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5 *Counsel to Receiver Kathy Bazoian Phelps*

6  
7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10  
11 **COMMODITY FUTURES TRADING**  
12 **COMMISSION,**

13 **Plaintiff,**

14 **v.**

15 **DENARI CAPITAL LLC, TRAVIS**  
16 **CAPSON, and ARNAB SARKAR,**

17 **Defendants.**

Case No.: 19-cv-07284-EMC

Assigned to: Hon. Edward M. Chen

**DECLARATION OF DAVID CASTLEMAN  
IN SUPPORT OF NOTICE OF MOTION  
AND ADMINISTRATIVE MOTION BY  
RECEIVER KATHY BAZOIAN PHELPS  
FOR ENTRY OF AN ORDER:**

- (1) APPROVING SECOND INTERIM DISTRIBUTION;**
- (2) APPROVING THE RESOLUTION OF CERTAIN TAX MATTERS; AND**
- (3) BARRING FUTURE CLAIMS**

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

1 I, David Castleman, declare:

2 1. Pursuant to this Court’s Order entered May 10, 2021, I was appointed as counsel to  
3 the temporary receiver (“Receiver”) in this case, retroactive to April 23, 2021. I am also an attorney  
4 duly licensed to practice in the State of California and am partner at the firm of Raines Feldman  
5 LLP (“Raines Feldman”). I have personal knowledge of the matters set forth below and if called as  
6 a witness, I would and could testify competently to the matters stated herein.

7 2. This declaration is made in support of the Administrative Motion for Order (1)  
8 Approving Second Interim Distribution; (2) Approving Payment of Claims to Franchise Tax Board;  
9 and (3) Barring Future Claims (the “Motion”).<sup>1</sup>

10 3. Attached as Exhibit “3” hereto is a true and correct copy of a letter from Mark  
11 Smallhouse to Kathy Bagoian [sic] Phelps, dated April 28, 2021 [sic] (the “Smallhouse Letter”).

12 4. Attached as Exhibit “4” hereto is a true and correct copy of a letter from me to  
13 Mark Smallhouse, in response to the Smallhouse Letter, dated May 11, 2021 (the “Castleman  
14 Letter”).

15 5. To the best of my knowledge, my office has not received any response to the  
16 Castleman Letter as of the date of this Declaration.

17 6. I will email a copy of this Motion and supporting documents directly to Mark  
18 Smallhouse on the day it is filed, and I will also advise him of the response date.

19 I declare under penalty of perjury that the foregoing is true and correct. Executed on this  
20 9th day of August 2021 at New York, New York.

21  
22 /s/ David Castleman  
23 David Castleman  
24  
25  
26

27 <sup>1</sup> All capitalized terms used but not otherwise defined herein shall have the meanings given to  
28 them in the Motion.

# EXHIBIT 3



**Smallhouse**  
**Law Group**

10775 Double R Blvd., Suite 107  
Reno, NV 89521  
(775) 825-5700  
[www.nevantage.com](http://www.nevantage.com)

April 28, 20221

Via email. [kphelps@kathybphelps.com](mailto:kphelps@kathybphelps.com).

Kathy Bagoian Phelps, Esq.  
9519 Tullis Drive,  
Beverly Hills, California 90210.

Re: Travis Capson-Denari Capital, Greg Capson and Money Laundering Scheme.

Dear Kathy,

This firm serves as corporate legal counsel to National Gold Mining Corp. (“NGMC”), and I write to following up on our telephone call a few weeks ago.

During our conversation, I expressed NGMC’s concern about numerous transfers of its stock involving Travis Capson, Arnab Sarkar, and Denari Capital, LLC (for each of whom you serve as the court-appointed receiver). We also discussed the Complaint that was brought against Messrs. Capson, Sarkar, and Denari Capital in the Northern District of California. Specifically, I informed you of NGMC’s concern about a large number of illegal transfers of NGMC’s shares made by Travis Capson, Arnab Sarker, and Denari Capital. We have since determined that Mr. Capson was involved in over 29 illegal transfers of NGMC’s stock and Mr. Sarkar in 8 illegal transfers<sup>1</sup>. What is even more surprising is that the CFTC’s appears to have actual knowledge of the illegal stock transfers, as they referenced the illegal transfers in its Complaint. Essentially, not only were Mr. Capson, Mr. Sarkar, and Denari Capital acting as illegal, unlicensed commodities futures traders, but they appear also at the same time acting illegally as unlicensed broker-dealers under federal and Nevada securities laws. I have also reviewed your previous correspondence with James F. Noland, the President of NGMC. I did not find any reference made by you in those emails to the numerous illegal stock transfers made by Messrs., Capson, and Sarkar. If I

