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7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10  
11 COMMODITY FUTURES TRADING  
COMMISSION,

12 Plaintiff,

13 v.  
14

15 DENARI CAPITAL LLC, TRAVIS  
CAPSON, and ARNAB SARKAR,

16 Defendants.  
17  
18

Case No. 19-cv-07284-EC

**NOTICE OF MOTION AND MOTION FOR  
ENTRY OF AN ORDER APPROVING:**

- (1) **RECEIVER’S PLAN OF DISTRIBUTION;**
- (2) **SIERRA GOLD LLC AGREEMENT;**
- (3) **FORM AGREEMENTS WITH INVESTORS; AND**
- (4) **FORM AND MANNER OF NOTICE**

*Supporting Declaration and Proposed Order  
Filed Concurrently*

Date: October 1, 2020

Time: 1:30 p.m.

Place: Courtroom: 5

450 Golden Gate Ave

San Francisco, CA

Judge: Edward M. Chen

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23  
24 **PLEASE TAKE NOTICE THAT** on October 1, 2020, at 1:30 p.m., in Courtroom 5 of  
25 the above-titled Court located at 450 Golden Gate Ave., San Francisco, California, Kathy Bazoian  
26 Phelps, the Court-appointed temporary receiver herein (the “Receiver”) for Denari Capital, LLC  
27 (“Denari”), Travis Capson (“Capson”), and Arnab Sarkar (“Sarkar” and, collectively, the  
28 “Receivership Defendants”) will and hereby does move for an order granting her Motion for

1 Entry of Order Approving (1) Receiver’s Plan of Distribution; (2) Sierra Gold LLC Agreement;  
2 (3) Form Agreements with Investors; and (4) Form and Manner of Notice (the “Motion”).

3 **Procedural Requirements:** If you oppose all or part of the relief requested in this Motion,  
4 you are required to file your written opposition with the Office of the Clerk, United States District  
5 Court, 450 Golden Gate Ave., San Francisco, California 94102, and serve the same on the  
6 undersigned no later than two weeks from the date of the filing of this Motion, pursuant to the  
7 Court’s Order. IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the above  
8 date, the Court may grant the requested relief without further notice.

9 If you wish to receive a hard copy of the Plan by regular mail, please contact Kathy Bazoian  
10 Phelps by email to [kphelps@diamondmccarthy.com](mailto:kphelps@diamondmccarthy.com) or by regular mail at Diamond McCarthy,  
11 1999 Avenue of the Stars, Ste. 1100, Los Angeles, CA 90067.

12 **Meet and Confer:** The Receiver has met and conferred with the Commodity Futures  
13 Trading Commission (“CFTC”), and counsel to the Receivership Defendants prior to filing this  
14 pleading and they have no objection to the relief requested herein. The Receiver believes that the  
15 Plan is consensual and that the claimants do not have any opposition to the relief requested herein.

16 **Relief Requested in Motion.** The Motion seeks entry of an order with the following relief:

- 17 (1) Approving the Distribution Plan attached to the Phelps Declaration as Exhibit “1”;
- 18 (2) Authorizing the distribution of the National Gold shares from Sierra Gold to the  
19 National Gold Investors or their designees and the distribution of the Direct National  
20 Gold shares as set forth in the Plan;
- 21 (3) Authorizing the surrender of the Denari 87% interest in Sierra Gold;
- 22 (4) Approving the Receiver’s Agreement with Sierra Gold, attached to the Phelps  
23 Declaration as Exhibit “2”;
- 24 (5) Approving the form of agreement the Receiver negotiated with the National Gold  
25 Investors, attached to the Phelps Declaration as Exhibit “3”;
- 26 (6) Authorizing the transfer of the URHG Shares to the URHG Investors or their designees;
- 27 (7) Approving the form of agreement the Receiver negotiated with the URHG Investors,  
28 attached to the Phelps Declaration as Exhibit “4”; and

1 (8) Approving the form and manner of notice of the Motion.

2 The Motion is made on grounds that, in the Receiver's business judgment, the proposed  
3 distribution plan is fair and reasonable.

4 This Motion is supported by the Notice of Motion and Motion, the accompanying  
5 Memorandum of Points and Authorities, the Declaration of Kathy Bazoian Phelps and Exhibits  
6 filed herewith, and all the papers and files in this matter. The Receiver hereby files her Motion.

7  
8 DATED: August 27, 2020

DIAMOND McCARTHY LLP

9 By: /s/ Christopher D. Sullivan  
10 Christopher D. Sullivan  
11 Counsel to Temporary Receiver  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Motion seeks approval of the Receiver’s Plan of Distribution, which contains a plan to  
4 distribute cash and non-cash assets of the Receivership Estate (defined below) to claimants holding  
5 allowed claims.

6 The Receiver has met and conferred with the CFTC and counsel to the Receivership  
7 Defendants, and they do not have any opposition to the Plan. Declaration of Kathy Bazoian Phelps  
8 in Support of Motion for Approval of: (1) Receiver’s Plan of Distribution; (2) Sierra Gold LLC  
9 Agreement; (3) Form Agreements with Investors; and (4) Form and Manner of Notice (“Phelps  
10 Decl.”), ¶ 26. The Receiver has also met and conferred with the claimants in this case and believes  
11 that they do not have any opposition to the Plan.

