

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT CALIFORNIA**

_____	)	
COMMODITY FUTURES	)	Case No: 3:19-cv-07284-EC
TRADING COMMISSION,	)	
	)	
Plaintiff,	)	<del>Proposed</del> <b>CONSENT ORDER</b>
	)	<b>FOR PERMANENT</b>
vs.	)	<b>INJUNCTION, CIVIL</b>
	)	<b>MONETARY PENALTY AND</b>
DENARI CAPITAL LLC, TRAVIS	)	<b>OTHER EQUITABLE RELIEF</b>
CAPSON, and ARNAB SARKAR,	)	<b>AGAINST DEFENDANTS</b>
	)	
Defendants.	)	

**I. INTRODUCTION**

On November 5, 2019, Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”) filed a Complaint against the Defendants Denari Capital, LLC (“Denari”), Travis Capson (“Capson”), and Arnab Sarkar (“Sarkar”) (collectively “Defendants”), seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1-26 (2018), and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pts. 1–190 (2020). (ECF No. 1.)

The CFTC moved for a preliminary injunction, and on December 4, 2019 the Court entered a Consent Order for Preliminary Injunction, pursuant to which Kathy Bazoian Phelps was appointed Temporary Receiver. (ECF No. 37.)

**II. CONSENTS AND AGREEMENTS**

To effect settlement of all charges alleged in the Complaint against Defendants without a trial on the merits or any further judicial proceedings, Defendants:

1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants (“Consent Order”);

2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the CFTC or any member, officer, agent, or representative thereof, or by any other person, to induce consent to this Consent Order;

3. Acknowledge service of the summons and Complaint;

4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018);

5. Admit the jurisdiction of the CFTC over the conduct and transactions at issue in this action pursuant to the Act;

6. Admit that venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e);

7. Waive:

(a) Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this action;

(b) Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this action;

(c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) Any and all rights of appeal from this action;

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Defendants now or in the future reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waive any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their:

(a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party;

11. Consent to the entry of this Consent Order without admitting or denying the allegations of the Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which they admit;

12. Consent to the use of the findings and conclusions in this Consent Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof;

13. Do not consent, however, to the use of this Consent Order, or the findings and conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party, other than a: statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Order;

14. Agree to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 141 of Part VI of this Consent Order, of any bankruptcy

proceeding filed by, on behalf of, or against them, whether inside or outside the United States; and

15. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against them in any other proceeding.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), as set forth herein.

#### **THE PARTIES AGREE AND THE COURT HEREBY FINDS:**

##### **A. Findings of Fact**

###### **1. The Parties to this Consent Order**

16. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act and the Regulations.

17. Defendant Denari Capital, LLC is a California limited liability company. Denari's business address was 3100 Oak Road, Suite 380, Walnut Creek, California.

18. Denari's articles of organization were filed with the State of California on August 14, 2012. On May 1, 2019, Denari became registered with the CFTC as a Commodity Pool Operator ("CPO") and a Commodity Trading Advisor ("CTA"), and became listed as a "forex firm" with the National Futures Association ("NFA"), the industrywide self-regulatory organization for the derivatives industry in the U.S.

19. Defendant Travis G. Capson is a principal and co-owner of Denari. Capson is a resident of Kanab, Utah. Capson became registered with the CFTC as an Associated Person (“AP”) of Denari, and was listed as a principal of Denari with NFA on May 1, 2019.

20. Defendant Arnab Sarkar is a resident of El Cerrito, California. He is a principal and co-owner of Denari along with Capson. Sarkar has been listed as a principal of Denari with NFA since July 10, 2019. Sarkar has never been registered with the CFTC in any capacity.

21. On December 4, 2019, the Court entered an Order Appointing a Temporary Receiver (Doc. No. 37) appointing Kathy Phelps as the temporary receiver with full powers of an equity receiver for Denari, Capson and Sarkar, except as set forth therein.

## **2. The Denari Pool**

22. Capson and Sarkar formed Denari in August of 2012 in California for the purpose of investing in various products, including foreign currency (“forex”) trading, real estate and other business interests. Capson and Sarkar each hold a 50% ownership interest in Denari.

23. Capson and Sarkar began operating Denari in August of 2012 while they were working for an investment firm registered with the Financial Institution Regulatory Authority (“FINRA”), including opening a bank account in Denari’s name. Capson and Sarkar settled a subsequent FINRA proceeding regarding this conduct in June 2014 based on their failure to disclose outside business activities and engaging in a private securities transaction without providing prior written notice to the FINRA-member firm where they worked.

24. Between August 2012 and December of 2019 (“Relevant Period”), Capson and Sarkar solicited thirty-six relatives, friends, business associates, and others by various means, including in-person communication, phone, email, and word-of-mouth. Capson and Sarkar

solicited participants for various investments, including forex trading, real estate, and investment in mining companies (the “Denari Pool”).

25. Denari provided participants with promotional brochures it created in 2012, 2018 and 2019. In the brochures created in 2018 and 2019, Denari claimed that “over the past 10 years we have developed a disciplined investment strategy that has earned positive returns in 36 of the past 40 quarters.” Denari also represented in its 2012, 2018 and 2019 brochures that it “charges no management fees. We will pay all expenses associated with the fund management, performance reporting and market research. By not passing any of these expenses on to our clients through traditional quarterly fees we are compensated through performance, not assets under management.”

26. Denari’s promotional materials included claimed annual rates of return for 2017 of 50.22% and for 2018 of 36.33%, and portrayed Denari as never having a losing year. However, Denari’s forex trading account(s) actually experienced a combined negative return of more than 45% in 2017 and a positive return of only 7.9% in 2018.