For that matter, neither Mr. Noland nor I knew those illegal stock transfers until just before our telephone call. After reviewing the docket in the CFTC’s Complaint in the Northern District of California action, I am also concerned that you may have been aware of the illegal broker-dealer transactions. For example, in your Declarations dated August 25, 2020, filed as Document 72-1 in the Docket of the CFTC Action, you acknowledge that Gregory Capson gave Denari a check for \$90,000 and instructed it to use the funds to purchase NGMC shares. [Declaration of Kathy Bagoian Phelps, Page 3, lines 6-9] It is my understanding that Denari was

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<sup>1</sup> The transfers are numerous enough to qualify Mr. Capson Mr. Sarkar as illegal and unlicensed broker-dealers under federal and Nevada secured laws.

Kathy Phelps, Esq.

April 28, 2021

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not a licensed securities broker, and the transaction referred to in your Declaration was representative of an illegal broker transaction under federal and Nevada securities laws.

Since our telephone conversation, I also found out that you recently left the Diamond McCarthy law firm and started a private practice specializing in unwinding Ponzi schemes. From my review of the CFTC Complaint, it appears that Mr. Capson and Mr. Sarkar were involved in a Ponzi Scheme with investors of Denari Capital. More importantly, however, we have evidence that Messrs. Capson, and Sarkar (i) were separately involved in a possible Ponzi scheme related to the transfers of shares of NGMC, and (ii) were also actively involved in an illegal gold exchange company, Global Gold Exchange, LLC (“GGEX”). GGEX and its principals are defendants in several criminal cases brought by the U.S. Attorney General’s Office in the U.S. District Court, Southern District of California<sup>2</sup>. Those cases involve the principals of GGEX, including Richard Owen, Jeffrey Morrow, and James Warren. In those criminal cases, the principals of GGEX were charged with, and each has subsequently entered felony guilty pleas, for being (i) involved in an illegal money-laundering scheme involving gold trading with Mexican drug cartel members and (ii) engaged in numerous illegal gold trading activities both domestically and internationally. Mr. Warren’s entity, NGMC Holding LLC, is also an investor in NGMC. Alternatively, we believe Mr. Capson and Mr. Sarkar were investors in GGEX, and Mr. Capson personally transferred shares of NGMC to Mr. Warren. We also believe that both Mr. Capson and Mr. Sarkar were actively involved in the illegal activities undertaken by GGEX Mr. Warren.

I am also concerned about your approval of two other transactions while acting as the receiver in the CFTC action. The first involves the transfer of NGMC shares to Mr. Gregory Capson. The second transaction involves your approval of the issuance of shares of URHG to Mr. Gary Bremansalo.

As to the transfer of NGMC shares to Gregory Capson, in your reports to the Court, you stated that you were firmly against the transfer. However, you then settled matters with Mr. Capson without either informing NGMC or requesting NGMC’s consent to the transfer of its shares. Further, I am unaware of any federal or Nevada securities law exemption that would allow for the transfer. My review of NGMC’s stock ledger shows that shares that you transferred to Gregory Capson are now held in the Capson Family Living Trust. Although we do not know who the Capson Family Living Trust beneficiaries are, Travis Capson is likely one of the primary beneficiaries. In other words, in settling the purported claims of Mr. Gregory Capson, you possibly indirectly transferred the NGMC shares back to Travis Capson via his father’s revocable living trust. At his dad’s death, those shares will most likely revert to Travis Capson, and Greg Capson is likely free to at any time gift those shares back to his son. I should also advise you that in connection with NGMC’s investigation of Mr. Warren and his associates, that I have previously received personal threats from Gregory Capson. Again, we will provide you with additional information about these matters in the next several business days.