12 In summary, the Plan provides that some investor claimants will receive cash and others  
13 will receive non-cash assets according to their preferred form of distribution. The Receiver has  
14 conferred with her tax advisor and securities counsel who have confirmed that the terms of the Plan  
15 and the proposed implementation of the Plan are and will be compliant with applicable tax and  
16 securities regulations. This Motion seeks Court approval of the Plan which is attached to the Phelps  
17 Declaration as Exhibit “1” and the actions that will be required to implement the Plan as set forth  
18 herein. More specifically, the Receiver is seeking entry of an order with the following relief:

- 19 (1) Approving the Distribution Plan attached to the Phelps Declaration as Exhibit “1”;
- 20 (2) Authorizing the distribution of the National Gold shares from Sierra Gold to the  
21 National Gold Investors or their designees and the distribution of the Direct National  
22 Gold shares as set forth in the Plan;
- 23 (3) Authorizing the surrender of the Denari 87% interest in Sierra Gold;
- 24 (4) Approving the Receiver’s Agreement with Sierra Gold, attached to the Phelps  
25 Declaration as Exhibit “2”;
- 26 (5) Approving the form of agreement the Receiver negotiated with the National Gold  
27 Investors, attached to the Phelps Declaration as Exhibit “3”;
- 28 (6) Authorizing the transfer of the URHG Shares to the URHG Investors or their designees;

1 (7) Approving the form of agreement the Receiver negotiated with the URHG Investors,  
2 attached to the Phelps Declaration as Exhibit “4”; and

3 (8) Approving the form and manner of notice of the Motion.

4 **II. STATEMENT OF FACTS**

5 1. On November 5, 2019, the CFTC filed a Complaint (Doc. No. 1) against the  
6 Receivership Defendants, alleging that, since at least 2012, the Receivership Defendants have  
7 fraudulently solicited and accepted at least \$8,300,000.00 from approximately twenty-eight  
8 participants, whose funds were subsequently commingled in a pooled investment scheme that  
9 included leveraged or margined off exchange foreign currency (“forex”) transactions.

10 2. According to the Complaint, the pooled and commingled funds were deposited into  
11 a Denari bank account and used for, among other things, foreign exchange trading, real estate  
12 investments, securities transactions, and satisfaction of personal expenses. According to the  
13 Complaint, as of July 2019, Denari owed its participants more than \$5,200,000.00, which it did not  
14 have sufficient funds or assets to satisfy.

15 3. On December 4, 2019, this Court entered an order (Doc. No. 37) (“Preliminary  
16 Injunction”) appointing the Receiver as temporary receiver and granting her full powers of an  
17 equity receiver over all funds, property and assets belonging to, being managed by or in the  
18 possession of or control of the Receivership Defendants (the “Receivership Estate”). In addition,  
19 among other things, the Preliminary Injunction provides that the Receiver has been granted specific  
20 powers to make such payments and disbursements from the funds and assets taken into custody,  
21 control, and possession or thereafter received by her, and to incur, or authorize the making of, such  
22 agreements as may be necessary and advisable in discharging her duties as permanent receiver.

23 4. On February 6, 2020, the Court entered an Amended Order (Doc. No. 47) (“Bar  
24 Date Order”) granting the Receiver’s Administrative Motion (Doc. No. 42) and establishing,  
25 among other things, a claims bar date of April 6, 2020 (the “Claims Bar Date”).

26 5. On April 29, 2020, the Receiver filed the Receiver’s First Status Report (Doc. No.  
27 56) covering the period from her appointment on December 4, 2019 through March 31, 2020. On  
28 August 5, 2020, the Receiver filed the Receiver’s Second Status Report (Doc. No. 67) covering the

1 period from her appointment on April 1, 2020 through June 30, 2020.

2 6. The Receiver has met and conferred with the CFTC and counsel to the Receivership  
3 Defendants regarding the form and content of the Distribution Plan, as well as with the individual  
4 claimants regarding the amounts of their claims and the proposed treatment under the Plan. Phelps  
5 Decl., ¶ 9, 26. The Receiver is advised that the investors agree to the terms of the Distribution  
6 Plan attached to the Phelps Declaration as Exhibit “1.”<sup>1</sup> Phelps Decl., ¶ 9.”

7 **III. Assets of Receivership**

8 The assets of the Receivership Estate consist of cash and non-cash assets as follows:

9 **A. Unencumbered cash:**

10 As of the date of this Motion, the total unencumbered cash held by the Receivership Estate  
11 is approximately \$798,000. Additional funds totaling approximately \$309,000 are anticipated to be  
12 paid into the Receivership Estate in connection with the proposed sale of assets or settlements,  
13 which are the subject of separate motions filed concurrently herewith. If approved, those assets and  
14 settlements will generate additional funds as follows:

15 (1) Sale of URHG Stock: The Receiver has entered into a sale agreement for

16 10,144,516 shares of United Resource Holdings Group, Inc. (“URGH”) owned by  
17 the Receivership Estate for the purchase price of \$101,445.06.

18 (2) Settlement with URHG and United Milling and Refining Corp. (“United Milling”).

19 The Receiver has entered into a settlement agreement with URHG, United Milling,  
20 and Springbok Development Inc. that will result in: (i) payment to the Receivership  
21 Estate of approximately \$58,000; and (ii) payment to the Receivership Estate of  
22 \$150,000 from the sale of the real property located at 399 Wild Horse, Sparks  
23 Nevada. The Receiver also holds a deed of trust against the real property in the  
24 amount of \$205,000 which will be surrendered in connection with the settlement.

