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6

7 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT CALIFORNIA
8

9 _____)
COMMODITY FUTURES)
10 TRADING COMMISSION)

Case No: 3:19-cv-07284-EMC
Hearing Date: December 19, 2019
Hearing Time: 1:30 p.m.

11 Plaintiff)

12 vs.)

13 DENARI CAPITAL, LLC, TRAVIS)
14 CAPSON, ARNAB SARKAR.)

15 Defendants)
16

17 **PLAINTIFF’S MOTION FOR APPOINTMENT OF A TEMPORARY RECEIVER**

18 Pursuant to Section 6c of the Commodity Exchange Act, as amended (“Act”),
19 7 U.S.C. §§ 13a-1 (2012), Plaintiff Commodity Futures Trading Commission (“Commission or
20 CFTC”) makes this motion to appoint a Temporary Receiver to take control of and protect certain assets
21 of Defendants’ public customers. The CFTC seeks to present this Motion on December 19, 2019 before
22 the Honorable Judge Chen.
23

24 This motion seeks the appointment of a Temporary Receiver to implement the relief the CFTC is
25 seeking in its Motion for a Preliminary Injunction, filed concurrently with this motion. In support of this
26 motion, the Commission states the following:

- 27 1. Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), permits the federal district court to
28

1 enter an order appointing a temporary receiver to help administer the [Proposed] Order For Preliminary
2 Injunction filed on November 8, 2019 (“Preliminary Injunction”). The Commission’s principal aim is to
3 maximize restitution to customers that it seeks as an equitable remedy for Defendants’ violations of the
4 Act.

5 2. The Defendants’ conduct has violated several sections of the Act and Commission
6 Regulations, specifically, Sections 4b(a)(2)(A) and (C), 4b(a)(2)(B), 4o(1), 4m(1), 4k(2), and
7 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. §§ 6b(a)(2)(A), (C), 6(b)(2)(B), 6o(1), 6m(1), 6(k)(2),
8 2(c)(2)(C)(iii)(I)(cc) (2012), and Commission Regulations 4.20(a)-(c), 4.21, 4.24, 4.25, 5.2(b)(1)-(3), and
9 5.3(a)(2)(i)-(ii), 17 C.F.R. §§ 4.20(a)-(c), 4.21, 4.24, 4.25, 5.2(b)(1)-(3), 5.3(a)(2)(i)-(ii) (2019), and an order
10 finding that Defendants Capson and Denari violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2012).

11 3. In support of this motion and in verification of the facts alleged herein, the
12 Commission submits and incorporates its Memo and Exhibits in Support of Plaintiff’s Motion
13 for Preliminary Injunction filed on November 8 , 2019, that includes excerpts of the transcripts of
14 testimony of Travis Capson and Arnab Sarkar, and the declaration of Nicole Wahls, a compliance
15 manager with the National Futures Association.
16
17

18 4. Appointment by the Court of a Temporary Receiver is particularly appropriate where, as
19 here, the Defendants have cheated and defrauded at least 28 customers whose funds were commingled in
20 a pooled investment scheme that included leveraged or margined off exchange foreign currency
21 (“forex”) transactions. Capson and Sarkar pooled and commingled participant funds into a Denari bank
22 account and used the funds for various purposes, including \$1.9 million for forex trading and the
23 remaining funds for real estate investments, securities transactions, and personal expenses.
24

25 6. Denari currently appears to have liquid assets of approximately \$830,000. Combining all
26 of Denari’s liquid assets and even attributing them all to the Denari forex pool, the Denari forex pool
27 had a shortfall of at least \$400,000 as of June 30, 2019.

28 7. Additionally, Denari’s June 30, 2019 balance sheet indicates that the firm owes more

1 than \$5,200,000 in “business loans,” which, according to Defendants, represents the firm’s obligation to
2 the forex pool participants, promissory note holders and others. Excluding the approximately
3 \$1,600,000 that Denari and Capson have represented is owed to forex pool participants as of June 30,
4 2019, Denari, Capson and Sarkar appear to owe more than \$3,600,000 to the promissory noteholders
5 and others whose funds were commingled with the pool participants’ funds. Proposed Defendants
6 misappropriated some or all of these funds.
7

8 8. Denari’s June 30, 2019 balance sheet also included other assets purportedly valued at
9 more than \$6,100,000. These assets consist of stock in three mining-related companies and a real estate
10 holding in Nevada. However, Denari has not been able to substantiate its ownership of these assets nor
11 the value Denari assigns to them. Additionally, Denari, Capson and Sarkar hold ownership interests in
12 or have roles with the mining entities listed as Denari’s assets. These assets include penny stock in one
13 company that is insolvent; stock in a privately-held company of which Denari and Sarkar are majority
14 shareholders; and stock in a third company in which Denari and Capson regularly engage in buying and
15 selling the stock by privately arranging transactions in the stock. The real estate holding in Nevada is
16 not in Denari’s name, and Denari also included on its balance sheet Capson’s and Sarkar’s personal
17 shares in the mining-related companies, which had the effect of improperly increasing the assets listed
18 on the firm’s balance sheet.
19

20 9. Appointment of a Temporary Receiver is necessary to assist in unwinding Defendants’
21 companies, and to assist in valuing Defendants’ stock and other assets as well as locating any additional
22 funds and assets.
23

24 10. The Commission submits the attached information containing the credentials of
25 three prospective Temporary Receivers, Geoffrey Winkler, Kathy Bazoian Phelps, and Thomas Seman,
26 who in the view of the Commission’s staff would be qualified to act in this matter. All are experienced
27 receivers with expertise in financial investigations. The Commission believes that each of them
28 has the capability and experience necessary for carrying out the tasks that will be required of the

1 Temporary Receiver and each has indicated a willingness to serve as Temporary Receiver. All
2 of the proposed Temporary Receivers have performed the necessary conflict of interest checks
3 and are available to serve as receiver immediately upon appointment. Geoffrey Winkler's billing rate is
4 \$395 per hour, Kathy Bazoian Phelps' billing rate is \$475 per hour and Thomas Seman's billing rate is
5 \$220 per hour.

