

EXHIBIT D
TESTIMONY EXCEPERT TRAVIS
CAPSON

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UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURE TRADING COMMISSION

:
In the Matter of: :
:
Certain Persons and :
Entities Engaged in Fraud : CONFIDENTIAL
with Respect to Pooled :
Investments and/or Managed :
Accounts :
-----:

Tuesday, September 24, 2019

Oral Deposition of TRAVIS CAPSON,
taken at the Offices of the United States
Commodities Futures Trading Commission, 1155
21st Street NW, 9th Floor, Washington, D.C,
beginning at 9:07 a.m., before Ryan K. Black, a
Registered Professional Reporter, Certified
Livenote Reporter and Notary Public in and for
the District of Columbia.

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UNITED STATES
COMMODITIES FUTURES TRADING COMMISSION
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1 Whereupon --

2 TRAVIS CAPSON,
3 called to testify, having been first duly sworn
4 or affirmed, was examined and testified as
5 follows:

6 EXAMINATION

7 BY MR. METZGER:

8 Q. Good morning, Mr. Capson. My name
9 is Carlin Metzger, and I'm an attorney with the
10 Division of the Enforcement of the United States
11 Commodities Futures Trading Commission. Here
12 with me today by video is Susan Gradman, also
13 an attorney in the Enforcement Division of the
14 Commodity Futures Trading Commission. We are
15 officers of the Commission for the purposes of
16 this proceeding today.

17 I've shown you a copy of the
18 formal order authorizing this investigation in
19 advance of the testimony today. Did you have an
20 opportunity to review that document and discuss
21 it with your counsel?

22 A. Yes.

23 (Capson Exhibit No. 1, the subpoena
24 calling for Mr. Capson's testimony, was marked.)

25 BY MR. METZGER:

1 Q. I have marked as Exhibit Number 1 the
2 subpoena calling for your testimony here today.
3 Have you had an opportunity to review that
4 document and discuss any questions you have with
5 your counsel?

6 A. Yes.

7 (Capson Exhibit No. 2, the
8 Commission's statement of persons providing
9 information about themselves, was marked.)
10 BY MR. METZGER:

11 Q. Also, I have marked as Exhibit
12 Number 2 the Commission's statement of persons
13 providing information about themselves to the
14 Commission. Have you had an opportunity to
15 review that document in advance of your
16 testimony today?

17 A. Yes.

18 MR. METZGER: Will counsel introduce
19 -- will you introduce yourself for the record,
20 as well?

21 MS. DAVIS: Sure.

22 Elizabeth Davis. I represent Denari
23 Capital and Travis Capson.

24 MR. METZGER: Thank you.

25 BY MR. METZGER:

1 Q. This is an investigation by the United
2 States Commodity Futures Trading Commission to
3 determine whether there have been violations
4 of certain provisions of the Commodity Exchange
5 Act or Commission Regulations.

6 This investigation is, as I had
7 mentioned, pursuant to a formal order in the
8 matter of, and I should read it correctly
9 just so I have that right, Certain Persons and
10 Entities Engaged in Fraud with Respect to Pooled
11 Investment or Managed Accounts; however, the
12 facts developed in this investigation might
13 constitute violations of other federal or state
14 civil or criminal laws.

15 Do you understand that?

16 A. Yes.

17 Q. All right. Mr. Capson, can you
18 tell us what your current role is with Denari
19 Capital?

20 A. Sure. I'm currently managing partner,
21 along with Arnie Sarkar.

22 Q. Describe Denari Capital. How would
23 you describe it?

24 A. We are a firm that raised money from
25 friends and family to do real estate projects

1 and some other small business development deals,
2 as well as some foreign currency exchange.

3 Q. And when you say foreign currency
4 exchange, can you tell us what you mean by that?

5 A. Sure. FX trading. Spot Forex.

6 Q. How long have you worked for Denari
7 Capital?

8 A. We started Denari in 2012.

9 Q. So between 2012 and the present?

10 A. Yes.

11 Q. Were yourself and Mr. Sarkar the
12 managing members between 2012 and the present?

13 A. Yes.

14 Q. So from the inception?

15 A. Yes.

16 Q. Has your role changed over time, or
17 has it remained consistent?

18 A. It's remained the same.

19 Q. Before we get a little bit more into
20 the details of Denari, I'd like to walk through
21 just a little bit of your educational and work
22 experience. Can you give me just a quick
23 summary of your educational background, college
24 level and above, if any?

25 A. Sure. After high school I attended

1 A. Yeah. Life insurance license, as well
2 as securities licenses, Series 6, Series 63 and
3 Series 7.

4 Q. Did Northwestern Mutual provide you
5 with any training during the course of your job
6 there?

7 A. Yes.

8 Q. Broadly speaking, --

9 A. Yeah.

10 Q. -- can you give us a sense of the
11 types of training that you received while you
12 were at Northwestern Mutual?

13 A. Sure. Yeah, I mean, their whole
14 compliance, I think we had continuing education,
15 you know, pretty consistently there that
16 included, you know, all sorts of insurance, kind
17 of understanding the insurance market, as well
18 as knowing your customer.

19 Q. You mentioned that life insurance
20 was a focus, or maybe the focus, but you also
21 mentioned retirement plans as part of the job.
22 Did I catch that right?

23 A. Yes.

24 Q. In that area, can you give us a sense
25 of the type of work you did?

1 A. Sure. Most of that work was helping
2 clients select -- kind of do a risk profile on
3 the client based on their age, and then putting
4 them into the appropriate mutual funds that were
5 recommended by Northwestern.