25 **B. Interests in Sierra Gold.**

26 The Receivership Estate holds 87% of the membership interests in Sierra Gold LLC, a

27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms used but not otherwise defined in this Motion shall have the meanings given to  
them in the Distribution Plan.



1 Nevada limited liability company (“Sierra Gold”). The sole assets of Sierra Gold are 400,000  
2 shares of National Gold Mining Co. (“National Gold”), a privately held corporation, which owns  
3 patented and unpatented mining claims. Sarkar was the managing member of Sierra Gold as of the  
4 date of the Preliminary Injunction. Pursuant to the terms of the Plan, the Receiver proposes to  
5 transfer Denari’s share of the stock of National Gold held by Sierra Gold (the “Indirectly Held  
6 National Gold Shares”) to the Investor Claimants who have elected to receive National Gold shares  
7 in lieu of a cash distribution and in full satisfaction of their claims. The Receiver has executed an  
8 agreement with Sierra Gold that will, if approved: (i) settle any claims Sierra Gold may have  
9 against the Receivership Estate concerning the management of Sierra Gold; (ii) transfer  
10 management of Sierra Gold to an existing investor in Sierra Gold who elected not to pursue a claim  
11 against the Receivership but rather retain his Sierra Gold interest (the “New Sierra Gold  
12 Manager”); (iii) surrender Denari’s interest in Sierra Gold (87% of the interests) in exchange for  
13 the transfer of the Indirectly Held National Gold Shares to the Investor Claimants who have elected  
14 to receive National Gold shares; and (iv) provide for the cost-efficient distribution of the Indirectly  
15 Held National Gold Shares to the Investor Claimants or their designees. (Phelps Decl. ¶ 11 & Ex.  
16 “2”) The Receiver has also negotiated separate agreements with the Investor Claimants, all but one  
17 of whom have designated Sierra Gold as the entity to receive their National Gold Shares. (Phelps  
18 Decl. ¶ 11 & Ex. “3”) Both of those agreements are subject to approval of the instant motion.  
19 Those Investor Claimants wishing to hold their National Gold interests through Sierra Gold will  
20 negotiate separate subscription agreements with the New Sierra Gold Manager under which they  
21 will receive Sierra Gold interests, and those agreements will be executed outside the Receivership.

22 **C. Shares of National Gold:**

23 In addition to the Indirectly Held National Gold Shares, Denari owns 77,593 shares of  
24 National Gold and Capson owns 80,000 shares in National Gold (the “Directly Held National Gold  
25 Shares”). Under the terms of the Plan, the Receiver proposes to transfer the Directly Held National  
26 Gold Shares directly to an Investor Claimant in lieu of a cash distribution, as set forth in more  
27 detail below.

28 **D. URHG Shares.**

1 The Receiver is in control of 30,633,998 URHG shares, excluding the 18,615 shares in  
2 Capson's IRA account and the 16,580 shares in Sarkar's IRA account. On December 4, 2019, the  
3 date of the creation of the Receivership Estate and entry of the Preliminary Injunction, URHG  
4 stock was trading at \$.06/share. The URHG shares have fluctuated between \$.02 and \$.06/share  
5 during the receivership on the pink sheets; however, given the volume of shares in the Receivership  
6 Estate, as attempting to sell them at a public sale would dilute or destroy the value. The Receiver  
7 has obtained an offer for the purchase of 10,144,506 of the URHG Shares for the price of  
8 \$.01/share from a board member of URHG, which is the subject of a motion filed concurrently  
9 herewith. The Receiver offered the Investor Claimants the opportunity to receive noncash assets,  
10 including URHG shares on account of their Allowed Claims in lieu of cash distributions, with no  
11 representations, requirements or promises that such a distribution would be approved. Four Investor  
12 Claimants have expressed interest in receiving a portion of the distribution on their claims in the  
13 form of URHG shares. Pursuant to the Plan, the URHG Shares will either be liquidated for the  
14 benefit of the Receivership Estate by a sale, or distributed directly to one or more holders of  
15 Allowed Claims who wish to receive URHG shares as a part of their distribution as set forth  
16 below. The Receiver has negotiated separate agreements with the claimant receiving URHG shares  
17 directly, and those agreements are subject to approval of the instant motion. (Phelps Decl. ¶ 13 &  
18 Ex. "4")

19 **E. URHG, URM, and the Sparks Real Property.**

20 The Receivership holds claims to recover approximately \$677,793.37 that was transferred  
21 by Denari to URHG, United Milling and Refining Corp. ("UMRC"), and Dun Glen Mining  
22 Corporation ("Dun Glen"), , which may be avoidable transfers which are recoverable for the  
23 benefit of the Receivership Estate. UMRC is a subsidiary of URHG and co-owns certain real  
24 property at 399 Wild Horse, Sparks Nevada (the "Nevada Real Property") with Springbok  
25 Development Inc., a Nevada corporation ("Springbok"). A deed of trust recorded against the  
26 Nevada Real Property (the "Denari Lien") was given by UMRC (signed by Capson as President) in  
27 connection with a promissory note given by Denari to a Denari investor. That Denari investor  
28 confirmed to the Receiver that the amount due under that promissory note has been satisfied, and

1 assigned the Denari Lien to the Receiver on behalf of the Receivership Estate. Additionally,  
 2 certain transfers were made by Denari to URHG, UMRC, and/or Dun Glen in connection with  
 3 loans or gifts, which may be avoidable transfers which are recoverable for the benefit of the  
 4 Receivership Estate. Last, entry of the TRO caused certain funds in a URHG account in the  
 5 amount of approximately \$58,000.00 to be frozen (the “Frozen Funds”).

