

1 KATHY BAZOIAN PHELPS (State Bar No. 155564)  
kphelps@diamondmccarthy.com  
2 DIAMOND MCCARTHY LLP  
1999 Avenue of the Stars, Suite 1100  
3 Los Angeles, California 90067-4402  
4 Telephone: (310) 651-2997

5 *Temporary Receiver*

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

11  
12 COMMODITY FUTURES TRADING  
13 COMMISSION,

14 Plaintiff,

15 v.

16 DENARI CAPITAL LLC, TRAVIS CAPSON,  
AND ARNAB SARKAR,

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

**NOTICE OF MOTION AND  
ADMINISTRATIVE MOTION BY  
RECEIVER KATHY BAZOIAN PHELPS  
FOR ENTRY OF AN ORDER APPROVING  
INTERIM DISTRIBUTION TO  
CLAIMANTS**

Date: No Hearing Set  
Time: No Hearing Set  
Judge: Edward M. Chen



1           **PLEASE TAKE NOTICE THAT** under Local Civil Rule 7-11, Kathy Bazoian Phelps, the  
2 Court-appointed temporary receiver herein (the “Receiver”) for Denari Capital, LLC (“Denari”),  
3 Travis Capson (“Capson”), and Arnab Sarkar (“Sarkar” and, collectively, the “Receivership  
4 Defendants”), will and hereby does move for entry of an order granting her motion (the “Motion”)  
5 to make an interim distribution to claimants.

6           The Motion seeks authority to make an interim distribution to claimants in the amount of  
7 50% of their allowed cash claims, which the Receiver believes appropriately balances the interest of  
8 conservative and careful cash management of the estate with the interest of making a meaningful  
9 distribution to claimants as expeditiously as possible.

10           The Motion is based upon this Notice of Motion, the Motion, the Declaration of the  
11 Receiver, and the proposed order. In addition to service by ECF, the Receiver intends to serve this  
12 Notice, the Motion and the supporting documents on the affected claimants via email. *See* Civil  
13 L.R. 66-6.

14           **PLEASE TAKE FURTHER NOTICE THAT** any opposition to the Motion must be filed  
15 within four days of the filing of the Motion. *See* Civil Local Rule 7-11.

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17 DATED: December 17, 2020

By \_\_\_\_\_  
          /s/ *Kathy Bazoian Phelps*  
          Kathy Bazoian Phelps  
          *Temporary Receiver*

DIAMOND MCCARTHY LLP

**MOTION FOR INTERIM DISTRIBUTION**

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3 Kathy Bazoian Phelps, temporary receiver herein (the “Receiver”) for Denari Capital LLC  
4 (“Denari”), Travis Capson (“Capson”), and Arnab Sarkar (“Sarkar” and, collectively, the  
5 “Receivership Defendants”), hereby files this Administrative Motion for Order Approving an  
6 Interim Distribution to Claimants (the “Motion”). The Receiver has conferred with the CFTC and  
7 the Defendants’ counsel, who do not oppose the Motion.

8 **I. Statement of Facts**

9 On December 4, 2019, the Court appointed Kathy Bazoian Phelps as temporary receiver,  
10 and directed and authorized her to take full control of the Receivership Defendants and to  
11 administer the Receivership Estate. (Dkt. 37, ¶¶ 23-29.) On February 6, 2020, the Court set the  
12 bar date for claims as April 6, 2020. (Dkt. 47). The Receiver received eighteen claims in the  
13 ordinary course (one of which was withdrawn), plus one priority claim from the Franchise Tax  
14 Board for \$800. The total allowed claims were valued at \$3,683,082.

15 The Court approved the Distribution Plan (the “Plan”) in this case on October 5, 2020 (Dkt.  
16 79). The Plan included distribution of the receivership’s holdings of securities, which had limited  
17 liquidity, as well as the cash that the Receiver was able to marshal. The Receiver has already  
18 distributed the securities to those claimants who elected to receive those assets under the Plan as  
19 follows:

20 1. The Receiver held 30,633,998 shares of United Resources Holding Group (URHG)  
21 in the estate. As part of the Distribution Plan, the Receiver sold 10,144,506 of those shares to a  
22 third party, which resulted in a payment of \$101,445.06 to the Receiver. (Dkt. 81). The Receiver  
23 distributed the remaining 20,489,492 URHG shares to claimants.

