

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

-against-

EDDY ALEXANDRE and
EMINIFX, INC.,

Defendants.

22 Civ. 3822 (VEC)

AMENDED NOTICE OF NON-USER CLAIMS REPORT

PLEASE TAKE NOTICE that David A. Castleman, the Court-appointed receiver (the “Receiver”) over Defendant EminiFX, Inc. (“EminiFX”), files this Amended Notice of Non-User Claims Report (the “Amended Non-User Claims Report”) in accordance with the procedures (the “Procedures”)¹ approved by the Court pursuant to *Order (I) Approving Procedures For The Verification Of User Contributions To And Withdrawals From EminiFX, (II) Setting A Bar Date For The Filing Of Non-User Claims, (III) Establishing Notice Procedures, And (IV) Granting Related Relief*. [Dkt. 228].

PLEASE TAKE FURTHER NOTICE that the Non-User Claims Report dated August 2, 2024 [Dkt. 369] (the “Initial Non-User Claims Report”) identified all Filed Claims that were previously allowed and the amount paid pursuant to settlements between the Receiver and Claimants. The Initial Non-User Claims Report also identified the one Non-User Claim that had not been resolved and was, therefore, a Disallowed Claim. The Initial Non-User Claims Report

¹ A copy of the Current Procedures is posted to the Receiver’s website under “Key Documents” (<https://www.eminifxreceivership.com/>). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Procedures.

also set forth the basis for the Receiver's determination to disallow the claim. In accordance with the Procedures, the holder of the Disallowed Claim, through newly retained counsel, objected to the Receiver's determination and provided additional documentation to further substantiate the Disallowed Claim. Also in accordance with the Procedures, the Receiver and the Non-User Claimant engaged in further communications and agreed to enter into a mediation, which resulted in an agreement to allow the previously Disallowed Claim in a significantly reduced amount.

PLEASE TAKE FURTHER NOTICE that the Receiver is filing this Amended Non-User Claims Report, attached as Exhibit A hereto, to update the status of all Non-User Claims, including the resolution of the previously Disallowed Claim.

Dated: New York, New York
January 6, 2025

OTTERBOURG P.C.

By: /s/ Jennifer S. Feeney
Jennifer S. Feeney
William M. Moran
230 Park Avenue
New York, New York 10169
Tel.: (212) 661-9100
Fax: (212) 682-6104
jfeeney@otterbourg.com

*Attorneys for David A. Castleman, as
Receiver*

EXHIBIT A**AMENDED NON-USER CLAIMS REPORT**

In accordance with the Procedures and the applicable bar dates,¹ a total of eight non-duplicative Proofs of Claim were submitted by non-user Claimants.² As set forth in the Non-User Claims Report, dated August 2, 2024 [Dkt. No 369] (the “Initial Non-User Claims Report”), for the eight non-duplicative Filed Claims that were submitted by non-users, the Receiver or the Receiver’s counsel reached out to all of the claimants. The Receiver resolved and paid seven of the eight Filed Claims prior to the filing of the Initial Non-User Claims Report. There was only one unresolved Proof of Claim—Claim A0001³—that was identified as a Disallowed Claim. Following the filing of the Initial Non-User Claims Report, the holder of Claim A0001 (“Claimant A0001” or “Claimant”), through newly retained counsel, filed a formal objection to the Receiver’s recommendation to disallow its claim, the parties continued with further discussions seeking to resolve the dispute and, ultimately, with the assistance of a third-party mediator, the Receiver and Claimant agreed to allow Claim A0001 at a significantly reduced amount.

With the resolution of Claim A0001, all Non-User Claims have now been resolved. The Receiver personally reviewed each Filed Claim and signed off on each settlement. Further, in the judgment of the Receiver, (i) each of these Filed Claims was at least partially valid, (ii) the settlement amounts were a fair compromise, (iii) the Receivership benefited by saving costs related

¹ The Internal Revenue Service is not subject to the Procedures.

² For those Proofs of Claim submitted by users based upon their status as a user, the Procedures authorized the Receiver to reject, without further review by the Court, any Proof of Claim submitted by a user based solely on their status as user. (Procedures, Sec. 3.C.(I)). A total of fifty-six users improperly filed Proofs of Claim based on their status as a user. The Receiver emailed each of those users informing them that their submitted Proof of Claim did not verify their user transactions and that all such Proofs of Claim will be automatically denied by the Receiver. The email further directed those users to the Portal where they can review and add transactions.

³ Pursuant to the Procedures, the Receiver assigned Claimants a unique identifier—a Non-User Identification Number. In the settlements submitted to the Court for approval, each of the Claimants had already been identified in public filings and, therefore, the Claimant was referred to by name.

to any litigation arising from any of these Filed Claims, and (iv) the settlements were in the best interest of the Receivership.

