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5 *Receiver*

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

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11 COMMODITY FUTURES TRADING
COMMISSION,

12 Plaintiff,

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14 v.

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DENARI CAPITAL LLC, TRAVIS
CAPSON, and ARNAB SARKAR,

16 Defendants,

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Case No. 19-cv-07284-EMC

**THIRD ADMINISTRATIVE MOTION FOR
AN ORDER PURSUANT TO LOCAL RULE
7-11 FOR THE APPROVAL OF FEES AND
EXPENSES FOR RECEIVER, DIAMOND
McCARTHY LLP, AND SCHINNER &
SHAIN, LLP THROUGH SEPTEMBER 30,
2020**

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

1 **I. Relief Requested**

2 Pursuant to Local Rule 7-11, Kathy Bazoian Phelps, the Receiver (“Receiver”) seeks approval
 3 of compensation in the amount of \$19,118.50 for services rendered and reimbursement for actual,
 4 necessary and reasonable expenses incurred in the amount of \$397.20 from July 1, 2020 through
 5 September 30, 2020. Diamond McCarthy LLP (“Diamond McCarthy”), Receiver’s general counsel,
 6 seeks compensation in the amount of \$41,658.00 for services rendered from July 1, 2020 through
 7 September 30, 2020. Schinner & Shain, LLP (“Schinner & Shain”), Receiver’s securities counsel,
 8 seeks compensation in the amount of \$1,950.00 for services rendered from July 1, 2020 through
 9 September 30, 2020. This motion (“Motion”) is supported by the Declarations of the Receiver, David
 10 A. Castleman (the “Castleman Declaration”) of Diamond McCarthy and Fred Koenen (the “Koenen
 11 Declaration”) of Schinner & Shain. The Receiver has conferred with counsel to the Commodity
 12 Futures Tradition Commission (“CFTC”), and counsel to the Receivership Defendants (defined
 13 below), and is advised that they do not oppose the Motion.

14 **II. Previous Fee Motions**

15 This is the Receiver’s third interim fee motion. On May 6, 2020, the Court entered an Order
 16 approving the Receiver’s first interim application for payment of fees and expenses for the period
 17 December 4, 2019 through March 31, 2020, as follows: (i) the Receiver’s fees in the amount of
 18 \$59,580.10 and reimbursement of expenses in the amount of \$1,358.27; and (ii) Diamond McCarthy’s
 19 fees in the amount of \$22,090.00 and reimbursement of expenses in the amount of \$2,347.95.

20 On August 12, 2020, the Court entered an Order approving the Receiver’s second interim
 21 application for payment of fees and expenses for the period April 1, 2020 through June 30, 2020, as
 22 follows: (i) the Receiver’s fees in the amount of \$53,838.00; (ii) Diamond McCarthy’s fees in the
 23 amount of \$53,472.00 and reimbursement of expenses in the amount of \$254.23; (iii) Schinner &
 24 Shain’s fees in the amount of \$6,850.00, and (iv) Miller Kaplan Arase LLP’s fees in the amount of
 25 \$3,808.00.¹

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 28 ¹ Miller Kaplan Arase LLP, the Receiver’s tax advisor, does not have fees to submit for this Motion.

1 **III. Case Status**

2 On November 5, 2019, the CFTC filed a Complaint (Doc. No. 1) against Denari Capital,
3 LLC (“Denari”), Travis Capson, and Arnab Sarkar (collectively, with Denari, the “Receivership
4 Defendants”). On December 4, 2019, this Court entered an Order Appointing a Temporary
5 Receiver (Doc. No. 37) appointing the Receiver as the temporary receiver with full powers of an
6 equity receiver for the Receivership Defendants and all of their assets, except as set forth therein.

7 On February 4, 2020, the Court entered an Order (Doc. No. 44) approving the relief
8 requested in the Receiver’s Administrative Motion (Doc. No. 40) to employ Diamond McCarthy as
9 general counsel and Schinner & Shain as securities counsel.

10 On August 27, 2020, the Receiver filed Motions for Entry of Orders approving (1) the
11 Receiver’s Plan for Distribution; (2) the Sierra Gold LLC Agreement; (3) the Form Agreements
12 with Investors; (4) the Form and Manner of Notice; (5) the Settlement with United Resource
13 Holdings Group, Inc., United Milling and Refining Corp., and Springbok Development LLC; (6)
14 the Sale of Publicly Traded Shares; and (7) the Settlement of Claim Asserted by Investor Gregory
15 Capson (Doc Nos. 69-72). On October 1, 2020, the Court granted all of these Motions (Doc Nos.
16 78-82).