27. Denari’s promotional material also reported monthly “trading results” for January through July 2018 that are inconsistent with the results in its trading account when unrealized losses are factored in as part of its performance reporting. Specifically, Denari’s promotional material advertises monthly rates of return of 3.79%, 3.55%, 3.43%, 3.09%, 3.53%, 0.94%, and 2.47% for January through July 2018 respectively, while its actual monthly trading results were -7.27%, -1.79%, -4.82%, 7.71%, 16.80%, -0.72%, and 3.7% during that time period. Consequently, these statements in Denari’s promotional materials were misleading.

28. Additionally, Denari did not provide any prospective or actual participants in the Denari Pool with the disclosure documents required by CFTC Regulations. Also, prior to May 1,

2019, Denari neither registered with the CFTC as a CPO nor filed or claimed any exemption from registration with the CFTC as required by the Act.

29. Denari provided “Joint Venture Agreements” or “Promissory Notes” to prospective and actual participants. Since September of 2012, several participants signed “Joint Venture Agreements” with Denari. Capson also signed these agreements as managing partner of Denari. These agreements state that “the Joint Venturers have agreed to make contributions to a common fund for the purpose of investing under the direction of Denari Capital, LLC.” The agreements also state that Denari could acquire “any assets, which may include but are not limited to real estate, foreign currency,” or other business interests, in connection with the venture. The Denari Joint Venture Agreements provide that “Denari Capital, LLC will be solely responsible for all investment decisions and will receive a portion of the investment earnings equal to the percentage agreed upon by each of the Joint Venturers.”

30. Several Denari participants signed the Promissory Notes, which were signed by a representative of Denari. The Promissory Notes state that Denari agrees to repay the loans, usually with 10% to 12% interest annually. Most of the loans had a one-year term with an option to renew at the lender’s choice.

31. For example, one of the Promissory Notes involved a \$50,000 loan made by an individual on May 15, 2018 to Denari. The note had a one-year term, with a promise for the principle to be repaid upon demand at the end of any month after June 2019. The note also provided for monthly interest payments at a rate of 10% annually on the outstanding principle balance.

32. Denari, through Capson and Sarkar, deposited and commingled participant funds received pursuant to the Joint Venture Agreements and Promissory Notes into one or more bank

accounts in Denari's name and subsequently transferred some of these funds into forex trading accounts for the purpose of trading forex.

### 3. Denari's Forex Trading Accounts

33. Denari first opened a forex trading account in its own name in August 2012 with a futures commission merchant ("FCM A"), at the time a retail foreign exchange dealer ("RFED") registered with the CFTC. Capson was the sole authorized trader on the account. Denari's account opening application with FCM A falsely claimed that it was only investing proprietary funds, and not funds of third parties. Denari funded its FCM A account with a deposit of \$270,000 it received from a pool participant who, according to corporate documents, was also a co-founder and former part owner of the company in August 2012.

34. The FCM A account remained open from August 2012 through February 2017. Denari deposited a total of \$967,000 into this account, and withdrew a total of \$690,975 from this account. Inclusive of fees, the account lost \$267,192. The yearly performance results were as follows:

2012:	-43.0%
2013:	-66.2%
2014:	-82.9%
2015:	24.0%
2016:	-19.6%
2017:	-11.4% (January and February only)

35. In February 2017, Denari transferred its trading account held at FCM A to a different RFED, FCM B. Capson was the sole authorized trader for Denari on the account at



FCM B. The FCM B account remained open from February 2017 through December 2019, when it was liquidated by the court-appointed receiver. In addition to the nearly \$9,000 opening transfer balance in February 2017, the FCM B account received deposits totaling \$1,662,000 and had withdrawals totaling \$1,832,537; inclusive of fees the account at FCM B gained \$174,329.

The yearly performance results were as follows:

2017:	-46.2%
2018:	7.9%
2019:	5.2%

36. Overall, the Denari forex trading accounts at both FCM A and B, taken together, lost \$92,863 between August 2012 and December 2019.

#### **4. Denari Issued False or Misleading Account Statements to Participants**

37. During the Relevant Period, Defendants sent monthly and/or quarterly account statements to certain participants via mail or email that misrepresented the value of their respective investments and interests in the Denari Pool, and exaggerated returns because the account statements only took into account realized returns. In particular, for this reason, the account statements Defendants issued to participants depicted false returns, and misrepresented the value of the participants' respective accounts, as described above, because the results reported did not take into account unrealized results.

38. The statements reflected that Denari participants' funds were earning consistent profits with no losses. However, Denari calculated its performance results on these statements by failing to factor in the impact of unrealized losses in its forex trading account. Denari

regularly closed out profitable positions to recognize gains, while continuously rolling forward losing positions.

39. Capson and Sarkar did not trade all of the funds that participants invested in Denari for the purpose of forex trading. Instead, Capson and Sarkar misappropriated a portion of these funds for personal and other uses.

## **5. Denari's Other Investments**

40. In addition to its forex trading accounts, during the Relevant Period, Denari used participant funds for various other investments, including securities in two companies and several real estate development projects.

41. Denari used participant funds to purchase shares of stock in United Resource Holdings Group ("URHG"), a company previously involved in mining and which has securities listed on an over-the-counter securities trading platform. Until his resignation in December 2019, Capson was the chief financial officer of URHG, and also an officer of two wholly-owned subsidiaries of URHG: United Milling and Refining Corporation and Dun Glen Mining Corporation.

42. Denari also used participant funds to purchase shares in a privately traded mining company, National Gold Mining Corporation ("National").

43. Denari used participant funds for an indirect investment in National, through Sierra Gold LLC ("Sierra"), an entity incorporated by and controlled by Capson and Sarkar. Capson and Sarkar incorporated Sierra Gold as a limited liability company in the state of Nevada in February 2016. Sarkar and Capson transferred 400,000 shares of National stock into Sierra, and opened a bank account in the name of Sierra with Wells Fargo Bank. Denari sold two participants equity stakes of approximately 4% and 9%, respectively, in Sierra Gold. Sierra

Gold's bank account was closed in 2016 with no activity. Denari currently owns the remaining approximately 87% of Sierra Gold.