This Amended Non-User Claims Report updates the Initial Non-User Claims Report to reflect and summarize the resolution of Claim A0001.

I. CLAIMS SETTLED AND PAID

As set forth in the Initial Non-User Claims Report, seven of the Non-User Claims were resolved pursuant to settlements and have been paid in full. The Court granted the Receiver supplemental authority to settle any claim of the estate, where, in the Receiver's judgment, the value of the claim is less than \$50,000 and the settlement is in the best interest of the estate [Dkt. 91]. For any settlements above that amount, the Receiver sought authority from the Court to pay the settlement amount and all were approved.

The following is a summary of the Filed Claims that were resolved and paid pursuant to settlement:

Claimant⁴	Amount Asserted	Resolution Amount	Percentage	Authorization
A0002	\$700,048.25 ⁵	\$160,500.00 ⁶	23%	Dkt. 339
A0003	\$5,100,000.00	\$251,553.37	5%	Dkt. 249
A0004	\$220,288.08	\$90,376.06	41%	Dkt. 294
A0005	\$17,458.03	\$5,000.00	28%	Dkt. 91
A0006	\$81,098.00	\$10,000.00	12%	Dkt. 91
A0007	\$17,324.30	\$5,000.00	29%	Dkt. 91
A0008	\$5,003.50	\$1,375.00	27%	Dkt. 91
Total	\$6,141,220.16	\$523,804.43		

⁴ Pursuant to the Procedures, the Receiver assigned Claimants a unique identifier (each a "Non-User Identification Number"). In the settlements submitted to the Court for approval, each of the Claimants had already been identified in public filings and, therefore, the Claimant was referred to by name.

⁵ After the initial filing of the Proof of Claim, Claimant A0002 sought to increase the claim amount under an alternative theory of liability to \$1,015,048.25.

⁶ The \$160,500 settlement was a return of \$160,500 of the \$535,000 the Claimants initially turned over to the Receiver subject to Claimants' right to make a claim against the Receivership, releasing the encumbrance on the remaining \$374,500. [Dkt. No. 339].

II. CLAIM SETTLED AND ALLOWED (Claim A0001)

As described in further detail below, pursuant to the Claims Procedures, the Receiver initially determined to disallow Claim A0001, Claimant then filed an objection with further documentation in support of Claim A0001 and agreed to mediate the claim, resulting in the Receiver agreeing to allow Claim A0001 at a reduced claim amount and subject to a further cap on total recovery:

Claimant	Amount Asserted	Allowed Claim Amount
A0001	\$1,003,064.39 ⁷	\$555,000.00 capped at a 45% total recovery on the Allowed Claim Amount

Claim A0001 sought recovery for goods and labor provided to EminiFX while EminiFX was in operation. Prior to the Receivership, Claimant received payments from EminiFX in the total amount of \$904,258.81 for such goods and services. Claim A0001 asserted a claim for additional amounts in excess of those paid by EminiFX while it was operating. Claimant initially asserted a claim in the amount of \$992,614.05. Following an in-person meeting and subsequent correspondence, Claimant sought to adjust the amount of the Claim to an amount in excess of \$2 million. The goods and services provided by EminiFX by Claimant and its principal were integral to EminiFX operations in that Claimant was contracted to set up the technology infrastructure for EminiFX. Although the Receiver does not assert, nor does he have any information indicating that Claimant A0001 and its principal had knowledge of or were in any way involved in the fraud perpetrated upon EminiFX users, in light of the services provided by Claimant and work with EminiFX, the Receiver deemed the Claimant and its principal to be insiders of EminiFX and reviewed the Claim with this status in mind. The Receiver also reserved the ability to subordinate the Claim on the basis of Claimant's principal's insider status.

⁷ The claim was initially asserted in the amount of \$992,614.05 and then subsequently amended to an amount in excess of \$2 million and finally asserted in the amount of \$1,003,064.39.

A. The Non-User Claims Report

Even after amending the claim to the higher amount, the parties continued to engage in discussions to seek to resolve Claim A0001 and to better understand the documents provided in support of the Claim. The parties, however, were unable to come to a resolution and, pursuant to the Procedures, the Receiver filed the Non-User Claims Report. The Receiver determined that, after taking into account what the Receiver believed to be the appropriate and reasonable value of the actual goods provided and services performed, Claimant had already received amounts in excess of such value. Therefore, the Receiver determined, as set forth in the Non-User Claims Report, that the Disallowed Claim be disallowed in its entirety. The Initial Non-User Claims Report also sets forth the multiple components of Claim A0001 and the Receiver's analysis of each component, resulting in the Receiver's determination. For a complete description of the Receiver's analysis, please refer to the Initial Non-User Claims Report.

