

1 Carlin Metzger (cmetzger@cftc.gov)
2 Illinois Bar No. 6275516
3 Susan Gradman (sgradman@cftc.gov)
4 Illinois Bar No. 6225060
5 Attorneys for Plaintiff
6 Commodity Futures Trading Commission
7 525 W. Monroe, Suite 1100
8 Chicago, Illinois 60661
9 Tel. 312-596-0700; Fax 312-596-0714

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT CALIFORNIA

10 _____)
11 COMMODITY FUTURES)
12 TRADING COMMISSION)

12 Plaintiff,)

13 vs.)

14 DENARI CAPITAL LLC, TRAVIS)
15 CAPSON, ARNAB SARKAR)

16 Defendants.)

Case No: 3:19-cv-07284-EMC

**PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: December 19, 2019
Hearing Time: 1:30 PM

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18
19 PLEASE TAKE NOTICE that on December 19, 2019 at 1:30 p.m., Plaintiff Commodity Futures
20 Trading Commission (“CFTC” or “Commission”) intends to present this Motion before the Honorable
21 Judge Chen, seeking an order of preliminary injunction against Travis Capson (“Capson”), Arnab Sarkar
22 (“Sarkar”) and Denari Capital, LLC (“Denari”) (collectively, “Defendants”). The CFTC requests an
23 order enjoining Defendants from committing further violations of the Commodity Exchange Act
24 (“Act”), 7 U.S.C. §§ 1-26 (2012), freezing Defendants’ assets, requiring an accounting, permitting the
25 inspection of books and records, and other equitable relief described in this Motion, and in Plaintiff’s
26 Memorandum of Points and Authorities in Support of this Motion, filed contemporaneously with this
27 Motion. Contemporaneous with this Motion, the CFTC has or is filing: (1) a Complaint for Injunctive
28 and Other Equitable Relief and Penalties Under the Commodity Exchange Act (“Complaint”); (2) a

1 Memorandum in Support of Plaintiff's Motion for a Preliminary Injunction ("Memorandum"); (3) an
2 Appendix to Plaintiff's Memorandum ("Appendix") containing declarations, transcripts and exhibits
3 thereto; (4) a Motion to Exceed Page Limits in the Memorandum; (5) a Motion for the Appointment of a
4 Temporary Receiver; (6) a Motion for Expedited Discovery; and (7) Proposed Orders for these Motions.

5
6 In this Motion for a Preliminary Injunction, the CFTC seeks an order:

- 7 (1) prohibiting Defendants from continuing to violate the provisions of the Act and
8 Commission Regulations described in the Complaint, and in the accompanying
9 Memorandum in Support of Plaintiff's Motion for a Preliminary Injunction;
- 10 (2) prohibiting Defendants from trading on or subject to the rules of any registered entity (as
11 that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (2012));
- 12 (3) prohibiting Defendants from entering into any transactions involving "commodity
13 interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014)) for
14 their own accounts or for any account in which they have a direct or indirect interest;
- 15 (4) prohibiting Defendants from (i) having any commodity interests traded on their behalf; (ii)
16 controlling or directing the trading for or on behalf of any other person or entity, whether
17 by power of attorney or otherwise, in any account involving commodity interests; or (iii)
18 soliciting, receiving or accepting any funds from any person for the purpose of
19 purchasing or selling any commodity interests;
- 20 (5) prohibiting Defendants from applying for registration or claiming exemption from
21 registration with the Commission in any capacity, and engaging in any activity requiring
22 such registration or exemption from registration with the Commission, except as provided
23 for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019);
- 24 (6) prohibiting Defendants from acting as a principal (as that term is defined in Regulation
25 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent or any other officer or employee of any person
26 (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)) registered,
27 exempted from registration or required to be registered with the Commission except as
28 provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019);
- (7) requiring Defendants to file with the Court, within ten days of the date of the Court's
order of preliminary injunction, a complete and accurate accounting of all of Defendants'
assets and liabilities, wherever located, together with all funds Defendants received from
and paid to others in connection with commodity futures transactions or purported
commodity futures transactions;
- (8) prohibiting Defendants and any firm, corporation, or other person or entity with notice
that holds any accounts, funds, assets, or other property of Defendants from withdrawing,
transferring, removing, dissipating, concealing, assigning, pledging, encumbering,
disbursing, converting, selling, or otherwise disposing of, in any manner, any funds,
assets, or other property of Defendants, wherever situated;

