

1 KATHY BAZOIAN PHELPS (State Bar No. 155564)
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3 DIAMOND MCCARTHY LLP
4 1999 Avenue of the Stars, Suite 1100
5 Los Angeles, California 90067-4402
6 Telephone: (310) 651-2997

7 *Receiver*

8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 COMMODITY FUTURES TRADING
13 COMMISSION,

14 Plaintiff,

15 v.

16 DENARI CAPITAL LLC, TRAVIS
17 CAPSON, and ARNAB SARKAR,

18 Defendants,

Case No. 19-cv-07284-EMC

**DECLARATION OF DAVID A.
CASTLEMAN IN SUPPORT OF 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**

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

1 I, David A. Castleman, declare:

2 1. I am an attorney duly licensed to practice in the State of California, and a senior counsel
3 at the firm of Diamond McCarthy LLP (“Diamond McCarthy”), counsel of record for the Receiver
4 Kathy Bazoian Phelps in this case. I have personal knowledge of the matters set forth below and if
5 called as a witness, I would and could testify competently to the matters stated herein.

6 2. This declaration is made in support of the Fourth Administrative Motion for an Order
7 Pursuant to Local Rule 7-11 for the Approval of Fees and Expenses for the Receiver, Diamond
8 McCarthy LLP, Schinner & Shain, LLP, and Miller Kaplan Arase through December 31, 2020
9 (“Motion”).

10 3. On February 4, 2020, the Court entered an order (Doc. No. 44) authorizing the Receiver
11 to employ Diamond McCarthy as the Receiver’s general counsel retroactively to December 4, 2019
12 (“DM Employment Order”). I am the attorney principally responsible for representing the Receiver.
13 I directly supervised the professionals and staff of Diamond McCarthy with respect to this
14 representation.

15 4. In recognition of the efficiencies and benefits to the estate, Diamond McCarthy has
16 divided its time among different billing categories. For the period of October 1, 2020 through
17 December 31, 2020 (“Motion Period”), Diamond McCarthy performed services between the
18 following 4 billing categories:

- 19 Case Administration
- 20 Asset Disposition
- 21 Fee Applications/Objections
- 22 Plan & Disclosure Statement

23 In the interests of the estate and pursuant to the DM Employment Order, Diamond McCarthy has
24 reduced its rates by 20%, and as such my customary rate of \$625.00 per hour has been reduced to
25 \$500.00 per hour, as reflected in the billing statements. Other professionals’ rates were similarly
26 discounted. These distinct billing categories enable Diamond McCarthy to monitor its activities and
27

28

1 appropriately account for the time expended.¹ Attached hereto as Exhibit “4” are true and correct
2 copies of the billing statements itemizing the legal services provided in this case.

3 Case Administration

4 5. Diamond McCarthy performed 3.50 hours of case administration services for total fees
5 of \$1,750.00.

6 6. The Case Administration billing category includes all professional services related to
7 general representation of the Receiver in her administration of the Receivership Estate during the
8 Motion Period, including but not limited to preparing the closing motion and related tasks. Such
9 motion may be filed once the Sparks property closes, which has been delayed.

10 Asset Disposition

11 7. Diamond McCarthy performed 42.20 hours of asset disposition services for total fees of
12 \$21,100.00.

13 8. During the Motion Period, Diamond McCarthy devoted a significant amount of time to
14 assisting the Receiver with her efforts to implement the settlement agreements, including the
15 disposition of the Receivership Estate’s shares in United Resource Holdings Group, Inc. (“URHG”)
16 and National Gold, and the Receivership Estate’s interests in Sierra Gold. That disposition required
17 coordinating with a number of parties, including TD Ameritrade, Pacific Stock Transfer, the Nevada
18 Agency and Transfer Company, and Sierra Gold’s new manager, as the shares that were transferred
19 had to be done privately through the stock transfer agent, rather than through an exchange. The
20 Receivership Estate’s entire interests in URHG, National Gold, and Sierra Gold, were successfully
21 disposed of during the Motion Period.

22 9. Diamond McCarthy also assisted the Receiver in drafting a motion for interim
23 distribution, so that the Receiver could distribute 50% of each cash claim to the applicable claimant.
24 Diamond McCarthy also assisted the Receiver in making that distribution.

