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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.

15 DENARI CAPITAL LLC, TRAVIS
CAPSON, and ARNAB SARKAR,

16 Defendants,

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Case No. 19-cv-07284-EMC

**FIFTH ADMINISTRATIVE MOTION FOR
AN ORDER PURSUANT TO LOCAL RULE
7-11 FOR THE APPROVAL OF FEES AND
EXPENSES FOR RECEIVER, DIAMOND
MCCARTHY LLP, AND MILLER KAPLAN
ARASE LLP THROUGH MARCH 31, 2021**

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 \$3,916.00 for services rendered from January 1, 2021 through
4 March 31, 2021. Diamond McCarthy LLP (“Diamond McCarthy”), Receiver’s general counsel, seeks
5 compensation in the amount of \$3,050.00 for services rendered from January 1, 2021 through March
6 31, 2021. Miller Kaplan Arase LLP (“Miller Kaplan”), Receiver’s securities counsel, seeks
7 compensation in the amount of \$627.60 for services rendered and reimbursement for actual, necessary
8 and reasonable expenses incurred in the amount of \$50.00 from January 1, 2021 through March 31,
9 2021. This motion (“Motion”) is supported by the Declarations of the Receiver, David A. Castleman
10 (the “Castleman Declaration”) of Diamond McCarthy, and Julia Damasco (the “Damasco
11 Declaration”) of Miller Kaplan. The Receiver has conferred with counsel to the Commodity Futures
12 Tradition Commission (“CFTC”), and counsel to the Receivership Defendants (defined below), and is
13 advised that they do not oppose the Motion.

14 **II. Previous Fee Motions**

15 This is the Receiver’s fifth 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.

26 On November 6, 2020, the Court entered an Order approving the Receiver’s third interim
27 application for payment of fees and expenses for the period July 1, 2020 through September 30, 2020,
28 as follows: (i) the Receiver’s fees in the amount of \$19,118.50 and reimbursement of expenses in the

1 amount of \$397.20; (ii) Diamond McCarthy's fees in the amount of \$41,658.00; and (iii) Schinner &
2 Shain's fees in the amount of \$1,950.00.

3 On February 15, 2021, the Court entered an Order approving the Receiver's fourth interim
4 application for payment of fees and expenses for the period October 1, 2020 through December 31,
5 2020, as follows: (i) the Receiver's fees in the amount of \$15,019.00 and reimbursement of expenses
6 in the amount of \$616.34; (ii) Diamond McCarthy's fees in the amount of \$26,080.00; (iii) Schinner &
7 Shain's fees in the amount of \$250.00; and (iv) Miller Kaplan's fees in the amount of \$2,379.00.

8 **III. Case Status**

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

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

17 On August 27, 2020, the Receiver filed Motions for Entry of Orders approving (1) the
18 Receiver's Plan for Distribution; (2) the Sierra Gold LLC Agreement; (3) the Form Agreements
19 with Investors; (4) the Form and Manner of Notice; (5) the Settlement with United Resource
20 Holdings Group, Inc., United Milling and Refining Corp., and Springbok Development LLC; (6)
21 the Sale of Publicly Traded Shares; and (7) the Settlement of Claim Asserted by Investor Gregory
22 Capson (Doc. Nos. 69-72). On October 1, 2020, the Court granted all of these Motions (Doc. Nos.
23 78-82). The Receiver implemented the distribution of the securities soon thereafter.

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

1 sent distribution checks cashed them in early January 2021.

2 As of March 31, 2021, the Receivership Estate presently had approximately \$322,000 of
 3 cash on hand. The Receivership Estate is owed an additional \$150,000.00 as a result of the closing
 4 of the Sparks Property as set forth in the URHG Settlement (Doc. No. 80), but that closing has been
 5 delayed due to the buyer's inability to close the transaction. The Receiver is continuing to pursue
 6 collection of that amount, contacting the counterparties to the Sparks Property transaction regularly
 7 throughout the quarter. Attached to the Receiver's Declaration as Exhibit "1" is a financial
 8 summary showing cash receipts and disbursements during the First Quarter 2021, and cash on hand
 9 as of March 31, 2021.

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

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

14 Matter	Hours	Fees	Expenses
15 Case Administration	4.70	\$1,968.50	n/a
16 Plan & Disclosure Statement	2.90	\$1,377.50	n/a
17 Fee Applications	1.20	\$570.00	n/a
TOTAL	8.80	\$3,916.00	n/a

18 Under Case Administration, the Receiver and her staff communicated with investors
 19 regarding the plan, managed the website, communicated with CFTC regarding the plan, worked
 20 with her accountants on tax matters, and managed the funds of the Receivership Estate. Under Plan
 21 & Disclosure Statement, the Receiver communicated with the president of National Gold regarding
 22 the prior distribution of those shares, and had multiple communications regarding closing of the
 23 Sparks Property. Under Fee Applications, the Receiver reviewed her advisers' invoices.

24 **V. Diamond McCarthy's Fee Request**

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

Matter	Hours	Fees	Expenses
Case Administration	2.30	\$1,150.00	n/a
Fee Applications/Objections	3.80	\$1,900.00	n/a
TOTAL	6.10	\$3,050.00	n/a

6 Case Administration includes all professional services related to general representation of
7 the Receiver in her administration of the Receivership Estate, including communicating with the
8 Receiver, CFTC, Receivership Defendants and their counsel to review information and documents
9 necessary to analyze claims, assets, and action items for a plan. Under Case Administration,
10 Diamond McCarthy assisted the Receiver in preparing the fourth quarter financial reporting and
11 communicated with a claimant regarding distribution questions. Fee Applications/Objections
12 include assistance to the Receiver with the Fourth Interim Fee Request.

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

17 **VI. Miller Kaplan’s Fee Request**

18 As detailed in the Damasco Declaration, Miller Kaplan was retained solely as tax advisers
19 and counsel and did not establish separate billing categories. The billing statements itemizing the
20 services provided are contained in Exhibit “4” attached thereto. Miller Kaplan’s services during the
21 relevant period for \$627.60 include advising the Receiver and her counsel on preparing and filing
22 of the 2020 qualified settlement fund tax returns, and \$50.00 in costs for the 1099 forms.

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

24 Dated: April 15, 2021

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