- 1 (9) prohibiting Defendants, all persons insofar as they are acting in the capacity of
2 Defendants' agents, servants, successors, employees, assigns, and attorneys, and all
3 persons insofar as they are acting in active concert or participation with Defendants who
4 receive actual notice of such order by personal service or otherwise, from destroying,
5 mutilating, concealing, altering, or disposing of, in any manner, any books, records, or
6 other documents of Defendants, including all such records concerning Defendants'
7 solicitation and trading activities, wherever located;
- 8 (10) prohibiting Defendants, all persons insofar as they are acting in the capacity of
9 Defendants' agents, servants, successors, employees, assigns, and attorneys, and all
10 persons insofar as they are acting in active concert or participation with Defendants who
11 receive actual notice of such order by personal service or otherwise, from refusing to
12 permit authorized representatives of the CFTC to inspect and copy, when and as
13 reasonably requested, any books, records, or other documents of Defendants, including
14 all such records concerning Defendants' solicitation and trading activities, wherever
15 located, and whether they are in the possession of Defendants or others, either on or off
16 the premises where they may be situated;
- 17 (11) authorizing that copies of the order of preliminary injunction may be served by any
18 means, including personal service, United Parcel Service, Federal Express, or other
19 commercial overnight service, email, facsimile, Rule 5 of the Federal Rules of Civil
20 Procedure, or Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial
21 and Extrajudicial Documents, upon any financial institution or other entity or person that
22 may have possession, custody, or control of any documents or assets of Defendants or
23 that may be subject to any provision of the order of preliminary injunction;
- 24 (12) Appointment of a Temporary Receiver to implement the provisions of the Preliminary
25 Injunction Order; and
- 26 (13) awarding such further relief as the Court deems necessary and appropriate under the
27 circumstances.

28 In further support of this Motion, the CFTC submits an accompanying Memorandum of Points
and Authorities, and an Appendix containing supporting declarations, testimony and exhibits, all of
which are incorporated into this Motion by reference. In brief, Defendants have cheated and defrauded
at least 28 individuals, including by: (1) commingling their funds in a pooled investment scheme that
included leveraged or margined off exchanged foreign currency ("forex") transactions; (2)
misappropriating their funds; (2) making material misrepresentations and omissions about Denari; and
(3) causing false account statements to be issued to participants misrepresenting the profitability of their
respective interests in the forex pool, among other violations. Furthermore, Defendants have escaped
regulatory scrutiny by failing to register with the Commission as required, and Capson and Denari made
false statements to the National Futures Association ("NFA").

1 By engaging in this conduct and the conduct further described herein, Defendants engaged, are
 2 engaging, or are about to engage in acts and practices that violate the anti-fraud and registration
 3 provisions of the Act (“Act”), 7 U.S.C. §§ 1-26 (2012), and Commission Regulations promulgated
 4 thereunder, 17 C.F.R. pts. 1-190 (2019). Specifically, Defendants have:

- 5
- 6 (a) violated anti-fraud provisions contained in Sections 4b(a)(2)(A)-
 7 (C) and 4o(1)(A)-(B) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C),
 8 6o(1)(A)-(B) (2012), and Regulation 5.2(b)(1)-(3), 17 C.F.R.
 9 § 5.2(b)(1)-(3) (2019);
 - 10 (b) violated the registration requirements set forth in Sections 4m(1),
 11 4k(2) and 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. §§ 6m(1),
 12 6(k)(2), 2(c)(2)(C)(iii)(I)(cc) (2012), and Regulation 5.3(a)(2)(i)-
 13 (ii), 17 C.F.R. 5.3(a)(2)(i)-(ii) (2019);
 - 14 (c) commingled participant funds and failed to provide disclosure
 15 documents in violation of Regulations 4.20, 4.21, 4.24 and 4.25, 17
 16 C.F.R. §§ 4.20, 4.21, 4.24, 4.25 (2019); and
 - 17 (d) Made false statements to the NFA in violation of Section 9(a)(4) of
 18 the Act, 7 U.S.C. § 13(a)(4) (2012).

19 The Act authorizes the CFTC to seek injunctive relief whenever it appears that a person or entity has
 20 engaged, is engaging, or is about to engage in any act or practice that violates the Act or CFTC
 21 Regulations. 7 U.S.C. § 13a-1(a); see also *CFTC v. Wilshire Inv. Mgmt. Corp.*, 531 F.3d 1339, 1343
 22 (11th Cir. 2008). “Upon a proper showing, a permanent or temporary injunction . . . shall be granted
 23 without bond.” 7 U.S.C. § 13a-1(b); see also *Wilshire Inv. Mgmt. Corp.*, 531 F.3d at 1343. To make a
 24 proper showing that injunctive relief is merited under Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), the
 25 CFTC must show a person violated and is likely to continue violating the Act, the latter of which “may
 26 be inferred from past unlawful conduct.” *CFTC v. British Am. Commodity Options*, 560 F.2d 135, 142
 27 (2d Cir. 1977); see also *CFTC v. Sidoti*, 178 F.3d 1132, 1137 (11th Cir. 1999).

