funds to pay bogus “investment profits” to other clients in a manner akin to a Ponzi scheme.

40. Defendants advised clients that they could access their portfolios via Kikit’s online platform, where they could see their accounts.

41. Kikit did not have a commodity trading account at any registered futures commission merchant (“FCM”) or forex trading account at any retail foreign exchange dealer (“RFED”). Further, although Tinoco opened a trading account in his own name at an FCM prior to the Relevant Period, depositing a mere \$10 and executing negligible trades of foreign currency pairs on leverage, he conducted no trading during the Relevant Period in that account. During the Relevant Period, Kikit had on their payroll an employee (“Employee 1”) who was never registered in any capacity with the CFTC. Employee 1 promoted himself as a “broker” for Kikit on his LinkedIn page, while Kikit’s Facebook page described him as Kikit’s “co-founder.” Kikit funded a trading account at an FCM for Employee 1 during the Relevant Period which was minimally funded and did very little trading.

42. During the Relevant Period, the Defendants received deposits of more than \$7,200,000 via checks, wires and Zelle transfers and misappropriated millions of dollars in client funds. Kikit’s original bank account had a balance exceeding \$2 million in July 2021; however, after the bank notified the Defendants in mid-August that they would be closing the account, the Defendants withdrew \$644,489.46 on September 1, 2021. These funds were deposited into a new Kikit bank account in September 2021. Tinoco and another individual who was the vice-president of Kikit were signatories on the new Kikit bank account which had a balance of \$769,626.60 when it was frozen by the October 13, 2021 Statutory Restraining Order entered in this case on October 13, 2021.

## **B. Conclusions of Law**

### **Jurisdiction and Venue**

43. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that 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 promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

44. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because the Defendants reside in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

**Fraud in Connection with Commodities Transactions by Misappropriation, Misrepresentations and Material Omissions**

45. Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C), in relevant part, makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person: (A) to cheat or defraud or attempt to cheat or defraud such other person; or (C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for such other person.

46. By the conduct described in paragraphs 1 through 45 above, Defendants, willfully, knowingly, or with reckless disregard for the truth: (1) falsely told clients that their funds were being used to trade in managed cryptocurrency accounts (commodities in interstate commerce); and (2) misappropriated client funds for Tinoco's personal benefit, including paying travel costs for the chartering of a private jet, luxury mansion and car rentals, and, in recent months, for the purchase or lease of a luxury automobile and real estate in the El Paso area, and

also to pay false profits to other clients, in the manner of a Ponzi scheme in violation of 7 U.S.C. § 6b(a)(1)(A), (C).

47. Tinoco is a controlling person of Kikit and has failed to act in good faith, or has knowingly induced, directly or indirectly, the acts of Kikit constituting the violations of Section 7 U.S.C. § 6b(a)(1)(A), (C). Accordingly, Tinoco is liable for each and every violation of the Act committed by Kikit, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

48. Kikit is liable as a principal for the acts, omissions, or failures of Tinoco, and any other agents, employees, or persons otherwise acting for them constituting the violations of 7 U.S.C. § 6b(a)(1)(A), (C), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2021).

**Fraud in Connection with Forex Transactions by Misappropriation,  
Misrepresentations and Omissions**

49. Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C), makes it unlawful “for any person, in or in connection with any order to make, or the making of, any contract for sale of any commodity for future delivery . . . that is made, or to be made, for or on behalf of, or with any other person, other than on or subject to the rules of a designated contract market: (A) to cheat or defraud or attempt to cheat or defraud the other person; or (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to an order or contract for or, in the case of paragraph (2), with the other person.”

50. Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C), among other things, contains three grants which make clear that the CFTC has jurisdiction over, and that certain antifraud provisions in the Act apply to, retail forex:

- a. Pursuant to 7 U.S.C. § 2(c)(2)(C)(ii)(I), forex agreements, contracts, or transactions described in 7 U.S.C. § 2(c)(2)(C)(i) “shall be subject to” the antifraud provisions of 7 U.S.C. §§ 6b and 6o, among other Sections of the Act;
- b. Pursuant to 7 U.S.C. § 2(c)(2)(C)(iv), 7 U.S.C. § 6b “shall apply to” the forex agreements, contracts, or transactions described in 7 U.S.C. § 2(c)(2)(C)(i) “as if” they were a contract of sale of a commodity for future delivery; and
- c. Pursuant to 7 U.S.C. § 2(c)(2)(C)(vii), “[t]his Act applies to, and the Commission shall have jurisdiction over an account . . . that is offered for the purpose of trading, or that trades,” forex agreements, contracts, or transactions described in 7 U.S.C. § 2(c)(2)(C)(i).