6 A. **Geoffrey Winkler** is a Managing Director with Alvarez & Marsal in San Francisco. He
7 leads a team of legal and financial industry professionals who specialize in managing complex
8 investigations, forensic accounting, fiduciary and insolvency services, and securities litigation support.
9 He has served as CFO and COO in dozens of state and federal district court receiverships, and corporate
10 monitorships. Mr. Winkler's experience includes leadership in large and complex fraud investigations
11 and forensic accounting efforts in numerous industries. One large fraud investigation involved the
12 misappropriation of funds from dozens of high-profile, high net worth individuals by their investment
13 advisor. Among his numerous regulatory enforcement engagements, Mr. Winkler led a receivership
14 team in an SEC action against a large operator of retirement care facilities in 38 states that was accused
15 of defrauding over 12,000 investors and creditors for over \$1.2 billion. Mr. Winkler has been a court
16 appointed receiver or monitor in ten government enforcement actions. A summary of his qualification is
17 attached as Ex. A.

18
19
20 B. **Kathy Bazoian Phelps** is a senior counsel at Diamond McCarthy LLP's Los Angeles
21 office. The firm also has an office in San Francisco. She practices in the area of federal equity
22 receiverships, bankruptcy law and fraud litigation. She serves as a receiver and has represented both
23 state court and federal receivers. She is particularly knowledgeable about the administration of Ponzi
24 scheme cases and has extensive litigation experience in claims arising in these types of cases and in
25 tracing and recovering assets. Recently, she has served as the receiver or counsel for the receiver in five
26 government enforcement cases. Ms. Phelps has lectured widely and written on bankruptcy and
27 receivership matters, with a focus on Ponzi schemes. Her book entitled *The Ponzi Book: A Legal*
28

1 *Resource for Unraveling Ponzi Schemes*, co-authored with Honorable Steven Rhodes, has garnered
2 national and international attention as the authoritative work on Ponzi scheme law. A summary of her
3 qualifications is attached as Ex. B.

4 C. **Thomas Seman** is Principal and sole shareholder of Thomas A. Seman, Company
5 located in Irvine, California. He has served as receiver in well over 200 matters since 1995, including
6 eight SEC and four FTC federal equity receiverships in investment fraud and consumer fraud
7 enforcement actions. He is a Chartered Financial Analyst ("CFA") and is able to quickly assimilate and
8 analyze financial data and business records for the purposes of marshalling assets, understanding the
9 financial behavior of companies and for identifying potential sources of recovery. As a CFA he is
10 familiar with financial instruments and markets. Mr. Seman is experienced at seizing assets, stabilizing
11 operations, and formulating and implementing business solutions. He also has strong accounting skills
12 and experience as a financial analyst. A summary of his qualifications is attached as Ex. C.

14 **WHEREFORE**, the Commission requests that the Court enter an order appointing one of
15 Geoffrey Winkler, Kathy Bazoian Phelps, or Thomas Seman, or any other suitable person as Temporary
16 Receiver of Defendants to take, marshal and liquidate assets to further protect defrauded customers'
17 interests.

19 Date: November 8, 2019

Attorney for Plaintiff CFTC

21 /s/ Carlin Metzger

22 IL ARDC No. 6275516

23 Commodity Futures Trading Commission

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CERTIFICATE OF SERVICE

I, Carlin Metzger, an attorney with the U.S. Commodity Futures Trading Commission, certify that I served the CFTC’s Motion for Plaintiffs Motion for Appointment of Temporary Receiver upon counsel for Defendants listed below, who have been representing Defendants in connection with the CFTC’s investigation prior to the filing of the CFTC’s action against Defendants, via e-mail, on November 8, 2019.

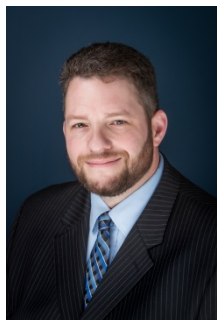
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Date: November 8, 2019

Attorney for Plaintiff CFTC

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EXHIBIT A



Geoffrey B. Winkler, JD, MBA, CFE **Managing Director**

Geoff Winkler is a Managing Director with Alvarez & Marsal, based in San Francisco, California. Mr. Winkler leads a team of legal and financial industry professionals who specialize in managing complex investigations, forensic accounting, fiduciary and insolvency services, and securities litigation support. He has extensive experience testifying as an expert witness and has served as CFO and COO in dozens of State and Federal District Court receiverships, corporate monitorships, and in other cases as a fiduciary and insolvency expert.

Contact

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Education

- B.A., Politics, Willamette University
College of Liberal Arts
- M.B.A., Willamette University Atkinson
Graduate School of Management
- J.D., Willamette University School of Law

Certifications

- Certified Fraud Examiner (CFE)
- Certified Insolvency and Restructuring
Advisor (CIRA)
- Certified Specialist in Asset Recovery
(CSAR)

Associations

- Association of Certified Fraud Examiners
(ACFE)
- Association of Certified Anti-Money
Laundering Specialists (ACAMS)
- Association of Insolvency and
Restructuring Advisors (AIRA)
- National Association of Federal Equity
Receivers (NAFER)

Expertise

- Anti-Money Laundering
- Data Analysis
- Fiduciary and Insolvency Services
- Financial Accounting
- Financial Litigation Consulting
- Forensic Accounting
- Fraud Investigation
- Fraud Risk Assessment
- Internal Controls

These roles included responsibility for: managing operations with up to thousands of employees; preparing, auditing, and/or restating financial statements per Generally Accepted Accounting Principles (GAAP) and SEC reporting requirements; instituting internal controls to prevent fraud and provide assurances in reporting; and, turnaround and restructuring businesses. In addition, Mr. Winkler has initiated litigation against executive leadership, board of directors, and financial oversight committees for failure to execute the duties required by their fiduciary duty to the company, including failure to: institute strong internal controls; provide oversight of financial reporting; and, ensure GAAP requirements are being met. Due to the varying nature of these assignments, Mr. Winkler works with a diverse team of experts that supplement his expertise based on the specific needs of a given case.