28 The evidence of Defendants’ fraud and misappropriation of pool participants’ funds and their
 continued failure to return pool participants’ funds, is highly suggestive of future violations of the Act.
 Therefore, injunctive relief is necessary to prevent Defendants from continuing to defraud others and

1 from further attempting to evade regulatory scrutiny into their actions. Injunctive relief is also necessary
2 to prevent the dissipation of Defendants' assets and the destruction of Defendants' books and records to
3 preserve the CFTC's ability to obtain full and complete relief upon final adjudication of this action.
4

5 **WHEREFORE**, the Commission respectfully requests that the Court enter an order of
6 preliminary injunction:

7 (1) prohibiting Defendants from:

- 8 a. in or in connection with any order to make, or the making of, any contract of sale
9 of any commodity for future delivery, or swap, that is made, or to be made, for or
10 on behalf of, or with, any other person, other than on or subject to the rules of a
11 designated contract market to (A) cheat or defraud or attempt to cheat or defraud
12 the other person; (B) willfully to make or cause to be made to the other person
13 any false report or statement, or willfully to enter or cause to be entered for the
14 other person any false record; or (C) willfully to deceive or attempt to deceive the
15 other person by any means whatsoever in regard to any order or contract or the
16 disposition or execution of any order or contract, or in regard to any act of agency
17 performed, with respect to any order or contract for or with the other person in
18 violation of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C)
19 (2012);
- 20 b. by use of the mails or by any means or instrumentality of interstate commerce,
21 directly or indirectly, in or in connection with any retail forex transaction: (1) [t]o
22 cheat or defraud or attempt to cheat or defraud any person; (2) [w]illfully to make
23 or cause to be made to any person any false report or statement or cause to be
24 entered for any person any false record; or (3) [w]illfully to deceive or attempt to
25 deceive any person by any means whatsoever in violation of Regulation 5.2(b)(1)-
26 (3), 17 C.F.R. §5.2(b)(1)-(3)(2019).
- 27 c. using the mails or any means or instrumentality of interstate commerce, directly
28 or indirectly, as a CPO or AP to (A) employ any device, scheme, or artifice to
defraud any participant; or (B) engage in any transaction, practice, or course of
business that operates as a fraud or deceit upon any participant, in violation of
Sections 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012);
- d. failing to register as a CPO and operate or solicit funds, securities, or property for
any pooled investment vehicle that is not an eligible contract participant in
connection with retail forex contracts, agreements, or transactions in violation of
Sections 4m(1) and 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. §§ 6m(1) and
2(c)(2)(C)(iii)(I)(cc) (2012), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i)
(2019);
- e. failing to register as an AP of a retail forex CPO or permitting an AP of a retail
forex CPO to remain unregistered, in violation of Section 4k(2) of the Act, 7
U.S.C. § 6k(2) (2012) and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii);

- 1 f. as a CPO, failing to operate its commodity pool as an entity cognizable as a legal
2 entity separate from its operator, receiving participants' funds in any name other
3 than that of the pool and commingling the property of any pool it operates with
4 the property of any other person in violation of Regulation 4.20(a)-(c), 17 C.F.R.
5 § 4.20(a)-(c)(2019); and
- 6 g. as a CPO, failing to deliver or cause to be delivered to a prospective participant in
7 a pool that it operates or intends to operate a disclosure document for the pool
8 prepared in accordance with CFTC Regulations 4.24 and 4.25 by no later than the
9 time it delivers to the prospective participant a subscription agreement for the
10 pool in violation of Regulations 4.21, 4.24 and 4.25, 17 C.F.R. §§ 4.21, 4.24 and
11 4.25(2019).