6 Q. And in the client accounts at
7 Northwestern Mutual, were the clients able to
8 purchase mutual fund shares, then, that would be
9 in their Northwestern Mutual account?

10 A. Yes.

11 Q. All right. So you remained in that
12 role until about 2012?

13 A. Mm-hmm. Yes.

14 Q. And in 2012 you started Denari?

15 A. Yes.

16 Q. Where is Denari incorporated?

17 A. The State of California.

18 Q. Were you involved in the incorporation
19 of Denari?

20 A. Yes.

21 Q. What's Denari's mailing address?

22 A. 3100 Oak Road, Walnut Creek,
23 California 94597.

24 MS. DAVIS: Current or past address?

25 THE WITNESS: Still. Past and

1 current.

2 BY MR. METZGER:

3 Q. Where are you currently based?

4 A. Where do I live?

5 Q. That would be fine. Where do you
6 live?

7 A. I live in Southern Utah.

8 Q. What's your --

9 A. In a town called Kanab.

10 Q. What is your address?

11 A. [REDACTED].

12 Q. In Kanab, Utah?

13 A. Yeah. And that zip is [REDACTED].

14 Q. Where do you currently work from?

15 A. Mostly from home. Recently, in June
16 of this year, I leased an office there in town
17 in Kanab, just a single space above a credit
18 union.

19 Q. What's the office address of your
20 leased space?

21 A. I believe it's 190 West Center Street.

22 Q. Also in Kanab?

23 A. Yes.

24 Q. Where is Mr. Sarkar based?

25 A. In California.

1 Q. Now, the mailing address, is there a
2 physical office at that mailing address?

3 A. Yes.

4 Q. Do you know whether Mr. Sarkar works
5 there?

6 A. What do you mean by work there?

7 Q. Does he work out of the office where
8 the -- in Walnut Creek?

9 A. I don't think he goes there very
10 often. I don't know exactly the -- his -- you
11 know, the timing that he goes there, but we were
12 subleasing an office there from another company
13 and still have a relationship with the office
14 manager, and so we still have mail sent there
15 and can pick up mail from that location.

16 Q. Okay. Besides yourself and
17 Mr. Sarkar, are there any other employees of
18 Denari currently?

19 A. No.

20 Q. Have there been other employees in the
21 past?

22 A. Yes.

23 Q. Who else in the past has been an
24 employee of Denari?

25 A. In 2012 when we began Denari, we had a

1 third partner named Bradley Badger.

2 Q. For how long was Mr. Badger with
3 Denari?

4 A. I believe a little over a year.

5 Q. And did he resign from the company?

6 A. Yes.

7 Q. So, approximately, a year or so after
8 he began, he resigned from the company --

9 A. Yes.

10 Q. -- in 2013 or 2014?

11 A. Yeah.

12 Q. Other than Mr. B [REDACTED], have there
13 been any other employees besides yourself and
14 Mr. Sarkar?

15 A. No. There was a contemplated
16 partnership, someone that came in after Brad
17 resigned to potentially take his place, kind of
18 on a trial basis, but we never ended up -- he
19 never became an employee or a partner in Denari
20 officially.

21 Q. What was Mr. B [REDACTED] role while he
22 was there early on in 2012 or '13?

23 A. Similar to Arnie and myself, a
24 managing, member and the idea was he worked with
25 us also at Northwestern Mutual so we all moved

1 from there at the same time. And it was to, you
2 know, prospect clients and get involved in the
3 real estate and other deals that we had.

4 Q. Was Mr. B [REDACTED] also an investor with
5 Denari?

6 A. Yes.

7 Q. Was he the initial investor?

8 A. Yes.

9 Q. Do you know how much he initially
10 invested with Denari?

11 A. Yes.

12 Q. How much?

13 A. 300,000.

14 Q. Was any of that 300,000 used by Denari
15 in connection with Forex trading?

16 A. Yes.

17 Q. Do you know what Forex trading is?

18 A. Yes.

19 Q. What's your understanding of Forex
20 trading, if I can use that term? That's what
21 I'm trying to figure out, is that an okay term
22 to used. Do you understand it?

23 A. Yes.

24 Q. Okay. Was any of the 300,000, and you
25 may have answered this, my apologies, but was

1 any of the 300,000 invested by Mr. B [REDACTED] used
2 for Forex trading?

3 A. Yes.

4 Q. Into what account was that 300,000
5 placed?

6 A. We established a trading account with
7 a broker, FXCM, 270,000 of that 300,000 went
8 into that account.

9 Q. Did you open the account with FXCM?

10 A. Yes.

11 Q. And the account was opened under the
12 name of Denari?

13 A. Yes.

14 Q. When was that account opened?

15 A. 2012.

16 Q. Was that the first Forex account
17 Denari held in its own name?

18 A. Yes.

19 Q. Has Denari held any other Forex
20 trading accounts?

21 A. That same account has been transferred
22 to other brokers, but Denari has not set up any
23 other current FX accounts.

24 Q. Okay. So the account of Denari -- the
25 Forex account of Denari was held at FXCM from

1 2012 until, approximately, when before it was
2 transferred?

3 A. I don't remember that date exactly.
4 My guess would be early 2017.

5 Q. To what firm was the Forex account of
6 Denari transferred in approximately 2017?

7 A. To Gain Capital.

8 Q. Does Denari currently have an account
9 at Gain Capital?

10 A. Yes.

11 Q. So other than the account at FXCM that
12 was subsequently transferred to Gain, has Denari
13 had any other Forex trading accounts?