17 As of September 30, 2020, the Receivership Estate presently has approximately \$800,000
18 of cash on hand. Attached to the Receiver’s Declaration as Exhibit “1” is a financial summary
19 showing cash receipts and disbursements from inception of the case and cash on hand as of
20 September 30, 2020.

21 **IV. The Receiver’s Fee and Expense Request**

22 As detailed in the Declaration of the Receiver, the Receiver established separate billing
23 categories for services provided. The billing statements itemizing the services provided are
24 contained in Exhibit “2” and the expenses are attached as Exhibit “3” to the Receiver’s Declaration.
25 The categories and amounts are as follows:

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Matter	Hours	Fees	Expenses
Case Administration	12.00	\$4,678.50	n/a/
Asset Analysis & Recovery/Disposition	13.60	\$6,460.00	n/a
Plan & Disclosure Statement	16.80	\$7,980.00	n/a
Expenses	n/a	n/a	\$397.20
TOTAL	42.40	\$19,118.50	\$397.20

Under Case Administration, the Receiver reviewed and revised the second quarter Status report, reviewed tax returns, communicated with investors regarding the plan, managed the website, communicated with CFTC regarding the plan, and managed the funds of the Receivership Estate. Under Asset Analysis & Recovery/Disposition, the Receiver evaluated the Receivership Estate's interest in certain securities. The Receiver drafted, reviewed and revised the Sierra Gold, LLC agreements, and evaluated transfer and settlement agreements relating to United Resource Holdings Group, Inc. ("URHG") shares and Dun Glen. Under Plan & Disclosure Statement, the Receiver prepared and reviewed multiple Motions for plan of distribution, approval of settlements, and sale of publicly traded shares. The Receiver also reviewed and revised various agreements, reviewed and edited the plan, communicated with CFTC regarding the plan and its implementation, communicated with investors regarding status of agreements, reviewed pleadings for plan and related motions and communicated with counsel regarding the same.

V. Diamond McCarthy's Fee Request

As detailed in the Castleman Declaration, Diamond McCarthy established separate billing categories for services provided, which enable Diamond McCarthy to monitor its activities and appropriately account for the time expended.² The billing statements itemizing the services provided are attached as Exhibit "4" to the Castleman Declaration. The categories and amounts for each are as follows:

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² In certain instances, where more than one category of issues might have been addressed during the course of a meeting or telephone conference, Diamond McCarthy's time records may include that time in only one billing category.

Matter	Hours	Fees	Expenses
Case Administration	4.70	\$1,823.60	n/a
Asset Disposition	64.50	\$30,570.00	n/a
Fee Applications/Objections	9.90	\$3,841.20	n/a
Plan & Disclosure Statement	13.40	\$5,423.20	n/a
TOTAL	92.50	\$41,658.00	n/a

Case Administration includes all professional services related to general representation of the Receiver in her administration of the Receivership Estate, including communicating with the Receiver, CFTC, Receivership Defendants and their counsel to review information and documents necessary to analyze claims, assets, and action items for a plan. Under Asset Disposition, Diamond McCarthy worked with the Receiver to draft, review, and revise settlement agreements and motion to sell URHG shares and reviewed URHG stock transfer information. Fee Applications/Objections include assistance to the Receiver with the Second Interim Fee Request. Under the Plan and Disclosure Statement, Diamond McCarthy worked with the Receiver to formulate, draft, and revise a plan of distribution and a motion to approve the plan, as well as necessary securities agreements.

Diamond McCarthy has made every effort to avoid unnecessary duplication of effort by and among its attorneys and paraprofessionals, as well as with the Receiver's other retained professionals in this case. The Receiver records time for services rendered as receiver to a separate billing matter, which is not included in any of Diamond McCarthy's invoices.

VI. Schinner & Shain's Fee Request

As detailed in the Koenen Declaration, Schinner & Shain was retained solely as securities counsel and did not establish separate billing categories. The billing statements itemizing the services provided are contained in Exhibit "5" attached thereto. Schinner & Shain's services during the relevant period for \$1,950.00 include reviewing a settlement agreement and stock purchase and sale agreements, and discussing with the Receiver application for court order requesting issuance of electronic stock certificates.

WHEREFORE, the Receiver seeks entry of an order granting this Motion in all respects.

Dated: October 26, 2020

By: /s/Kathy Bazoian Phelps
Kathy Bazoian Phelps, Receiver