

1 CHRISTOPHER D. SULLIVAN (148083)
csullivan@diamondmccarthy.com
2 DIAMOND MCCARTHY LLP
150 California Street, Suite 2200
3 San Francisco, CA 94111
Phone: (415) 692-5200

4 *Counsel to Temporary Receiver*

5
6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN FRANCISCO DIVISION**

9 COMMODITY FUTURES TRADING
10 COMMISSION,

11 Plaintiff,

12 v.

13 DENARI CAPITAL LLC, TRAVIS
14 CAPSON, and ARNAB SARKAR,

15 Defendants.
16

Case No. 19-cv-07284-EC

**NOTICE OF MOTION AND MOTION BY
RECEIVER KATHY BAZOIAN PHELPS
FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT WITH UNITED
RESOURCE HOLDINGS GROUP, INC.,
UNITED MILLING AND REFINING
CORP., AND SPRINGBOK
DEVELOPMENT INC.**

*Memorandum of Points and Authorities and
Supporting Declaration 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

17
18
19
20
21
22 **PLEASE TAKE NOTICE THAT** on October 1, 2020, at 1:30 p.m., in Courtroom 5 of the
23 above-titled Court located at 450 Golden Gate Ave., San Francisco, California, Kathy Bazoian
24 Phelps, the Court-appointed temporary receiver herein (the “Receiver”) for Denari Capital, LLC
25 (“Denari”), Travis Capson (“Capson”), and Arnab Sarkar (“Sarkar” and, collectively, the
26 “Receivership Defendants”), will and hereby does move for entry of an order granting her motion
27 (the “Motion”) to approve the Receiver’s settlement with United Resource Holdings Group, Inc.
28

1 (“URHG”), and its subsidiary United Milling and Refining Corp. (“UMRC”), and Springbok
2 Development Inc. (“Springbok”).

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 within fourteen (14) days from the filing of this motion, pursuant to the Court’s Order.
7 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the above date, the Court
8 may grant the requested relief without further notice.

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

12 **Meet and Confer:** The Receiver has met and conferred with the Commodity Futures
13 Trading Commission (“CFTC”), URHG, Dun Glen, UMRC, and counsel to the Receivership
14 Defendants prior to filing this pleading and they have no objection to the relief requested herein.

15 **Relief Requested in Motion.** The Motion seeks entry of an order approving a settlement
16 agreement by and among the Receiver, URHG, Dun Glen, UMRC and Springbok. UMRC is a
17 subsidiary of URHG and Dun Glen used to be a subsidiary. Springbok is a co-owner of property
18 with UMRC. The settlement will result in approximately \$58,000.00 in cash to the estate and
19 payment of \$150,000 cash from the sale of certain real property owned by URMC and Springbok.
20 In addition, the settlement agreement confirms the estate’s ownership of certain shares in URHG,
21 and resolves potential claims the Receiver may be able to assert on behalf of the estate against
22 URHG, and UMRC. The Motion is made on grounds that, in the Receiver’s business judgment, the
23 proposed settlement is reasonable and in the best interests of the estate. The Receiver requests that
24 Wells Fargo Bank be directed to deliver the URHG funds to the Receiver.

25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: August 27, 2020

DIAMOND MCCARTHY LLP,

By: /s/ Christopher Sullivan
Christopher Sullivan, Esq.
Counsel to Temporary Receiver

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Kathy Bazoian Phelps, temporary receiver herein (the “Receiver”) for Denari Capital LLC
3 (“Denari”), Travis Capson (“Capson”), and Arnab Sarkar (“Sarkar” and, collectively, the
4 “Receivership Defendants”), hereby files this Motion for Order Approving Settlement With United
5 Resource Holdings Group, Inc., and United Milling and Refining Corp. (the “Motion”), seeking
6 entry of an order approving a settlement by and among the Receiver, URHG, Dun Glen, and
7 UMRC.

8 **I. INTRODUCTION**

9 The Receiver has entered into a Settlement Agreement (the “Agreement”) subject to the
10 Court’s approval, with URHG, UMRC, and Springbok, which allows the Receiver to (a) recover
11 cash from URHG, (b) recover cash from the sale of property owned by URMC and Springbok (c)
12 confirm the Receivership Estate’s (defined below) ownership of certain shares in URHG, and (d)
13 resolves claims the Receiver may assert against one or more of URHG and UMRC, to recover
14 amounts due on unpaid loans. A copy of the Agreement is annexed as Exhibit “1” to the
15 Declaration by the Receiver in support of the Motion (the “Phelps Declaration”).