51. The foreign currency transactions offered by Defendants are retail forex transactions pursuant to Regulation 5.1(m), 17 C.F.R. § 5.1(m) (2021). Regulation 5.2(b)(1) and (3), 17 C.F.R. § 5.2(b)(1), (3) (2021), makes it unlawful “for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) [t]o cheat or defraud or attempt to cheat or defraud any person; or (3) [w]illfully to deceive or attempt to deceive any person by any means whatsoever.”

52. Defendants violated 7 U.S.C. § 6b(a)(2)(A), (C) and 17 C.F.R. § 5.2(b) (1), (3), by, among other things, willfully, knowingly, or with reckless disregard of the truth: (1) falsely telling clients that their funds were being used to trade in managed forex accounts; and (2) misappropriating client funds for Tinoco’s personal benefit, including paying travel costs for the chartering of a private jet, luxury mansion and car rentals, and, in recent months, for the

purchase or lease of a luxury automobile and real estate in the El Paso area, and also using client funds to pay false profits to other clients, in the manner of a Ponzi scheme.

53. Defendants engaged in such acts by the use of the mails or other means or instrumentality of interstate commerce.

54. Defendant Tinoco is a controlling person of Kikit and has failed to act in good faith, or has knowingly induced, directly or indirectly, the acts of Kikit constituting the violations of 7 U.S.C. § 6b(a)(2)(A), (C) and 17 C.F.R. § 5.2(b) (1), (3). Accordingly, Tinoco is liable for each and every violation of the Act committed by Kikit, pursuant to 7 U.S.C. § 13c(b).

55. Kikit is liable for the acts, omissions, or failures of Tinoco, and any other agents, employees, or persons otherwise acting for them constituting the violations of 7 U.S.C. § 6b(a)(2)(A), (C) and 17 C.F.R. § 5.2(b) (1), (3), pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2.

#### **Fraud by a Commodity Trading Advisor**

56. Defendant Kikit, through the offer of its managed trading account services, for compensation or profit, has engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in “any agreement, contract, or transaction described in section 2(c)(2)(C)(i)” (foreign currency). As such, Defendant Kikit acted as a CTA within the meaning of Section 1a(12) of the Act, 7 U.S.C. § 1a(12). Therefore, pursuant to 7 U.S.C. § 2(c)(2)(C)(ii) and (vii), Defendant Kikit’s retail forex agreements, contracts and transactions and accounts are subject to Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A), (B).

57. From September 2020 to the present, Defendant Kikit violated 7 U.S.C. § 6o(1)(A), (B), in that, while acting as a CTA, through use of the mails or other means or

instrumentality of interstate commerce such as the internet, electronic mail and electronic trading, employed a device, scheme or artifice to defraud clients and prospective clients and engage in a transaction, practice or course of business which operates as a fraud upon its client and prospective clients by, among other things: (1) falsely telling clients that their funds were being used to trade in managed forex and cryptocurrency accounts; and (2) misappropriating client funds for Tinoco's personal benefit, including paying travel costs for the chartering of a private jet, luxury mansion and car rentals, and, in recent months, for the purchase or lease of a luxury automobile and real estate in the El Paso area, and also using client funds to pay false profits to other clients, in the manner of a Ponzi scheme.

58. Defendant Tinoco is a controlling person of Kikit and has failed to act in good faith, or has knowingly induced, directly or indirectly, the acts of Kikit constituting the violations Defendant Tinoco is a controlling person of Kikit and has failed to act in good faith, or has knowingly induced, directly or indirectly, the acts of Kikit constituting violations of Section 7 U.S.C. § 6o(1)(A), (B). Accordingly, Tinoco is liable for each and every violation of the Act committed by Kikit, pursuant to 7 U.S.C. § 13(b).