6 The Receiver has entered into a settlement agreement with URHG and UMRC, subject to  
 7 Court approval. The settlement will result in: (i) payment to the Receivership Estate of  
 8 approximately \$58,000; and (ii) payment to the Receivership Estate of \$150,000 from the sale of  
 9 the real property located at 399 Wild Horse, Sparks Nevada. The Denari Lien will be surrendered  
 10 in connection with the settlement. The proceeds of the settlement constitute part of the funds being  
 11 used to fund the distributions under this Plan. Phelps Decl., ¶ 14.

#### 12 **IV. CLAIMS AND PROPOSED CLASSES OF CLAIMANTS**

##### 13 **A. The Allowed Claims**

14 The Claims Bar Date was set for April 6, 2020. The Receiver received 19 claims prior to  
 15 the Bar Date and one claim a few days late. The Receiver excused the tardiness of the one claim  
 16 because of a problem with service of the notice on the claimant. One of the submitted claims was  
 17 subsequently withdrawn. The Receiver has communicated with all claimants<sup>2</sup> regarding their  
 18 claims and believes that all claimants agree with the amount of their Allowed Claims as well as the  
 19 proposed treatment of their claim as set forth below:

I.D. No.	Allowed Net Claim Amount	Proposed Treatment of Claims
1	\$ 200,000	Class 3 pro rata cash distribution
2	\$ 107,020	Class 3 pro rata cash distribution on \$97,020 cash claim; Class 4 asset distribution of 1,000,000 URHG shares
3	\$ 20,000	Class 3 pro rata cash distribution
4	\$ 100,000	Class 3 pro rata cash distribution

26 \_\_\_\_\_  
 27 <sup>2</sup> Each investor has been assigned an Investor I.D. Number to protect their confidentiality and they  
 28 have been notified of their unique I.D. Number so that they can identify their claim in public filings.

5	\$ 100,000	Class 3 pro rata cash distribution on \$92,500 cash claim; Class 4 asset distribution of 750,000 URHG shares
6	\$ 405,845	Class 3 pro rata cash distribution on up to \$405,845; or Class 4 asset distribution of up to 18,363,792 URHG shares, plus reduced Class 3 cash claim. Total consideration not to exceed allowed amount of claim
7	\$ 79,986	Class 3 pro rata cash distribution
8	\$ 177,720	Class 3 pro rata cash distribution
9	\$ 3,757	Class 4 asset distribution of 375,500 URHG shares
10	Settled	Class 4 asset distribution of 157,593 Directly Held National Gold Shares and 42,407 Indirectly Held National Gold Shares (200,000 total National Gold shares)
11	\$ 595,337.14	Class 4 asset distribution of 91,242 Indirectly Held National Gold Shares
12	\$ 769,950	Class 4 asset distribution of 118,454 Indirectly Held National Gold Shares
13	\$ 348,250	Class 4 asset distribution of 53,577 Indirectly Held National Gold Shares
14	\$ 106,750	Class 4 asset distribution of 16,423 Indirectly Held National Gold Shares
15	\$ 168,333	Class 4 asset distribution of 25,897 Indirectly Held National Gold Shares
16	\$ 80,000	Pro rata cash distribution
17	Withdrawn	No distribution
18	\$ 19,000	Pro rata cash distribution
19	\$ 800	Class 4 priority payment

The Receiver does not anticipate filing any objections to these claims. If a claim objection becomes necessary, the Receiver shall provide notice and an opportunity to object and be heard pursuant to the Court's Local Rules to any claimant whose claim is affected.

#### **B. Classes of Claimants**

The Receiver has categorized the Allowed Claims into certain classes, as follows:

Class 1: Administrative Claims

Class 2: Priority Claims

Class 3: Investor and Creditor Claims – Cash Distribution

Class 4: Investor Claims – Non-Cash Distribution

Class 5: Distribution of Surplus Funds

**Class 1 – Administrative Claims.** Class 1 consists of the holders of Allowed

1 Administrative Claims. It is contemplated these Administrative Claims will consist primarily of the  
2 Receiver's fees and costs and the fees and costs of professional retained by the Receiver. Except if  
3 a holder of an Allowed Administrative Claim agrees to a less favorable treatment of such Claim in  
4 full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Claim,  
5 each holder of an Allowed Administrative Claim will receive a cash distribution in the full amount  
6 of its Allowed Administrative Claim; provided, however, that where required, a motion will be  
7 filed with the Court and entry of an order will be a condition precedent to distributions.

8 **Class 2 – Priority Claims.** Class 2 consists of Allowed Priority Claims. Allowed Priority  
9 Claims consist substantially, if not entirely, of tax claims. As of the filing of the Plan, one tax claim  
10 for \$800 was submitted by the California Franchise Tax Board. Other anticipated tax claims that  
11 would constitute Priority Claims are tax liability at both the federal and state levels attributable to  
12 the sale and disbursement of securities. Except if a holder of an Allowed Priority Claim agrees to a  
13 less favorable treatment of such Claim in full and final satisfaction, settlement, release, and  
14 discharge of, and in exchange for, such Claim, each holder of an Allowed Priority Claim will  
15 receive full payment on account of its Allowed Priority Claim, or funds will be reserved to pay  
16 such Allowed Priority Claim, prior to disbursement of any cash or securities to holders of Allowed  
17 Claims in Classes 3 and 4.

