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

11 COMMODITY FUTURES TRADING
12 COMMISSION,

13 Plaintiff,

14 v.

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

17 Defendants.
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Case No. 19-cv-07284-EC

**NOTICE OF MOTION AND MOTION BY
RECEIVER KATHY BAZOIAN PHELPS
FOR ENTRY OF AN ORDER UNDER 28
U.S.C. § 2004 FOR APPROVAL OF SALE
OF PUBLICLY TRADED SHARES**

*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

1 **PLEASE TAKE NOTICE THAT** on October 1, 2020 at 1:30 p.m., in Courtroom 5 of the
2 above-titled Court located at 450 Golden Gate Ave., San Francisco, California, Kathy Bazoian
3 Phelps, the Court-appointed temporary receiver herein (the “Receiver”) for Denari Capital, LLC
4 (“Denari”), Travis Capson (“Capson”), and Arnab Sarkar (“Sarkar” and, collectively, the
5 “Receivership Defendants”) will and hereby does move for entry of an order granting her motion
6 (the “Motion”) under 28 U.S.C. § 2004 approving of a sale of certain publicly traded shares.

7 **Procedural Requirements:** If you oppose all or part of the relief requested in this Motion,
8 you are required to file your written opposition with the Office of the Clerk, United States District
9 Court, 450 Golden Gate Ave., San Francisco, California 94102, and serve the same on the
10 undersigned within fourteen (14) days from the filing of this motion, pursuant to the Court’s Order.
11 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the above date, the Court
12 may grant the requested relief without further notice.

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

16 **Meet and Confer:** The Receiver has met and conferred with the Commodity Futures
17 Trading Commission, United Resource Holdings Group, Inc. (“URHG”, the company in which the
18 shares are held), and counsel to the Receivership Defendants prior to filing this pleading and they
19 have no objection to the relief requested herein.

20 **Relief Requested in Motion.** The Motion seeks entry of an order approving the sale of
21 certain shares in URHG controlled by the Receiver on behalf of the estate to a third-party. The
22 Receiver entered into a Transfer Agreement, subject to approval by the Court, which provides for
23 the transfer and sale of those shares for cash. The Motion is made on grounds that, in the
24 Receiver’s business judgment, the proposed sale is reasonable and in the best interests of the estate.

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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 D. Sullivan
Christopher D. Sullivan
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 Private Sale of Certain
5 Publicly Traded Shares (the “Motion”), pursuant to 28 U.S.C. § 2004 seeking entry of an order
6 approving a private sale of certain shares in United Resource Holdings Group, Inc. (“URHG”), a
7 publicly traded company incorporated in Nevada.

8 **I. Introduction**

9 The Receiver is in control of 30,633,998 shares in URHG (the “URHG Shares”),
10 excluding those held in certain IRA accounts.

11 The Receiver has received an offer and entered into a Share Transfer Agreement (the
12 “Transfer Agreement”) subject to the Court’s approval, to transfer and sell 10,144,506 of the
13 URHG Shares (the “Designated Shares”) for \$101,445.06 (*i.e.*, valuing the shares at \$0.01/share).
14 A copy of the Transfer Agreement is annexed as Exhibit “1” to the Declaration by the Receiver in
15 support of the Motion (the “Phelps Declaration”). The proposed purchaser Gary R. Bermensolo
16 (the “Purchaser”) is a current URHG shareholder and member of the board of directors of URHG,
17 but he is unrelated to the Receivership Defendants.

18 On December 4, 2019, the date of the Receiver’s appointment, URHG stock was trading at
19 \$0.06/share. Since then, the URHG shares have fluctuated between \$0.02 and \$0.06/shares on the
20 pink sheets; however, given the volume of shares controlled by the Receiver, she has been unable
21 to sell them at a public sale because it would dilute or eliminate the value of the shares. The
22 proposed Transfer Agreement allows the Receiver to monetize approximately one-third of the
23 URHG Shares for the benefit of the Receivership Estate (defined below), and creates additional
24 cash for distribution to holders of allowed claims.

25 The Receiver has conferred with the Commodity Futures Trading Commission (“CFTC”),
26 counsel to the Receivership Defendants, and URHG, who each do not oppose the Motion.

