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8 Temporary Receiver

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

12 COMMODITY FUTURES TRADING
13 COMMISSION,

14 Plaintiff,

15 v.

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

18 Defendants.

Case No. 19-cv-07284-EMC

RECEIVER'S FIRST STATUS REPORT

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

1 Kathy Bazoian Phelps, the Court-appointed temporary receiver herein (the
2 “Receiver”) for Denari Capital, LLC (“Denari”), Travis Capson (“Capson”), and Arnab
3 Sarkar (“Sarkar”) (collectively, the “Receivership Defendants”), hereby files her First
4 Status Report for the period from her appointment on December 4, 2019 through March
5 31, 2020 (the “Report Period”).

6 **I. Procedural History**

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

13 According to the Complaint, the pooled and commingled funds were deposited into
14 a Denari bank account and used for, among other things, foreign exchange trading, real
15 estate investments, securities transactions, and satisfaction of personal expenses.
16 According to the Complaint, as of July 2019, Denari owed its participants more than
17 \$5,200,000.00, which it did not have sufficient funds or assets to satisfy.

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

27 On February 6, 2020, the Court entered an Amended Order (Doc. No. 47) (“Bar
28 Date Order”) granting the Receiver’s Administrative Motion (Doc. No. 42) and

1 establishing, among other things, a claims bar date of April 6, 2020.

2 **II. Summary of Temporary Receiver's Activities in Reporting Period**

3 **A. Administrative Matters**

4 **1. Territorial Jurisdiction Over Receivership Assets**

5 By filing the Complaint and the TRO with other federal district courts in the United
6 States, the territorial jurisdiction of this Court over assets in the Receivership Estate is
7 extended to such districts. 28 U.S.C. § 754; *see also Haile v. Henderson Nat'l Bank*, 657
8 Fed. 2d 816, 822 (6th Cir. 1981). Based on information to date regarding property owned
9 by the Receivership Defendants or in which they may have an interest, and in conformity
10 with section 754 and the federal law, the Receiver filed the Complaint and TRO in the
11 United States District Courts for Utah and Nevada within the first ten days of the
12 receivership.

13 **2. Engagement of Professionals**

14 The TRO authorizes the Receiver to engage attorneys, accountants, and other
15 professionals as necessary to assist in the performance of her duties. By Order entered on
16 February 4, 2020 (Doc. No. 44), the Receiver engaged Diamond McCarthy as her general
17 counsel for the receivership, Schinner & Shain as her securities counsel to advise on the
18 disposition of certain securities which are property of the Receivership Estate, and
19 Miller, Kaplan & Arase LLP as her accountants to assist her with tax advice and reporting
20 in this case.

21 **3. Communications with Investors**

22 Upon her appointment, the Receiver gathered information regarding the then
23 current and the former customers of Denari, as well as creditors of all Receivership
24 Defendants. She delivered an introductory letter to all known creditors and interested
25 parties, seeking their consent for electronic communications and providing them with
26 information about the receivership. The Receiver also established a website for the case so
27 that interested parties could easily find current information about the case and
28 communicate with the Receiver. The Receiver also set up phone calls with some of the

1 investors to learn more about the case and the nature of their investments with Denari.

2 **4. Retrieval of Records and Information**

3 The Receiver gathered information and documents from a number of sources. The
4 Receivership Defendants provided online access to bank records and Quickbook files,
5 which the Receiver downloaded. She also imaged the One Drive accounts of Capson and
6 Denari and downloaded documents and emails, subject to privilege and work product
7 review. The Receiver also communicated with financial institutions to obtain additional
8 documents regarding the financial transactions.

9 The Receiver also had several phone interviews with Mr. Capson and Mr. Sarkar,
10 and their counsel. The meetings focused primarily on identifying assets and understanding
11 certain transactions. They followed up by providing requested information and
12 documentation to the Receiver. The information gathered clarified a few issues and
13 assisted the Receiver's understanding of the business and the assets. The Receiver has had
14 additional follow up calls with Mr. Capson and Mr. Sarkar, and their counsel, relating to
15 the claims of the investors and the securities held by the Receivership Estate.

