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5 *Receiver*

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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

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COMMODITY FUTURES TRADING
COMMISSION,

Case No. 19-cv-07284-EMC

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Plaintiff,

**FOURTH ADMINISTRATIVE MOTION
FOR AN ORDER PURSUANT TO LOCAL
RULE 7-11 FOR THE APPROVAL OF
FEES AND EXPENSES FOR RECEIVER,
DIAMOND MCCARTHY LLP, SCHINNER
& SHAIN, LLP, AND MILLER KAPLAN
ARASE LLP THROUGH DECEMBER 31,
2020**

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v.

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DENARI CAPITAL LLC, TRAVIS
CAPSON, and ARNAB SARKAR,

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Defendants,

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

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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 \$15,019.00 for services rendered and reimbursement for actual,
4 necessary and reasonable expenses incurred in the amount of \$616.34 from October 1, 2020 through
5 December 31, 2020. Diamond McCarthy LLP (“Diamond McCarthy”), Receiver’s general counsel,
6 seeks compensation in the amount of \$26,080.00 for services rendered from October 1, 2020 through
7 December 31, 2020. Schinner & Shain, LLP (“Schinner & Shain”), Receiver’s securities counsel,
8 seeks compensation in the amount of \$250.00 for services rendered from October 1, 2020 through
9 December 31, 2020. Miller Kaplan Arase LLP (“Miller Kaplan”), Receiver’s securities counsel, seeks
10 compensation in the amount of \$2,379.00 for services rendered from October 1, 2020 through
11 December 31, 2020. This motion (“Motion”) is supported by the Declarations of the Receiver, David
12 A. Castleman (the “Castleman Declaration”) of Diamond McCarthy, Fred Koenen (the “Koenen
13 Declaration”) of Schinner & Shain, and Julia Damasco (the “Damasco Declaration”) of Miller Kaplan.
14 The Receiver has conferred with counsel to the Commodity Futures Tradition Commission (“CFTC”),
15 and counsel to the Receivership Defendants (defined below), and is advised that they do not oppose
16 the Motion.

17 **II. Previous Fee Motions**

18 This is the Receiver’s fourth interim fee motion. On May 6, 2020, the Court entered an Order
19 approving the Receiver’s first interim application for payment of fees and expenses for the period
20 December 4, 2019 through March 31, 2020, as follows: (i) the Receiver’s fees in the amount of
21 \$59,580.10 and reimbursement of expenses in the amount of \$1,358.27; and (ii) Diamond McCarthy’s
22 fees in the amount of \$22,090.00 and reimbursement of expenses in the amount of \$2,347.95.

23 On August 12, 2020, the Court entered an Order approving the Receiver’s second interim
24 application for payment of fees and expenses for the period April 1, 2020 through June 30, 2020, as
25 follows: (i) the Receiver’s fees in the amount of \$53,838.00; (ii) Diamond McCarthy’s fees in the
26 amount of \$53,472.00 and reimbursement of expenses in the amount of \$254.23; (iii) Schinner &
27 Shain’s fees in the amount of \$6,850.00, and (iv) Miller Kaplan Arase LLP’s fees in the amount of
28 \$3,808.00.

1 On November 6, 2020, the Court entered an Order approving the Receiver's third interim
2 application for payment of fees and expenses for the period July 1, 2020 through September 30, 2020,
3 as follows: (i) the Receiver's fees in the amount of \$19,118.50 and reimbursement of expenses in the
4 amount of \$397.20; (ii) Diamond McCarthy's fees in the amount of \$41,658.00; and (iii) Schinner &
5 Shain's fees in the amount of \$1,950.00.

6 **III. Case Status**

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

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

15 On August 27, 2020, the Receiver filed Motions for Entry of Orders approving (1) the
16 Receiver's Plan for Distribution; (2) the Sierra Gold LLC Agreement; (3) the Form Agreements
17 with Investors; (4) the Form and Manner of Notice; (5) the Settlement with United Resource
18 Holdings Group, Inc., United Milling and Refining Corp., and Springbok Development LLC; (6)
19 the Sale of Publicly Traded Shares; and (7) the Settlement of Claim Asserted by Investor Gregory
20 Capson (Doc. Nos. 69-72). On October 1, 2020, the Court granted all of these Motions (Doc. Nos.
21 78-82). The Receiver implemented the distribution of the securities soon thereafter.

22 On December 17, the Receiver filed a Motion for Entry of an Order approving an interim
23 distribution to Claimants, in the amount of 50% of the amount of the Claimants' cash claims (Doc.
24 No. 87). On December 23, the Court granted this motion. (Doc. No. 88.) On December 24, 2020,
25 the Receiver wired funds to those claimants that requested distribution by wire transfer, and sent
26 checks to those claimants that requested distribution by check.