14 A. No.

15 Q. Does Denari have a bank account?

16 A. Yes.

17 Q. Where is Denari's bank account?

18 A. It's currently at Wells Fargo Bank.

19 Q. Does Denari have bank accounts at any
20 other bank?

21 A. No. Not currently.

22 Q. And who are the signatories on the
23 Denari bank account currently?

24 A. Myself and Mr. Sarkar.

25 Q. At what banks has Denari held bank

1 accounts in the past?

2 A. When we began Denari in 2012, we
3 opened an account at Mechanic's Bank, and then I
4 believe in January of 2013 we transferred to
5 Bank of the West. And then in October of 2013
6 we transferred to Wells Fargo and have been
7 there since.

8 Q. Have you and Mr. Sarkar been
9 signatories on all of the bank accounts of
10 Denari?

11 A. Yes.

12 Q. Who has access to Denari's Forex
13 account at Gain?

14 A. Myself and Mr. Sarkar.

15 Q. So you both have the ability to access
16 the Gain Forex trading account held by Denari?

17 A. Yes.

18 Q. Can you give us a quick overview
19 of the roles and responsibilities of yourself
20 and Mr. Sarkar at Gain -- or at -- at Denari,
21 rather, to help me understand whether you guys
22 have any different focuses at the firm?

23 A. Sure. So Arnie, prior to him working
24 at Northwestern Mutual, did real estate
25 development, and so he focuses on the real

1 estate, as well as, kind of, the client -- any
2 client interactions, prospecting, that sort of
3 thing. I tend to focus more on the FX trading,
4 the other businesses that we have invested in.

5 Q. Does Denari currently have any real
6 estate investments?

7 A. Not directly.

8 Q. And what do you mean by that?

9 A. We -- we helped -- we are an investor
10 in another company, and we helped them purchase
11 a storage yard in Sparks, Nevada, and we have a
12 lien against that property.

13 Q. Denari does?

14 A. Denari does.

15 Q. And what's the name of that other
16 company?

17 A. The company that owns the property is
18 United Milling and Refining Corp.

19 Q. So the real estate in that case is
20 held by United Milling and Refining Corp?

21 A. Yes.

22 Q. And Denari is an investor in United
23 Milling?

24 A. Yes.

25 Q. So currently Denari does not have any

1 A. Bank of America. And when I moved to
2 Utah two years ago, I opened an account at
3 Zion's Bank.

4 Q. Any other bank accounts?

5 A. No.

6 Q. And the Bank of America and Zion's
7 Bank account, those are still open?

8 A. Yes.

9 Q. Are you and Mr. Sarkar both authorized
10 traders on the Forex account at Gain?

11 A. I believe so.

12 Q. Does Mr. Sarkar -- has he ever placed
13 any trades in that account?

14 A. No.

15 Q. I also believe you mentioned that
16 there are other businesses that you -- that
17 Denari invested in. I know you mentioned the
18 United Milling and Refining Company, the lien
19 that you say you had on the storage property
20 through that company. What other investments
21 have you or Denari made?

22 A. What other companies?

23 Q. Yes.

24 A. So we have --

25 Q. Well, yeah, you could start with that.

1 A. We have interest in a company called
2 National Gold Mining Corp --

3 Q. Okay.

4 A. -- and United Resources Holdings
5 Group, and Dun Glen Mining Corp.

6 Q. I'm sorry. Say the last one again
7 please.

8 A. D [REDACTED] G [REDACTED] D [REDACTED], G [REDACTED], Mining
9 Corporation.

10 Q. Okay. And regarding the interest in
11 National Gold Mining Corp, can you explain that?
12 Like, when did you purchase the interest, what
13 funds went in there, what's the status and so
14 forth?

15 A. Sure. We first purchased into
16 National in 2013 and are shareholders in that.
17 We also did some negotiations with -- on that
18 -- for that company, there were two partners
19 that kind of split. We did some negotiating and
20 were given some shares for that work.

21 Q. Okay. So what's the -- what's -- how
22 many shares do you -- this is in the name of
23 Denari or your personal name?

24 A. There are both. There are both.

25 Q. Okay. So what -- how many shares are

1 in Denari's name?

2 A. Currently, there are about 77,500 in
3 the name of Denari.

4 Q. And how many in your name?

5 A. 80,000.

6 Q. And what about in Mr. Sarkar's name.
7 How many in his name?

8 A. There are currently no shares in
9 Mr. Sarkar's name.

10 Q. Okay. And what's -- and what funds
11 did you use to purchase the shares in Denari's
12 name and in your name?

13 A. The shares in the name of Denari were
14 purchased with funds from Denari Capital.

15 Q. Okay. From the bank?

16 A. Yes.

17 Q. And you withdrew the funds from the
18 bank account at Wells Fargo?

19 A. Yes.

20 Q. And what about the 80,000 funds in
21 your name, what funds were used to purchase
22 those shares?

23 A. So those shares originally came from
24 the shares that we were awarded for the work
25 that we did. But there's also -- I just

1 remembered there's another entity called Sierra
2 Gold LLC, and that entity owns 400,000 shares of
3 National. And that entity was set up by Denari
4 Capital, and Denari --

5 Q. I'm sorry. Go ahead.

6 A. -- Denari Capital currently owns 87
7 percent of that entity.

8 Q. Going back to the 80,000 shares in
9 your name, you were -- you said -- I just want
10 to make sure I understand, you were awarded
11 80,000 shares in your name for what?