25 10. To the extent necessary, Diamond McCarthy worked with the Receiver’s securities
26 _____

27 ¹ In certain instances, where more than one category of issues might have been addressed during
28 the course of a meeting or telephone conference, Diamond McCarthy’s time records may include
that time in only one billing category.

1 counsel to ensure that the transactions contemplated by the Receiver complied with applicable
2 securities laws, but Diamond McCarthy performed the bulk of the necessary legal services.

3 Fee Applications/Objections

4 11. Diamond McCarthy performed 10.30 hours of fee applications/objections services for
5 total fees of \$3,230.00.

6 12. During the Motion Period, Diamond McCarthy worked with the Receiver to prepare and
7 file the third interim fee request for the Receiver and Diamond McCarthy for the period July 1, 2020
8 through September 30, 2020, by way of an Administrative Motion and supporting declarations.

9 Plan & Disclosure Statement

10 13. Diamond McCarthy did not perform services under this billing category during the
11 Motion Period.

12 14. I have read the Motion and the billing statements attached to this declaration. To the best
13 of my knowledge, information and belief formed after reasonable inquiry, all the fees and requested
14 in the attached billing statements are true and correct.

15 15. The fees that Diamond McCarthy has charged are reasonable, necessary, and
16 commensurate with the skill and experience required for the activity performed. Diamond
17 McCarthy's services and time expenditures are reasonable in light of the labor required for the
18 matters for which Diamond McCarthy was retained and the balancing that must be performed to
19 efficiently and effectively represent the Receiver. Diamond McCarthy respectfully submits that it has
20 not expended time unnecessarily and that it has rendered efficient and effective services.

21 I declare under penalty of perjury that the foregoing is true and correct. Executed on this
22 28th day of January 2021 at Los Angeles, California.

23
24 */s/ David A. Castleman*

25 _____
26 David A. Castleman
27
28

EXHIBIT 4



DIAMOND McCARTHY LLP

**1999 Avenue of the Stars
11th Floor
Century City, CA 90067**

Fed. Tax I.D. #76-0631446

Counsel, of Kathy Bazoian Phelps, Receivership for CFTC
Diamond McCarthy LLP
1999 Avenue of The Stars, Suite 100
Los Angeles, CA 90067

Invoice 35665
January 15, 2021

ID: 2818-00011 - KBP

Re: Case Administration-Denari

For Services Rendered Through 12/31/2020

Previous Balance		1,823.60
Payments		-1,823.60
Balance Forward		0.00
Current Fees	1,750.00	
Total Current Charges		1,750.00
Total Due		1,750.00

Diamond McCarthy LLP

Counsel, of Kathy Bazoian Phelps, Receivership for CFTC
 I.D. 2818-00011 - KBP
 Re: Case Administration-Denari

January 15, 2021
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Fee Recap

		Hours	Rate/Hour	Amount
David A. Castleman	Senior Counsel	3.50	500.00	1,750.00
Totals		3.50		1,750.00

Fees

Date	Atty	Description	Hours	Rate	Amount
11/19/20	DAC	Revisions to closing motion, supporting declaration, and notice, review of applicable files regarding same.	3.50	500.00	1,750.00
Total Fees			3.50		1,750.00

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I.D. 2818-00011 - KBP
Re: Case Administration-Denari

January 15, 2021
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Total Fees and Disbursements **1,750.00**
Total Current Charges **1,750.00**

*The above amount may not include third party expenses for which we have not yet been billed.
REMITTANCE WITHIN 20 DAYS IS APPRECIATED*



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Counsel, of Kathy Bazoian Phelps, Receivership for CFTC
Diamond McCarthy LLP
1999 Avenue of The Stars, Suite 100
Los Angeles, CA 90067

Invoice 35666
January 15, 2021

ID: 2818-00014 - KBP

Re: Asset Disposition-Denari

For Services Rendered Through 12/31/2020

Previous Balance		30,570.00
Payments		-30,570.00
Balance Forward		0.00
Current Fees	21,100.00	
Total Current Charges		21,100.00
Total Due		21,100.00

Diamond McCarthy LLP

Counsel, of Kathy Bazoian Phelps, Receivership for CFTC
 I.D. 2818-00014 - KBP
 Re: Asset Disposition-Denari