44. Capson and Sarkar also both owned shares individually in URHG and National.

45. Denari also used pool participant funds for several real estate development projects in Walnut Creek, Oakland, and Mill Valley, California.

**6. Denari Had Insufficient Liquid Assets To Cover Its Obligations To Participants**

46. Capson and Sarkar were signatories on the Denari bank accounts into which participant funds were deposited.

47. As of the entry of the preliminary injunction in this case, Denari had liquid assets of approximately \$1,000,000, consisting of the funds that were frozen in its bank accounts and the funds that were generated from the liquidation of its forex account in December 2019.

48. As of the entry of the preliminary injunction in this case, Denari also had illiquid investments in mining companies and real estate.

49. As of the entry of the preliminary injunction in this case, Denari did not have sufficient liquid assets to meet its liabilities and obligations to pool participants.

50. During the Relevant Period, Denari distributed funds from Denari bank accounts to certain participants as profit and interest payments, as some of Denari's investments were profitable. However, Capson and Sarkar withdrew and misappropriated a portion of the funds from the Denari pool intended for forex trading for their personal use, including payments to personal credit cards, the repayment of personal loans, retail purchases, and other personal expenses.

## **7. NFA's July 2019 Examination of Denari**

51. In furtherance of its official duties under the Act, NFA conducts periodic audits and examinations of NFA members as a means of monitoring and assuring compliance with NFA rules, the Act, and the Regulations.

52. In May 2019, Denari voluntarily registered with the NFA as a CPO and CTA, and Capson registered as a Principal and AP of Denari. In July 2019, Sarkar registered with the NFA as a Principal of Denari.

53. In July 2019, NFA began an examination of Denari, a new registrant.

54. On July 15, 2019, NFA sent Capson a document request and spoke to him by telephone. During that phone call, Capson told NFA representatives that Denari had been trading forex with its own, proprietary funds since 2015, and that Denari did not trade forex for third parties until after Denari became registered as a CPO in 2019.

55. Capson's representations to NFA were false. Denari had been operating a forex pool and trading third party funds.

## **8. The Receivership**

56. Since being appointed pursuant to this Court's order on December 4, 2019, the Receiver has assumed control over the Receivership Estate, collected assets of the Estate, reviewed claims, and made interim distributions to claimants as allowed by the Court.

57. More specifically, on August 27, 2020, the Receiver filed Motions for Entry of Orders approving (1) the Receiver's Plan for Distribution; (2) the Sierra Gold LLC Agreement; (3) the Form Agreements with Investors; (4) the Form and Manner of Notice; (5) the Settlement with United Resource Holdings Group, Inc., United Milling and Refining Corp., and Springbok Development LLC; (6) the Sale of Publicly Traded Shares; and (7) the Settlement of Claim

Asserted by Investor Gregory Capson (Doc. Nos. 69-72). On October 1, 2020, the Court granted all of these Motions (Doc. Nos. 78-82). The Receiver implemented the distribution of the securities soon thereafter.

58. On December 17, the Receiver filed a Motion for Entry of an Order approving an interim distribution to Claimants, in the amount of 50% of the amount of the Claimants' cash claims (Doc. No. 87). On December 23, the Court granted this motion. (Doc. No. 88.) On December 24, 2020, the Receiver wired funds to those claimants that requested distribution by wire transfer, and sent checks to those claimants that requested distribution by check. On August 9, 2021 the Receiver filed a Motion for Entry of an Order approving a second interim distribution, approving the resolution of certain tax matters, and barring future claims. (Doc. No. 109.) On August 23, 2021, the Court granted this motion (Doc. No. 112) and the Receiver has completed the second interim distribution.

59. As of September 30, 2021, the Receiver had issued payments or distributed assets totaling \$3,288,186.52 of the \$3,663,282.14 in allowed investor claims. After payment of professional fees for the third quarter of 2021 the Receivership Estate holds approximately \$263,346 of cash on hand.

60. Capson and Sarkar provided substantial assistance to the Receiver in administering the Receivership Estate and the claims process, and cooperated with the Commission during the course of the litigation of this case.

## **B. Conclusions of Law**

### **1. Jurisdiction and Venue**

61. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2018) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (providing that U.S.

district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2018), provides that the CFTC may bring actions for injunctive relief or to enforce compliance with the Act or any rule, regulation, or order thereunder in the proper district court of the United States whenever it shall appear to the CFTC that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

62. In addition, this Court has jurisdiction over the forex transactions pursuant to Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2018), which subjects the forex solicitations and transactions at issue in this action to, *inter alia*, Sections 4b and 4o of the Act, 7 U.S.C. §§ 6b, 6o (2018).

63. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because Defendants transacted business in this District, Defendant Sarkar resides in this District, and the acts and practices in violation of the Act occurred within this District.

## **2. Defendants Operated a Commodity Pool as Defined by the Act and CFTC Regulations**

64. Denari accepted funds from participants and pooled certain of those funds into a trading account at an RFED, in which Denari engaged in retail forex transactions.

65. Neither Denari nor the third party participants in Denari's pool were eligible contract participants ("ECP"). Section 1a(18)(A)(xi) of the Act, 7 U.S.C. § 1a(18)(A)(xi) (2018), sets a high dollar-value threshold requirement for an individual or entity to qualify as an ECP. For individuals, it is generally limited to those who have more than \$10 million invested on a discretionary basis. Moreover, pursuant to 7 U.S.C. § 1a(18)(A)(xi), the Denari pool additionally cannot be an ECP because at least some, if not all of its participants are not ECPs.

66. Pursuant to 7 U.S.C. § 2(c)(2)(C)(ii)(I), Denari's leveraged or margined retail forex transactions with non-ECPs are subject to certain provisions of the Act, including certain anti-fraud provisions.