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<sup>2</sup> See: USA v. Global Gold Exchange, LLC at al., Case No. 19-cr-02936-CAB; and USA v. James Warren Case No. 20-cr-03748-CAB.

Kathy Phelps, Esq.  
April 28, 2021  
Page 3

As to the transfer of the URHG shares to Mr. Bremansalo, you appear to have not performed a background investigation into either URHG or Mr. Bremansalo. I have attached a copy of a Voting Agenda for the Annual Meeting of Shareholders of URHG held on December 30, 2020. The "News" section of the Agenda refers to URHG's "Silver Stage" business. A search of the State of Utah's Secretary of State's Website shows that the owner of Silver Stage, LLC is none other than Travis Capson. URHG and Mr. Bermensolo are both related parties to Mr. Capson and Denari Capital, they are business partners and Mr. Capson is part of the subsidiary of URHG. Again, it appears that you may have been duped into approving transactions that allowed Travis Capson to continue his fraudulent business activities.

I also express concern as to the fact that your receiver reports to the Court contain no reference to the fact that in 2014 each of Mr. Capson, Mr. Sarkar, and Denari Capital LLC fined and suspended by FINRA, for their involvement in an unlicensed currency trading scheme. FINRA also fined each of them for collecting illegal broker-dealer fees from investors in Denari Capital.

I am also concerned about the identity of the "creditors" to whom you have previously made distributions of assets seized from Mr. Capson, Mr. Sarkar, and Denari Capital. In reviewing your filings with the Northern California District Court, in essentially every instance, you have redacted the names and addresses of each of the purported "creditors" to whom you made distributions. We believe that many of those purported creditors are involved in the illegal money laundering and illegal gold trading schemes of Mr. Capson, Mr. Sarkar, Denari Capital, GGEX, and James Warren have been participants.

I am also concerned that you did not provide notice to NGMC of the claims levied by the CFTC against Mr. Capson and Denari Capital. Based upon our uncovering of all of the illegal broker-dealer trading of NGMC's shares by Mr. Capson and Mr. Sarkar, it is clear from the CFTC's Complaint that the CFTC knew of those transactions. I also believe that you should have included NGMC as a creditor of Mr. Capson, Mr. Sarkar, and Denari Capital.

Moreover, I understand that you did not contact NGMC regarding your transfers of over 157,523 shares of NGMC to Mr. Greg Capson. At the time, those shares were being sold in the market by Mr. Warren and others at prices of up to \$15 per share. In your reports as a receiver, even you admitted that the value of the National Gold Mining shares received by Mr. Capson was likely far more than his purported "claims." Given my concern about Gregory Capson's active participation in Denari Capital, I would request that you provide me with the documentation that he offered to support his claim of being a creditor of his son Travis and Denari Capital. We believe that some of his claims were based upon his delivering of money to Denari Capital and instructing Denari Capital to acquire National Gold Mining shares in an illegal broker-dealer transaction.

Presently, our investigation is ongoing. We recently filed a Complaint with the Nevada Attorney General's Office concerning the illegal broker-dealer transactions in NGMC shares by Mr. James Warren, and his associates, all of whom were involved with and associated with Travis Capson in the illegal money laundering scheme conducted by Global Gold Exchange. As

Kathy Phelps, Esq.  
April 28, 2021  
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a result, we are requesting that we be provided information about filing a claim as a creditor in the CFTC action against Travis Capson and Denari Capital. We also would request that any distributions to creditors previously being negotiated by you, or for which you are currently seeking approval by the Court, be rescinded, or halted. We are requesting the same treatment as to transactions previously engaged in with Gregory Capson and Mr. Bremansalo based upon material misstatements of fact, and omissions of material facts, to the Court in the CFTC action. We believe that those material misstatements and omissions constitute separate violations of the antifraud provisions of SEC Rule 10b-5, and Nevada's securities laws.