18 **Class 3 – Investor and Creditor Claims – Cash Distribution.** Class 3 consists of holders  
19 of Allowed Investor Claims which have been calculated using the net investment methodology  
20 approved by the Court by order entered on February 6, 2020 (Doc. No. 47), and one Creditor  
21 Claim. Class 3 claimants will receive a pro rata cash distribution from the funds remaining  
22 following payment in full to Class 1 and 2 claimants. Each of the claimants in Class 3 are investors,  
23 except for Claim No. 18 which is the claim of Duff & Phelps in the amount of \$19,000 for services  
24 provided to Denari pre-receivership. Except if a holder of an Allowed Investor Claim agrees to a  
25 less favorable treatment of such Claim in full and final satisfaction, settlement, release, and  
26 discharge of, and in exchange for, such Claim, each holder of an Allowed Investor Claim in Class 3  
27 will receive its *pro rata* share of the cash available, which shall also be pro rata with holders of  
28 Allowed Investor Claims in Class 4.

1           **Class 4 – Investor Claims – Non-Cash Distribution.** Class 4 consists of holders of  
2 Allowed Investor Claims accepting a non-cash asset distribution from the Receivership Estate.  
3 Holders of Allowed Investor Claims in Class 4 have agreed with the Receiver to this treatment.  
4 Except if a holder of an Allowed Investor Claim agrees to a less favorable treatment of such  
5 Allowed Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange  
6 for, such Claim, each holder of an Allowed Investor Claim in Class 4 will receive its *pro rata* share  
7 of certain non-cash assets available to satisfy the Allowed Claims in such class, such that holders of  
8 Allowed Investor Claims in Class 4 will be treated *pro rata* with holders of Allowed Investor  
9 Claims in Class 3.

10           **Class 5 – Surplus Funds.** Class 5 will include all Investor Claimants holding Allowed  
11 Claims who received payment as contemplated under the Plan in full under Class 3 and distribution  
12 of non-cash assets in Class 4, who will share on a *pro rata* basis based on the allowed amount of  
13 their Allowed Claims in any surplus funds that remain following distribution in full to Classes 1, 2,  
14 3 and 4.

15 **V. DISTRIBUTION UNDER THE PLAN**

16 **A. Priority of Payment of Claims.**

17 Allowed Claims receiving cash shall be paid from the Plan Fund, and Allowed Claims  
18 receiving non-cash assets shall be paid from the Receivership Estate in the following priority:

19 **1. Class 1 – Administrative Claims.**

20 Holders of Allowed Administrative Claims shall be paid in full, in full and final  
21 satisfaction, settlement, release, and discharge of, and in exchange for such Allowed  
22 Administrative Claims as first priority from the Plan Fund. The Receiver shall reserve sufficient  
23 funds to pay projected Allowed Administrative Claims in Class 1 through the close of the  
24 Receivership Estate.

25 **2. Class 2 – Priority Claims.**

26 Holders of Allowed Priority Claims in Class 2 shall be paid in full, in full and final  
27 satisfaction, settlement, release, and discharge of, and in exchange for such Allowed Priority  
28 Claims as second priority from the Plan Fund after satisfaction in full of Allowed Administrative

1 Claims, including any reserve deemed necessary by the Receiver in her sole discretion. The  
 2 Receiver shall reserve sufficient funds to pay projected Allowed Priority Claims in Class 2 through  
 3 the close of the Receivership Estate.

4 **3. Class 3 – Investor and Creditor Claims – Cash Distribution.**

5 Holders of Allowed Investor Claims in Class 3 (*i.e.*, accepting cash distributions) shall be as  
 6 third priority on a *pro rata* basis up to the full amount of each holder's Allowed Claim, in full and  
 7 final satisfaction, settlement, release, and discharge of, and in exchange for such Allowed Investor  
 8 Claim. The Receiver shall not be obligated to make any payment to holders of Allowed Claims in  
 9 Class 3 if there are not sufficient funds to pay all Allowed Claims in Class 1 and 2 Claims in full.

10 **4. Class 4 – Investor Claims – Non-Cash Distribution.**

11 Holders of Allowed Investor Claims in Class 4 will receive under the Plan either (i) shares  
 12 of National Gold, (ii) shares of URHG, or (iii) in the Receiver's sole discretion, subject to Court  
 13 approval, the Sparks Property or the Denari Lien.

14 **a. National Gold Shares**

15 Certain Investor Claimants shall receive National Gold shares in the amounts listed below,  
 16 some of which will be distributed from the Indirectly Held National Gold Shares that will be  
 17 redeemed from Sierra Gold, and some of which will be distributed from the Directly Held National  
 18 Gold Shares:

Investor ID	Indirectly Held National Gold Shares	Directly Held National Gold Shares
10	42,407	157,593
11	91,242	0
12	118,454	0
13	53,577	0
14	16,423	0
15	25,897	0

1                   **b. URHG Shares.**

2                   The Receiver filed a motion simultaneously with this Motion seeking authority to sell  
3 10,144,516 of those URHG Shares at \$0.01/share. The Receivership Estate will then remain in  
4 control of 20,489,482 URHG Shares, which the Receiver proposes to distribute to the holders of  
5 Allowed Investor Claims in Class 4 as follows:

Investor ID	URGH Shares
2	1,000,000
5	750,000
6	Up to 18,363,792
9	375,700

6  
7  
8  
9  
10  
11  
12 (the “URHG Investors”).