67. Denari operated a "Commodity Pool" as defined by the Act, albeit not as a separate entity or under a specific name. Section 1a(10) of the Act, 7 U.S.C. § 1a(10) (2018), defines a "commodity pool" as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any commodity for future delivery, security futures product, swap, or commodity option.

68. Denari is a "Commodity Pool Operator" as defined by the Act. Section 1a(11)(A)(i) of the Act, 7 U.S.C. § 1a(11)(A)(i) (2018), in relevant part, defines a CPO as any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including commodities for future delivery, security futures products, and swaps.

69. The individuals whose funds Capson and Sarkar used to fund the forex pool are "participants" in the pool within the meaning of Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2020), which defines a "participant" as any person who "has any direct financial interest in a pool (e.g., a limited partner)."

70. Capson and Sarkar are APs of Denari as defined in Section 4k of the Act, 7 U.S.C. § 6k (2018), and Regulation 1.3, 17 C.F.R. § 1.3 (2020). Those provisions, with certain qualifications, define an AP as a natural person associated with any CPO as a partner, officer,

employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves: (i) the solicitation of funds, securities, or property for a participation in a commodity pool; or (ii) the supervision of any person or persons so engaged.

71. Defendants are subject to the various provisions of the Act and CFTC Regulations described below, because they operated a Commodity Pool and engaged in retail forex transactions.

**3. Fraud by Misrepresentations and Omissions, and False Account Statements: Violations of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2018), and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2020)**

72. The Act and CFTC Regulations prohibit fraud by persons engaging in retail forex transactions. 7 U.S.C. § 6b(2)(A)-(C) makes it unlawful:

(2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market

(A) to cheat or defraud or attempt to cheat or defraud the other person;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;

(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person[.]

73. 17 C.F.R. § 5.2(b) provides, in relevant part, that:

[i]t shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction:



- (1) To cheat or defraud or attempt to cheat or defraud any person;
- (2) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or
- (3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

74. By the conduct described in paragraphs 16 through 55 above, Defendants, in connection with retail forex transactions, knowingly or recklessly: cheated or defrauded or attempted to cheat or defraud pool participants and deceived or attempted to deceive pool participants by, among other things, making material misrepresentations and omissions regarding their trading profits, trading performance track record, and value of their interest in the Pool, and/or misappropriating participant funds in violation of 7 U.S.C. § 6b(a)(2)(A) and (C), and 17 C.F.R. § 5.2(b)(1) and (3).

75. In addition, by the conduct described in paragraphs 16 through 55 above, Defendants, in connection with retail forex transactions, willfully made or caused to be made false account statements issued to pool participants via regular and electronic mail, showing consistent profits with no losses, in violation of 7 U.S.C. § 6b(a)(2)(B) and 17 C.F.R. § 5.2(b)(2).

**4. Fraud by a Commodity Pool Operator, and by Associated Persons of a Commodity Pool Operator, in Violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2018)**

76. 7 U.S.C. § 6o(1) prohibits any CPO or AP of a CPO, from using the mails or any other means of interstate commerce, directly or indirectly:

(A) to employ any device, scheme or artifice to defraud any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective participant.

77. Pursuant to Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2020), and subject to certain exceptions not relevant here, any person who operates or solicits funds, securities, or property for a pooled investment vehicle and engages in retail forex transactions is defined as a retail forex CPO.

78. Pursuant to 7 U.S.C. § 2(c)(2)(C)(ii)(I), “[a]greements, contracts, or transactions” in retail forex and accounts or pooled investment vehicles “shall be subject to . . . section[ ] 6o [of the Act],” except in circumstances not relevant here.

79. Denari acted as a CPO in that it engaged in a business that is of the nature of an investment trust, syndicate or similar form of enterprise operated for the purpose of trading in commodity interests or commodity futures, and in connection therewith, solicited, accepted and received funds from others for the purpose of trading in commodity interests and commodity futures.

80. Capson and Sarkar acted as APs of Denari by soliciting funds for the pool and handling participant funds while being associated with Denari as partners, officers, employees, consultants, or agents.

81. By the conduct described in paragraphs 16 through 55 above, Capson and Sarkar, while acting as APs of a CPO, and Denari, while acting as a CPO, willfully or recklessly defrauded and deceived participants of the Denari Pool by using the mails or any other means of interstate commerce in violation of 7 U.S.C. § 6o(1) by, among other things:

- (a) misappropriating participant funds;
- (b) fraudulently soliciting participants and prospective participants by making material misrepresentations and omitting material facts regarding

Defendants trading profits, trading performance track record, and the value of participants' interest in the Pool; and/or

- (c) causing false account statements to be issued to participants in the Pool that reflected consistent profits with no losses.

**5. Failure to Register as a Commodity Pool Operator in Violation of Sections 2(c)2(C)(iii)(I)(cc) and 4m(1) of the Act, 7 U.S.C. §§ 2(c)2(C)(iii)(I)(cc), 6m(1) (2018), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2020)**

82. With certain exemptions and exclusions not applicable here, 7 U.S.C. § 6m(1) requires all CPOs operating a commodity pool to be registered with the Commission.

83. Subject to certain exceptions not relevant here, 7 U.S.C. § 6m(1) states that it shall be “unlawful for any . . . [CPO], unless registered under this chapter, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such . . . [CPO].”

84. Subject to certain exceptions not relevant here, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) states in part, that:

A person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 17, shall not . . .

. . . .

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with [applicable retail forex contracts, agreements, or transactions].

85. For the purposes of retail forex transactions, a CPO is defined in 17 C.F.R. § 5.1(d)(1) “as any person who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an eligible contract participant as defined in section 1a(18) of the Act, and who engages in retail forex transactions.” Denari operated and solicited funds,

securities, or property for a pooled investment vehicle, and was not an ECP as defined in 7 U.S.C. § 1a(18).