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1 **II. Statement of Facts**

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

7 2. On December 4, 2019, this Court entered an order (Doc. No. 37) (“TRO”)
8 appointing the Receiver as temporary receiver and granting her full powers of an equity receiver
9 over all funds, property and assets belonging to, being managed by or in the possession of or
10 control of the Receivership Defendants (the “Receivership Estate”). In addition, among other
11 things, the TRO provides that the Receiver is authorized to “[p]erform a valuation of the securities
12 holdings in the Receivership Estate, and attempt to sell and/or transfer those holdings, with any
13 proceeds or transfers applied to claims of the customers of Denari;” TRO, ¶24(e).

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

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

18 **III. Terms of the Transfer Agreement**

19 Without modifying the terms, the Transfer Agreement provides generally as follows:

- 20 1. **Conditions to Transfer.** The transfer of the Designated Shares is only effective upon
21 the occurrence of the following conditions:
- 22 a. Execution of the Agreement by the Receiver on behalf of the Receivership
23 Estate and the Purchaser;
 - 24 b. Payment of the agreed upon transfer price; and
 - 25 c. Entry of a final and non-appealable order by the Court approving the
26 Agreement.
- 27 2. **Transfer Price.** The Designated Shares will be transferred for the price of
28 \$101,445.06.
3. **Costs of Transfer.** The Purchaser shall bear the costs of registering the transfer of the
Designated Shares.

1 4. **Representations and Warranties.** Among other representations and warranties, the
2 Purchaser acknowledges that the Designated Shares may fall within the meaning of
3 “penny stock,” as defined in the Securities Exchange Act of 1934 and regulations
4 promulgated thereunder, and that it has chosen to execute the Transfer Agreement and
 purchase the Designated Shares on its own volition and not based on the
 recommendation of the Receiver or any of her agents.

5 **IV. The Agreement is in the Best Interests of the Estate**

6 The sale of personal property by a receiver is governed by 28 U.S.C. § 2004. Section 2004
7 provides that: “Any personalty sold under any order or decree of the United States shall be sold in
8 accordance with section 2001 of this title, unless the court orders otherwise.” Section 2001
9 provides certain options for the sale of real property,: (i) the property may be sold in a public
10 auction sale; or (ii) the property may be sold in a private sale, but there must be three separate
11 appraisals conducted, the terms must be published in a circulated newspaper 10 days prior to sale,
12 and the sale price must be no less than two-thirds of the valued price. 28 U.S.C. 2001. The
13 Court may, under 28 U.S.C. § 2004, exercise discretion and approve a private sale of personal
14 property that does not comply with Section 2001. 28 U.S.C. § 2004. The Receiver respectfully
15 submits that it is in the best interests of the Receivership Estate for the District Court to approve
16 the relief requested in the Motion, which asks the Court to exercise its discretion under Section
17 2004 and approve the Transfer Agreement without requiring the Receiver to comply with the
18 requirements set forth in Section 2001. The Receiver requests authority to take all actions and
19 execute all documents required to consummate the transaction.

20 A federal district court presiding over an equity receivership exercises the traditional,
21 common law powers of equity and, therefore, has broad powers in fashioning relief. *Liberte*
22 *Capital Group LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006); *see also* Fed. R. Civ. P. 66
23 (“The practice in the administration of estate by receivers . . . shall be in accordance with the
24 practice heretofore followed in the courts of the United States or as provided in rules promulgated
25 by the district court.”). Arising from that authority, the Court is empowered to order the sale of
26 receivership property. *See SEC v. American Capital Invs., Inc.*, 98 F.3d 1133, 1144 (9th Cir.
27 1996) (approving receiver’s decision to sell receivership estate property), abrogated on other
28 grounds, *Steele Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998). “It is generally

1 conceded that a court of equity having custody and control of property has the power to order a
2 sale of the same in its discretion. The power of sale necessarily follows the power to take
3 possession and control of and to preserve property, resting in the sovereignty and exercised
4 through courts of chancery, or courts having statutory power to make the sale.” *Id.* (quoting 2
5 *Clar on Receivers* § 582 (3d ed. 1992)) (emphasis omitted); *see also SEC v. Elliot*, 953 F.2d 1560,
6 1566 (11th Cir. 1992) (authorizing receiver’s disposal of receivership assets).