12 A. We helped with negotiating the
13 -- there was two partners of National. They
14 each owned about 50 percent of the company, and
15 we helped to negotiate that.

16 Q. You helped to negotiate their interest
17 in the company or their --

18 A. To help one of the partners was -- was
19 -- they had a difference of opinion on how they
20 wanted to proceed, and one of the partners
21 wanted to leave. So we helped kind of acted as
22 a mediator between the two.

23 Q. We meaning you and Mr. Sarkar?

24 A. Yes.

25 Q. And then, as a result, you were

1 awarded 80,000 shares?

2 A. I don't remember the exact number of
3 shares that we were awarded for that.

4 Q. Did you pay for any of the shares that
5 are in your name?

6 A. No.

7 Q. You have not provided any funds
8 for any of the shares that are in your name,
9 correct?

10 A. No. Correct.

11 Q. Okay. And then this Sierra Gold, you
12 said Sierra Gold owns 400,000 shares, is that
13 right, of National Mining; --

14 A. Yes.

15 Q. -- is that right?

16 A. Yes. That's correct.

17 Q. Okay. And Denari owns -- I'm sorry.
18 Did you say 87 percent of Sierra Gold?

19 A. Yes.

20 Q. And how did Denari wind up owning 87
21 percent of Sierra Gold?

22 A. Denari, we set up Sierra Gold as an
23 entity. We transferred the 400,000 shares into
24 the name of Sierra Gold.

25 Q. Okay. And how did -- how were the

1 400,000 shares acquired? Were they awarded?

2 A. Purchased by Denari.

3 Q. With funds from Wells Fargo bank
4 account?

5 A. Yes.

6 Q. And how much did Denari pay for that?

7 A. I don't recall.

8 Q. How much did Denari pay for the, let's
9 see, 77,500 shares it owns in National Mining?

10 A. I don't recall. Al --

11 Q. How could we find that information?

12 A. In the Wells Fargo checking account.

13 Q. Okay. I'm sorry. You were going do
14 say something?

15 A. Altogether, yeah, originally there
16 were, I think, two different purchases of
17 shares. And then since, then there have been
18 some sales by Denari, as well as some purchases.

19 Q. And could we find out about what
20 -- are there a number of sales? Could you tell
21 us what those sales are sitting here today? How
22 could we get that information?

23 A. Yeah. There are sales contracts for
24 those sales that we provided to the NFA, and
25 also to your -- to the CFTC.

1 Q. And then you said there's also an
2 investment in United Resources Holding Group; --

3 A. Yes.

4 Q. -- is that right?

5 A. Yes.

6 Q. What's that? Could you tell me about
7 that investment?

8 A. Sure.

9 We originally invested in 2012 or 2013
10 into URHG from the Denari checking account, and
11 then -- and then in 2015 became more involved in
12 the management of URHG.

13 Q. What does it do, URHG?

14 A. They own United Milling and Dun Glen
15 Mining Corp, which is a mining property in
16 Northern Nevada, and a processing plant that
17 processes minerals and gold and silver.

18 Q. And how much has Denari invested in
19 United -- in URHG?

20 A. I don't -- I don't know that number
21 off the top of my head. It's been, you know,
22 quite a bit over the -- especially since 2015,
23 providing funding, and, you know, at multiple
24 times.

25 Q. Okay. More than a million dollars?

1 A. That's probably pretty close. I don't
2 -- I don't know if I could say definitively
3 above or below that number.

4 Q. Okay. And then D ■ G ■ Mining Corp,
5 can you tell me about that investment?

6 A. Sure. That is a subsidiary of URHG.
7 That is the entity that owns Dun Glen Mining,
8 which is in Northern Nevada. So they have
9 claims, patented and unpatented claims, in
10 Northern Nevada, and mining equipment to mine.

11 Q. So does Denari have a separate
12 investment directly with D ■ G ■ Mining or is
13 that just part of what the URHG invested in?

14 A. It's part of what URH -- when we
15 invested in URHG.

16 MS. GRADMAN: All right, Carlin. Back
17 to you.

18 BY MR. METZGER:

19 Q. What does National Gold Mining Corp
20 do?

21 A. They own a mining district in Southern
22 Idaho and Northern Nevada, right on the border
23 near McDermitt, Nevada.

24 Q. Do you and Mr. Sarkar have roles with
25 National Gold Mining?

1 Q. What, in general, is the difference
2 between, you know, the joint venture agreement,
3 as opposed to the promissory note?

4 A. Sure. The promissory note clients
5 were kind of thought of as business loans, where
6 they would not have any of the risk of the
7 overall company, but we would pay them a fixed
8 interest rate, typically either 10 percent or 12
9 percent.

10 Q. And how about the joint venture
11 agreements?

12 A. Joint venture agreements were
13 agreements where they would -- where their
14 principal would be at risk, and they would get
15 the returns of Denari as a whole.

16 Q. Is there a name for the spreadsheet
17 where you track client investments?

18 A. I think client list.

19 Q. So on your computer you would have an
20 Excel file named something to the effect of
21 client list?

22 A. Yes.

23 Q. How does Denari track its investments,
24 whether in shares of National Gold, as an
25 example, or the activity in the Gain account?

1 terms of funds, to transfer to that Gain Forex
2 trading account?

3 A. That would be a discussion between
4 Mr. Sarkar and myself about, you know, what
5 other investments we had at the time or kind of
6 the best way to utilize those funds at that
7 time.