59. Kikit is liable for the acts, omissions, or failures of Tinoco, and any other agents, employees, or persons otherwise acting for them constituting violations of 7 U.S.C. § 6o(1)(A), (B), pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2.

**Fraud by Manipulative or Deceptive Device or Contrivance**

60. Section 6(c)(1) of the Act, U.S.C. § 9(1), makes it unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery on or subject

to the rules of any registered entity, any manipulative or deceptive device or contrivance, including in contravention of Regulation 180.1(a)(1)-(3) and 17 C.F.R. § 180.1(a)(1)-(3) (2021).

61. The Regulations at 17 C.F.R. § 180.1(a) provide, in relevant part, that it shall be unlawful for any person, directly or indirectly, in connection with any contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or (3) engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

62. Defendants, directly or indirectly, in connection with contracts of sale of commodities in interstate commerce, contracts for future delivery on or subject to the rules of a registered entity, intentionally or recklessly:

- (a) used or employed, or attempted to use or employ, a scheme or artifice to defraud; including falsely telling clients that their funds were being used to trade in managed forex and cryptocurrency accounts and misappropriating client funds for personal use;
- (b) made, or attempted to make, untrue or misleading statements of material fact, or omitted to state material facts necessary to make the statements made not untrue or misleading; including falsely telling clients that funds were being used to trade in managed forex and cryptocurrency accounts and misappropriating client funds for personal use; and/or
- (c) engaged in, or attempted to engage in, acts, practices, or a course of business that operated or would operate as a fraud or deceit on Kikit's clients,



including falsely telling clients that funds were being used to trade in managed forex and cryptocurrency accounts and misappropriating client funds for personal use.

63. As a result of the foregoing conduct, Defendants' fraudulent conduct violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

64. Defendant Tinoco is a controlling person of Kikit and has failed to act in good faith, or has knowingly induced, directly or indirectly, the acts of Kikit constituting violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3). Accordingly, Tinoco is liable for each and every violation of the Act committed by Kikit, pursuant to 7 U.S.C. § 13(b).

65. Kikit is liable for the acts, omissions, or failures of Tinoco, and any other agents, employees, or persons otherwise acting for them constituting violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3), pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2.

66. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

#### **IV. PERMANENT INJUNCTION**

##### **IT IS HEREBY ORDERED THAT:**

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

- a. cheating or defrauding or attempting to cheat or defraud any other person; or (c) willfully deceiving or attempting to deceive any other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for such other person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any

person, or otherwise violating Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. §6b(a)(1)(A), (C);

- b. directly or indirectly: (a) cheating or defrauding or attempting to cheat or defraud any other person; or (c) willfully deceiving or attempting to deceive any other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract or the disposition or execution of any order or contract, in regard to any act of agency performed, with respect to any order or contract for such other person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, other than on or subject to the rules of a designated contract market, for or on behalf of any person, or otherwise violating Section 4b(a)(2)(A) and (C), 7 U.S.C. § 6b(a)(2)(A) and (C) and Regulation 5.2(b)(1) and (3); 17 C.F.R. § 5.2(b)(1), (3) (2021);
- c. while acting as a commodity trading advisor (“CTA”), through the use of the mails or other means or instrumentality of interstate commerce such as the internet, electronic mail and electronic trading, employing a device, scheme or artifice to defraud clients and prospective clients and engage in a transaction, practice or course of business which operates as a fraud upon its clients and prospective clients, or otherwise violating Section 4o(a)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A), (B);
- d. directly or indirectly, using or employing, or attempting to use or employ, in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, including by intentionally or recklessly: (1) using or employing, or attempting to use or employ, any manipulative device, scheme, or artifice to defraud; (2) making, or attempting to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or (3) engaging, or attempting to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person or otherwise violating Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3), 7 U.S.C. § 9(1) and 17 C.F.R. §180.1(a)(1)-(3) (2021) .

