

1 **RAINES FELDMAN LLP**
David Castleman (State Bar No. 326812)
2 *dcastleman@raineslaw.com*
1800 Avenue of the Stars, 12th Floor
3 Los Angeles, California 90067
Telephone: (310) 440-4100
4 Facsimile: (310) 691-1943

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**
COMMISSION,

12 **Plaintiff,**

13
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

ADMINISTRATIVE MOTION BY
RECEIVER KATHY BAZOIAN PHELPS
FOR ENTRY OF AN ORDER:

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

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

1 Kathy Bazoian Phelps, temporary receiver herein (the “Receiver”) for Denari Capital LLC
2 (“Denari”), Travis Capson (“Capson”), and Arnab Sarkar (“Sarkar” and, collectively, the
3 “Receivership Defendants”), hereby files, pursuant to Local Civil Rule 7-11, this Administrative
4 Motion for Order (1) Approving Second Interim Distribution; (2) Approving the Resolution of
5 Certain Tax Matters; and (3) Barring Future Claims (the “Motion”).¹

6 **I. INTRODUCTION**

7 The Receiver seeks authority in this motion to make a second distribution to cash
8 claimants in the amount of 15%, or \$163,604.56, of their total allowed cash claims, for a
9 cumulative distribution of 65%. The first interim distribution of 50% of the total allowed cash
10 claims was approved by the Court on December 23, 2020 (Dkt. 88), and that distribution was
11 completed in early January 2021. On April 21, 2021, the Receiver collected the final sum of
12 \$150,000 cash owed to the estate pursuant to the Distribution Plan approved by the Court in this
13 case on October 5, 2020 (the “Plan”) (Dkt. 79). The estate is holding approximately \$465,000 in
14 cash, but the Receiver must wait for the three-year audit period to expire for the Internal Revenue
15 Service (“IRS”) from the filing of the 2020 tax return to ensure that no additional tax liability is
16 assessed before making a final distribution. In consultation with her tax advisers, the Receiver
17 believes that it is prudent to hold approximately \$280,000 in the estate to satisfy any unforeseen
18 tax liability and pay future administrative costs. As such, even after the proposed second interim
19 distribution is made, the estate will still be properly reserved for all contingencies.

20 The Receiver also seeks authority to pay a late filed claim by the Franchise Tax Board
21 (“FTB”) in the amount of \$1,775.96 as a priority claim and to seek authorization for Defendants
22 Capson and Sarkar to file a 2019 stub pre-receivership tax return with both the IRS and the FTB.
23 The Receiver also seek authorization to terminate Denari with the California Secretary of State.

24 Finally, the Receiver seeks an order to barring any claims against the Receiver and the
25

26 ¹ The Motion is based upon this Motion, the Declarations of the Receiver and David Castleman,
27 and the proposed order. In addition to service by ECF, the Receiver intends to serve this Motion
28 and supporting documents on the affected claimants via email. *See* Civil L.R. 66-6. The Receiver
has conferred with the CFTC and the Defendants’ counsel, who do not oppose the Motion.

1 receivership estate not allowed as of the filing of this Motion, including but not limited to a claim
2 by National Golding Mining Company (“NGMC”).

3 **II. STATEMENT OF FACTS**

4 **Procedural Matters.** On December 4, 2019, the Court appointed Kathy Bazoian Phelps
5 as temporary receiver, and directed and authorized her to take full control of the Receivership
6 Defendants and to administer the Receivership Estate. (Dkt. 37, ¶¶ 23-29.) On February 6, 2020,
7 the Court set the bar date for claims as April 6, 2020. (Dkt. 47). The Receiver received eighteen
8 claims in the ordinary course (one of which was withdrawn), plus one priority claim from the FTB
9 for \$800 (the “Initial FTB Claim”). The total allowed claims were valued at \$3,683,082, of which
10 \$1,091,497.08 were classified as cash claims. The Plan approved in October 2020 included
11 distribution of the receivership’s holdings of securities, which had limited liquidity, as well as the
12 cash that the Receiver was able to marshal. The Receiver has already distributed all the securities
13 to claimants under the Plan, and distributed \$546,148.54 to cash claimants in December 2020,
14 amounting to 50% of the allowed cash claims for each Class 3 claimant.

15 **Status of Asset Administration.** The Receiver has also collected all of the cash pursuant
16 to the terms of the Plan. First, as noted above, the Receiver collected that \$101,445.06 from the
17 URHG stock sale. Second, pursuant to the Court approved settlement among the Receiver and
18 United Resource Holding Group, Inc., United Milling and Refining Corp., and Springbok
19 Development Inc. (the “URHG Settlement”) (Dkt. 80), the Receiver took possession of
20 \$56,666.83 in funds. Third, the real estate transaction contemplated in the URHG Settlement (the
21 “Sparks Transaction”) resulted in an additional \$150,000.00 paid to the estate on April 21, 2021.