Mr. Winkler's experience includes leadership in large and complex fraud investigations and forensic accounting efforts in numerous industries including manufacturing, financial services, healthcare, capital leases, consumer services and retail sales. One large private fraud investigation involved the misappropriation of funds from dozens of high-profile, high net worth individuals by their investment advisor. Among his numerous regulatory enforcement engagements, Mr. Winkler led a receivership team in an SEC action against a large operator of retirement care facilities in 38 states that was accused of defrauding over 12,000 investors and creditors for over \$1.2 billion. The restructuring effort resulted in a sale to Blackstone Group, with most investors receiving interest in addition to their capital investments returned to them. These efforts resulted in winning the 2011 Turnaround Management Association Turnaround of the Year award.

Mr. Winkler has lectured and published articles on the topics of occupational fraud, anti-money laundering, business law, business ethics, elder financial exploitation, the role of financial oversight committees in preventing fraud, and analysis of new regulations.

Prior to joining Alvarez & Marsal, Mr. Winkler was Director of Fraud & Forensic Investigations at Bates Group, a litigation consulting firm, and Director of Case Management for Grassmuck Group, a fiduciary and insolvency services firm.



FIDUCIARY EXPERIENCE

Securities and Exchange Commission – Receivership Cases

- *Securities and Exchange Commission v. Essex Capital Corporation et al.*, United States District Court for the Central District of California. A venture capital and private equity firm specializing in providing venture capital leasing to start-up companies raised over \$100 million from investors. This case is ongoing as of June 2019 and additional information is not currently available.
- *Securities and Exchange Commission v. Health Maintenance Centers, Inc. et al.*, United States District Court for the Western District of Washington. An operator of medically integrated health clubs was accused of selling unregistered securities that raised over \$91 million from 7,000 investors in just seven years, with most of the money being used to finance a grossly extravagant lifestyle for the accused fraudsters in what has been called the largest stock fraud in Washington State history. From assets of \$47,000 at appointment, more than \$30 million were received in the victim's recovery effort.
- *Securities and Exchange Commission v. C. Wesley Rhodes and Rhodes Econometrics, Inc. et al.*, United States District Court for the District of Oregon at Portland. Investment advisor implemented a Ponzi scheme to steal \$36 million from over 80 investors. A majority of these funds were used to purchase expensive property, collector cars, jewelry and pay for extravagant events and vacations.
- *Securities and Exchange Commission v. Global Online Direct, Inc. et al.*, United States District Court for the Northern District of Georgia at Atlanta. Initially appointed as a monitor to review the business activities of two farmers who were operating a successful distressed merchandise resale business, once onsite, it was quickly determined that the business engaged in no beneficial activities and was in fact a disguised Ponzi scheme. Defendants solicited nearly \$45 million dollars in unregistered investments from over 10,000 international investors. The case was promptly converted to a receivership, which identified and liquidated all remaining assets for the benefit of the victims.
- *Securities and Exchange Commission v. Sunwest Management, Inc. et al.*, United States District Court for the District of Oregon at Eugene. The SEC sought appointment of a receiver and turnaround professional after filing allegations that a large retirement care facility operator, with facilities in 34 states, was operating a Ponzi-like scheme. Our claims process identified over 12,000 investors and creditors and totalled \$1.2 billion in losses claimed. Ultimately, the company was placed into bankruptcy to shed unprofitable investments and then restructured and sold, leading many of the investors to receive more than 100 percent of their original investment.

Securities and Exchange Commission – Corporate Monitor Cases

- *Securities and Exchange Commission v. Alexander James Trabulse and Fahey Fund, L.P. et al.*, United States District Court for the Northern District of California at San Francisco. Hedge fund manager accused of using clients' money to pay for personal expenses. Over 100 clients had invested over \$10 million in a hedge fund. The fund manager provided an investment ledger, but it contained significant missing information and a full forensic accounting was required in addition to the wind down of the fund and return of remaining funds to the clients.

Federal Trade Commission – Receivership Cases

- *Federal Trade Commission v. Fortuna Alliance et al.*, United States District Court for the Western District of Washington at Seattle. An international case where the company operated an internet Ponzi scheme based in Bellingham, Washington. Taking immediate possession and control of business locations allowed us to intercept domestic and foreign cashier's checks worth millions of dollars. We uncovered and drilled multiple safe deposit boxes, from which we seized hundreds of thousands more in international money orders. Other actions included assisting the FTC and U.S. Attorney in seizing funds in Antigua and uncovering the purchase of an island offshore near Belize, part of the perpetrator's scheme to establish its own bank.
- *Federal Trade Commission v. Merchant Processing, Inc. et al.*, United States District Court for the District of Oregon at Portland. A credit card processing company was accused of unlawful trade practices by offering misleading and altered contracts. We took possession of the business, replaced all fraudulent contracts, wound down a dog racing operation, filed delinquent tax returns and ultimately sold the business, allowing us to make all victims whole and writing a multi-million dollars check to the U.S. Treasury.
- *Federal Trade Commission v. Merchant Consolidated Savings, Inc. et al.*, United States District Court for the Western District of Washington at Tacoma. A business offering credit card consolidation services was accused of charging large fees while failing to assist most consumers, leaving them in more debt than before working with the company. Ultimately, we shut down and liquidated the business and calculated the total loss for consumers of the business.
- *Federal Trade Commission v. Consumer Advocates Group Experts, LLC et al.*, United States District Court for the Central District of California at Los Angeles. A company was accused of predatory practices through its mortgage assistance programs. In practice, the business charged consumers large up-front fees and provided little to no assistance with their mortgages. Ultimately, we shut down and liquidated the business and calculated the total loss for consumers of the business.



