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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT CALIFORNIA

9 _____)
10 COMMODITY FUTURES)
TRADING COMMISSION)

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

11 Plaintiff,)
12)

13 vs.)
14)

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

15)
16 Defendants.)

17 **PLAINTIFF’S MOTION FOR EXPEDITED DISCOVERY**

18 Pursuant to Rules 26(d)(1), 30(a) and (b), and 45 of the Federal Rules of Civil Procedure,
19 Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) hereby moves for an
20 order authorizing the CFTC immediately to engage in expedited discovery, including granting the CFTC
21 specific authority to commence written and oral discovery as described below, and to shorten the time
22 for response otherwise specified by the Federal Rules of Civil Procedure for the parties to prepare for
23 any litigation schedule this Court may set. The hearing on this motion is noticed for December 19, 2019
24 at 1:30 p.m. In support of this Motion for Expedited Discovery (“Motion”), the CFTC states as follows:
25

26 1. In support of this Motion and in verification of the facts alleged herein, the Commission
27 submits and incorporates its Memo and Exhibits in Support of Plaintiff’s Motion for Preliminary
28

1 Injunction seeking emergency injunctive relief for the purposes of preserving funds, assets, and other
2 property of Defendants Travis Capson (“Capson”), Arnab Sarkar (“Sarkar”), and Denari Capital, LLC
3 (“Denari”) (collectively “Defendants”), and otherwise protecting the interests of commodity pool
4 participants who invested funds with Defendants, among other relief. The Memo and Exhibits in
5 Support of Plaintiff’s Motion for Preliminary Injunction was filed on November 8, 2019, and includes
6 the transcripts of testimony of Capson and Sarkar, and the declaration of Nicole Wahls, a compliance
7 manager with the National Futures Association.
8

9 2. Good cause exists to grant the CFTC’s request for expedited discovery. In order to fulfill
10 its statutory duties of protecting pool participants from further loss, the CFTC must immediately identify
11 all of Defendants’ assets and pool participants and review Defendants’ books and records, including all
12 bank records, to ensure that Defendants preserve all pool participant assets. Expedited discovery is also
13 necessary to allow the CFTC to prepare for any hearing this Court may schedule on the CFTC’s Motion
14 for Preliminary Injunction.
15

16 3. Rule 26(d)(1) of the Federal Rules of Civil Procedure expressly authorizes the Court to
17 order the expedited discovery the CFTC seeks. *See* FED. R. CIV. P. 26(d)(1) (timing of discovery may be
18 altered “when authorized by these rules, by stipulation, or by court order”); *see also* FED. R. CIV. P.
19 26(d) Advisory Committee Notes accompanying 1993 Amendments to Subdivision (d) (recognizing that
20 cases involving requests for a preliminary injunction are among the special instances in which expedited
21 discovery prior to the time ordinarily allowed by Rule 26(d) of the Federal Rules of Civil Procedure is
22 appropriate).
23

24 4. For the foregoing reasons, the CFTC requests leave to: (1) take the depositions of Capson
25 and Sarkar and up to three other witnesses prior to any hearing on its Motion for Preliminary Injunction
26 and with two days’ notice for parties and four days’ notice for non-parties; (2) request that Defendants
27 produce, on an expedited basis (within three days of receipt of such request), any relevant documents;
28 and (3) issue subpoenas to third parties with a return date of five days of receipt in order to gain

1 information about pool participants who may have been defrauded and to help identify and locate
2 Defendants' assets and pool participant assets.

3 **WHEREFORE**, the CFTC respectfully requests that this Court enter an order authorizing
4 expedited discovery as detailed above.

5 A proposed Order accompanies this Motion as Exhibit A.
6

7
8 Date: November 8, 2019

Attorney for Plaintiff CFTC

9
10 **/s/ Carlin Metzger**

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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 Expedited Discovery 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.

Date: November 8, 2019

Attorney for Plaintiff CFTC

/s/ Carlin Metzger

Carlin Metzger

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(Pro Hac Vice)

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