22 **Franchise Tax Board Claims.** Other than the outstanding cash claims, the Receiver had
23 received the \$800 Initial FTB Claim, and attempted to satisfy that claim in whole when making
24 the first interim distribution by sending the FTB a check for \$800. The FTB has not cashed that
25 check, and on June 30, 2021, the FTB submitted a new claim, assessed additional taxes of
26 \$1,775.96 based on fees purportedly owed for later years (the “Second FTB Claim”). *See* Phelps
27 Decl. Ex. 2. The Second FTB Claim contains an asterisk relating to 2019 tax liability, indicating
28

1 that the FTB may intend to assert a further claim. As any such claim relates to the pre-Receivership
2 period, it appears necessary for Defendants Capson and Sarkar to file a pre-receivership stub return
3 for 2019, including but not limited to file Form 1065 with the IRS and Form 568 for the FTB.
4 Once the Defendants have filed the 2019 federal and state returns for Denari Capital LLC for the
5 pre-receivership period, the Receiver will need to file Form 568 returns with the FTB for 2020
6 and 2021. The Receiver will thereafter file the appropriate forms to terminate Denari as an LLC
7 entity with the California Secretary of State.

8 **National Gold Mining Unfiled Claim.** On April 28, 2021, the Receiver received a letter
9 from Mark Smallhouse (the “Smallhouse Letter”), counsel for NGMC, suggesting for the first
10 time a possible claim against the receivership estate (the “NGMC Unfiled Claim”). *See*
11 Castleman Decl. Ex. 3. The Smallhouse Letter raised several issues about various persons and
12 entities, many of which had nothing to do with the Receivership. The letter cursorily noted that
13 NGMC had “independent creditor claims against Denari Capital,” but failed to set forth the basis
14 for such purported claims. Part of the administration of the estate resulted in the disposition of the
15 estate’s position in NGMC, which required the Receiver to have several communications with
16 NGMC beginning around April 2020. At no point did NGMC raise that it had independent
17 creditor claims, nor did NGMC ever file an actual claim with the estate.

18 Indeed, much of the Smallhouse Letter complained about the distribution of NGMC shares
19 to Gregory Capson and the sale of URHG shares to Gary Bermensolo. But those transfers were
20 part of the Plan and separately approved upon the Receiver’s motion on notice (Docs. No. 81, 82).
21 The Smallhouse Letter also raised issues concerning Global Gold Exchange, which is not a
22 Receivership Entity and is otherwise not a part of this Receivership. Nevertheless, counsel for the
23 Receiver replied on May 11, 2021, providing a claim form without any waiver of the estate’s
24 defenses as to such claim, including timeliness, and setting a deadline of June 10, 2021 for the
25 submission of this untimely assertion of a claim. *See* Castleman Decl. Ex. 4. No response has
26 been received as of this filing. Mr. Smallhouse will be served with a copy of the Motion by email
27 so that NGMC may have notice and an opportunity to respond if it so chooses.

28

1 **III. THE RECEIVER’S PROPOSED COURSE OF ACTION IS APPROPRIATE**

2 The Receiver requests permission to make a second interim distribution on the remaining
 3 allowed cash claims. The current cash claims to the Receivership total \$1,090,697.08, as set forth
 4 in Exhibit “1” to the Phelps Declaration, excluding the Initial FTB Claim. The Receiver distributed
 5 50% of those claims, for a total of \$545,348.54. The proposed distribution of 15% would bring
 6 the total distribution to 65% of the cash claims, or \$708,953.10 in total cash distributed. This
 7 distribution will leave the estate with approximately \$280,000: \$250,000 in reserve for any as yet
 8 unassessed taxes and \$30,000 in reserve for any administrative costs.

9 The Receiver is advised that it is prudent to hold a reserve of \$250,000 until the three-year
 10 audit period for the 2020 tax return has expired, as all of the securities transactions and
 11 distributions occurred in 2020. Although the Receiver believes that the 2020 tax returns she filed
 12 are correct, the 2020 transactions involved illiquid securities with low trading volumes, and the
 13 IRS and FTB have three years to review that 2020 return. It is critical the estate be properly
 14 reserved during the audit period so that the Receiver can properly protect the estate.² The Receiver
 15 believes that her proposed interim distribution of 15% balances the need to make distributions to
 16 claimants as soon as possible while also protecting the estate against possible future contingencies.

17 Moreover, the Receiver also believes that is prudent to resolve the outstanding priority
 18 claims of the FTB. Those claims at present appear to be no greater than the \$800 claim that was
 19 paid with a check yet to be cashed, plus the \$1,775.96 claim submitted on June 30, 2021, and the
 20 unidentified amount for 2019. The Receiver requests authority to negotiate with the FTB to resolve
 21 the FTB claims without further Court authority, unless such claims exceed \$5,000. In addition,
 22 by allowing Defendants Capson and Sarkar to file the 2019 stub tax returns, and the Receiver to
 23 file any necessary forms to resolve the tax matters and terminate the LLC, the Receiver expects
 24 that no further fees of this nature will be charged and the tax claims will be fully resolved.

25
 26 _____
 27 ² Additionally, a Receiver can be personally liable for any unpaid taxes of the estate, *see* 31
 28 U.S.C. § 3713(b), so it is appropriate to permit a reserve so that the estate assets are sufficient to
 pay any additional liability that might be incurred.