State Court – Receivership Cases

- *Crystal Dawn Smith Rilee Foundation v. Elizabeth Rhode and Yamhill County v. Elizabeth Rhode, Yamill County Circuit Court for the State of Oregon at McMinnville.* The director of a non-profit that provides educational opportunities in Oregon was accused of embezzling at least \$50,000 from foundation accounts and inventory. A full forensic accounting and inventory was taken to determine the extent of the loss and to prevent further dissipation of the foundation assets.
- *City of West Linn v. Elma Magkamit, Marion County Circuit Court for the State of Oregon at Salem.* An employee of the city of West Linn, Oregon was accused of embezzling nearly \$2 million from city bank accounts. A full forensic accounting was undertaken to determine the extent of the loss and the method of concealment to prevent future losses.
- *Oregon Real Estate Department v. Crane Property Management, Oregon Department of Justice and Oregon Real Estate Division at Salem.* Forensic accounting, operations and sale of the business.
- *Maco Wood Products, Clackamas County Circuit Court for the State of Oregon at Oregon City.* Large scale furniture manufacturer and secured lender engaged us to wind down business operations, including runout of current order and inventory in 200,000 square foot manufacturing facility.
- *Molalla Chevron, Clackamas County Circuit Court for the State of Oregon at Oregon City.* Served as state court receiver during long-term partnership dispute. Our duties included restoration of business operations and reestablishing vendor and bank relationships.

Other Fiduciary Cases

- *In re South Star Oil Company, United States Bankruptcy Court for the District of Oregon at Eugene. Chapter 11 Operating Bankruptcy.* A local chain of 17 gas stations, convenience stores and related facilities filed bankruptcy, which required renegotiating leases, selling properties, fixing DEQ issues and working with vendors to ensure product availability before selling the properties.
- *In re WJ Hoyt et al., United States Bankruptcy Court for the District of Oregon at Portland. Bankruptcy.* Hoyt and Sons Ranch Properties was landlord to other related entities who operated a complex “phantom cow” scheme. The subject properties included nine ranches covering thousands of acres and numerous leases for additional grazing land. The terms of a landlord's lien require possession; in this case, the property subject to the lien was living cattle grazing on land spread throughout four states. Our solution was to mobilize a group of retirees in motor homes to physically stay with the cattle at locations in Oregon, Idaho,



Nevada, and California. In other actions, we systematically listed ranch properties for sale, corrected U.S. Forest Service and Bureau of Land Management lease issues to preserve lease rights for each ranch and negotiated a settlement. More than \$5 million was collected. In a 1999 indictment for mail fraud, bankruptcy fraud, and money laundering, the perpetrators were charged with selling thousands of adult female breeding cows that “they never had and which did not exist.” Our efforts as Trustee helped ensure that the principal architect of the scheme was sentenced to a lengthy term in federal prison.

- *Parati Pension Plan, United States Department of Justice.* Orphaned retirement plan that we were asked to reconcile and serve as trustee through winddown.
- *Estate of Del Castillo, Multnomah County Circuit Court for the State of Oregon at Portland. Personal Representative.* Served as personal representative in contentious estate liquidation involving a bus transportation company.



EXHIBIT B



Biography of Kathy Bazoian Phelps

Kathy Bazoian Phelps
Diamond McCarthy LLP
1999 Avenue of the Stars, Suite 1100
Los Angeles CA 90067
310-651-2997 (office)
310-488-4883 (cell)
kphelps@diamondmccarthy.com



Kathy Bazoian Phelps is a senior counsel at Diamond McCarthy LLP in the Los Angeles office and has been a lawyer since 1991. She practices in the area of federal equity receiverships, bankruptcy law and fraud litigation. She serves as receiver and has served as Chapter 11 trustee, and she represents both state court and federal receivers as well as bankruptcy trustees. She also represents litigants and parties in interest in bankruptcy and receivership cases and other insolvency proceedings. She is particularly knowledgeable about the administration of Ponzi scheme cases and has extensive litigation experience in claims arising in these types of cases and in tracing and recovering assets.

Kathy has lectured widely and written on bankruptcy and receivership matters, with a focus on Ponzi schemes. Her book entitled *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes*, co-authored with Hon. Steven Rhodes, has garnered national and international attention as the authoritative work on Ponzi scheme law.

In addition to her roles as lawyer, speaker and author, Kathy also serves as a mediator and is currently on the mediation and arbitration rosters for the Financial Industry Regulatory Authority, as well as the Bankruptcy Mediation Panel for the Central District of California and the Bankruptcy Mediation Panel for the District of Arizona.

Work Experience

- Diamond McCarthy LLP in Los Angeles California, 2013 to present.
- Danning, Gill, Diamond & Kollitz, LLP in Los Angeles California: 1991 – 2013.

Dispute Resolution/Mediation Experience

- Serves on roster of mediators for Financial Industry Regulatory Authority (FINRA)
- Serves on roster of arbitrators for FINRA
- Serves on panel of mediators for United States Bankruptcy Court, Central District of California
- Serves on panel of mediators for United States Bankruptcy Court, District of Arizona

Principal Publications

- *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes*. co-authored with Hon. Steven Rhodes (Ret.) (LexisNexis® 2012)
- *Fraud and Forensics: Piercing Through the Deception in a Commercial Fraud Case*, co-author (American Bankruptcy Institute 2015)
- *Ponzi-Proof Your Investments: An Investor's Guide to Avoiding Ponzi Schemes and Other Fraudulent Scams* (IRR Publishing 2013)
- *The Depths Of Deepening Insolvency: Damage Exposure For Officers, Directors and Others*, co-authored with Prof. Jack F. Williams (American Bankruptcy Institute 2013)
- Author of *The Ponzi Scheme Blog* at www.theponziscHEMEblog.com

Memberships and Positions

- American Bankruptcy Institute
 - Board of Directors, 2017 to present
 - Member, Publications Committee
 - Co-Chair of Commercial Fraud Committee, April 2015 to 2017
 - Special Task Director of Commercial Fraud Committee, 2013-2015
- American College of Bankruptcy
 - Fellow, Class of 2016
 - Co-chair of Ninth Circuit Distinguished Law Student Award Committee, 2017 to present
 - Member, Finance Committee, 2018 to present
- California Receivers Forum, Los Angeles/Orange County Chapter
 - Editor in Chief of *Receivership News*, 2012 to present
 - Secretary, 2010 - 2012
 - Board of Directors, 2010 to present
- National Association of Federal Equity Receivers
 - Board of Directors, 2012 – 2014, October 2016 to present
 - Co-Chair, Conference Committee, 2012 to present
 - Chair, Judicial Outreach Committee, 2016 to present
 - Member, Nominating Committee, 2016 to present
 - Member, Regional Dinner Committee, 2017 to present
- Member, International Chamber of Commerce FraudNet global network, 2012-2015, www.icc-fraudnet.org
- American Bar Association, White Collar Crime, Asset Forfeiture and Business Bankruptcy Subcommittee focused on parallel insolvency and criminal proceedings, 2012 to present