7 The Court also has wide discretion to set the terms and procedures used to sell personal
8 property so as to maximize the proceeds from such sales. *See U.S. v. Stonehill*, 83 F.3d 1156,
9 1160 (9th Cir. 1996) (holding that district court had discretion under 28 U.S.C. § 2004 to tailor
10 requirements for selling personal property). In determining whether to approve a sale, the Court
11 may take into account the unique facts and circumstances surrounding the proposed sale,
12 including the precarious financial condition of the assets being sold. *Tanzer v. Huffines*, 412 F.2d
13 221, 222-23 (3d Cir. 1969) (approving expedited sale in absence of financial appraisal and limited
14 notice in light of corporation’s deteriorating financial condition). In overseeing a receivership, the
15 Court must “make rules which are practicable as well as equitable.” *See SEC v. Hardy*, 803 F.2d
16 1034, 1039 (9th Cir. 1986).

17 In the context of sales of personal property, courts have found that a receiver need not
18 strictly comply with the requirement of Rule 2001 for real property when doing so would be
19 burdensome for selling personal property under Rule 2004. *See Federal Trade Commission v.*
20 *Consumer Defense, LLC*, 2:18-CV-30 JCM (PAL), 2019 WL 266287 *4 (D. Nev. Jan. 18, 2019)
21 (authorizing sale of personal property using commercially reasonable sales methods pursuant to
22 Section 2004 after considering nature of asset and desire to preserve return for estate) (citing
23 *S.E.C. v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005)); *Federal Trade*
24 *Commission v. Universal Premium Services, Inc.*, 06-0849 SJO (OPx), 2006 WL 8442136 *4
25 (C.D. Cal. June 8, 2006) (approving sale of certain personal property and exercising discretion
26 pursuant to § 2004 to approve alternative procedures proposed by receiver because complying
27 with § 2001 would be “burdensome, time consuming, and expensive for the receivership estate”).

28 The Receiver requests that the Court approve the proposed sale of the Designated Shares

1 under the terms of the Transfer Agreement pursuant to 28 U.S.C. § 2004, without the need for
2 compliance with 28 U.S.C. § 2001 as in the best interests of the Receivership Estate because it
3 promotes judicial economy and preserves the Receivership Estate's assets. The Receiver believes
4 in her business judgment, after consulting with her retained professionals including securities
5 counsel, that the Transfer Agreement is fair, reasonable, and is in the best interest of the
6 Receivership Estate. First, the Transfer Agreement allows the Receiver to liquidate one-third of
7 the URHG Shares which she cannot sell on the open market as part of a public sale without
8 further diminishing value. Second, there are limited assets in the Receivership Estate, and
9 requiring that the Receiver comply with the requirements for the sale of real property as set forth
10 in 28 U.S.C. § 2001 would be very cumbersome and expensive, including 3 appraisals and a
11 public sale with marketing and notice procedures. This would drain the Receivership Estate's
12 resources and reduce distributions to the investors, and the administrative costs of such a sale
13 would also significantly diminish returns. The Receiver has attempted to administer this case in
14 an efficient and effective manner, conserving assets for investor claimants. Indeed, the Receiver
15 has already filed a proposed distribution plan and motion for approval concurrently with this
16 Motion. Third, and relatedly, the proposed Transfer Agreement provides the Receivership Estate
17 with additional cash which will enable the Receiver to make a more meaningful distribution to
18 investor claimants. The Receiver received other offers for certain URHG Shares, but the
19 consideration offered was other non-cash assets which the Receiver believed would create
20 additional administrative hurdles and would not increase the cash available for distribution to
21 investor claimants. The Receiver's ability to satisfy the allowed investor claims depends, in part,
22 on her ability to generate sufficient cash from the Receivership Estate's non-cash assets (to the
23 extent investor claimants are unwilling to accept them in lieu of cash). Last, if the Receiver is not
24 permitted to go ahead with this proposed transfer, there is a risk she will not find a willing buyer,
25 and she will be forced to either (i) delay administration of the case to wait for a larger offer for the
26 Designated Shares or other URHG Shares, or (ii) abandon an asset which could have been
27 monetized.

28 The Receiver believes that the price of \$0.01 per share is reasonable given the

1 circumstances. The URHG shares currently trade over the counter for \$0.05, but the average
 2 trading volume for the last 65 days was just over 12,000 shares.¹ The sale of over 30,000,000
 3 shares is therefore approximately 2,500 times the daily volume, which in the Receiver's
 4 considered judgment renders the over the counter market ineffective as a secondary market in this
 5 case. The sale of 30,000,000 shares, or even 10,000,000 shares, would be even more impractical,
 6 and the resulting downward pressure could drive the price of URHG well below \$0.01 per share,
 7 even if there were a market for such a trade.