As stated, our investigation is ongoing. Next week, I will call to provide you with an update as to the information and further evidence of the illegal trading of NGMC's securities by Travis Capson and Denari Capital. We will demand that the legend restrictions on transfers set forth on the face of those shares be strictly enforced. We additionally reserve the right to reject any transfer of NGMC's shares to Sierra Gold, LLC. Denari capital was a principal owner of Sierra Gold, LLC, and we have independent creditor claims against Denari Capital.

I look forward to talking with you next week.

Very truly yours,

Smallhouse Law Group

  
By: \_\_\_\_\_  
Mark K Smallhouse

# EXHIBIT 4



# RAINESFELDMAN

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May 11, 2021

## VIA E-MAIL AND FIRST CLASS MAIL

Mark Smallhouse  
Smallhouse Law Group  
10775 Double R. Blvd., Suite 107  
Reno, NV 89521

Re: ***CFTC v. Denari Capital LLC et al., No. 19-cv-7284 (N.D. Cal.)***

Dear Mark:

I write in response to your letter of April 28, 2021, on behalf of the court-appointed Receiver, Kathy Bazoian Phelps, in the above-captioned action. Your letter on behalf of National Gold Mining Company (“NGMC”) raises a number of accusations and concerns about various persons and entities, many of which appear to have nothing to do with this receivership. It is therefore difficult for us to discern precisely what relief you are seeking from the receivership, although you do assert in conclusion that you have “independent creditor claims against Denari Capital.” (Letter at 4.) But in order to assert a claim in a receivership, a claimant must first timely file a proof of claim with the receivership.

NGMC did not, however, timely file a proof of claim. The time to submit a claim has long since passed, as the bar date for claims was April 6, 2020, over a year ago. (Dkt. No. 47.) The Court was unequivocal in its order concerning late claims: “Any claims received after the Bar Date shall forever be disallowed without further order of the Court.” (*Id.* at 2.) Nevertheless, I am providing you with a proof of claim form that you can complete and submit to the Receiver for her evaluation, which must be received within 30 days of the of this letter (June 10, 2021). You must include with your submission an explanation as to why the claim was filed over a year after the bar date. **Please send any such claim to my attention at Raines Feldman LLP, 1800 Avenue of the Stars, 12th Floor, Los Angeles, CA 90067**, instead of the address provided by the form. The Receiver reserves all rights to deny or object to the timeliness and merits of such a claim, and we provide this proof of claim form to you without waiver of any right.

Regarding your complaints about the transfer of the NGMC shares to Gregory Capson as part of the court-ordered distribution plan, that was transfer was specifically approved by the Court

upon a motion filed on notice with an opportunity for any interested party to oppose or respond. Neither NGMC nor any other party did so, and the Court granted the motion on October 5, 2020 (Dkt. No. 82.) The Receiver then implemented that transfer with notice to NGMC and with the approval of NGMC's transfer agent at the Nevada Agency and Transfer Company. Wherever the shares were transferred after that is beyond the scope of the receivership.

Similarly, the sale of URHG shares to Gary Bermensolo was completed as part of the court-ordered distribution plan, and also specifically approved by the Court after a motion filed on notice with an opportunity for an interested party to respond. Again, NGMC did not object, and the Court granted that motion on October 5, 2020. (Dkt. No. 81.) Neither the Capson nor Bermensolo transactions can be undone without vacatur of the court orders ordering their completion. If NGMC wishes to file a motion with the Court, it may do so, and the Receiver reserves all her rights to oppose or object to any such motion, including but not limited to seeking attorney's fees for responding to any frivolous motion that unnecessarily depletes receivership assets.

You also raise several issues about transactions and relationships with Global Gold Exchange, LLC ("GGEX"). GGEX is not a receivership entity or a party in this action. Whatever concerns you have about GGEX can be raised with the Securities and Exchange Commission, the CFTC, the Department of Justice, or any other entity NGMC thinks is appropriate. The Receiver is charged with administering the receivership estate, and your concerns about GGEX are beyond the scope of this receivership.

If you would like to discuss the matter with me further, or explain precisely what relief you are seeking from the receivership at this time, you may reach me at [dcastleman@raineslaw.com](mailto:dcastleman@raineslaw.com) or (310) 424-4082. If we have not received a proof of claim form within the next 30 days, we will deem this matter concluded.