13                   The Receiver may delay such distribution to holders of Allowed Claims in Class 4 until  
14 such time as the tax liability for the liquidation of the National Gold Shares and/or URHG Shares  
15 has been established. Distributions made to holders of Allowed Claims in Class 4 shall comply  
16 with all securities law requirements.

17                   **5. Class 5 – Surplus Funds.**

18                   To the extent there is any surplus of cash or assets available, with respect to holders of  
19 Allowed Investor Claims in Classes 3 and 4, such funds may be available to holders of such  
20 Allowed Investor Claims on a gross investment method basis, pro rata with all holders of Allowed  
21 Investor Claims.

22                   **B. Interim Distribution**

23                   The Receiver shall endeavor to make an interim distribution as soon as practicable after  
24 approval of the Plan of Distribution. The Receiver anticipates that a final distribution will occur  
25 after her receipt of final tax clearance from the IRS at the end of the case upon closure of the  
26 Receivership Estate.

27                   The Receiver shall have the authority to retain a reserve from the Plan Fund to ensure that  
28



1 sufficient funds will be available to pay:

- 2 i. Allowed Claims in Classes 1 and 2 in full through the close of the Receivership Estate;
- 3 ii. Any and all estimated tax liability generated from the transactions contemplated under
- 4 the Plan;
- 5 iii. The fees and costs to wind up the Receivership Estate, which shall constitute Allowed
- 6 Administrative Claims in Class 1; and
- 7 iv. Any unanticipated costs of the Receivership Estate, in an amount not to exceed
- 8 \$20,000.00.

9 **C. Final Distribution**

10 Following the distribution of cash, securities, and other assets of the Receivership Estate  
11 pursuant to the terms of the Plan, the Receiver shall prepare and file final tax returns and, upon  
12 receipt of final tax clearance, shall seek authority from the Court to make a final distribution of any  
13 funds remaining at the time that final tax clearance is received pursuant to the Plan as set forth  
14 herein.

15 Notwithstanding anything contained in this Motion or the Plan to the contrary, the  
16 allowance, classification and treatment of all Allowed Claims and their respective distributions and  
17 treatments under this Plan take into account and conform to the relative priority and rights of the  
18 Claims and in each class with due regard to any contractual, legal and equitable subordination  
19 rights relating thereto. As of entry of an order approving this Motion and the Plan, any and all such  
20 rights described in the preceding sentence are settled and compromised pursuant to the Plan. Entry  
21 of an order approving the Plan will constitute the Court's finding and determination that the  
22 settlements reflected in the Plan are (1) in the best interests of the Receivership Estate and all  
23 holders of Claims, (2) fair, equitable and reasonable, (3) made in good faith, and (4) approved by  
24 the Court pursuant to applicable law.

25 **D. Tax Consequences of Plan**

26 The Receivership Estate shall be treated as a Qualified Settlement Fund ("QSF") effective  
27 as of the date of the commencement of the Receivership Estate, December 4, 2019. The assets of  
28 the Receivership Defendants became property of the QSF as of December 4, 2019. The Receiver

1 has valued the assets of the Receivership Entities as of December 4, 2019. The sale or distribution  
2 of securities under the terms of this Plan shall be treated as taxable events if required by law.

3 Under the Plan, the Receiver is authorized to use the Plan Fund to pay any and all tax  
4 liability generated from the sale and transfer of securities in connection with this Plan. No  
5 distributions to holders of Allowed Claims in Classes 3, 4, or 5 shall be paid until such time as the  
6 Receiver, in her sole discretion, determines that sufficient funds are reserved to pay all taxes which  
7 constitute Allowed Priority Claims in full.

8 There are a number of material income tax considerations, risks, uncertainties associated  
9 with the Plan. The U.S. Federal income tax consequences of the Plan are complex. Nothing herein  
10 shall constitute tax advice. The tax consequences are in many cases uncertain and may vary  
11 depending on a holder's particular circumstances. Accordingly, holders are urged to consult their  
12 tax advisors about the U.S. federal, state, and local and applicable foreign income and other tax  
13 consequences of the Plan.

#### 14 **VI. DISTRIBUTION OF NATIONAL GOLD SHARES AND URHG SHARES IS** 15 **COMPLIANT WITH SECURITIES REGULATIONS**

16 The Receiver intends to direct the transfer of the Indirectly Held National Gold Shares to  
17 certain holders of Allowed Investor Claims in Class 4, and to distribute the Directly Held National  
18 Gold Shares to a certain holder of an Allowed Investor Claim in Class 4. Certain holders of  
19 Allowed Investor Claims in Class 4 have agreed to accept, in full and final satisfaction, settlement,  
20 release, and discharge of, and in exchange for, their Allowed Investor Claims, those National Gold  
21 shares (individually, each shall be referred to as a "National Gold Recipient" and, collectively, the  
22 "National Gold Recipients").