27 As of December 31, 2020, the Receivership Estate presently had approximately \$503,000 of
28 cash on hand although \$137,000 in distribution checks had not yet been cashed as of that date. As

1 of the filing of this motion, those checks have largely been cashed, and the Receivership has
 2 approximately \$366,000 cash on hand. The Receivership Estate is owed an additional \$150,000.00
 3 as a result of the closing of the Sparks Property as set forth in the URHG Settlement (Doc. No. 80),
 4 but that closing has been delayed due to the buyer's inability to close the transaction. The Receiver
 5 is continuing to pursue collection of that amount. Attached to the Receiver's Declaration as
 6 Exhibit "1" is a financial summary showing cash receipts and disbursements during the Fourth
 7 Quarter 2020, and cash on hand as of December 31, 2020.

8 **IV. The Receiver's Fee and Expense Request**

9 As detailed in the Declaration of the Receiver, the Receiver established separate billing
 10 categories for services provided. The billing statements itemizing the services provided are
 11 contained in Exhibit "2" and the expenses are attached as Exhibit "3" to the Receiver's Declaration.
 12 The categories and amounts are as follows:

13 Matter	Hours	Fees	Expenses
14 Case Administration	8.90	\$3,666.50	\$200.60
15 Plan & Disclosure Statement	22.80	\$10,830.00	\$415.74
16 Fee Applications	1.10	\$522.50	n/a
TOTAL	32.80	\$15,019.00	\$616.34

17 Under Case Administration, the Receiver and her staff communicated with investors
 18 regarding the plan, managed the website, communicated with CFTC regarding the plan, worked
 19 with her accountants on tax matters, and managed the funds of the Receivership Estate. Under
 20 Asset Analysis & Recovery/Disposition, the Receiver communicated with a purchaser of United
 21 Resource Holdings Group, Inc. ("URHG") shares and followed up regarding the URHG check.
 22 Under Plan & Disclosure Statement, the Receiver communicated with her advisers, claimants, and
 23 third parties regarding the distribution of URHG and National Gold shares, and supervised the
 24 distribution of those securities. The Receiver also prepared and implemented the motion for an
 25 interim cash distribution, implemented that interim cash distribution, and had multiple
 26 communications regarding closing of the Sparks Property. Under Fee Applications, the Receiver
 27 reviewed her advisers' invoices.
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1 **V. Diamond McCarthy’s Fee Request**

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

Matter	Hours	Fees	Expenses
Case Administration	3.50	\$1,750.00	n/a
Asset Disposition	42.20	\$21,100.00	n/a
Fee Applications/Objections	10.30	\$3,230.00	n/a
TOTAL	56.00	\$26,080.00	n/a

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11 Case Administration includes all professional services related to general representation of
12 the Receiver in her administration of the Receivership Estate, including communicating with the
13 Receiver, CFTC, Receivership Defendants and their counsel to review information and documents
14 necessary to analyze claims, assets, and action items for a plan. Under Asset Disposition, Diamond
15 McCarthy coordinated with the Receiver to implement the securities transfers of URHG and
16 National Gold shares and Sierra Gold interests, including working with TD Ameritrade, Pacific
17 Stock Transfer, the Nevada Agency and Transfer Company, and Sierra Gold’s new manager.
18 Diamond McCarthy also drafted the motion for an interim distribution and assisted the Receiver
19 with implementing that distribution. Diamond McCarthy also assisted the Receiver to prepare a
20 motion for final disposition and to pursue closing of the Sparks property. Fee
21 Applications/Objections include assistance to the Receiver with the Third Interim Fee Request.

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

26 **VI. Schinner & Shain’s Fee Request**

27 As detailed in the Koenen Declaration, Schinner & Shain was retained solely as securities
28 counsel and did not establish separate billing categories. The billing statements itemizing the

1 services provided are contained in Exhibit “5” attached thereto. Schinner & Shain’s services during
2 the relevant period for \$250.00 include advising the Receiver and her counsel on finalizing the
3 URHG and Sierra Gold transfers.

4 **VII. Miller Kaplan’s Fee Request**

5 As detailed in the Damasco Declaration, Miller Kaplan was retained solely as tax advisers
6 and counsel and did not establish separate billing categories. The billing statements itemizing the
7 services provided are contained in Exhibit “6” attached thereto. Miller Kaplan’s services during the
8 relevant period for \$2,379.00 include advising the Receiver and her counsel on preparing the 2020
9 qualified settlement fund tax returns.

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

12 Dated: January 29, 2021

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