- National Association of Bankruptcy Trustees, Member
- Association of Insolvency and Restructuring Advisors, Member
- Armenian Bar Association, Member
- Los Angeles Bankruptcy Forum, Member
- Los Angeles County Bar Association, Member
- Beverly Hills Bar Association, Member

Recent Awards and Distinctions

- American College of Bankruptcy, Fellow, Inducted into the 27th Class, March 2016
- American Bankruptcy Institute, Committee Member of the Year, April 2016
- The International Who's Who of Asset Recovery Lawyers, 2013 - 2019
- Super Lawyers, 2007, 2009, 2010, 2013, 2014, 2015, 2016, 2017, 2018, 2019
- Martindale Hubble AV Preeminent Attorney 2016, 2017, 2018, 2019

Representative Cases

- Federal equity receiver requested by the Securities and Exchange Commission over SRA Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, NYPA Management Associates, LLC, and Solis Associates Fund.
- Counsel for federal equity receiver requested by the Securities and Exchange Commission in Capital Cove Bancorp, LLC, in which Kathy is lead counsel in unraveling the fraudulent scheme and liquidating the assets of the company and its affiliates.
- Counsel for federal equity receiver requested by the Securities and Exchange Commission in Secured Capital Investments, in which Kathy was lead counsel in advising the receiver on operational issues and assisting with the administration of assets, the sale of properties nationwide, and the claims process for the defrauded victims.
- Counsel for federal equity receiver requested by the Securities and Exchange Commission in Diversified Lending Group, Inc., in a \$250 million Ponzi scheme case, where Kathy supervised the winding down of the business, the reconstruction of missing and incomplete records, the analysis and tracing of investor funds, the liquidation and recovery on various investments made by the debtor, and the prosecution of litigation to recovery funds for the benefit of the investors and creditors.
- Counsel for federal equity receiver in First Time Credit Solutions, Inc. requested by the Federal Trade Commission, in a credit repair business engaged in allegedly fraudulent activity.

- Chapter 11 trustee of Sonya D. International, Inc., Hazlaha LLC and Sonya Dakar, where Kathy served as trustee and ran the operations of a skin care clinic, investigated the business operations and inter-company transfers, and facilitated a complex settlement which resulted in payment in full to creditors.
- Counsel for Chapter 11 trustee of Ray Gonzales, where Kathy worked creatively with the Debtor to structure a refinance of real properties and the Trustee was able to make a 100% payout to the creditors.
- Special litigation counsel for Chapter 7 trustee in Fox Ortega Enterprises, Inc. dba Premier Cru in prosecuting fraudulent transfer litigation on a contingency basis.
- Counsel for chapter 11 and chapter 7 trustees in a multitude of bankruptcy cases, handling:
 - operating going concern businesses
 - winding down various types of businesses
 - tracing funds in Ponzi and other fraudulent schemes
 - selling real estate
 - prosecuting fraudulent conveyance and preference litigation
 - addressing countless administrative issues arising in those cases
- Local litigation counsel for federal equity receiver requested by Commodities Futures Trading Commission in Hunter Wise Commodities LLC.
- Counsel for group of defrauded investors in alleged Ponzi scheme bankruptcy case of Vincent Singh and Perfect Financial Corp., defending them against the chapter 7 trustee's fraudulent transfer, preference and usury claims.
- Counsel for state court appointed receiver in Unicorp, Inc., a fraud litigation matter, reconstructing missing records and tracing over \$9 million of funds removed by the defendant prior to the receiver's appointment.

Bar Admissions

- State Bar California, 1991
- United States District Court, Central District of California, 1991
- United States District Court, Southern District of California, 2011
- United States District Court, Eastern District of California, 2011
- United States District Court, Northern District of California, 2012
- United States District Court, Western District of Michigan, 2010

Educational Background

Pomona College (B.A. 1988)

University of California at Los Angeles (J.D. 1991)

Interests

Kathy's personal interests and accomplishments include extensive travel and the study of the Chinese Mandarin language.

EXHIBIT C

THOMAS SEAMAN COMPANY

3 PARK PLAZA, SUITE 550
IRVINE, CA 92614

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FACSIMILE (949) 222-0661
E mail tom@thomasseaman.com

THOMAS A. SEAMAN, CFA
PRINCIPAL

CONFIDENTIAL

September 24, 2019

Susan Gradman
Chief Trial Attorney / Division of Enforcement
US Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, IL 60661

Re: Proposal to act as receiver for Denari Capital, LLC its subsidiaries and affiliates,
and entities controlled by Travis Capson and Arnab Sarkar (the "Receivership Entities")

Dear Ms. Gradman:

Thank you for your Request for Proposal to act as receiver for the above-referenced Defendants. I understand that the Commodity Futures Trading Commission ("CFTC" or the "Commission") will seek an order for Preliminary Injunction and appointment of a receiver for a commodity pool allegedly conducting its futures trading in a fraudulent manner. If I am nominated and appointed to serve, my team and I are available to act as contemplated by the Commission in mid to late October.

I believe I have the skills to serve as receiver in this matter. Attached as Exhibit A, please find my *Curriculum Vitae* which more fully sets forth my qualifications and experience to serve as receiver. I have served as receiver in well over 200 matters since 1995, including eight SEC and four FTC federal equity receiverships in investment fraud and consumer fraud enforcement actions. A list and description of these assignments is provided in Exhibit B. I am a Chartered Financial Analyst ("CFA") and am able to quickly assimilate and analyze financial data and business records for the purposes of marshalling assets, understanding the financial behavior of companies and for identifying potential sources of recovery. As a CFA I am familiar with financial instruments and markets.