16 The proposed Agreement allows the Receiver to avoid potentially protracted litigation
17 with respect to potential avoidance actions which would inevitably delay her administration of the
18 Receivership Estate (defined below) and ability to obtain approval of a proposed plan of
19 distribution (the “Plan”) filed concurrently with this Motion. The Agreement procures cash for
20 distribution to claimants, confirms the Receiver’s control of (and ability to sell) certain shares in
21 URHG, and recovers funds from URMC relating to the real property owned with Springbok. In
22 the event that the real property transaction does not close, the Agreement provides that UMRC
23 will transfer its interest in the Nevada Real Property to the Receiver if the Receiver elects to take
24 possession. The Receiver will later determine if it is in the best interests of the Estate to: (i) accept
25 a transfer of title to the Nevada Real Property as consideration under this Agreement, and either
26 transfer title to a designated third-party, or sell the Nevada Real Property and use the proceeds for
27 a distribution to claimants, or (ii) decline to accept transfer of title to the Nevada Real Property

1 because of various external factors. The Receiver reserves her rights with respect to the ultimate
2 disposition, or lack thereof, of the Nevada Real Property. The flexibility built into the Agreement
3 with respect to the real property allows the Receiver to move the case forward and reach
4 resolutions while preserving her right to make choice later, if necessary, that is in the best
5 interests of the Receivership Estate.

6 The Receiver has conferred with the CFTC and counsel to the Receivership Defendants,
7 who each do not oppose the Motion.

8 **II. STATEMENT OF FACTS**

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

14 2. On December 4, 2019, this Court entered an order (Doc. No. 37) (“TRO”)
15 appointing the Receiver as temporary receiver and granting her full powers of an equity receiver
16 over all funds, property and assets belonging to, being managed by or in the possession of or
17 control of the Receivership Defendants (the “Receivership Estate”). In addition, among other
18 things, the TRO provides that the Receiver is authorized to “[i]nitiate, defend, compromise, adjust,
19 intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign
20 court that the . . . Receiver deems necessary and advisable to preserve or increase the value of the
21 Receivership Estate” TRO, ¶24(e).

22 3. On February 6, 2020, the Court entered an Amended Order (Doc. No. 47) (“Bar
23 Date Order”) establishing a claims bar date of April 6, 2020 (the “Claims Bar Date”).

24 4. On April 29, 2020, the Receiver filed the Receiver’s First Status Report (Doc. No.
25 56) covering the period from her appointment through March 31, 2020.

26 5. URHG is a majority shareholder of UMRC.
27
28

1 6. UMRC and Springbok own certain real property and improvements known as and
2 located at 399 Wild Horse Canyon Drive, Sparks, Nevada 89434 in Storey County, Nevada (the
3 “Nevada Real Property”). A certain Grant, Bargain, Sale Deed for the Nevada Real Property
4 recorded October 30, 2017 in the Official Records of Storey County, Nevada, reflects that when the
5 Nevada Real Property was conveyed to UMRC, it was conveyed to UMRC and Springbok.

6 7. In 2017, Denari loaned UMRC \$205,000.00, which amount remains unpaid. Also in
7 2017, Michael Navone, an investor in Denari, loaned Denari \$200,000.00. In exchange, Denari
8 executed a promissory note and caused UMRC to grant Mr. Navone a first-priority lien against the
9 Nevada Real Property, and a Deed of Trust with Assignment of Rents was recorded in Storey
10 County, Nevada, Doc. ID 126632 (the “Denari Lien”). The Denari Lien was signed only by
11 UMRC, not Springbok.

12 8. Since then, Mr. Navone has advised that Denari repaid the amounts due to Mr.
13 Navone in connection with the Denari Lien, although UMRC has not repaid the amounts due to
14 Denari on account of the \$205,000 loan. Mr. Navone has assigned the Denari Lien to the Receiver
15 on behalf of the Receivership Estate, which the Receiver had recorded in Storey County’s real
16 property records. The Receiver on behalf of the Receivership Estate holds the Denari Lien, which
17 the Receiver understands is a first-priority secured lien against the Nevada Real Property.