Sincerely,



David Castleman  
Raines Feldman LLP  
*Counsel to the Receiver*

ss  
Attachment

cc: Carlin Metzger (CFTC)

*Civil Court Docket No. 19-cv-07284-EC*

**If you invested money with Denari Capital LLC managed by Denari Capital LLC, Travis Capson, or Arnab Sarkar, or if you have any claims against any of the Receivership Defendants (as defined below), you may be entitled to relief if you complete and submit this claim form by **APRIL 6, 2020**.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

This case involves an action for fraud asserted by the Commodity Futures Trading Commission. The Court has placed all assets belonging to the following entities and individuals under the control of a Court-appointed Receiver:

**Receivership Defendants:**

Denari Capital LLC  
Travis Capson  
Arnab Sarkar

The Court must determine a fair and equitable means to distribute the assets above to investors, as well as any potential creditors, in the aforementioned entities. The purpose of this claim form is to identify all potential investors and creditors with valid claims against the Receivership Defendants.

**If you invested money with any of the following entities or individuals, or are a creditor, you must complete and submit this form to the Receiver by [Date].**

Denari Capital LLC  
Travis Capson  
Arnab Sarkar

Failure to do so could result in the disallowance of your claim. Completed claim forms should be delivered to one of the following:

1. ~~Email: [kphelps@diamondmccarthy.com](mailto:kphelps@diamondmccarthy.com)~~
2. ~~Kathy Bazoian Phelps, Receiver  
1999 Avenue of the Stars, Suite 1100  
Los Angeles, CA 90067 4402~~
1. Email [dcastleman@raineslaw.com](mailto:dcastleman@raineslaw.com)
2. David Castleman, Counsel to Receiver  
Raines Feldman LLP  
1800 Avenue of the Stars, 12th Floor  
Los Angeles, CA 90067

If you have any questions, the Receiver may be contacted at (310) 651-2997.

## PROOF OF CLAIM

**This is an important legal document that will affect your legal rights if you have an interest in or claim against one or more of the Receivership Defendants as an investor or creditor. If you have an interest in or claim against one or more of the Receivership Defendants as an investor or creditor, you must submit this Proof of Claim Form on or before APRIL 6, 2020. Failure to do so could result in the forfeiture of your claim.**

The Court has not yet determined how the assets of the Receivership Entities will be allocated or distributed or how claims against the Receivership Entities will be paid. However, when the Court makes this determination, the information provided in this Proof of Claim Form will be used to calculate your interest in or claim against the Receivership Defendants and your entitlement, if any, to participate in any distribution from the Receivership Defendants' estate (the "Receivership Estate").

The Receiver has the right to dispute and/or verify any information you have provided in order to determine the proper distribution amount, if any, to which you may be entitled. The Receiver additionally reserves the right to request additional documentation supporting your claim at a later date. All original documentation should be preserved as it may be requested at a future date. If you are an investor, the Receiver has the right to correct for administrative, or computational error, any information you provide as to your investment activity. The Receiver does not waive any right to (1) deny, contest the validity of, or otherwise object to a claim, or (2) if warranted, amend the provided investment activity to correct for such administrative or computational errors.

### IMPORTANT INFORMATION TO READ PRIOR TO SUBMITTING THIS FORM:

ANY PERSON OR ENTITY SUBMITTING THIS PROOF OF CLAIM FORM, EXCEPT FOR STATE AND LOCAL GOVERNMENT ENTITIES, SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AS TO ANY CLAIMS, OBJECTIONS, DEFENSES, OR COUNTERCLAIMS THAT COULD BE OR HAVE BEEN ASSERTED BY THE RECEIVER AGAINST SUCH CLAIMANT OR THE HOLDER OF SUCH CLAIM IN CONNECTION WITH THIS RECEIVERSHIP, INCLUDING THOSE ARISING OUT OF (1) ANY DEALING OR BUSINESS TRANSACTED BY OR WITH ANY RECEIVERSHIP DEFENDANT, OR (2) ANY DEALING OR BUSINESS TRANSACTED THAT RELATES IN ANY WAY TO ANY RECEIVERSHIP PROPERTY.