Susan Gradman, Chief Counsel
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SCOPE OF WORK (Proposed)

- Take immediate possession of and secure Company offices.
- Immediately cease all activities that defraud investors.
- Immediately eliminate external access to Company computers and ensure that a forensically sound unalterable image of all data, known as a bit-stream back-up, is taken.
- Replicate, or mirror image, the Company's and the other defendants' computers. In the past, this process has proven extremely helpful to the Plaintiff's prosecution of the underlying enforcement action as well as any associated criminal action.
- Determine if the business, or any portion of the business, can be operated lawfully and profitably.
- For those that can be operated lawfully and profitably, manage and operate business operations.
- Identify and seize bank accounts.
- Investigate existence and use of affiliated entities and seek authority to add them to receivership estate if appropriate.
- Identify and take control of real property.
- Identify and seize personal property.
- Enforce asset freeze, if applicable.
- Divert or otherwise control mail.
- Quickly assimilate, review, analyze, reach conclusions, and report on the nature and status of the flow of funds of the Company's operation in order to report to both the Court and the CFTC. Prepare a 10-Day Receiver's Report reflecting Receiver's initial findings in connection with the Preliminary Injunction hearing.
- Enforce the Preliminary Injunction to the extent of the authority granted by the order appointing Receiver.
- Identify creditors and prepare Schedule of Creditors in accordance with local rules.
- File and/or record the appointment order pursuant to 28 U.S.C. § 754 in jurisdictions where assets are located.
- Prepare a forensic accounting to identify assets, recipients of ill-gotten gains, and other potential sources of recovery, if deemed advisable and ordered by the Court. We believe our ability to perform this function without hiring an outside accounting firm is efficient and conserves the resources of the estate.
- Evaluate and analyze the Company's assets for purposes of liquidating the Company's interests for the benefit of victims.
- Examine the feasibility of litigation to recover damages including possible claims against attorneys, accountants, officers, and directors with a fiduciary duty to the Company and others who may have contributed to the deception of investors.
- Investor communications:

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- Establish telephone line and voice mail system to handle incoming investor inquiries.
- Establish and maintain web-site for efficient mass communications with investors.
- Create and maintain database of investors and creditors.
- Assist CFTC with claims process and plan of distribution if requested.
- Provide regular periodic accounting reports as dictated by Local Court Rules.
- Provide financial analysis to the CFTC and others as appropriate in the underlying litigation.
- Administer filing of tax returns, if necessary.
- Wind up the affairs of the enterprise as needed.

Our blended hourly rate will not exceed \$220 for the duration of the receivership. My current hourly rate is \$425 per hour. Thomas Seaman Company will assist me in the execution of my duties at rates ranging from \$75 to \$235 per hour. I will delegate work to the lowest priced person capable of performing the task required. In this manner I will be able to achieve a weighted average hourly or blended rate significantly less than \$400 per hour, most likely in the range of \$190 - \$200 per hour. We will agree to cap the blended hourly rate at \$220 per hour for the duration of the assignment. Our inception-to-date blended hourly rate for our most recent FTC matter (Digital Altitude) was \$200. Specific hourly rates are as follows:

Thomas A. Seaman, CFA	Receiver	\$425
Alison Juroe	Senior Analyst	\$235
Darren Clevenger	Business Management	\$185
Tim McDonnell	Business Analyst	\$175
Matthew Flahive	Accounting and banking	\$125
Kimberly Wolfe	Paralegal	\$110
Bonnie Carver	Administration	\$75

I believe our rates and the cap on the blended hourly rate are competitive. Additional provisions concerning fees are as follows:

- Billing standards meet or exceed the Securities and Exchange Commission's Receiver Billing Instructions, SFAR, as well as United States Trustee Guidelines.
- Detailed descriptions in tenth of the hour increments.
- All bills subject to fee application and Court approval.
- No reimbursement for routine photocopying, facsimile, incidental postage, or other expenses of the receiver. Costs directly attributable to the administration of the Company and the estate are paid directly from the estate in accordance with the Order Appointing Receiver.
- Travel time is billed at half of the hourly rates. The Receiver will limit his hourly rate to \$150 per hour for travel time.

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PROFESSIONALS:

In this matter I would likely require legal representation. I would retain the Allen, Matkins law firm in Los Angeles. Allen, Matkins has represented me in prior regulatory matters with good results and is well qualified to advise me as receiver in federal enforcement actions. I will seek a proposal from Allen Matkins proposal at the appropriate time.

I may be obligated to file tax returns, investor K-1s, and to fulfill other tax related requirements. I may also require legal advice in the taxation area and would retain Crowe Horwath to assist me with tax issues requiring legal advice. I will obtain a proposal from Crowe Horwath if and when it is determined that I require tax advice and will ensure that they are able to certify that they have no conflicts prior to engaging them.

CONFLICTS:

I certify that I, Thomas Seaman Company, and any of the professionals I propose to retain, or any professional I may retain in the future, do not have any conflicts of interest with any of the proposed defendants and will ensure that no conflicts continue to exist or will rise. Kindly provide a blank Conflicts of Interest and Background Information Form and I will execute accordingly.

If you require additional information, kindly give me a call. My direct line is (949) 265-8403. You may also wish to visit our website at www.thomasseaman.com for additional information and relevant experience. In the meantime, thank you very much for considering us for this assignment.

Yours very truly,

THOMAS SEAMAN COMPANY



Thomas A. Seaman, CFA
Judicial Receiver

Attachments:

- Exhibit A - *Curricula Vitae*
- Exhibit B - List of Regulatory Assignments

Exhibit A

CURRICULUM VITAE
THOMAS A. SEAMAN, CFA

3 PARK PLAZA, SUITE 550
IRVINE, CA 92614
TELEPHONE (949) 222-0551
E MAIL tom@thomasseaman.com

THOMAS A. SEAMAN IS PRINCIPAL AND SOLE SHAREHOLDER OF THOMAS SEAMAN COMPANY, A CALIFORNIA CORPORATION. THOMAS SEAMAN COMPANY PROVIDES BUSINESS MANAGEMENT SERVICES IN CIVIL MATTERS WHICH REQUIRE A NEUTRAL THIRD PARTY TO SERVE AS RECEIVER, REFEREE, PROVISIONAL DIRECTOR, SPECIAL MASTER, OR ADMINISTRATOR. THOMAS SEAMAN COMPANY WAS FORMED IN 1996 AND HAS THE CAPABILITY TO MANAGE AND ADMINISTER A BROAD RANGE OF ASSET CLASSES INCLUDING OPERATING COMPANIES, FINANCIAL ASSETS, REAL PROPERTY AND CONSTRUCTION PROJECTS.