18 9. Springbok has offered to buy out UMRC’s interest in the Nevada Real Property for
19 the sum of \$150,000. UMRC and Springbok have agreed that the \$150,000 consideration shall be
20 paid to the Receivership Estate as part of the settlement among the parties. If the sale transaction
21 between UMRC and Springbok does not close, the Receiver retains the right to determine the best
22 alternative transaction with respect to the ultimate disposition of the Nevada Real Property as set
23 forth in the Agreement.

24 10. Between 2015 and entry of the TRO in 2019, Denari transferred to URHG, Dun
25 Glen Mining Co., and/or UMRC approximately \$677,793.37 as loans or otherwise, which remains
26 owing to Denari at this time and for which the Receiver has claims to seek to recover for the
27
28

1 benefit of the Receivership Estate. The transfers to URHG and UMRC are referred to as the
2 “Transfers.”

3 11. As of the date of this Agreement, the Receivership Estate owns 26,047,410 publicly
4 traded shares in URHG which are held in the form of stock certificates, and 4,586,588 shares in
5 certain TD Ameritrade accounts (collectively, the “Receivership URHG Shares”), as set forth
6 below:

	Number of Shares	Owner	Location
7	791,667	Denari	Stock certificate – restricted
8	7,450,000	Denari	Stock certificate - unrestricted
9	1,100,000	Denari	Stock certificate – restricted
10	1,000,000	Denari	Stock certificate – unrestricted
11	1,666,667	Denari	Stock certificate – unrestricted
12	333,334	Denari	Stock certificate –unrestricted
13	500,000	Denari	Stock certificate – unrestricted
14	1,282,917	Denari	Stock certificate – unrestricted
15	50,000	Denari	Stock certificate – unrestricted
16	6,816,465	Denari	Stock certificate – unrestricted
17	500,000	Denari	Stock certificate – unrestricted
18	300,000	Denari	Stock certificate – unrestricted
19	1,800,000	Denari	Stock certificate – unrestricted
20	1,000,000	Denari	Stock certificate – restricted
21	1,000,000	Denari	Stock certificate – restricted
22	143,860	Denari	Stock certificate- unrestricted
23	312,500	Denari	Stock certificate - unrestricted
24	4,301,531	Denari	TD Ameritrade #5871
25	285,057	Travis and Jennifer Capson	TD Ameritrade #5789
26	30,633,998	TOTAL	

27 12. URHG has a bank account with Wells Fargo Bank, Account No. xxxxxx2291 (the
28 “URHG Account”), which was frozen as a result of the Consent Order. As of November 30, 2019
the balance in the URHG Account was \$58,260.17 (the “URHG Frozen Funds”).

13. Concurrent with this Motion, the Receiver has filed (i) the Plan and a motion to
approve the Plan and related agreements, (ii) a motion to approve the transfer and sale of certain of
the Receivership URHG Shares, and (iii) a motion to approve a settlement resolving an investor
claimant’s proof of claim, which includes acceptance of non-cash assets under the Plan in full and
final satisfaction of his claim. The Receiver believes that the transactions contemplated under these

1 motions and the Plan will enable her to move the case forward efficiently and effectively,
2 maximizing recoveries for claimants.

3 **III. TERMS OF THE AGREEMENT**

4 Without modifying the terms, the Agreement provides generally as follows:

- 5 1. **Preconditions.** The Agreement is contingent upon approval by the Court.
- 6 2. **The Receivership URHG Shares.** The Receivership Estate shall retain ownership of
7 the Receivership URHG Shares, which URHG does not contest, and the Receiver is free
8 to transfer, sell and/or assign them in her sole discretion, subject to approval by the
9 Court.
- 10 3. **The URHG Frozen Funds.** The URHG Frozen Funds will be delivered to the
11 Receiver, and URHG releases and any all claims to those funds.
- 12 4. **The Nevada Real Property and the Denari Lien:**
- 13 a. UMRC and Springbok represent and warrant that they own the Nevada Real
14 Property alone, and that they have not otherwise assigned or transferred or
15 purported to assign or transfer, or grant any liens, whether subordinate or
16 otherwise to the Denari Lien, the Nevada Real Property to any person or entity.
- 17 b. UMRC, URHG, and Springbok confirm the validity and existence of the Denari
18 Lien as a first-priority lien against the Nevada Real Property.
- 19 c. UMRC and Springbok shall enter into the Sale Transaction pursuant to an
20 agreement to separately be entered into as between those two parties. The Sale
21 Transaction shall close on or before October 30, 2020 (the "Closing Date"),
22 unless the Receiver grants an extension to such date in her sole discretion.
- 23 d. URHG, UMRC and Springbok agree that the net sum of \$150,000 (the
24 "Payment") shall be paid directly to the Receiver out of escrow as part of the
25 closing of the Sale Transaction. The Receiver place a demand into the escrow
26 for the Sale Transaction in the amount of \$150,000.
- 27 e. The Receiver agrees to release and surrender the Denari Lien as part of the
28 closing of the Sale Transaction.
- f. URHG, UMRC and Springbok shall pay all costs associated with the Sale
Transaction, including all closing costs, escrow fees, commissions, outstanding
taxes, or any other costs associated with the Sale Transaction as may be
negotiated amongst themselves.
- g. URHG, UMRC and Springbok will use best efforts to keep the Receiver
reasonably informed of all material developments with respect to the Sale
Transaction.