86. Except in circumstances not relevant here, 17 C.F.R. § 5.3(a)(2)(i) requires those that meet the definition of a retail forex CPO to register as a CPO with the Commission.

87. By the conduct described in paragraphs 16 through 55 above, Denari engaged in activities as a retail forex CPO, with participants who are not ECPs, without being registered as a CPO until May 2019, and in connection therewith used the mails or other means or instrumentalities of interstate commerce, in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc) and 6m(1), and 17 C.F.R. § 5.3(a)(2)(i).

**6. Failure to Register as Associated Persons, and Allowing Unregistered Associated Persons to Remain Associated With a Commodity Pool Operator, in Violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2018) and 17 C.F.R. § 5.3(a)(2)(ii) (2020)**

88. With certain exemptions and exclusions not applicable here, it is unlawful for a person to be associated with a CPO as a partner, officer, employee, consultant, or agent, or a person occupying a similar status or performing similar functions, in any capacity that involves the solicitation of funds, securities, or property for participation in a commodity pool unless registered with the Commission as an AP of the CPO pursuant to 7 U.S.C. § 6k(2).

89. Except in certain circumstances not relevant here, 17 C.F.R. § 5.3(a)(2)(ii) requires those that meet the definition of an AP of a retail forex CPO under 17 C.F.R. § 5.1(d) to register as an AP of a CPO with the Commission.

90. It is also unlawful under 7 U.S.C. § 6k(2) for a CPO to permit such a person to become or remain associated with the CPO in any such capacity if the CPO knew or should have known that the person was not registered as an AP.

91. Further, pursuant to 17 C.F.R. § 5.1(d)(2), any person associated with a CPO “as a partner, officer, employee, consultant or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves: (i) [t]he solicitation of funds, securities, or property for a participation in a pooled vehicle; or (ii) [t]he supervision of any person or persons so engaged” is an AP of a retail forex CPO.

92. Defendants Capson and Sarkar were associated with Denari, a CPO, as officers, employees and agents, in a capacity that involved the solicitation of funds, securities, or property for participation in the Denari commodity pool. Therefore, Defendants Capson and Sarkar were APs of a CPO as defined by 17 C.F.R. § 1.3.

93. By the conduct described in paragraphs 16 through 55 above, Capson and Sarkar violated 7 U.S.C. § 6k(2) and 17 C.F.R. § 5.3(a)(2)(ii) by acting as APs of Denari without being registered as APs of a CPO.

94. By the conduct described in paragraphs 16 through 55 above, Denari violated 7 U.S.C. § 6k(2) in that, acting as a CPO, it allowed Capson and Sarkar to act as its APs when it knew or should have known that Capson and Sarkar were not registered as APs.

**7. Commingling of Pool Funds and Failure to Receive Pool Funds in Pool’s Name, in Violation of Regulation 4.20, 17 C.F.R. § 4.20 (2020)**

95. Regulation 5.4, 17 C.F.R. § 5.4 (2020), states that Part 4 of the Regulations, 17 C.F.R. pt. 4 (2020), applies to any person required to register as a CPO pursuant to Part 5 of the Regulations, 17 C.F.R. pt. 5 (2020), relating to forex transactions.

96. With certain exemptions not applicable here, 17 C.F.R. § 4.20(a) requires that a CPO must operate its commodity pool as an entity cognizable as a legal entity separate from its operator.

97. 17 C.F.R. § 4.20(b) prohibits CPOs, whether registered or not, from receiving pool participants' funds in any name other than that of the pool.

98. 17 C.F.R. § 4.20(c) prohibits a CPO, whether registered or not, from commingling the property of any pool it operates with the property of any other person.

99. Denari, while acting as a CPO, failed to operate its commodity pool as an entity cognizable as a legal entity separate from its operator, failed to receive pool participants' funds in the name of the Pool when they deposited funds into Denari's bank and trading accounts, and commingled the property of the Pool and pool participants' funds with property of Defendants and others.

100. By the conduct described in paragraphs 16 through 55 above, Denari violated 17 C.F.R. § 4.20(a)-(c).

**8. Failure to Provide Required Commodity Pool Disclosures in Violation of Regulations 4.21, 4.24 and 4.25, 17 C.F.R. §§ 4.21, 4.24, 4.25 (2020)**

101. Regulation 4.21, 17 C.F.R. § 4.21 (2020), provides that “each commodity pool operator registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with 17 C.F.R. §§ 4.24 and 4.25 by no later than the time it delivers to the prospective participant a subscription agreement for the pool . . .”

102. 17 C.F.R. § 4.24 outlines in detail twenty-three types of general disclosures required for commodity pools. 17 C.F.R. § 4.25 outlines in detail the performance disclosures required for pools, including performance disclosures for different points in time during the pool's operating history.

103. Denari did not provide any actual or prospective pool participants with pool disclosure documents in the form specified in 17 C.F.R. §§ 4.24 and 4.25. Denari therefore violated 17 C.F.R. §§ 4.21, 4.24, 4.25.

**9. Misrepresentations by Defendant Travis Capson to National Futures Association in Violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2018), and 17 C.F.R. § 4.20 (2020)**

104. 7 U.S.C. § 13(a)(4) makes it unlawful for any person willfully to falsify, conceal, or cover up by trick, scheme or artifice a material fact, or to make any false, fictitious, or fraudulent statements or representations, or to make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, swap data repository, or futures association designated or registered under the Act and acting in furtherance of its official duties under the Act.

105. Capson violated 7 U.S.C. § 13(a)(4) by willfully making false, fictitious, or fraudulent statements or representations to NFA, a futures association registered under the Act, in connection with an examination that NFA conducted of Denari beginning in July 2019 in furtherance of NFA's official duties under the Act.

106. Specifically, during the examination, Capson falsely represented to NFA staff that Denari had been trading forex with its own proprietary funds since 2015, and that Denari did not trade forex for any third party participants until after Denari became registered with the CFTC on May 1, 2019.