MR. SEAMAN HAS 40 YEARS OF BUSINESS EXPERIENCE BOTH IN PRIVATE INDUSTRY AND AS A COURT-APPOINTED FIDUCIARY. MR. SEAMAN IS A FORMER CFO AND CONTROLLER, AND IS A CHARTERED FINANCIAL ANALYST (CFA). MR. SEAMAN ENTERED THE INSOLVENCY ARENA IN 1989 AND HAS SERVED AS RECEIVER IN APPROXIMATELY 225 MATTERS SINCE FORMATION OF THOMAS SEAMAN COMPANY. HE HAS OPERATED DISTRESSED BUSINESSES THAT WERE THE SUBJECT OF A STATE COURT RECEIVERSHIP, CHAPTER 11 BANKRUPTCY ESTATE, FEDERAL REGULATORY ACTION, PARTNERSHIP DISPUTE, PARTITION ACTION, DISSOLUTION PROCEEDING, PROBATE MATTER, OR IN OTHER LITIGATION REQUIRING A FIDUCIARY. THOMAS SEAMAN COMPANY HAS OPERATED COMPANIES IN NUMEROUS INDUSTRIES INCLUDING MANUFACTURING, DISTRIBUTION, CONSTRUCTION, HEALTHCARE, ASSISTED LIVING, SERVICE, HOSPITALITY AND OTHERS. MR. SEAMAN IS EXPERIENCED AT SEIZING ASSETS, STABILIZING OPERATIONS, AND FORMULATING & IMPLEMENTING BUSINESS SOLUTIONS.

MR. SEAMAN'S STRONG ACCOUNTING SKILLS AND EXPERIENCE AS A FINANCIAL ANALYST HAVE BEEN BENEFICIAL IN LITIGATION REQUIRING RECONSTRUCTION OF BOOKS AND RECORDS. THESE SKILLS HAVE BEEN BENEFICIAL IN FEDERAL EQUITY APPOINTMENTS IN WHICH THE RECEIVER IS REQUIRED TO MAKE A DETAILED REPORT OF THE FINANCIAL CONDITION OF THE DEFENDANT WITHIN TEN DAYS OF THE APPOINTMENT AND TO IDENTIFY SOURCES OF RECOVERY. MR. SEAMAN'S FINANCIAL SKILLS HAVE ALSO BEEN EMPLOYED BY THE COURT AND LITIGANTS TO SUPPORT THE UNDERLYING LITIGATION AND HAVE RESULTED IN THE GRANTING OF MOTIONS FOR SUMMARY JUDGMENT AND CRIMINAL INDICTMENTS. IN MATTERS WHERE THE BUSINESS IS VIABLE AND OPERATIONS ARE CONTINUED, MR. SEAMAN IS ABLE TO EXERT FINANCIAL CONTROL OVER AND OPERATE THE ENTITY.

MR. SEAMAN HAS EXTENSIVE EXPERIENCE IN REAL ESTATE AND RENTS & PROFITS RECEIVERSHIPS WHICH INCLUDES RESOLVING PROBLEMS WITH COMPLETION, MARKETING, LEASING, MANAGEMENT, PHYSICAL PLANT, ENVIRONMENTAL, SEISMIC, EMINENT DOMAIN, AND OTHER ISSUES AFFECTING REAL ESTATE. MR. SEAMAN IS EXPERIENCED IN VIRTUALLY ALL PRODUCT TYPES INCLUDING COMMERCIAL, RETAIL, MULTI-FAMILY, SENIOR LIVING, CONDOMINIUM CONVERSIONS, AND RESIDENTIAL REAL PROPERTY. MR. SEAMAN HAS BEEN CALLED UPON TO MANAGE THE CONCLUSION OF CONSTRUCTION PROJECTS AND HAS MARKETED AND SOLD COUNTLESS REAL ESTATE ASSETS. IN ASSISTED LIVING MATTERS, MR. SEAMAN HAS SERVED AS RECEIVER FOR 26 COMMUNITIES OVER THE LAST DECADE AND RESTORED STABILITY AND PROFITABILITY TO TROUBLED COMMUNITIES.

THOMAS SEAMAN COMPANY'S CLIENTS INCLUDE BANKS, PROMINENT FINANCIAL INSTITUTIONS, GOVERNMENTAL AGENCIES INCLUDING THE SECURITIES AND EXCHANGE COMMISSION, THE FEDERAL TRADE COMMISSION AND THE OFFICE OF THE UNITED STATES ATTORNEY, LIFE INSURANCE COMPANIES, AND LAW FIRMS, AMONG OTHERS.

MR. SEAMAN EARNED A BACHELOR OF SCIENCE DEGREE IN FINANCE FROM THE UNIVERSITY OF ILLINOIS IN 1979, AND WAS AWARDED A CFA CHARTER IN 1993. MR. SEAMAN'S FIRM IS LICENSED BY THE STATE OF CALIFORNIA AS A REGISTERED INVESTMENT ADVISER AND AS A CALIFORNIA REAL ESTATE BROKER. HE IS A MEMBER OF THE INSTITUTE OF CHARTERED FINANCIAL ANALYSTS, THE LOS ANGELES SOCIETY OF FINANCIAL ANALYSTS, THE CALIFORNIA RECEIVER'S FORUM, AND THE ORANGE COUNTY BAR ASSOCIATION, AS A NON-LAWYER AND IS A FOUNDING MEMBER OF THE NATIONAL ASSOCIATION OF FEDERAL EQUITY RECEIVERS.

Exhibit B

REGULATORY RECEIVERSHIPS

Securities Fraud

Securities and Exchange Commission vs. PDC Capital, et al

Currently serving as Receiver for scheme involving investors in the USCIS EB-5 immigrant investor program that collectively invested \$75,000,000 with the expectation of obtaining permanent residency in the United States. Defendants mis-appropriated EB-5 investors' funds. Management and disposition of senior living real estate projects. Monetized distressed and over-encumbered assets. Conducted forensic accounting. Third party litigation, including fraudulent transfers and malpractice litigation. Claims procedure in process.