1 h. The Parties agree that none of the costs associated with the release of the Denari
2 Lien, and the Sale Transaction generally, shall be borne by the Receiver or the
3 Receivership Estate.

4 i. If the Receiver has not received the Payment one week after the Closing Date:

5 ▪ In the Receiver’s sole discretion and, if required, subject to District Court
6 approval, UMRC, URHG, and Springbok, to the extent necessary, shall
7 assist the Receiver with effectuating one of the following outcomes with
8 respect to the Nevada Real Property: (i) selling the Receiver’s interest in
9 the Denari lien; (i) causing the Nevada Real Property to be transferred
10 from UMRC and Springbok to the Receiver, solely in her capacity as the
11 Receiver for the Receivership Defendants, or to such other entity as
12 directed by the Receiver in her sole discretion; or (ii) electing that
13 UMRC and Springbok will retain title and ownership to the Nevada Real
14 Property, in the Receiver’s sole discretion. Whether title and ownership
15 to the Nevada Real Property is transferred to the Receiver, the
16 Receivership Estate, or a third-party, as the Receiver may elect, the
17 proceeds of any sale of the Nevada Real Property shall belong to the
18 Receivership Estate.

19 ▪ UMRC, URHG, and Springbok, to the extent necessary, shall execute
20 any documents necessary to effectuate transfer of the Nevada Real
21 Property including but not limited to a Grant Deed or Assignment of
22 Deed, ensure that they are filed with and/or submitted to the appropriate
23 Recorder’s Office for Storey County, Nevada, and that any necessary
24 fees or costs incurred in connection therewith including but not limited to
25 title fees or recording costs are promptly paid and satisfied.

26 ▪ If the Sale Transaction does not close by the Closing Date and the
27 Receiver later decides that it is in the best interests of the Receivership
28 Estate to take title to the Nevada Real Property and transfer it to a holder
of an allowed investor claim, or liquidate it and use the proceeds for
distribution under the Plan, the Receiver will separately seek Court
approval, and UMRC, URHG and Springbok shall cooperate with the
Receiver as needed.

 ▪ Under this subsection 4.1, the Receiver agrees to make a determination
as to the Nevada Real Property and to provide URHG, UMRC and
Springbok with written notice of that determination on or before March
31, 2021.

5. **Releases.** The “URHG Parties” and the “Receiver Parties” (both as defined in the Agreement) each give under the Agreement mutual general releases with respect to the Transfers, the URHG Parties’ interests in the Nevada Real Property, or the proceeds thereof in the even it is sold or transferred by the Receiver, the URHG Frozen Funds, and the URHG Account

1 **IV. THE AGREEMENT IS IN THE BEST INTERESTS OF THE ESTATE**

2 The Receiver believes in her business judgment that the Agreement is fair, reasonable, and
3 is in the best interest of the Receivership Estate. The Agreement provides the Receivership Estate
4 with additional cash and confirmation of its ownership of the Receivership URHG Shares (which
5 will also provide the Receivership Estate with additional cash and other benefits under a plan)..
6 In exchange, the Receiver is agreeing on behalf of the Receivership Estate not to pursue potential
7 claims in connection with the Transfers (which amounts URHG, UMRC and Dun Glen have
8 advised they do not have to turnover). Last, the Agreement provides the Receiver and the
9 Receivership Estate, on the one hand, and URHG and UMRC, on the other, with mutual general
10 releases. The foregoing is all accomplished without the need for protracted and expensive
11 litigation, enabling the Receiver to continue administering the Receivership Estate and advance a
12 plan of distribution.