16 **5. Turnover of Bank Accounts**

17 The Receiver established bank accounts at East West Bank to take possession of
18 funds on behalf of the Receivership Estate. The Receiver has taken control of numerous
19 bank accounts and funds of the Receivership Defendants and the brokerage accounts
20 remain frozen and subject to the TRO. To date, the Receiver has taken possession of
21 approximately \$____, which was turned over to the Receiver by financial institutions as a
22 result of the TRO. The funds that have been received are summarized as follows:

23 Financial Institution	Amount	Account Holder
24 Zions Bank	\$6,535.50	Capson
25 JPMorgan Chase	\$1,632.28	Sarkar
26 JPMorgan Chase	\$1,355.47	Sarkar
27 Wells Fargo Bank	\$249,143.21	Denari

1	Wells Fargo Bank	\$2,381.79	Denari
2	Wells Fargo Bank	\$540.62	Capson
3	Bank of America	\$8,358.51	Capson
4			

6. Turnover of GAIN Capital Foreign Exchange Account

5
6 Working with the representative at GAIN Capital, the Receiver closed out the open
7 positions at GAIN in December 2019, immediately upon her appointment. A few of the
8 positions were sold at a profit and others were monitored so that the losses on those
9 positions as of the time of the receivership did not grow larger. The Receiver ultimately
10 closed out each of the remaining positions to mitigate ongoing costs from keeping the
11 positions open and on the advice that the positions would not likely substantially increase
12 in value in the near term. The Receiver closed out the account and on December 23, 2019,
13 was delivered a check in the amount of \$747,536.67, representing the net funds in the
14 account.

7. Freezing of Brokerage Accounts

15
16 The TRO obtained by the CFTC served to freeze all brokerage accounts as well. To
17 avoid any unintended adverse tax consequences, the Receiver, with the agreement of the
18 CFTC, has left the shares residing in their accounts as of the date of the TRO, but subject
19 to the asset freeze. Those accounts are identified as follows:

- 20 a. TD Ameritrade
 - 21 i. Capson IRA
 - 22 ii. Travis and Jennifer Joint Account
- 23 b. ETrade
 - 24 i. Sarkar's IRA

B. Claims Administration

25
26 The claims bar date was set pursuant to the Bar Date Order for April 6, 2020. The
27 Receiver has received a total of 19 claims, 17 of which are investor claims, one of which
28 is a priority tax claim of \$800, and one of which is a creditor claim against Denari for

1 professional fees in the amount of \$28,209.95. She has reviewed each claim as it was
 2 submitted and has engaged in extensive communications with the investors to attempt to
 3 reach agreement on the net investment amount of their claims. The Receiver has had
 4 numerous telephone discussions with the Receivership Defendants and their counsel, and
 5 the CFTC, in connection with her efforts to analyze the validity and extent of each of the
 6 claims submitted. The Receivership Defendants and the CFTC have provided
 7 supplemental documents to assist the Receiver in her efforts.

8 **C. Sierra Gold, LLC**

9 Sierra Gold, LLC is a Nevada limited liability company and its sole asset is 400,000
 10 shares in National Gold Corporation, a private Nevada corporation which owns patented
 11 and unpatented mining claims. Upon her appointment, the Receiver was advised that
 12 Denari held an 87% interest in Sierra Gold and that two former investors of Denari owned
 13 the other 13%. Sarkar is listed in Nevada state records as the managing member of Sierra
 14 Gold. During the Reporting Period, the Receiver received a notice that a renewal was
 15 required with the Secretary of State to keep Sierra Gold in good standing. Upon the advice
 16 of counsel, the Receiver arranged for the renewal. The Receiver has also taken possession
 17 of the stock certificates for National Gold Mining that are owned by Sierra Gold. The
 18 Receiver is evaluating the Receivership Estate's interests in Sierra Gold and possible use
 19 of the entity as part of a distribution plan in this case.

20 **D. National Gold Mining Shares**

21 In addition to Sierra Gold's 400,000 shares in National Gold Mining, Denari and
 22 Capson also own shares in National Gold Mining, which are now part of the Receivership
 23 Estate. The Receiver has obtained the original stock certificates in National Gold Mining
 24 Corp., which are identified as follows:

25 Number of Shares	Owner	Location
26 77,593	Denari Capital LLC	Stock certificate
27 80,000	Travis Capson	Stock certificate
28 400,000	Sierra Gold LLC	Stock certificate

Certain investors have expressed a willingness to accept National Gold Mining shares instead of cash as a distribution. As stated above, the Receiver is considering utilizing Sierra Gold in structuring that type of non-cash distribution. As of the date of this Report, the Receiver is not yet able to value the shares in National Gold Mining, which is necessary to ensure a fair and equitable distribution plan. The Receiver has discussed this issue with the CFTC and the Receivership Defendants and their counsel, and is working to value the shares without incurring unnecessary costs.