B. The Objection

At the time that Claimant A0001 submitted the Claim, and in subsequent correspondence, Claimant was not represented by counsel. However, after the Receiver filed the Initial Non-User Claims Report, Claimant retained counsel. As required by the Procedures, on September 23, 2024, Claimant A0001 timely served on the Receiver an Objection (the "Objection") in response to the Receiver's determination to disallow Claim A0001. With the assistance of newly retained counsel by Claimant A0001, the Objection provided greater clarity and eliminated certain unsupported portions of the Claim. With the elimination of certain portions of Claim A0001, the Objection amended the asserted claim amount to \$1,003,064.39. In addition to providing greater clarity regarding the amount being sought, the Objection also included additional documents that were not previously provided to support Claim A0001.

C. Resolution of the Claim

Pursuant to the Claims Procedures Order, the Receiver “may determine whether a Filed Claim is fully allowed, partially allowed, or disallowed by taking into account, without limitation, whether (i) the Filed Claim is properly and timely filed; (ii) the Filed Claim is duplicative of any other Filed Claim; (iii) the Filed Claim is consistent with the books and records of EminiFX (to the extent available); (iv) the Filed Claim is supported by adequate documentation; (v) the Filed Claim is subject to any offsets or defenses that may be asserted; or (vi) whether other grounds exist for allowing or disallowing the Filed Claim, in whole or in part.” [Dkt 228].

The Procedures also contemplate that parties may enlist the services of a mediator to seek to resolve a Disallowed Claim. Given the impasse in negotiations to resolve Claim A0001, the Receiver and Claimant agreed to retain a neutral third-party mediator. The chosen mediator, who was agreed to by both parties, is a highly qualified mediator and attorney who has decades of experience as a mediator and also has particular expertise in bankruptcy and receivership matters. The parties prepared mediation statements for the mediator and met at the mediator’s office for a one-day mediation session.

Following the day long mediation, the Receiver and Claimant reached a resolution. The resolution was that Claim A0001 would be allowed in the amount of \$555,000.00 and will be treated in accordance with the terms of the plan of distribution when approved by the Court, provided, however, that if distributions to users exceed 45% of the allowed claim amount, Claimant A0001’s recovery shall be capped at a 45% recovery. In other words, Claimant A0001 will receive distributions along with distribution to other users, but if distributions ultimately exceed 45%, distributions to Claimant A0001 will be capped at \$249,750.00 (45% of the allowed Claim), regardless of the percentage of distributions made to other users. The total amount that

Claimant A0001 may receive, therefore, is a significant reduction to the asserted Claim amount of \$1,003,064.39.

The Receiver considered several factors in determining that the settlement achieved in mediation is a fair and reasonable resolution of Claim A0001. The Receiver considered the additional documentation provided by Claimant A0001 to support the value of goods and services provided. While the documentation may not have been perfect to support the value of every item of goods provided to EminiFX, it did provide significant additional support above what was initially provided. The Receiver also balanced Claimant's receipt of significant payments from EminiFX before the Receivership and Claimant's principal's insider status against the fact that Claimant's principal was himself a victim of the fraud by Mr. Alexandre (both as a User and Non-User Claimant⁸) and his business suffered significant losses due to that fraud. While the Receiver reserved the right to subordinate the Claim because of the principal's insider status, in view of the losses incurred by Claimant A0001 and its principal, the reduced claim amount and the cap on recoveries is deemed by the Receiver to have the same economic impact as a partial subordination of the claim. Given all of these factors, and in consideration of the potentially significant cost to the Receivership of litigating the Claim, the Receiver believes that the resolution of Claim A0001 is fair and appropriate.

The resolution also provides closure to the Receivership regarding all non-user claims, which were all resolved without the need for Court intervention.

⁸ Through the mediation, the Receiver and Claimant also resolved the User claims of Claimant and its affiliate.

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2025, I electronically filed the Amended Notice of Non-User Claims Report, with the Clerk of the Court using the Court's CM/ECF system, which shall send notice to all counsel of record. I also served, or cause to be served, a copy of the Amended Notice of Non-User Claims Report on Defendant Eddy Alexandre by U.S. mail to Eddy Alexandre, Reg. No. 00712-510, FCI Allenwood-Low, P.O. Box 1000, White Deer, PA 17887.

Dated: New York, New York
January 6, 2025

/s/ Jennifer S. Feeney
Jennifer S. Feeney