YOU MUST SUBMIT THIS COMPLETED FORM, SIGNED UNDER PENALTY OF PERJURY, TO THE RECEIVER BY DELIVERY TO THE RECEIVER BY NO LATER THAN **APRIL 6, 2020**. SUBMIT YOUR FORM TO ONE OF THE FOLLOWING:

- |  |   |
|--|---|
| 1. <del>Email: KPHELPS@DIAMONDMCCARTHY.COM</del> | 1. Email dcastleman@raineslaw.com       |
| 2. <del>Kathy Bazoian Phelps, Receiver</del>     | 2. David Castleman, Counsel to Receiver |
| <del>Diamond McCarthy LLP</del>                  | Raines Feldman LLP                      |
| <del>1999 Avenue of the Stars, Suite 1100</del>  | 1800 Avenue of the Stars, 12th Floor    |
| <del>Los Angeles, CA 90067 4402</del>            | Los Angeles, CA 90067                   |

IF YOU DO NOT SUBMIT THE COMPLETED CLAIM FORM BY [DATE], YOU WILL BE FOREVER BARRED FROM ASSERTING ANY CLAIM AGAINST THE RECEIVERSHIP DEFENDANTS' ASSETS AND WILL NOT BE ELIGIBLE TO RECEIVE ANY DISTRIBUTIONS FROM THE RECEIVERSHIP ESTATE.



10	<b>Name of Receivership Entity that owes you (i.e., Denari Capital, LLC, Travis Capson, or Arnab Sarkar)</b>			
<b>IMPORTANT: You must attach documentation to support your claim, including invoices, canceled checks [front and back], account statements, trust deeds, property information and any other document that supports your claim (you do not need to provide documents you previously sent to the Receiver)</b>				
11	<b>Supporting documents:</b> Please attach copies of any documents that support your claim, such as bank statements, canceled checks, correspondence, investor statements or subscription agreements. <b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING</b>		<b>Number of pages of supporting documents attached: _____</b>	
12	<b>Do you hold a lien, trust deed or security interest related to your claim?</b>		___ YES / ___ NO	
<b>INVESTMENT INFORMATION</b>				
13	<b>Have you ever received a payment of interest, principal, dividends or investment distributions from any Receivership Entity?</b>		___ YES / ___ NO	
14	<b>If you answered "YES" to question 13 please provide the following information for each payment and amount received (attach additional sheets if needed):</b>			
	Date of payment (mm/dd/yy)	Amount of Payment	Payment of Principal or Interest, if known	Name of Entity Making Payment
1	___/___/___	\$		
2	___/___/___	\$		
3	___/___/___	\$		
4	___/___/___	\$		
5	___/___/___	\$		
6	___/___/___	\$		
7	___/___/___	\$		

If you need additional space to complete an answer, please attach a separate sheet of paper and indicate the number of the question for which you are providing the additional information.

**CERTIFICATION AND SIGNATURE (REQUIRED OF ALL CLAIMANTS)**

**By signing below, I declare under penalty of perjury that the information in this proof of claim form is true and correct, and that I have been authorized to file this proof of claim from on behalf of the claimant**

**Signature:**   X  

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**IMPORTANT: ANY PERSON OR ENTITY SUBMITTING THIS PROOF OF CLAIM FORM SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA FOR ALL PURPOSES, INCLUDING, WITHOUT LIMITATION, AS TO ANY CLAIMS, OBJECTIONS, DEFENSES, OR COUNTERCLAIMS BY THE RECEIVER AGAINST SUCH CLAIMANT IN CONNECTION WITH THIS RECEIVERSHIP, INCLUDING THOSE ARISING OUT OF (1) ANY DEALING OR BUSINESS TRANACTED BY OR WITH ANY RECEIVERSHIP ENTITY OR (2) ANY DEALING OR BUSINESS TRANACTED THAT RELATES IN ANYWAY TO ANY RECEIVERSHIP PROPERTY. FURTHER, CLAIMANTS WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO SUCH CLAIMS, OBJECTIONS, DEFENSES, AND COUNTERCLAIMS.**