Matter website www.pdcreceiver.com

Securities and Exchange Commission vs. USFIA, Inc.

Currently serve as Receiver for a Defendant engaged in a fraud based on a purported crypto-currency based on the value of amber, a material of little to no intrinsic value. Conducted forensic accounting. Defendants raised over \$200,000,000. Gross recoveries to date are approximately \$70,000,000 arising from real estate accumulated by the Defendant with investor funds and recovery of fraudulent transfers. Final Judgment obtained against defendants. Significant recovery for victims anticipated.

Matter website www.usfiareceiver.com

Securities and Exchange Commission vs. Total Wealth Management, et al

Receiver for a registered investment adviser involving fraud and breach of fiduciary duty.

Matter website www.totalwealthreceiver.com

Securities and Exchange Commission vs. Small Business Capital, et al

Receiver for a lender licensed by the Small Business Administration ("SBA") to make and service SBA guaranteed loans. The Receiver managed and serviced a loan portfolio of SBA 7-A and 504 loans, and non-SBA loans. The Receiver conducted a forensic accounting. The underlying litigation was contested by the defendant, who is currently incarcerated. The Receiver monetized all problem loans, sold the SBA 504 program loans for a 110% of par, and sold 7-A loans for 90% of par. Receiver distributed \$35 million to investor/victims, or 86% of their losses.

Matter website www.sbcapitalreceiver.com

Securities and Exchange Commission vs. Medical Capital Holdings, Inc.

Federal Equity Receiver in a securities fraud enforcement action against a lender purportedly investing in medical accounts receivable and other lending activities. In excess of \$1.7 billion was raised from note holder/victims who had unpaid principal in excess of \$1 billion. The case was the largest receivership in the Ninth Circuit initiated in 2009. The Receiver recovered over \$200,000,000 and together with actions for damages supported by the Receiver, over \$400,000,000 was returned to investors. The case involved a multiplicity of duties including asset sales, debt collection, debt restructuring, operating businesses, forensic accounting, supporting criminal prosecutions, prosecuting actions for recovery of ill-gotten gains, prosecuting actions for breach of fiduciary duty, prosecuting actions for legal malpractice, among others. The Receiver conducted a forensic accounting which analyzed over \$20 billion in transactions involving 258 bank accounts over a 69-month period and concluded the company operated a Ponzi-like scheme.

Matter website www.medicalcapitalreceivership.com

Securities and Exchange Commission/Commodity Futures Trading Commission vs. Safevest

Federal Equity Receiver in securities fraud enforcement action involving a Ponzi-scheme purportedly using futures trading.

Securities and Exchange Commission vs. Carolina Development

Offering fraud case for a purported real estate development company. Significant misrepresentation of assets. Uncooperative defendants. Volatile investor base. Liquidated land holdings in excess of \$40 million. Several substantial interesting legal issues. Over thirty disgorgement actions filed. Filed suit against four separate attorneys for malpractice or other breaches of fiduciary duty. SEC won Motion for Summary Judgment and obtained judgment for \$29 million against defendant largely on the basis of Receiver's investigation and forensic accounting. Assisted with development of Plan of Distribution and expect to distribute approximately \$10 million to investor victims. Supported governmental agencies in criminal actions, defendants indicted and incarcerated.

Matter website www.carolinareceivership.com

Securities and Exchange Commission vs. Nathanson et al

\$80 million securities fraud case with 2,600 investor victims. Ponzi scheme combined with a legitimate golf club manufacturer. Performed forensic accounting identifying recipients of ill-gotten gains; highly complex accounting, 20 bank accounts at 6 banks for 15 corporate entities, extensive use of kiting, etc. Successful prosecution of professionals. Auction. Seized real property and personal property assets. Criminal referral, defendant indicted and incarcerated.

Consumer Fraud

Federal Trade Commission vs. Digital Altitude

Receiver for an online company that purports to sell a sales training program enabling customers to create online businesses and earn \$100,000 in 90 days. Only one consumer out of 185,000 made \$100,000, and it took 11 months. Aggrieved consumers spent \$60,000,000 and received commissions of \$6,000,000. Called as witness at Preliminary Injunction hearing by Defendants. The Court granted a Preliminary Injunction and confirmed Permanent Receiver.

Website: www.digitalaltitudereceiver.com

Federal Trade Commission vs. Dayton Productions

Federal Equity Receiver for a company committing consumer fraud in a sweepstakes scheme. Defendant sentenced to 87 months.

Federal Trade Commission vs. American Credit Crunchers, LLC et al

Federal Equity Receiver in an alleged consumer fraud case wherein the company purported to collect payday loan debts. The Receiver's primary function in this matter was to cease all fraudulent and activities, wind down the affairs of the company, mitigate losses and recover funds for restitution.

Federal Trade Commission vs. American Tax Relief, et al

Served as Federal Equity Receiver for a company operating tax relief services that collected fees in advance from consumers based on unreasonable representations of prospects for success to consumers that did not qualify for abatement of taxes. The Receiver's primary function was to cease all fraudulent and activities, wind down the affairs of the company, mitigate consumer losses and recover funds for restitution. The Receiver administered the relatively fee consumer files that had the prospect for obtaining tax relief and sold the real property assets of the Defendant that had been procured with ill-gotten gains.

Other

People of State of California vs. Theodore Swain

Receiver appointed to identify, seize, and liquidate assets for the benefit of investor-victims and distribute proceeds.

United States v. Petersen

Seized commercial real estate asset of criminal defendant. Collected rents, operated property, negotiated lease, monetized asset after successful overbid process increased the

price 16%. Paid proceeds of receivership to the United States in partial satisfaction of criminal restitution debt in a bank fraud matter.

United States vs. Boris Shpirt

Managed and sold criminal defendant's personal residence for \$12,104,260 in full satisfaction of Government's \$6 million restitution judgment, IRS liens, and mortgage debt leaving a surplus for the defendant. Prior to sale, property was leased to high ranking foreign diplomat of a gulf state country.