E. URHG Shares and Subsidiaries

United Resource Holdings Group, Inc. (“URHG”) is a publicly traded company incorporated in Nevada. The Receiver is in control of certain URHG shares, which are in the names of the following individuals and entities, most of which are Receivership Defendants, and held as follows:

Number of Shares	Owner	Location
791,677	Denari Capital LLC	Stock certificate
7,450,000	Denari Capital LLC	Stock certificate
1,100,000	Denari Capital LLC	Stock certificate
1,000,000	Denari Capital LLC	Stock certificate
1,666,667	Denari Capital LLC	Stock certificate
333,334	Denari Capital LLC	Stock certificate
500,000	Denari Capital LLC	Stock certificate
1,282,917	Denari Capital LLC	Stock certificate
50,000	Denari Capital LLC	Stock certificate
6,817,465	Denari Capital LLC	Stock certificate
500,000	Denari Capital LLC	Stock certificate
300,000	Denari Capital LLC	Stock certificate
1,800,000	Denari Capital LLC	Stock certificate
1,000,000	Denari Capital LLC	Stock certificate
1,000,000	Denari Capital LLC	Stock certificate
4,301,531	Denari Capital LLC	TD Ameritrade #5871
16,580	Arnab Sarkar IRA	ETrade #8814
285,057	Travis and Jennifer Capson	TD Ameritrade #5789
18,615	Travis Capson IRA	TD Ameritrade IRA #2135

1 The total number of URHG shares, excluding the 18,615 shares in Mr. Capson's
2 IRA account, is 30,195,228. On December 4, 2019, the date of the receivership, URHG
3 stock was trading at \$.06/share. As of April 13, 2020, days after the Reporting Period
4 ended, the shares were trading at \$.02/share. The Receiver is analyzing the value of the
5 URGH shares, and how they can best be utilized to benefit the Receivership Estate,
6 whether through a sale or transfer in satisfaction of an investor claim.

7 In addition, the Receiver learned that there are two subsidiaries of URHG with ties
8 to the Receivership Defendants: (1) Dun Glen Mining Corporation ("Dun Glen"); and (2)
9 United Milling and Refining Corp ("United Milling"). United Milling owns certain real
10 property in Nevada. The Receiver learned that a deed of trust recorded against that
11 property was given by United Milling, signed by Capson as President, in connection with
12 a promissory note given by Denari to an investor. The loan underlying that note has been
13 paid. The Receiver was also contacted by URHG's President because certain funds were
14 frozen as a result of the TRO are in an account under the name of URHG.

15 During the Reporting Period, the Receiver considered whether a global settlement
16 involving the recorded deed of trust, the real property, and the frozen URGH funds might
17 be possible and in the best interests of the Receivership Estate. The Receiver worked with
18 her counsel and the CFTC in analyzing this possibility, but ultimately concluded that
19 these issues are best resolved under the distribution plan she will soon propose.

20 **III. Next Steps**

21 The Receiver is in the process of evaluating the proofs of claims that have been
22 submitted, and communicating with the investors to discuss the net investment amounts of
23 their claims in an effort to consensually resolve and agree on the allowed claim amounts.
24 The Receiver is also communicating with the investors as to whether they have a
25 preference in terms of whether they wish to receive distributions in the form of cash or
26 shares of either National Mining or URHG. Depending on the outcome of those
27 discussions and whether a consensual plan can be developed, the Receiver will either
28 propose an agreed upon plan or will otherwise file a motion seeking approval of a

1 recommended plan of distribution that she deems to be the most equitable under the
2 circumstances. The Receiver hopes to have a plan presented to the Court in the second
3 quarter of 2020.

4 The Receiver will also continue her efforts to resolve all remaining issues with
5 URHG, United Mining and Dun Glen, which may serve to increase the amount of funds
6 available for distribution.

7 The Receiver intends to file an administrative motion for compensation for herself
8 and Diamond McCarthy, her general counsel in this case. It would be the Receiver's and
9 Diamond McCarthy's first interim request for compensation, and no amounts have yet
10 been paid to the Receiver or Diamond McCarthy for compensation or reimbursement of
11 expenses.

12 Last, to the extent the Receiver determines it is necessary and in the best interests of
13 the Receivership Estate, and only if the Receiver is unable to resolve these issues
14 consensually, the Receiver may file objections to certain claims, and actions against
15 certain possible "net winners" who received more distributions from the Receivership
16 Defendants than they invested. The Receiver continues to analyze whether those steps
17 would be necessary and beneficial.

18 **IV. Conclusion**

19 The Receiver respectfully submits that the steps she has taken to administer this
20 case during the Reporting Period have been authorized under the TRO and were beneficial
21 to the Receivership Estate and its beneficiaries. The Receiver will continue to administer
22 services she believes in her experience are reasonable and necessary to ensure the greatest
23 possible recovery for the Receivership Estate within the parameters of the TRO, without
24 incurring unnecessary cost and expense.

25 Dated: April 29, 2020

DIAMOND McCARTHY LLP

26
27 By: /s/ Kathy Bazoian Phelps
Kathy Bazoian Phelps
28 Temporary Receiver