8 Q. Have you been registered with FINRA in
9 the past?

10 A. Yes.

11 Q. During, approximately, what time
12 period were you registered with FINRA?

13 A. Probably 2002 or '03 until 2013.

14 Q. In what capacity, if you recall, were
15 you registered with FINRA?

16 A. Series 6, Series 63, Series 7.

17 Q. This registration was during the time
18 period you were working for Northwestern Mutual?

19 A. Yes.

20 Q. Were you the subject of a FINRA
21 disciplinary proceeding?

22 A. Yes.

23 Q. And can you describe what that
24 disciplinary proceeding involved?

25 A. Sure.

1 Mr. B [REDACTED], Mr. Sarkar and myself
2 were working at Northwestern Mutual in 2012.
3 We decided to start Denari Capital, and prior
4 to resigning from Northwestern Mutual we set up
5 the Denari Capital LLC entity. And so FINRA
6 considered it outside business activities
7 without notifying our compliance officer.

8 Q. FIN -- did you sign any documentation
9 relating to that proceeding?

10 A. Yes.

11 Q. A settlement of some sort?

12 A. Yes.

13 Q. How would you describe that?

14 A. As far as the results of --

15 Q. The results of the FINRA proceeding,
16 yes.

17 A. I believe I'm -- on my behalf it was
18 six months before I could reregister with FINRA,
19 or a six-month suspension and a fine, if I
20 returned -- if I were to reregister with FINRA.

21 Q. Was Mr. Sarkar also a subject of that
22 proceeding?

23 A. Yes.

24 Q. And he also resolved the matter with
25 FINRA?

1 A. Yes.

2 Q. Did you give any testimony in
3 connection with the FINRA investigation?

4 A. I remember an interview. I don't
5 think it was official testimony.

6 I could be wrong on that, but there
7 was no court reporter or anything. There was
8 just a video conference.

9 Q. Approximately when did you resolve the
10 FINRA proceeding?

11 A. Probably 2013.

12 Q. When did you first apply for
13 membership with NFA?

14 A. Earlier this year.

15 Q. So 2019?

16 A. 2019.

17 Q. Spring of 2019?

18 A. Yeah.

19 Q. When did Denari apply for membership
20 with NFA?

21 A. I think at the same time. I think
22 that was in conjunction.

23 Q. Did you prepare your own application
24 with NFA?

25 A. Yes.

1 Q. Did you prepare the Denari
2 application?

3 A. Yes.

4 Q. Do you know when you and Denari became
5 registered with NFA?

6 A. I think it was May.

7 Q. Do you know in what capacity Denari
8 became registered with NFA?

9 A. I think as a CPO and CTA.

10 Q. Do you know what a CPO is?

11 A. Commodity Pool Operator.

12 Q. Do you know what a CTA is?

13 A. Commodity Trading Adviser.

14 Q. In what capacity did you become
15 registered with NFA?

16 A. I believe as an associated person of
17 Denari.

18 MS. DAVIS: Carlin, we've been going
19 for a little over an hour. Whenever is a good
20 time to take a break.

21 MR. METZGER: Now is a good time.
22 Thank you for the reminder. Let's take a
23 few-minute break right now.

24 MS. DAVIS: Okay.

25 (Recess taken.)

1 BY MR. METZGER:

2 Q. Approximately how many clients does
3 Denari currently have?

4 A. Less than 20. Maybe about 16 or so,
5 15, 16.

6 Q. And over the life of Denari, if you
7 will, 2012 to the present, --

8 A. Sure.

9 Q. -- approximately how many clients has
10 Denari had?

11 A. There's probably maybe another five or
12 six that have been clients that are no longer
13 clients.

14 Q. Would -- before we went off the
15 record, we had discussed the FINRA proceeding.
16 Do you recall that?

17 A. Yes.

18 Q. Have you disclosed that FINRA
19 proceeding to any of the clients of Denari?

20 A. Yes.

21 Q. And to how many of them?

22 A. I don't know a number. It has
23 definitely come up in conversations, or we
24 brought it up.

25 Q. And have you disclosed it to all of

1 them?

2 A. I couldn't comfortably say all.

3 Q. The best you could say right now is
4 it's come up with some of the clients at least?

5 A. Yes. Yes. I would say over half.

6 Q. Let me mark as Exhibit Number 3 a
7 document that we recently received from you guys
8 produced by Denari. This one has Bates stamped
9 DC-CFTC_956 through 961.

10 (Capson Exhibit No. 3, a document
11 Bates Numbered DC-CFTC_956 through 961, was
12 marked.)

13 BY MR. METZGER:

14 Q. And this document -- well, first of
15 all, do you recognize it?

16 A. Yes.

17 Q. Can you tell us what this document is?

18 A. Sure. This was a financial statement
19 that we prepared to send to the NFA for the NFA
20 exam.

21 Q. So the first page is Denari Capital
22 LLC balance sheet as of June 30th, 2019?

23 A. Yes.

24 Q. Is this a document that you prepared?

25 A. Yes.

1 where you derived the figure?