- 12 (2) Prohibiting Defendants Capson and Denari from willfully falsifying, concealing, or
13 covering up by trick, scheme or artifice a material fact, or making any false, fictitious, or
14 fraudulent statements or representations, or making or using any false writing or
15 document knowing the same to contain any false, fictitious, or fraudulent statement or
16 entry to a registered entity, board of trade, swap data repository, or futures association
17 designated or registered under the Act and acting in furtherance of its official duties
18 under the Act in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).
- 19 (3) prohibiting Defendants from trading on or subject to the rules of any registered entity (as
20 that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (2012));
- 21 (4) prohibiting Defendants from entering into any transactions involving "commodity
22 interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014)) for
23 their own accounts or for any account in which they have a direct or indirect interest;
- 24 (5) prohibiting Defendants from (i) having any commodity interests traded on their behalf; (ii)
25 controlling or directing the trading for or on behalf of any other person or entity, whether
26 by power of attorney or otherwise, in any account involving commodity interests; or (iii)
27 soliciting, receiving or accepting any funds from any person for the purpose of
28 purchasing or selling any commodity interests;
- (6) prohibiting Defendants from 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) (2019);
- (7) prohibiting Defendants from acting as a principal (as that term is defined in Regulation
3.1(a), 17 C.F.R. § 3.1(a) (2019)), 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019);
- (8) requiring Defendants to file with the Court, within ten days of the date of the Court's
order of preliminary injunction, a complete and accurate accounting of all of Defendants'
assets and liabilities, wherever located, together with all funds Defendants received from
and paid to others in connection with commodity futures transactions or purported
commodity futures transactions;

- 1 (9) prohibiting Defendants and any firm, corporation, or other person or entity with notice
2 that holds any accounts, funds, assets, or other property of Defendants from withdrawing,
3 transferring, removing, dissipating, concealing, assigning, pledging, encumbering,
4 disbursing, converting, selling, or otherwise disposing of, in any manner, any funds,
5 assets, or other property of Defendants, wherever situated;
- 6 (10) prohibiting Defendants, all persons insofar as they are acting in the capacity of
7 Defendants' agents, servants, successors, employees, assigns, and attorneys, and all
8 persons insofar as they are acting in active concert or participation with Defendants who
9 receive actual notice of such order by personal service or otherwise, from destroying,
10 mutilating, concealing, altering, or disposing of, in any manner, any books, records, or
11 other documents of Defendants, including all such records concerning Defendants'
12 solicitation and trading activities, wherever located;
- 13 (11) prohibiting Defendants, all persons insofar as they are acting in the capacity of
14 Defendants' agents, servants, successors, employees, assigns, and attorneys, and all
15 persons insofar as they are acting in active concert or participation with Defendants who
16 receive actual notice of such order by personal service or otherwise, from refusing to
17 permit authorized representatives of the CFTC to inspect and copy, when and as
18 reasonably requested, any books, records, or other documents of Defendants, including
19 all such records concerning Defendants' solicitation and trading activities, wherever
20 located, and whether they are in the possession of Defendants or others, either on or off
21 the premises where they may be situated;
- 22 (12) authorizing that copies of the order of preliminary injunction may be served by any
23 means, including personal service, United Parcel Service, Federal Express, or other
24 commercial overnight service, email, facsimile, Rule 5 of the Federal Rules of Civil
25 Procedure, or Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial
26 and Extrajudicial Documents, upon any financial institution or other entity or person that
27 may have possession, custody, or control of any documents or assets of Defendants or
28 that may be subject to any provision of the order of preliminary injunction; and
- (13) awarding such further relief as the Court deems necessary and appropriate under the
circumstances.

Date: November 8, 2019

Attorney for Plaintiff CFTC

/s/ Carlin Metzger

IL ARDC No. 6275516

Commodity Futures Trading Commission

525 W. Monroe St., Suite 1100

Chicago, IL 60661

(312) 596-0536

cmetzger@cftc.gov

CERTIFICATE OF SERVICE

I, Carlin Metzger, an attorney with the U.S. Commodity Futures Trading Commission, certify that I served the CFTC’s Motion for Preliminary Injunction upon counsel for Defendants listed below, who have been representing Defendants in connection with the CFTC’s investigation prior to the filing of the CFTC’s action against Defendants, via e-mail, on November 8, 2019.

Elizabeth Davis (Elizabeth.Davis@mmlawus.com)
Brian Walsh (Brian.Walsh@mmlawus.com)
Murphy McGonagle
1001 G Street, N.W.
Seventh Floor
Washington, DC 20001
T: (202) 220-1933 (Davis)
F: (202) 661-7059 (Davis)

Date: November 8, 2019

Attorney for Plaintiff CFTC

/s/ Carlin Metzger

Carlin Metzger
IL ARDC No. 6275516
(Pro Hac Vice)
Commodity Futures Trading Commission
525 W. Monroe St., Suite 1100
Chicago, IL 60661
(312) 596-0536
cmetzger@cftc.gov