23 The Receiver has provided the National Gold Recipients with disclosure information  
24 provided to the Receiver by the President of National Gold, and the Receiver has informed the  
25 National Gold Recipients that she has not conducted any further due diligence with respect to  
26 National Gold. The Receiver has received declarations from each of the National Gold Recipients  
27 that they are accredited investors, as defined in 17.C.F.R. § 230.501(a). In addition, the National  
28 Gold Recipients have provided the Receiver with written representations that an investment in

1 National Gold is suitable based on their investment objections and financial needs and are in a  
2 position to withstand a complete loss of their investments in National Gold.

3 The Receiver has advised the National Gold Recipients that they may designate who they  
4 wish to receive the distribution of their National Gold shares, and the Receiver has been informed  
5 that all but one of the National Gold Recipients have elected to designate Sierra Gold as the  
6 recipient of the National Gold share distributions. The Receiver makes no representations or  
7 warranties with respect to Sierra Gold, its management, its investment strategy, or any other  
8 aspects of Sierra Gold's ongoing business. A current member of Sierra Gold has agreed to assume  
9 the responsibility of Sierra Gold as managing member and has revised the operating agreement  
10 substantially with respect to Sierra Gold's continued operation. The Receiver makes no  
11 representations or warranties as to any aspect of the revised operating agreement or the  
12 management of Sierra Gold, and notes that any decision by the National Gold Recipients to place  
13 their shares in Sierra Gold after distribution is a decision that is not subject to review by or advice  
14 from the Receiver. The Receiver has been advised that Sierra Gold does not intend to register with  
15 the Securities and Exchange Commission (the "SEC") as an investment company, nor does it  
16 intend to register the membership interests issued by Sierra Gold, and the Receiver makes no  
17 representation or warranty regarding the appropriateness of the designation of Sierra Gold as the  
18 holder of the National Gold shares by the National Gold Recipient.

19 Otherwise, the distribution of National Gold shares to the National Gold Recipients or their  
20 designees (including Sierra Gold) complies with applicable securities laws and regulations. *See* 15  
21 U.S.C. § 77d(a)(1) (exempting "transactions by any person other than an issuer, underwriter, or  
22 dealer"). The Receiver is not the issuer of National Gold interests, nor is the Receiver an  
23 underwriter within the meaning of 15 U.S.C. § 77b(a)(11) or 17 C.F.R. § 230.144 (commonly  
24 known as Rule 144), nor is the Receiver a dealer within the meaning of 15 U.S.C. § 77b(a)(12).  
25 The Receiver understands that Sierra Gold intends to rely on Rule 506 of SEC Regulation D, which  
26 exempts an issuer from registering securities that it offers or sells so long as the offering is not  
27 accompanied by a general solicitation and is made only to accredited investors and a limited  
28 number of unaccredited investors. 17 C.F.R. § 230.506(b). However, the Receiver does not make

1 any representation or warranty as to Sierra Gold’s compliance with applicable securities laws and  
2 regulations after the distribution is finalized.

3 Furthermore, the distribution of URHG Shares complies with applicable securities laws and  
4 regulations, and has received representations from the claimants receiving URHG Shares that (i)  
5 they are taking those shares for their own account and have no intent to dispose of their URHG  
6 shares in a manner contrary to the Securities Act of 1933, (ii) that they understand that URHG may  
7 be a “penny stock” within the meaning of the Securities Exchange Act of 1934, and (iii) that an  
8 investment in URHG is suitable for their investment needs.

9 **VII. THE PROPOSED PLAN FOR FINAL DISTRIBUTION OF RECEIVERSHIP**  
10 **ESTATE ASSETS SHOULD BE APPROVED**

11 The Court’s power over an equity receivership and to determine appropriate procedures for  
12 administering a receivership is “extremely broad.” *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir.  
13 1986); *see SEC v. Basic Energy*, 273 F.3d 657, 668 (6th Cir. 2001); *SEC v. Elliott*, 953 F.2d 1560,  
14 1566 (11th Cir. 1992). The primary purpose of an equity receivership is to promote the orderly and  
15 efficient administration of the estate for the benefit of the creditors. *See Hardy*, 803 F.2d at 1038.  
16 The relief requested by the Receiver in this Motion best serves this purpose. The Court has wide  
17 latitude when it exercises its inherent equitable power to approve a plan of distribution of  
18 receivership funds. *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (affirming  
19 district court’s approval of plan of distribution because court used its discretion in “a logical way to  
20 divide the money”); *Quilling v. Trade Partners, Inc.*, 2007 WL 107669, \* 1 (W.D. Mich. 2007)  
21 (“In ruling on a plan of distribution, the standard is simply that the district court must use its  
22 discretion in a logical way to divide the money”) (internal quotations omitted). In approving a plan  
23 of distribution in a receivership, “the district court, acting as a court of equity, is afforded the  
24 discretion to determine the most equitable remedy.” *Forex*, 242 F.3d at 332. The Court may adopt  
25 any plan of distribution that is logical, fair, and reasonable. *SEC v. Wang*, 944 F.2d 80, 83-84 (2d  
26 Cir. 1991); *Basic Energy*, 273 F.3d at 671; *Quilling*, 2007 WL 107669 at \*1.