2 A. Sure. That's a combination of all
3 client funds that were owed as of June 30th.

4 Q. So that would be promissory notes or
5 joint ventures?

6 A. Correct.

7 Q. And where did you derive the figure?

8 A. Just by adding up all of the current
9 loans.

10 Q. And where did you do that calculation,
11 on that Excel spreadsheet that we're talking
12 about?

13 A. Yes.

14 Q. The one that we think might be titled
15 client list?

16 A. Yes.

17 Q. Is that where you track interest on
18 the promissory notes for those who invested
19 through promissory notes?

20 A. Yes.

21 Q. Some of the clients accrue interest;
22 is that right?

23 A. Yes.

24 Q. And some of them receive periodic
25 disbursements?

1 A. Correct.

2 Q. Do you track those disbursements and
3 the accruals on that spreadsheet, as well?

4 A. No, if they -- that spreadsheet really
5 only tracks the accruals. Any disbursements we
6 track through the Wells Fargo Direct Pay and pay
7 clients out through the account, and so it's
8 tracked in the Wells Fargo checking account.

9 Q. So the Denari Wells Fargo checking
10 account?

11 A. Yes.

12 Q. And payments out to clients would, in
13 general, go out through Wells Fargo Direct Pay?

14 A. Correct. Anything that was routine,
15 you know, whether it was monthly, quarterly,
16 would go out that way.

17 Q. Where do you do the calculation of the
18 interest to be paid to clients who get periodic
19 payments?

20 A. Sure. So that is -- I mean, if it
21 -- for clients that get periodic payments on
22 promissory note, if it's a monthly, then that
23 gets set up in Direct Pay when they first sign
24 up, so they receive that calculation and that
25 -- once that number is in there in direct pay

1 and then it's set.

2 Q. Can you give me an example just to
3 help me better understand how it would work?
4 So with one of your clients, let's say, how
5 about Mr. H [REDACTED], is that one of your clients?

6 A. Yes.

7 Q. Does he have a promissory note?

8 A. No.

9 Q. How about a Mr. N [REDACTED], does he
10 have --

11 A. Yes.

12 Q. -- does he have a note?

13 A. Yes.

14 Q. Does he get quarterly disbursements or
15 periodic disbursements?

16 A. Yes.

17 Q. So he is an example of an individual
18 who would get periodic disbursements of interest
19 pursuant to his note?

20 A. Right.

21 Q. Do you know what his note amount is?

22 A. I don't. He's a tricky one, because
23 there's so many different deposits, but I can
24 give you an example: If a client gave us a
25 hundred thousand dollars and their interest rate

1 Q. Is J [REDACTED] G [REDACTED] a Denari client?

2 A. No.

3 Q. Is this a transaction that you were
4 involved in, or was this more of Mr. Sarkar's
5 transaction?

6 A. Mr. Sarkar.

7 Q. Okay. Looking at the expenses
8 entries, there's an interest expense. Do you
9 see that?

10 A. Yes.

11 Q. Where did you come up with that one?

12 A. That is all funds paid to clients in
13 that time period.

14 Q. That would include clients who had
15 note agreements as well as joint ventures?

16 A. Yes.

17 Q. So, basically, if you look at the
18 Wells Fargo operating account from January
19 through June of 2019 and look for payments
20 out to clients, it would be that number?

21 A. Yes. That's correct.

22 Q. How about operating expenses?

23 A. That would be everything else in
24 the account that's not client interest.

25 Q. How -- if a client has a joint venture

1 agreement, do you consider those payments to be
2 interest?

3 A. Yes. Any payments out to clients,
4 if it's not return of principal, we consider
5 interest.

6 Q. And so this operating expense figure
7 that you have listed on Page 2 of Exhibit Number
8 3, that is going to be taken from the Wells
9 Fargo operating account, anything that's not
10 an interest payment back out to a client?

11 A. Yes.

12 Q. Does that include your salary?

13 A. Yes.

14 Q. Do you take a salary?

15 A. Yes.

16 Q. How much is your salary on a monthly
17 basis?

18 A. We take 10,000 -- I take \$10,000 a
19 month.

20 Q. Is salary the right word? Do you call
21 it something else?

22 A. I mean, we -- back -- going back
23 to 2012, we called it a draw. It's K-1 income,
24 so ...

25 Q. So on the Wells Fargo statements, if

1 printed out from the Wells Fargo account kind of
2 a Direct Pay transaction activity?

3 A. Reports. Yes.

4 Q. And so this would be the funds paid to
5 customers through Direct Pay on that day?

6 A. Yes.

7 Q. And the more specific breakout would
8 be found in a different document?

9 A. Yes. In this case, that could have
10 been all been to one client. It may have been
11 to multiple, but it could have just been to one.

12 Q. The line below it, transaction
13 date 7/3, I see business-to-business ACH debit,
14 American Express, it looks like with a reference
15 with your name, Travis Capson. Do you see that?

16 A. Yes.

17 Q. Approximately \$6,000?

18 A. Yes.

19 Q. What's that for?

20 A. Payment of my American Express.

21 Q. Do you pay your American Express card
22 regularly on a monthly basis from the Denari
23 checking account?

24 A. Not -- yes.

25 Q. Is the American Express card in your

1 name?

2 A. Yes.

3 Q. Are there any personal expenses on
4 your American Express card?

5 A. Yes.

6 Q. Are you paying all of the expenses on
7 your American Express card through the Denari
8 checking account?

9 A. No.

10 Q. Where else do you make payments from?

11 A. My Bank of America account.

12 Q. And how do you keep track of the
13 business versus personal?

14 A. I don't have a set way of doing that.

15 Q. Do you know whether this payment for
16 this month, which is approximately July of 2019
17 based on this statement, do you know whether the
18 approximately \$6,000 we see withdrawn from the
19 Denari account, the bank account, would be
20 paying the entire amount of the American Express
21 card?