68. 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));

- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2021), for their own personal account or for any account in which they have 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) (2021); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2021)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38)), 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**

69. Defendants shall pay restitution, plus post-judgment interest, to each defrauded Customer/Participant/Client.
70. Defendants shall pay disgorgement, plus post-judgment interest, to the CFTC.
71. Defendants shall pay a civil monetary penalty, plus post-judgment interest, to the CFTC.
72. The Court shall determine the amounts of restitution, disgorgement and civil monetary penalty and the procedures for payment and distribution of these monetary sanctions by further order upon: motion of the parties submitting to the Court a proposed consent order setting out their agreement on the amounts of restitution, disgorgement and civil monetary

penalty to be paid by Defendants in this matter; subsequent motion by the CFTC; and/or hearing before this Court.

73. In connection with any Commission motion for restitution, disgorgement and/or civil monetary penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that he did not violate the federal laws as alleged in the Complaint; (b) Defendants may not challenge the validity of his consents and agreements herein or this Consent Order; (c) solely for the purposes of such motion, the allegations of the Complaint and the Findings of Fact and Conclusions of Law in this Consent Order shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, witness testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for restitution, disgorgement and/or civil monetary penalties, the parties may take discovery, including discovery from appropriate non-parties.

74. Defendants shall cooperate fully and expeditiously with the CFTC, including the CFTC's Division of Enforcement, in this action, and in any current or future Commission investigation or related thereto subject matter of this action. As part of such cooperation, 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, provided, however, that Defendants Tinoco (or his counsel) and Kikit shall promptly contact CFTC's attorneys to assert any claims of privilege or

other legal objection relating to testimony, depositions and/or interviews, and as to the contents of any records that are subject to this Consent Order and promptly cooperate with CFTC's attorneys to develop reasonable protocols to isolate and prevent disclosure of claimed privileged materials to the CFTC's attorneys and other staff who are part of the litigation team in this matter. 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 should such testimony be necessary.

75. Defendants shall cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.

**VI. CONTINUATION OF RELIEF FROM STATUTORY RESTRAINING ORDER  
and PRELIMINARY INUNCTION ORDER**

**A. Asset Freeze Order Prohibiting the Withdrawal, Transfer, Removal, Dissipation,  
and Disposal of Assets**

76. Except as otherwise modified by this Order and subsequent court orders, the SRO (D.E. # 13) and PI Orders (D.E. ## 28, 29) shall remain in full force and effect.

77. The injunctive provisions of this Consent Order shall be binding upon Defendant Kikit, and upon any person acting in the capacity of agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them including any successors thereof, of Defendant Kikit, and upon any person who receives actual notice of this Consent Order by personal service or otherwise insofar as he or she is acting in active concert or participation with Defendant Kikit.

78. Defendant Kikit and its agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successor thereof, who receive actual notice of this Consent Order by personal service or otherwise, are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly

withdrawing, transferring, removing, dissipating or otherwise disposing of any assets, wherever located, including Defendant Tinoco's and Kikit's funds, assets, including, but not limited to assets held in the names of Defendant Tinoco or Kikit, or in the name of Kikit & Mess Real Estate LLC or Kikit & Mess Exotics LLC or other property held outside the United States, in accordance with the Court's SRO and PI Orders.

79. At the request of the Receiver, Defendants Tinoco and Kikit and any other person who has possession, custody, or control of any of Defendants' funds, assets, or other property shall transfer possession of all funds, assets, or other property subject to this Order to the Receiver in accordance with the SRO and the PI Orders.

80. The funds, assets, or other property affected by this Consent Order shall include both existing funds, assets or other property, and funds, assets, or other property acquired after the effective date of this Consent Order.

**B. Persons Bound by This Order**

81. This Order is binding on any person who receives actual notice of this Order by personal service or otherwise and is acting in the capacity of an officer, agent, servant, employee, or attorney of Defendants, or is in active concert or participation with the Defendants.

**C. Authority of Receiver to Execute Order**

82. The Receiver is hereby authorized to execute this Consent Order on behalf of Defendant Kikit and counsel for Tinoco and Kikit have no objection to the Receiver entering into this Consent Order on behalf of Defendant Kikit.