107. Capson's representations were false. When Capson made these statements to NFA in July of 2019, Denari had been operating a forex pool and trading for third party participants.

**10. Denari is liable for the actions of its employees and officers, Capson and Sarkar.**

108. Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), entitled “Liability of Principal For Act of Agent,” provides that “the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.”

109. Regulation 1.2, 17 C.F.R. § 1.2 (2020), bears the same title, and mirrors this statutory provision. It provides that “the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust, within the scope of his employment or office, shall be deemed the act, omission, or failure of such individual, association, partnership, corporation or trust as well as of such official, agent, or other person.”

110. These provisions are designed to ensure that an entity is responsible for the actions of its employees and agents, consistent with basic principles of *respondeat superior*.

111. Capson and Sarkar were the two owners and operators of Denari. It was through Capson’s and Sarkar’s acts and omissions that Denari violated the Act and Regulations as described in this Consent Order. The acts, omissions, and failures of Capson and Sarkar described in this Consent Order occurred within the scope of their employment and/or office with Denari. Therefore, Denari is liable for their acts, omissions, and failures described in this Consent Order.



**11. Capson and Sarkar are liable as the “Control Persons” of Denari, Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2018)**

112. 7 U.S.C. § 13c(b) states that any person who “directly or indirectly” controls a person or entity that violates any provision of the CEA or any CFTC rules, “may be held liable for such violation in any action brought by the [CFTC] to the same extent as such controlled person” where the person “did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.”

113. As described in further detail in paragraphs 16 through 55 of this Consent Order, Capson and Sarkar exercised general control over Denari. For example, they are the sole owners of Denari, they are authorized signatories on Denari’s bank accounts, and they controlled the financial transactions of Denari. Capson and Sarkar exercised direct control over Denari and its violations of the Act and Regulations described in this Consent Order.

114. Capson and Sarkar, through the conduct described in paragraphs 16 through 55 of this Consent Order, knowingly induced Denari’s conduct described in this Consent Order. Therefore, under 7 U.S.C. § 13c(b), Capson and Sarkar are liable for Denari’s violations of the Act and Regulations described in this Consent Order.

115. Capson and Sarkar are therefore liable as “control persons” pursuant to 7 U.S.C. § 13c(b) for Denari’s violations of the Act and Regulations described in this Consent Order.

**12. Need for Injunctive Relief.**

116. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices described in this Consent Order and in similar acts and practices in violation of the Act and Regulations.

#### IV. INJUNCTIONS

##### IT IS HEREBY ORDERED THAT:

117. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), Defendants are permanently restrained, enjoined and prohibited from directly or indirectly:

- a) In or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market, (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or with the other person, in violation of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2018), or Regulation 5.2(b), 17 C.F.R. § 5.2(b) (2020);
- b) using the mails or any means or instrumentality of interstate commerce, directly or indirectly, as a CPO or an AP of a CPO, to (A) employ any device, scheme, or artifice to defraud any participant; or (B) engage in any transaction, practice, or course of business that operates as a fraud or deceit

- upon any participant, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2018);
- c) failing to register as a CPO, in violation of Sections 2(c)(2)(C)(iii)(I)(cc) and 4m(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6m(1) (2018), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2020);
  - d) failing to register as an AP or permitting an AP to remain unregistered, in violation of Section 4k of the Act, 7 U.S.C. § 6k(2) (2018), and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2020).
  - e) Failing to operate a commodity pool as an entity cognizable as a legal entity separate from its operator, failing to receive and hold pool participant funds in accounts in the name of the commodity pool, or commingling the property of a commodity pool and pool participants' funds with their own property in violation of Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2020); and
  - f) Failing to provide actual or prospective pool participants with required disclosure documents in violation of Regulations 4.21, 4.24 and 4.25, 17 C.F.R. §§ 4.21, 4.24, 4.25 (2020).

118. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), Defendant Travis Capson is permanently restrained, enjoined and prohibited from willfully making false, fictitious, or fraudulent statements or representations to the NFA a futures association registered under Act.

119. Defendants are also permanently restrained, enjoined and prohibited from directly or indirectly:

- a) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- b) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- c) Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2020); and/or
- d) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2020)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

120. Defendants are restrained, enjoined and prohibited for a period of five years beginning on December 4, 2019, the date of the preliminary injunction in this case, from directly or indirectly:

- a) Having any commodity interests traded on their behalf;
- b) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018)); and
- c) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2020), for their own personal account or for any account in which they have a direct or indirect interest.

**V. STATUTORY AND EQUITABLE RELIEF**

121. The Court-appointed Temporary Receiver is hereby appointed Permanent Receiver with respect to the Defendants’ “funds, assets, or other property” (as these terms are defined in the Consent Order of Preliminary Injunction and Other Ancillary Relief, ECF No. 37, referred to as “assets” in this section of this order), subject to the exemptions below, and is granted the full powers of a federal equity receiver with respect to these assets, including without limitation: (i) all powers granted to the Temporary Receiver in this Court’s Consent Order for Preliminary Injunction and Other Ancillary Relief Against Defendants Travis Capson, Arnab Sarkar and Denari Capital, LLC (ECF No. 37); (ii) the right, upon Court approval, to market and sell all these assets; and (iii) the right and discretion to pursue: (a) any actions necessary to recover these assets, wherever located, of the Defendants and/or of the Receivership Estate; and (b) any actions on behalf of the creditors of the Receivership Estate and/or the Defendants. However, Capson’s and Sarkar’s earnings, “funds, assets, or other property” (as these terms are defined in ECF No. 37) that are considered “exempt” under federal law and/or the law of the state in which they reside are neither subject to the Permanent Receiver’s powers above nor this paragraph. This Consent Order shall not preclude Defendants from seeking any additional exemptions from the Permanent Receiver’s powers above, and shall be without prejudice to the Defendants’ ability to otherwise seek any exemption from, or modification to, this paragraph; the Commission and the Permanent Receiver reserve the right to oppose any such exemption or modification.