22 A. Yes. That was paying the entire
23 amount.

24 Q. Immediately below that entry there's a
25 July 5th entry. It says, purchase authorized on

1 A. Prior to 2017?

2 Q. Yes.

3 A. Not to my knowledge.

4 (Whereupon witness and his attorney
5 spoke.)

6 MR. METZGER: Sorry. I didn't --

7 MS. DAVIS: I was just checking to see
8 if he wanted to take a break, but he's okay.

9 MR. METZGER: Okay. Well, how about
10 in a few minutes? I'd like to mark another
11 document and then perhaps it would be a good
12 time after we discuss it.

13 Let's mark this next document as
14 Exhibit Number 5, I believe.

15 (Capson Exhibit No. 5, a life of
16 account summary for the Denari Capital account
17 held at FXCM for the time period August 18th,
18 2012, through February 28th of 2017, was
19 marked.)

20 BY MR. METZGER:

21 Q. Okay. What I have marked as Exhibit
22 Number 5 is a document that we received from
23 FXCM?

24 A. Uh-huh.

25 Q. And you'll see that it is -- I've

1 taken an excerpt of it, --

2 A. Okay.

3 Q. -- and that is because it's kind of a
4 life of account summary for the Denari Capital
5 account held at FXCM for the time period,
6 as you'll see on the first page of the
7 statement, August 18th, 2012, through
8 February 28th of 2017.

9 Are you with me so far?

10 A. Yes.

11 Q. I have -- this -- this Exhibit Number
12 5 is an excerpt of, you know, several pages of
13 a 343 page document. The 343 page document
14 would include every transaction, I believe, that
15 took place in that account. But what I've got
16 here, I hope, will at least help us ask a few
17 questions and get some answers from you about
18 it.

19 Let me first -- I -- I don't think
20 there's a need to walk through each entry.

21 A. Okay.

22 Q. But to familiarize yourself real
23 briefly, it looks like there's some closed
24 trades, and then it skips away to 160, Page 160
25 that is. But I'd like to start with the last

1 after -- nine months or less. It was a pretty
2 short period of time. Somewhere in that 2014
3 range, I believe.

4 Q. So as of about 2014, Mr. B [REDACTED] would
5 have withdrawn his 220,000, right?

6 A. Correct.

7 Q. And as of 2014, at some point
8 Mr. M [REDACTED] would have withdrawn all the funds he
9 had invested?

10 A. That's correct.

11 Q. So if there are deposits after
12 2014 into Denari's FXCM account, what's your
13 understanding of where those are coming from?

14 A. It -- I mean, it would have come from
15 the Denari operating account.

16 Q. And you're not tracking which
17 particular funds inside that account are being
18 sent back and forth to the FXCM account, are
19 you?

20 A. No.

21 Q. Now, referring back to that summary
22 page real briefly, I see a tracked P&L, profit
23 loss of trade. Do you see that?

24 A. Okay.

25 Q. What's the number?

1 Q. Okay. And do you know whether all of
2 their funds went into the Gain Forex account
3 held in the name of Denari?

4 A. If I remember correctly, they
5 initially signed a \$200,000 joint venture
6 agreement and a \$300,000 promissory note. And
7 then sometime there was a deposit -- sometime
8 after receiving their funds there was a deposit
9 into the Gain Capital account, so their money
10 would have been part of that deposit.

11 Q. Do you know what portion of their
12 funds did you put into the Denari account at
13 Gain?

14 A. I believe the -- I think for -- in
15 this case I remember there being a deposit of
16 around 700,000 that went into the Gain account
17 sometime after or around their deposit, so their
18 funds would have been included in part of that.

19 Q. All of their funds?

20 A. I mean, that's not really how we
21 -- how we differentiated it, but they would have
22 been included in that deposit.

23 Q. How did you differentiate it?

24 A. Again, going back to the beginning
25 before the -- we considered both the joint

1 venture clients and the promissory note clients'
2 funds as, you know, funds of Denari Capital that
3 we could use as we saw fit.

4 Q. So once the client, for example, the
5 Oylers, deposited funds into the Denari bank
6 account on December 27th of 2017, you viewed
7 those as Denari's funds to be invested as you
8 saw fit as of that time?

9 A. Correct.

10 Q. On this account statement that is for
11 January of 2018 to the Oylers, I see investment
12 results reported both for December 31st of 2017
13 and 1/31 of 2018. Do you see those?

14 A. Yes.

15 Q. How did you perform those
16 calculations?

17 A. That the -- the four days in December
18 would have just been a prorated amount of the
19 returns for that. For a full month, like in
20 their case where they had both joint venture and
21 promissory notes, the portion that was in
22 promissory note would have received the
23 fractional interest of the -- so if it was, in
24 their case, 10 percent, then they would have
25 received 10 percent on that portion, and then

1 to current and potential lenders or investors
2 regarding Denari. Do you see that?

3 A. Yes.

4 Q. And in the responses from Mr. Sarkar,
5 which appear to be in red, he describes several
6 brochures, a Denari brochure 2019, Denari
7 brochure 2018 and a Denari brochure.

8 A. Yes.

9 Q. Are you the person at Denari who
10 prepared the brochures sent to clients?

11 A. Yes.

12 Q. I have attached, this Exhibit
13 Number 8, the brochures that Mr. Sarkar was
14 referencing. Can you flip to the first one?