24 2. The Receiver also held directly 157,593 shares of National Gold, and distributed  
25 those shares to a claimant pursuant to the Distribution Plan. The Receiver also held 348,000 shares  
26 of National Gold through its interest in Sierra Gold, and redeemed its interest in Sierra Gold for  
27 those shares of National Gold. Those 348,000 shares of National Gold were then distributed to  
28 claimants pursuant to the Distribution Plan.



1 As a result of the foregoing, the distribution of securities is complete, and satisfied in  
 2 excess of \$2,500,000 of the allowed claims. The Receiver has also collected most of the cash  
 3 pursuant to the terms of the Plan, with the exception noted below:

4 1. As noted above, the Receiver collected that \$101,445.06 from the URHG stock sale.

5 2. Pursuant to the Court approved settlement among the Receiver and United Resource  
 6 Holding Group, Inc., United Milling and Refining Corp., and Springbok Development Inc. (the  
 7 “URHG Settlement”) (Dkt. 80), the Receiver has taken possession of \$56,666.83 in funds located  
 8 in the Wells Fargo account, xxxxxx2291.

9 3. The real estate transaction contemplated in the URHG Settlement (the “Sparks  
 10 Transaction”) required that an additional \$150,000 be paid to the Receiver when the Sparks  
 11 Transaction closed, scheduled for the end of October. Unfortunately, the counterparties to the  
 12 URHG Settlement still have not closed the Sparks Transaction. The Receiver has continued to  
 13 press those counterparties on the need to close promptly, including direct contact with the escrow  
 14 agent, in multiple emails over the past two months. The Receiver is evaluating the options of the  
 15 estate with regard to that payment, but in any event cannot close the receivership until this  
 16 substantial asset is fully recovered.

17 **II. An Interim Cash Distribution is Appropriate**

18 The Receiver requests permission to make an interim distribution on the remaining allowed  
 19 cash claims. The current cash claims to the Receivership total \$1,091,497.08, as set forth in  
 20 Exhibit “1” to the Phelps Declaration. That includes an \$800 claim due to the Franchise Tax  
 21 Board, which the Receiver proposes to pay in full. The cash on hand in the receivership is  
 22 \$912,064.49 as of December 16, 2020. The Receiver believes it is prudent to hold on to a  
 23 meaningful cash reserve in the case pending finalization of the issues relating to the Sparks  
 24 property and to address any unanticipated tax consequences or administrative expenses.

25 Accordingly, the Receiver proposes below to make an interim distribution of 50% to the  
 26 cash claims, plus payment of the entire \$800 claim to the Franchise Tax Board, or \$546,148.54.  
 27 That will leave \$545,348.54 of claims outstanding, and \$365,915.95 remaining in the estate. Once  
 28 the Receiver is able to collect the \$150,000 payment from the Sparks Transaction, and finalize the

1 tax liabilities of the estate, the Receiver anticipates filing a closing motion and obtaining approval  
2 of a final distribution to the cash claimants upon final tax clearance.

3 The Receiver would like to give claimants the option of receiving their funds by wire  
4 transfer or by check to their last known address. In order to ensure that all funds are sent out as  
5 expeditiously as possible, the Receiver proposes that claimants be given 14 days from the entry of  
6 an order on this Motion to provide the Receiver with wire instructions, otherwise the Receiver will  
7 default to sending a check to the claimant's last known address. The Receiver does not anticipate  
8 that there will be costs associated with wiring funds to claimants but in the event there are wire  
9 charges assessed by the bank, the Receiver requests authority to pay those from the estate.

10 **III. Conclusion**

11 The Receiver respectfully requests that the Court grant the Receiver authority to make a first  
12 interim distribution to claimants, in the amount of 50% of their allowed cash claims, plus \$800 to  
13 the Franchise Tax Board, and requests all other appropriate relief.

14  
15 DATED: December 17, 2020

By \_\_\_\_\_  
Kathy Bazoian Phelps  
*Temporary Receiver*