122. The “Asset Freeze Order Prohibiting the Transfer, Removal, Dissipation and Disposal of Assets” set forth in Paragraph 10 of ECF No. 37 is hereby terminated.

**A. Restitution**

123. Defendants shall pay, jointly and severally, restitution in the amount of Three Million, Six Hundred Sixty-Three Thousand, Two Hundred Eighty-Two dollars and Fourteen cents (\$3,663,282.14) (the “Restitution Obligation”), provided, however, that the Restitution Obligation will be offset up to the full amount by any distributions made by the Permanent Receiver to claimants pursuant to the Plan of Distribution (ECF No. 69-1), which was previously approved by the Court (ECF No. 79). If the Restitution Obligation is not paid immediately, post-judgment interest shall accrue on any unpaid portion of the Restitution Obligation in excess of the value of the funds remaining in the Receiver’s possession as of the date of the entry of this Order. Post-judgment interest shall accrue beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2018).

124. The Permanent Receiver shall receive restitution payments from the Defendants and make distributions as set forth below.

125. Defendants shall make Restitution Obligation payments, and any post-judgment interest payments, under this Consent Order to the Permanent Receiver in the name “Denari Restitution Fund,” and shall send such payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s check, or bank money order, to Kathy Bazoian Phelps, Permanent Receiver, Raines Feldman LLP, 1800 Avenue of the Stars, 12th Floor, Los Angeles CA 90067, under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

126. The Permanent Receiver shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' pool participants who have made claims to the Permanent Receiver, or may defer distribution until such time as the Receiver deems appropriate. Amounts and assets distributed by the Permanent Receiver pursuant to any and all plans of distributions submitted by the Permanent Receiver and approved by the Court, shall be applied and credited toward the Defendants' Restitution Obligation. In the event that the amount of Restitution Obligation payments to the Permanent Receiver are of a *de minimis* nature such that the Permanent Receiver determines that the administrative cost of making a distribution to eligible pool participants is impractical, the Permanent Receiver may, in her discretion, treat such restitution payments as civil monetary penalty payments, which the Permanent Receiver shall forward to the CFTC following the instructions for civil monetary penalty payments set forth in Part V.B. below.

127. Defendants shall cooperate with the Permanent Receiver as appropriate to provide such information as the Permanent Receiver deems necessary and appropriate to identify Defendants' pool participants to whom the Permanent Receiver, in her sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendants shall execute any documents necessary to release funds that they may have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

128. The Permanent Receiver shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' pool participants during the previous year. The Permanent Receiver shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer,

Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

129. Upon the termination of the receivership estate, the Permanent Receiver shall provide the Commission with a report detailing the disbursement of funds to Defendants' pool participants. The Permanent Receiver shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

130. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each claimant whose claim was approved by the Permanent Receiver is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendants to ensure continued compliance with any provision of this Consent Order and to hold Defendants in contempt for any violations of any provision of this Consent Order; provided, however, that no third-party beneficiary of this Consent Order may seek to obtain satisfaction of any amount from the Permanent Receiver.

131. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligation, such funds shall be transferred to the Permanent Receiver for disbursement in accordance with the procedures set forth above.

**B. Civil Monetary Penalty**

132. Defendant Travis Capson and Arnab Sarkar shall each pay a civil monetary penalty in the amount of their respective gains from the violations described in this Order. Defendant Travis Capson shall pay a civil monetary penalty in the amount of Two Hundred Fifty



Thousand Dollars (\$250,000) (“CMP Obligation”). Defendant Arnab Sarkar shall pay a civil monetary penalty in the amount of One Hundred Sixty-Six Thousand Dollars (\$166,000) (“CMP Obligation”).

133. If the CMP Obligation is not paid immediately, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2018).

134. Defendants shall pay their respective CMP Obligations and any post-judgment interest, by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

CFTC  
C/O ESC/AMK-326; RM 265  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-6569 office  
(405) 954-1620 fax  
9-AMC-AR-CFTC@faa.gov

If payment by electronic funds transfer is chosen, Defendants shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies Defendants and the name and docket number of this proceeding. Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

135. With regard to funds accumulated by the Permanent Receiver, the funds shall be distributed first to satisfy the Restitution Obligation, and second to satisfy the CMP Obligation if funds are available. The Permanent Receiver shall provide written notice in accordance with Paragraph 141 to the Defendants of any partial and/or complete satisfaction of these obligations.

**C. Other Provisions Related to Restitution Award and Civil Penalty**

136. Partial Satisfaction: Acceptance by the CFTC or the Permanent Receiver of any partial payment of Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Consent Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

**D. Cooperation**

137. Defendants shall cooperate fully and expeditiously with the CFTC, including the CFTC's Division of Enforcement, in this action, and in any current or future CFTC investigation or action related thereto.

138. Defendants and all other persons or entities served with a copy of this Consent Order shall cooperate fully with all reasonable requests of the Permanent Receiver and her retained professionals including transferring funds at the Permanent Receiver's direction and producing records related to the Defendants' accounts as well as providing such information as the Permanent Receiver deems necessary and appropriate to identify the Defendant's pool participants to whom the Permanent Receiver, in her sole discretion, may determine to include in any plan for distribution of any restitution payments.