15 A. Okay.

16 Q. Do you recognize this promotional
17 brochure?

18 A. Yes.

19 Q. It indicates there are -- there's a
20 chart with quarterly investments. Do you see
21 that?

22 A. Yes.

23 Q. You're the one that prepared this
24 brochure?

25 A. Yes.

1 the previous page added to the -- the current
2 amount, so it's just a line chart, as opposed to
3 the bar graph on the page, and then compared to
4 the S&P 500.

5 Q. You know, in the text, towards
6 the top it says, in the second paragraph, in
7 particular, second sentence, it says, "We will
8 pay all expenses associated with the fund
9 management performance reported and market
10 research."

11 Do you see that?

12 A. Yes.

13 Q. Can you tell us what it is you meant
14 by that?

15 A. What we meant is, in a traditional
16 format like this where there would be a
17 management fee charged up front, that we
18 wouldn't charge that. We just would receive
19 compensation based on results at the end. So if
20 it was a two percent management fee or something
21 to that extent, that we wouldn't charge that.

22 Q. If we look at, you know, the Wells
23 Fargo bank account and the payments to you and
24 Mr. Sarkar, how should we tie those to the
25 performance of Denari?

1 A. Because of the way that we would just
2 do the kind of \$10,000 draws, there's no real
3 direct correlation to overall performance and
4 the amount of income that we took. It was
5 really just based on, you know, kind of that
6 \$10,000 a month base.

7 Q. So it wouldn't be accurate to say that
8 you were compensated through the performance of
9 the Denari fund, would it?

10 A. I guess, you know, we definitely
11 felt like we were being compensated through
12 the -- through performance, but not in a direct
13 sense the way you're alluding to in this, so,
14 yes, I understand the question.

15 Q. Your compensation was not directly
16 tied to the performance of Denari's fund, right?

17 A. That's correct.

18 Q. And if you'll turn to the next Denari
19 Capital promotional piece, this one reflects a
20 bar graph of 10-year annual returns. Do you see
21 that?

22 A. Yes.

23 Q. Are you also the person who prepared
24 this promotional piece?

25 A. Yes.

1 Ameritrade account?

2 A. No.

3 Q. Has it in the past?

4 A. It's possible that it had -- that we
5 had other positions, but nothing substantial
6 that I recall.

7 Q. Any other securities accounts over the
8 life of Denari?

9 A. Not that I recall.

10 BY MS. GRADMAN:

11 Q. Mr. Capson, --

12 A. Yes.

13 Q. -- the promotional material that
14 Carlin was showing you earlier,

15 MS. GRADMAN: Carlin, do you know
16 which exhibit number that was?

17 THE WITNESS: Eight.

18 BY MS. GRADMAN:

19 Q. Exhibit 8?

20 A. Yes.

21 Q. I'm not sure if you were asked this,
22 but did you or anybody from Denari provide that
23 to customers?

24 A. Yes.

25 Q. Okay. And who did you provide it to?

1 A. I don't -- I don't recall all the
2 specifics, but it was -- it was something that
3 was provided to clients.

4 Q. Okay. And how was it provided, via
5 e-mail, or did you hand it to them or mail or
6 more than one method?

7 A. Typically, it would have been e-mail.
8 In some cases, maybe in person it was handed to
9 them.

10 Q. And was it also -- it was provided to
11 customers and prospective customers; is that
12 right?

13 A. Yes. That's correct.

14 Q. Okay. And did you and Mr. Sarkar
15 provide it or just you?

16 A. Both.

17 BY MR. METZGER:

18 Q. What is Solitude Capital Group? Are
19 you familiar with that entity?

20 A. Yeah. We set up Solitude last year
21 with the intent to have it hold the intellectual
22 property, so the trading algorithm, strategies,
23 those kinds of things.

24 Q. Does Solitude have any operations?

25 A. No.

1 Q. Any assets?

2 A. No.

3 Q. Is it skill an active entity?

4 A. Yes.

5 Q. It's yourself and Mr. Sarkar that are
6 involved with that one?

7 A. I think it -- I think just my name is
8 on it currently, but the idea is that, yes, it's
9 kind of part of Denari.

10 Q. I saw some transfers from the Wells
11 Fargo account at Denari to Coinbase. What are
12 those for?

13 A. There was a time where we were
14 looking into -- we invested in Ethereum, you
15 know, to position in Ethereum, but it was very
16 short-term, I believe four or five months is
17 all. And that account is not currently active,
18 but that was in my personal name at Coinbase.

19 Q. Is it -- the account still active?

20 A. I couldn't tell you. If it
21 deactivates for inactivity, then it would be
22 deactivated. But I don't know if it's still
23 active. I don't think I've looked at it two
24 years or so, or maybe a year-and-a-half.

25 MR. METZGER: Susan or Matt, any

1 additional questions that you have?

2 MS. GRADMAN: Nope.

3 MR. METZGER: Okay. Those are all the
4 questions we have at this time. We may have
5 additional questions in the future, and if we
6 need additional testimony, we'll, of course, be
7 in touch with you, Liz.

8 Any questions that you want to ask
9 while we're on the record today?

10 MS. DAVIS: Can you just give me a
11 second?

12 MR. METZGER: Sure.

13 MS. DAVIS: No. We're all set.
14 Thanks.

15 MR. METZGER: Okay. With that, we'll
16 go off the record for today.

17 (Deposition concluded -- 1:33 p.m.)

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C E R T I F I C A T E

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 24th day of September 2019.



Ryan K. Black

VERITEXT LEGAL SOLUTIONS
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