January 15, 2021
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Fee Recap

		Hours	Rate/Hour	Amount
David A. Castleman	Senior Counsel	42.20	500.00	21,100.00
Totals		42.20		21,100.00

Fees

Date	Atty	Description	Hours	Rate	Amount
10/01/20	DAC	Attend hearing for approval of distribution plan motions.	1.00	500.00	500.00
10/05/20	DAC	Analysis of next steps for implementation of plan (1.3); email same with K. Phelps (.1); email to various claimants and stakeholder's regarding status (.5).	1.90	500.00	950.00
10/06/20	DAC	Communications with A. Maeda, G. Capson and G. Bermensolo regarding implementation.	0.80	500.00	400.00
10/07/20	DAC	Calls with K. Phelps, B. Oyler, and G. Bermensolo regarding implementation issues (1.3); email stock transfer agent and claimants regarding same (.3).	1.60	500.00	800.00
10/12/20	DAC	Analyze inventory of URHG shares and draft plan of distribution for allocation of specific shares to claimants.	1.50	500.00	750.00
10/13/20	DAC	Call with J. Claiborne (PST) regarding share transfer, review files regarding same (1.2); emails and calls with claimants regarding distributions (1.6); call with TD Ameritrade regarding distribution (.4); draft letter for TD Ameritrade (1.4).	4.60	500.00	2,300.00
10/14/20	DAC	Email TD Ameritrade regarding instructions (.2); call with J. Holt regarding Springbok and related emails (.5); email J. Claiborne (PST) regarding share transfer (.2).	0.90	500.00	450.00
10/19/20	DAC	Communications with A. Maeda and K. Phelps regarding Sierra Gold certification and distribution.	0.70	500.00	350.00
10/20/20	DAC	Communications with F. Koenen, G. Bermensolo, transfer agents, and claimants regarding URHG and National Gold transfers.	1.60	500.00	800.00
10/21/20	DAC	Email with A. Maeda regarding certification language.	0.20	500.00	100.00
10/22/20	DAC	Emails to stock transfer agents regarding URHG instruction letters and draft letter to Natco regarding National Gold transfer and medallion substitute.	1.70	500.00	850.00
10/23/20	DAC	Draft motion for interim cash distribution and create related cash management worksheet and related calls with K. Phelps and Claimant 6.	3.60	500.00	1,800.00
10/26/20	DAC	Create stock basis and transfer ledger (.7); analysis of related cash claim (.5); email K. Phelps regarding same (.2).	1.40	500.00	700.00
10/26/20	DAC	Calculate fees on transfer of URHG shares and email transfer agent regarding same.	0.30	500.00	150.00
10/27/20	DAC	Draft and revise letter to Maeda regarding compliance with Sierra Gold contract and related emails.	0.90	500.00	450.00