**VII. MISCELLANEOUS PROVISIONS**

83. 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:

Robert T. Howell  
Deputy Director  
Commodity Futures Trading Commission  
Division of Enforcement  
525 W. Monroe Street  
Suite 1100  
Chicago, IL 60661

Notice to Defendants:

Abner Alejandro Tinoco  
c/o his attorneys  
James A. Martinez, Esq.  
David M. Mirazo, Esq.  
Mounce, Geen, Myers, Safi, Paxson & Galatzan, P.C.  
P.O. Box 1977  
El Paso, Texas 79999-1977

Kikit & Mess Investments, LLC  
c/o Receiver Kelly M. Crawford  
500 North Akard  
Suite 2700  
Dallas, Texas 75225

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

84. 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.

85. 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.

86. Waiver: The failure of any party to this Consent Order or of any client at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or client 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.

87. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees, including orders setting the appropriate amounts of restitution, disgorgement and civil monetary penalty, that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of the Court, to assure compliance with this Consent Order and for all other purposes relevant to this action, including any motion by Defendants to modify or for relief from the terms of this Consent Order.

88. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon 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 Defendants.

89. Authority: Kelly M. Crawford hereby warrants that he is the Receiver for Kikit pursuant to the Court's order entered on October 26, 2021 (ECF # 28), and counsel for Tinoco have no objection to the Receiver entering this Order on behalf of Kikit and acknowledge that the Receiver is duly empowered and authorized to sign and submit this Consent Order on behalf of Kikit.




90. 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.

91. 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.

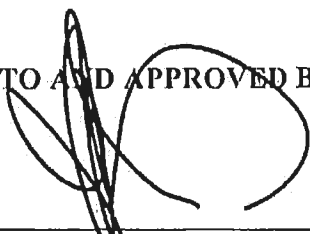
92. Agreements and Undertakings: Defendants shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby **DIRECTED** to enter this *Consent Order of Permanent Injunction and Other Statutory and Equitable Relief Against Defendants Abner Alejandro Tinoco and Kikit and Mess Investments, LLC*.

**SO ORDERED and SIGNED** on this 25th day of March 2022.

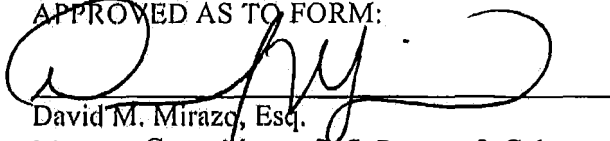
  
\_\_\_\_\_  
DAVID C. GUADERRAMA  
UNITED STATES DISTRICT JUDGE

**CONSENTED TO AND APPROVED BY DEFENDANT ABNER ALEJANDRO TINOCO:**

  
\_\_\_\_\_  
Abner Alejandro Tinoco

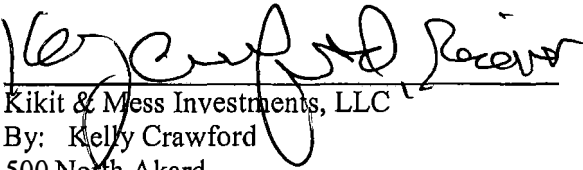
Dated: 02/09/2022

APPROVED AS TO FORM:

  
David M. Mirazo, Esq.  
Mounce, Geen, Myers, Safi, Paxson & Galatzan, P.C.  
P.O. Box 1977  
El Paso, Texas 79999-1977  
*Counsel for Defendant Tinoco*

Dated: 2/11/22

**CONSENTED TO AND APPROVED BY DEFENDANT KIKIT & MESS INVESTMENTS, LLC:**

  
Kikit & Mess Investments, LLC  
By: Kelly Crawford  
500 North Akard  
Suite 2700  
Dallas, Texas 75225

Dated: 3/01/22

*Receiver on behalf of Defendants Tinoco and Kikit*

**CONSENTED TO AND APPROVED BY PLAINTIFF, CFTC**

Dated: March 22, 2022

Plaintiff, Commodity Futures Trading Commission  
/s/Susan B. Padove  
Susan B. Padove  
Senior Trial Attorney  
spadove@cftc.gov (Padove)

David A. Terrell  
Chief Trial Attorney  
dterrell@cftc.gov (Terrell)

Division of Enforcement  
Commodity Futures Trading Commission  
525 W. Monroe St., Suite 1100  
Chicago, IL 60661  
(312) 596-0700  
Phone: (202) 390-6885 (Padove - cell)  
Fax: (312) 596-0714