13 There are “no federal rules [that] prescribe a particular standard for approving settlements
14 in the context of an equity receivership; instead a district court has wide discretion to determine
15 what relief is appropriate.” *Gordon v. Dadante*, 336 F. App’x 540, 549 (6th Cir. 2009).
16 Nevertheless, courts in federal receiverships often look to the following factors, which pertain to
17 compromises reached in bankruptcy actions, when examining a proposed settlement: the
18 probability of success in the litigation; the difficulties, if any, to be encountered in collection; the
19 complexity of the litigation and the expense, inconvenience, and delay associated therewith; and
20 the paramount interest of creditors. *See Secs. & Exch. Comm’n v. Ruderman*, No. CV 09-02974,
21 2011 WL 5857452, at *3 (C.D. Calif. Nov. 21, 2011) (considering these factors in approving
22 receivership settlement). Because compromises are favored in bankruptcy actions, courts
23 generally give deference to a trustee’s business judgment and approve settlements that are
24 negotiated in good faith and are “reasonable, fair, and equitable.” *Ruderman*, 2011 WL 5857452,
25 at *3.

26 The settlement terms set forth in the Agreement are in the best interests of the
27 Receivership Estate, because: (i) the URHG Frozen Funds represent immediate recovery of cash
28

1 for the distribution plan; (ii) the Receiver has a purchaser for certain of the Receivership URHG
2 Shares and proposes to distribute other URHG shares pursuant to the Plan; therefore, immediate
3 confirmation of ownership is helpful in moving that sale forward; (iii) the Receiver is unlikely to
4 recover much, if anything, in connection with the claims against URHG and UMRC, to recover
5 the amount of the Transfers (as noted above, the Receiver is advised that those entities lack the
6 funds to turnover any meaningful amount); (iv) the Agreement obtains \$150,000 cash on account
7 of the Nevada Real Property, but also gives the Receiver flexibility related to the property in the
8 event the sale transaction does not close.

9 The Agreement produces a global resolution of numerous issues which, if the Receiver
10 were forced to litigate, may not result in favorable outcome for the Receivership Estate. *See*
11 *Ruderman*, 2011 WL 5857452, at *4 (explaining uncertainty of outcome of litigation “weigh[ed]
12 heavily” in favor of approval of settlement reached by receiver). For example, the nature of the
13 Transfers, and the value provided, if any, to the Receivership Estate is unclear. Also, the fact that
14 the Receiver has a ready, willing, and able purchaser for the Receivership URHG Shares is an
15 opportunity to recover additional cash, which would likely be lost if the Receiver were forced to
16 litigate concerning the Receivership Estate’s ownership of those shares. Moreover, litigation
17 regarding these issues (the Transfers, the Receivership URHG Shares, the Denari Lien) will be
18 time consuming and costly, draining the assets of the Receivership Estate.

19 The Receiver has filed concurrently with this Motion, motions to approve a sale of certain
20 of the Receivership URHG Shares, a settlement with an investor claimant providing for a non-
21 cash distribution, a plan of distribution, and a motion to approve that plan. The Receiver believes
22 that the transactions contemplated by these motions must work together to achieve the most
23 optimal outcome for the Receivership Estate.

24 As part of this Motion, the Receiver requests entry of an order directing Wells Fargo Bank
25 to deliver the URHG Frozen Funds to the Receiver.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

The Agreement is in the best interests of the Receivership Estate for the reasons set forth above. First, it results in an immediate cash recovery with minimal administrative expenses incurred by the Receivership Estate. Second, it confirms (again at little cost) the Receivership Estate’s ownership of certain assets to be sold, subject to Court approval, and lien position with respect to the Nevada Real Property. Third, it provides the Receiver with time to assess whether the Nevada Real Property is an asset that would benefit the Receivership Estate and its beneficiaries, without delaying the Receiver’s administration of the case.

WHEREFORE, the Receiver respectfully requests that the Court (i) approve the Agreement attached to the Phelps Declaration as Exhibit “1”, (ii) direct Wells Fargo Bank to deliver the URHG Frozen Funds to the Receiver; (iii) authorize the Receiver to take any action necessary with respect to the URHG Account pursuant to the terms of the Agreement as required or necessary to implement the terms of the Agreement, and (iv) approve the form and manner of notice of the Motion, and requests all other appropriate relief.

DATED: August 27, 2020

DIAMOND MCCARTHY LLP,
counsel to Temporary Receiver

By: /s/ Christopher Sullivan
Christopher Sullivan, Esq.
Counsel to Temporary Receiver