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Date	Atty	Description	Hours	Rate	Amount
10/28/20	DAC	Emails with K. Phelps regarding implementation of Sierra Gold agreement.	0.50	500.00	250.00
10/29/20	DAC	Call with K. Phelps regarding Denari plan implementation and emails with counterparties regarding same.	0.70	500.00	350.00
10/29/20	DAC	Finalize URHG transfer documentation and email same to K. Phelps.	0.60	500.00	300.00
10/30/20	DAC	Review Claimant 6 agreement and revise transfer request papers regarding same and emails to K. Phelps regarding same.	1.20	500.00	600.00
11/01/20	DAC	Emails with transfer agent, G. Bermensolo, and K. Phelps regarding transfer documents.	0.80	500.00	400.00
11/02/20	DAC	Emails with Pacific Stock Transfer and NATCO regarding transfer of URHG and National Gold shares.	0.60	500.00	300.00
11/04/20	DAC	Emails with K. Phelps, G. Capson and other claimants regarding URHG and National Gold transfers.	1.40	500.00	700.00
11/05/20	DAC	Emails with TD Ameritrade and G. Bermensolo regarding transfer of URHG shares.	0.50	500.00	250.00
11/09/20	DAC	Emails with TD Ameritrade and G. Bermensolo regarding transfer of URHG shares.	0.20	500.00	100.00
11/10/20	DAC	Call with J. Damasco and K. Phelps regarding Denari tax advice and status.	0.70	500.00	350.00
11/10/20	DAC	Revise letter to TD Ameritrade and related emails with K. Phelps and B. Walsh.	0.50	500.00	250.00
11/12/20	DAC	Complete new TD transfer requests and related emails with B. Walsh, K. Phelps, and G. Bermensolo.	0.90	500.00	450.00
11/12/20	DAC	Revisions to distribution tax chart and related emails with J. Damasco.	1.30	500.00	650.00
11/13/20	DAC	Finalize new transfer requests and email same to TD Ameritrade and others.	0.80	500.00	400.00
11/16/20	DAC	Communications with Wild Horse escrow agent regarding applicable papers.	0.60	500.00	300.00
11/18/20	DAC	Email with TD Ameritrade regarding sale of URHG.	0.10	500.00	50.00
11/23/20	DAC	Emails with claimant regarding distribution issues.	0.10	500.00	50.00
11/25/20	DAC	Emails with claimant regarding distribution issues.	0.30	500.00	150.00
12/16/20	DAC	Draft motion for interim distribution and related papers and exhibits, related analysis and emails.	4.50	500.00	2,250.00
12/17/20	DAC	Revisions to motion for interim distribution and related analysis and emails.	1.20	500.00	600.00
12/17/20	DAC	Revise distribution chart to include distribution information and related emails.	0.90	500.00	450.00
12/23/20	DAC	Draft wire transfer forms and call with K. Phelps regarding same.	1.10	500.00	550.00
Total Fees			42.20		21,100.00

Diamond McCarthy LLP

Counsel, of Kathy Bazoian Phelps, Receivership for CFTC
I.D. 2818-00014 - KBP
Re: Asset Disposition-Denari

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Total Fees and Disbursements **21,100.00**
Total Current Charges **21,100.00**

*The above amount may not include third party expenses for which we have not yet been billed.
REMITTANCE WITHIN 20 DAYS IS APPRECIATED*



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1999 Avenue of The Stars, Suite 100
Los Angeles, CA 90067

Invoice 35667
January 15, 2021

ID: 2818-00017 - KBP

Re: Fee Applications/Objections-Denari

For Services Rendered Through 12/31/2020

Previous Balance		3,841.20
Payments		-3,841.20
Balance Forward		0.00
Current Fees	3,230.00	
Total Current Charges		3,230.00
Total Due		3,230.00

Diamond McCarthy LLP

Counsel, of Kathy Bazoian Phelps, Receivership for CFTC
 I.D. 2818-00017 - KBP
 Re: Fee Applications/Objections-Denari

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Fee Recap

		Hours	Rate/Hour	Amount
David A. Castleman	Senior Counsel	2.30	500.00	1,150.00
Sevana Zadourian	Associate	8.00	260.00	2,080.00
Totals		10.30		3,230.00

Fees

Date	Atty	Description	Hours	Rate	Amount
10/15/20	SZ	Review Second Fee Motion and supporting documents.	1.00	260.00	260.00
10/16/20	SZ	Review Second Fee Motion and supporting documents (.2); discuss Third Fee Motion with Receiver (.3); begin drafting Third Fee Motion (.5).	1.00	260.00	260.00
10/19/20	SZ	Draft Third Fee Motion and Declarations for Receiver, Castleman, Koenen, and proposed order.	2.70	260.00	702.00
10/20/20	SZ	Draft Third Fee Motion and Declarations for Receiver, Castleman, Koenen, and proposed order.	2.50	260.00	650.00
10/21/20	DAC	Review and comment on fee application papers and related emails and call with K. Phelps regarding same.	1.80	500.00	900.00
10/21/20	SZ	Review exhibits for Third Fee Motion.	0.50	260.00	130.00
10/22/20	DAC	Revisions to fee application papers.	0.50	500.00	250.00
10/26/20	SZ	Finalize third fee motion application and exhibits.	0.30	260.00	78.00
Total Fees			10.30		3,230.00

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January 15, 2021
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Page 3

Total Fees and Disbursements **3,230.00**
Total Current Charges **3,230.00**

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REMITTANCE WITHIN 20 DAYS IS APPRECIATED*