8 The Receiver is further assured that \$0.01 is a fair price as the Receiver permitted investor
 9 claimants to request to take URHG shares as distribution in kind as an offset to some of all of
 10 their allowed claim, and those that requested such distribution agreed at a price of \$0.01 per share.
 11 (*See Phelps Decl. Ex. 2 listing the URHG shares that will be transferred to each claimant as a*
 12 *credit against their allowed claim.*) As such, the Receiver believes that the sale of 10,144,516 of
 13 the URHG Shares to a single buyer at this negotiated price is reasonable and will help monetize
 14 the value of the shares for the benefit of the claimants in the Receivership Estate.

15 **V. Sale is Compliant with Securities Regulations**

16 The Receiver is satisfied that the sale of the Designated Shares complies with applicable
 17 securities laws and regulations, as the sale is permissible under Section 4(a)(1) of the Securities
 18 Act of 1933. *See* 15 U.S.C. § 77d(a)(1) (exempting “transactions by any person other than an
 19 issuer, underwriter, or dealer”). The Receiver is not the issuer of URHG shares, nor is the
 20 Receiver an underwriter within the meaning of 15 U.S.C. § 77b(a)(11) or 17 C.F.R. § 230.144
 21 (commonly known as Rule 144), nor is the Receiver a dealer within the meaning of 15 U.S.C. §
 22 77b(a)(12). The sale is also permissible under Section 4(a)(7) of the Securities Act of 1933, as
 23 the Purchaser is an accredited investor. *See* 15 U.S.C. § 77d(a)(7) (exempting certain transactions
 24 involving accredited investors). The Receiver has received declarations from the Purchaser that
 25 he is an accredited investor, as defined in 17.C.F.R. § 230.501(a), in part because he is a control
 26 person of URHG, and as such the Receiver is satisfied that the Purchaser is in possession of
 27

28 ¹ <https://www.marketwatch.com/investing/stock/urhg>

1 sufficient information to comply with the information requirements of Section 4(a)(7).

2 The Receiver is further satisfied that there are no suitability concerns with the sale of the
3 Designated Shares to Purchaser. In the Transfer Agreement, Purchaser has provided the Receiver
4 with written representations that an investment in URHG is suitable based on his investment
5 objections and financial needs and that he understands that URHG may be a “penny stock” within
6 the meaning of the Securities Exchange Act of 1934.

7 Furthermore, as set forth in the Transfer Agreement, some of the shares to be sold are
8 restricted (*see* Phelps Decl. Ex. “1”). Those shares will remain until the restriction period has
9 expired. Although the Receiver and the Receivership Estate have no control of or participation in
10 the management of URHG, the amount of shares held by the Receivership Estate does not permit
11 the automatic removal of the restricted legend under the Securities Act of 1933 and Rule 144.
12 The Receiver believes that it is not possible to remove the restrictions, and the Purchaser is aware
13 that the restricted shares will remain restricted. In any event, because Purchaser is a control
14 person of URHG, he will be independently prohibited on disposing of the shares within six
15 months pursuant to Section 16(b) of the Securities Exchange Act, 15 U.S.C. § 78p(b).

16 VI. Conclusion

17 The sale of the Designated Shares under the Transfer Agreement is in the best interests of
18 the Receivership Estate for the reasons set forth above, which includes that the proposed sale will
19 assist the Receiver in liquidating assets for the benefit of investors holding allowed claims, and
20 create additional cash for distribution under the proposed plan. The Receiver cannot simply sell all
21 of the URHG Shares on the market, so this represents an opportunity to monetize approximately
22 one-third of those non-cash assets for the Receivership Estate. Last, the private sale as
23 contemplated is in the best interests of the Receivership Estate, because it is efficient and a public
24 sale is unlikely to yield a significantly greater return and represents greater risk for recovery. The
25 Receiver exposed the shares to the investors in this case to ensure that the value is reasonable and
26 does not otherwise believe that a sale of 30 million shares is possible, even at \$.01 per share.

27 WHEREFORE, the Receiver respectfully requests that the Court (1) approve the Transfer
28 Agreement attached to the Phelps Declaration as Exhibit “1”; (2) authorize the Receiver to take all

1 actions and execute all documents required to consummate the transaction; (3) approve the form
2 and manner of notice of the Motion; and (4) for all other appropriate relief.

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DATED: August 27, 2020

DIAMOND McCARTHY LLP

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