**E. Cooperation of Third Parties**

139. During the Receivership, any financial or brokerage institution, business entity, or person that receives actual notice of this Consent Order by personal service or through other

means (including without limitation by U.S. Mail, overnight courier, email, or facsimile) and holds, controls, or maintains custody of any account, asset, records, or other property titled in the name of, held for the benefit of, or otherwise under the control of any of the Defendants, or has held, controlled, or maintained custody of any such account, asset, records or other property of any of the Defendants at any time since January 2012, except as directed by further order of the Court, and after the Permanent Receiver provides at least three business days' notice to the Defendants shall not:

- a. directly or indirectly destroy, alter, or dispose of, in any manner, any records relating to the business activities and business and personal finances of either of the Defendants; and
- b. deny a request by the Commission or the Permanent Receiver to inspect all records pertaining to every account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of the Defendants, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, safe deposit box logs, and all communications with any of the Defendants. As an alternative to allowing inspection of records, a financial or brokerage institution, business entity or other person may provide copies of records requested by the Commission or the Permanent Receiver.

140. Furthermore, during the Receivership, any such financial or brokerage institution, business entity, or person that receives actual notice of this Order, within ten business days of a request by the Permanent Receiver, or such longer period specified by the Permanent Receiver,

and after the Permanent Receiver has provided at least three business days' notice to the Defendants, shall:

- a. Turn over to the Permanent Receiver possession and custody of all Defendants' "funds, assets, or other property" (consistent with the use of these terms in ECF No. 37, as described in Paragraph 121 above) that were deposited into an account in the name of the Defendants, or acquired by the Defendants during the Relevant Period and prior to the date of this Consent Order;
- b. Provide the Permanent Receiver with copies of all records pertaining to any account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of the Defendants, either individually or jointly, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, safe deposit box logs, and all communications with any of the Defendants;
- c. Provide the Permanent Receiver with all usernames and passwords to all accounts, to gain or secure access to any of the assets or records, created, acquired, used and/or maintained by any of the Defendants prior to the entry of this Consent Order, and provide the Permanent Receiver with view-only access to all accounts created, acquired, used and/or maintained by any of the Defendants on or after the date this Consent Order is entered, and report to the Permanent Receiver by e-mail on a monthly basis until the restitution obligation is fulfilled setting forth income received or assets acquired; and

- d. Cooperate with all reasonable requests of the Permanent Receiver relating to implementation of this Order.

## **VI. MISCELLANEOUS PROVISIONS**

141. Notice: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows:

Notice to CFTC:

Robert Howell  
Deputy Director, Division of Enforcement  
Commodity Futures Trading Commission  
525 W. Monroe, Suite 1100  
Chicago, Illinois 60661

Notice to Defendants Travis Capson and Arnab Sarkar:

Brian Walsh and Elizabeth Davis  
Murphy & McGonigle, PC  
1001 G Street, N.W.  
Seventh Floor  
Washington, D.C. 20001

All such notices to the CFTC shall reference the name and docket number of this action.

142. Compensation for the Permanent Receiver: The Permanent Receiver and all personnel she hired as previously authorized by the Court, including counsel to the Permanent Receiver, remain entitled to reasonable compensation for the performance of duties pursuant to this Consent Order and for the cost of actual out-of-pocket expenses incurred by them for those services authorized by this Consent Order. However, the Permanent Receiver and any personnel she hired shall not be compensated or reimbursed by, or otherwise be entitled to, any funds from the Court or the CFTC. The Permanent Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation on at least a quarterly basis. Compensation shall be paid exclusively from the funds held by the Permanent Receiver in the receivership estate.

143. The Permanent Receiver shall not be liable to the Defendants, third-party beneficiaries of this Order, or any other third-party for any acts taken in her official capacity as temporary receiver before entry of this Order, or acts taken in her official capacity as Permanent Receiver after entry of this Order, and all acts taken in her official capacity, prior to or subsequent to entry of this Order, including acts taken at the Permanent Receiver's direction by her retained professionals, shall be deemed reasonable, necessary, and authorized under this Order; provided, however, that the foregoing shall not include acts of fraud.

144. Change of Address/Phone: Until such time as Defendants satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Consent Order, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone numbers and mailing addresses within ten calendar days of the change.

145. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

146. Invalidation: If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

147. Waiver: The failure of any party to this Consent Order or of any pool participant at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or pool participant at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any

provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

148. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Defendants to modify or for relief from the terms of this Consent Order.

149. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Defendants.

150. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

151. Contempt: Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

152. Agreements and Undertakings: Defendants shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction, Restitution, and Civil Monetary Penalty* forthwith and without further notice.

**IT IS SO ORDERED** on this 24<sup>th</sup> day of November, 2021.

  
\_\_\_\_\_  
**EDWARD M. CHEN**  
**UNITED STATES DISTRICT JUDGE**



CONSENTED TO AND APPROVED BY:

/s/ Kathy Bazoian Phelps  
Kathy Bazoian Phelps,  
Permanent Receiver on behalf of Denari  
Capital LLC

Date: 11/18/2021

\_\_\_\_\_  
Travis Capson

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

\_\_\_\_\_  
Arnab Sarkar

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

Approved as to form:

/s/ Elizabeth Davis  
Counsel for Travis Capson and Arnab  
Sarkar

Date: 11/18/2021

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/s/ Carlin Metzger  
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Date: 11/18/2021

CONSENTED TO AND APPROVED BY:

\_\_\_\_\_  
Kathy Bazoian Phelps,  
Permanent Receiver on behalf of Denari  
Capital LLC

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

  
\_\_\_\_\_  
Travis Capson

Date: 07/25/2021

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

\_\_\_\_\_  
Arnab Sarkar

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

Approved as to form:

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CONSENTED TO AND APPROVED BY:

\_\_\_\_\_  
Kathy Bazoian Phelps,  
Permanent Receiver on behalf of Denari  
Capital LLC

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

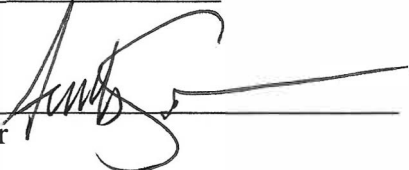
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\_\_\_\_\_  
Travis Capson

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

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

\_\_\_\_\_  
Arnab Sarkar



Date: 7/23/2021

Approved as to form:

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