27 The Receiver believes the proposed Distribution Plan is logical, fair, and reasonable. The  
28 expenses of administration of the Receivership Estate incurred for the services of the Receiver and

1 her professionals and those who provided goods, services, and use of property to the Receiver post-  
2 receivership as part of the administration of the Receivership Estate are properly paid as a priority  
3 before distribution of the receivership assets to investors or creditors because the Receiver collected  
4 the assets of the Receivership Estate. *FTC v. Crittenden*, 823 F. Supp. 699, 704 (CD Cal. 1993).  
5 The Receiver additionally believes that the Plan, which provides for payment in full of priority tax  
6 claims prior to distribution to investors or creditors, is necessary and appropriate. The Plan also  
7 provides for the best possible equitable distribution as between investors accepting a cash  
8 distribution and investors accepting securities or other property, and the Receiver has attempted to  
9 ensure that all holders of Allowed Investor Claims, whether in Class 3 or Class 4 will be treated  
10 equitably such that if holders of Allowed Investor Claims in Class 4 liquidated their non-cash  
11 distribution, they would receive a distribution on account of their Allowed Claims roughly equal to  
12 the same amount they would have received as if they were in Class 3. The Receiver recognizes,  
13 however, that the treatment may not be identical and that there are factors that make an exact  
14 determination of the equities between Classes 3 and 4 impossible. There are inherent risks in  
15 accepting securities whose value may be speculative and subject to fluctuation, leaving the exact  
16 value of the Class 4 distributions unknown. It is also not present known whether Class 3 claimants  
17 will receive a 100% distribution, as the administrative and priority claims are not yet known. The  
18 Receiver has communicated extensively with the Receivership Defendants and their counsel, as  
19 well as the holders of Allowed Investor Claims in an effort to attain an equitable distribution of the  
20 Receivership Estate's assets.

21 **VIII. NOTICE OF THE HEARING ON THIS MOTION SHOULD BE DEEMED**  
22 **APPROPRIATE AND SUFFICIENT**

23 The Receiver filed the Distribution Plan, this Motion, and a notice of hearing for approval  
24 of the Distribution Plan ("Plan Notice").

25 The Plan Notice contains the principal elements of the Distribution Plan, an objection  
26 deadline, the hearing date, time and place, and the web address of where the complete Plan can be  
27 reviewed online. The Plan Notice also offers interested parties the right to request a hard copy of  
28 the Plan by regular mail.

1 The Receiver has served the Plan Notice on all Unsecured Creditors, Investors and parties  
2 in interest as follows:

- 3 1. By ECF on those parties that have an account on the District Court's website;
- 4 2. By email where the email address is known to be valid and current;
- 5 3. By regular mail where an email address is not known or is known to be invalid.
- 6 4. The Receiver shall post the Plan Notice and the Distribution Plan on the Receiver's  
7 website at: <http://www.diamondmccarthy.com/denarireceiver>.

8 The Receiver has complied with those notice requirements. The Receiver requests that the  
9 Court approve this form of notice as reasonable, appropriate, and the most cost-effective means of  
10 providing notice of the hearing under the circumstances, *i.e.*, working under certain government  
11 orders in the midst of a pandemic, and with investors across state lines. To the extent necessary,  
12 the Receiver requests that the Court approve the notice given as reasonable, limited notice  
13 appropriate under the circumstances and in the interests of time and cost. This Court, as a court of  
14 equity supervising the Receivership Estate, may make appropriate administrative orders governing  
15 the Receivership Estate, including limitations on and changes in notice and other procedures. *See*  
16 F.R. Civ. P. 5(a) and (c) (authorizing the court to modify service procedures when numerous  
17 defendants are involved in litigation).

18 **IX. CONCLUSION**

19 The Receiver respectfully submits that this Motion adequately describes the Distribution  
20 Plan proposed by the Receiver, the Receiver's basis for the transactions contemplated thereunder,  
21 and applicable supporting law required for approval of the Distribution Plan. The Receiver further  
22 respectfully submits that the proposed Distribution Plan treats holders of Allowed Claims fairly and  
23 equitably under the circumstances, and to the extent the Receiver is able to do so, she hopes to  
24 make distributions to those holders in cash or other property that will allow their Allowed Claims  
25 to be satisfied in full. Last, the Receiver highlights that she was only appointed approximately six  
26 (6) months ago and in that time has successfully gathered assets, worked with interested parties  
27 including the CFTC and the Receivership Defendants, and proposed a consensual plan for  
28 distribution.

1 In light of the foregoing, the Receiver respectfully requests that the Court enter an order:

2 (1) approving the Distribution Plan attached to the Phelps Declaration as Exhibit  
3 “1”;

4 (2) authorizing the distribution of the National Gold shares from Sierra Gold to  
5 the National Gold Investors or their designees and the distribution of the Direct National Gold  
6 shares as set forth in the Plan;

7 (3) authorizing the surrender of the Denari 87% interest in Sierra Gold;

8 (4) authorizing the transfer of the URHG shares to the URHG Investors or their  
9 designees;

10 (5) approving the Receiver’s Agreement with Sierra Gold, attached to the Phelps  
11 Declaration as Exhibit “2”;

12 (6) approving the form of agreement the Receiver negotiated with the National  
13 Gold Investors, attached to the Phelps Declaration as Exhibit “3”;

14 (7) approving the form of agreement the Receiver negotiated with the URHG  
15 Investors, attached to the Phelps Declaration as Exhibit “4”; and

16 (8) approving the form and manner of notice of the Motion, and for all other  
17 appropriate relief.

18  
19 DATED: August 27, 2020

DIAMOND McCARTHY LLP

20 By: /s/ Christopher D. Sullivan  
21 Christopher D. Sullivan  
22 Counsel to Temporary Receiver  
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