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5 *Temporary Receiver*

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

11 COMMODITY FUTURES TRADING
COMMISSION,

12 Plaintiff,

13 v.

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

16 Defendants,
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Case No. 19-cv-07284-EC

**ADMINISTRATIVE MOTION FOR AN
ORDER PURSUANT TO LOCAL RULE
7-11 FOR THE APPROVAL OF FEES
AND EXPENSES FOR THE RECEIVER
AND COUNSEL FROM DECEMBER 4,
2019 THROUGH MARCH 31, 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, Temporary Receiver (“Receiver”) seeks
3 approval of compensation in the amount of \$59,580.10 for services rendered from December 4, 2019
4 through March 31, 2020 (the “Motion Period”), and reimbursement of expenses in the amount of
5 \$1,358.27. Diamond McCarthy seeks compensation in the amount of \$22,090.00 for services rendered
6 and reimbursement for actual, necessary and reasonable expenses incurred in the amount of \$2,347.95
7 during the Motion Period. This motion (“Motion”) is supported by the Declarations of the Receiver
8 and Sheryl P. Giugliano (the “Giugliano Declaration”).

9 The Receiver has conferred with counsel to the CFTC (“CFTC”), and counsel to the
10 Receivership Defendants (defined below), and is advised that they do not oppose the Motion.

11 **II. Previous Fee Motions**

12 This is the Receiver’s and Diamond McCarthy’s first interim fee motion and no prior amounts
13 have been requested or paid.

14 **III. Case Status**

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

21 On January 9, 2020, the Receiver filed an Administrative Motion (Doc. No. 40) (the
22 “Employment Application”) seeking approval to employ Diamond McCarthy as general counsel,
23 Miller Kaplan LLP as tax advisor, and Schinner & Shain as securities counsel. On February 4,
24 2020, the Court entered an Order (Doc. No. 44) approving the relief requested in the Employment
25 Application. On January 22, 2020, the Receiver filed an Administrative Motion (Doc. No. 42) (the
26 “Bar Date Motion”) seeking entry of an order establishing, among other things, a claims bar date.
27 On February 6, 2020, the Court entered an Amended Order (Doc. No. 47) (the “Bar Date Order”)
28 establishing, among other things, April 6, 2020 as the claims bar date in this case.

1 As of March 31, 2020, the Receivership Estate presently has approximately \$1,020,000 of
 2 cash on hand. Attached to the Declaration of the Receiver as Exhibit “1” is a financial summary
 3 showing the cash receipts and disbursements from the inception of the case and the cash on hand as
 4 of March 31, 2020.

5 **IV. The Receiver’s Fee Request**

6 As detailed in the Declaration of the Receiver, pursuant to the Receiver’s proposal for her
 7 appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver has
 8 established separate billing categories for services provided during the Motion Period: Case
 9 Administration; Asset Analysis and Recovery, Claims Administration/Objection, and Employment
 10 Applications. The billing statements itemizing the services provided and expenses incurred are
 11 contained in Exhibit “2” attached to the Declaration of the Receiver. The amounts for each
 12 category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	107.70	\$34,767.60	n/a/
Asset Analysis and Recovery	28.90	\$12,462.50	n/a
Claims Administration/Objection	26.00	\$12,350.00	n/a
Fee Employment Applications	9.40	No charge	n/a
Expenses		n/a	\$1,358.27
TOTAL	172.00	59,590.10	\$1,358.27

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 19 During the Motion Period, under the Case Administration category, the Receiver devoted a
 20 significant amount of time to ensuring the turnover of all documents and information necessary to
 21 understand the Receivership Defendants, the nature of the case, the likely valuable assets and
 22 claims to be asserted. Under the Claims Administration/Objection category, the Receiver has
 23 spoken numerous times with the CFTC and the Receivership Defendants and their counsel, as well
 24 as investors and creditors to understand the claims asserted and their validity. The Receiver
 25 established a claims bar date and began analyzing the claims submitted. The Receiver
 26 communicated with many of the investors to reach agreement regarding the net investment amount
 27 of their claims.
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1 The Receiver understands that her ability to effectuate a meaningful distribution plan is based,
 2 in part, on her ability to recover assets for the benefit of the Receivership Estate. Under the Asset
 3 Analysis and Recovery category, during the Motion Period the Receiver investigated, analyzed,
 4 and pursued all avenues of recovery for the Receivership Estate including illiquid assets such as
 5 privately held stock and real property. The Receiver has not charged the estate for time incurred in
 6 connection with employment or fee applications.

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

8 As detailed in Giugliano Declaration, Diamond McCarthy has established the following
 9 billing categories for tasks performed during the Motion Period: Case Administration; Asset
 10 Analysis & Recovery; Claims Administration & Objections; and Plan & Disclosure Statement.
 11 The billing statements itemizing the services provided and expenses incurred are attached as
 12 Exhibit "3" to the Giugliano Declaration. The amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	24.50	\$9,008.40	n/a
Asset Analysis & Recovery	25.80	\$9,744.80	n/a
Claims Administration/Objection	8.20	\$3,181.60	n/a
Plan & Disclosure Statement	0.40	\$155.20	n/a
Expenses	n/a	n/a	\$2,347.95
TOTAL		\$22,090.00	\$2,347.95

19 These distinct billing categories enable Diamond McCarthy to monitor its activities and
 20 appropriately account for the time expended.¹ The Case Administration billing category includes
 21 all professional services related to general representation of the Receiver in her administration of
 22 the Receivership Estate during the Motion Period, including but not limited to: preparing and filing
 23 documents in various district courts necessary to preserve assets in states other than California;
 24 ensuring the Receiver's ability to communicate with investors; remaining in communication with
 25 the Receiver, CFTC, Receivership Defendants and their counsel to gather, review, and analyze
 26 information and documents necessary for the investigation and recovery of assets.

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 28 ¹ 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.

1 Diamond McCarthy's services rendered during the Motion Period under the Asset Analysis
2 and Recovery category include: reviewing documents and information to determine the
3 Receivership Estate's interest in certain assets, and their potential value in a distribution plan;
4 notifying banks and financial institutions of the Receiver's appointment and securing turnover of
5 funds; and providing legal advice to the Receiver in connection with potential transfers and
6 settlements for the benefit of the Receivership Estate.

7 During the Motion Period, under the Claims Administration/Objection category, Diamond
8 McCarthy prepared and filed the Bar Date Motion. Entry of the Bar Date Order has allowed the
9 Receiver to have a more complete understanding of the universe of claims asserted against the
10 Receivership Estate and begin to formulate a distribution plan.

11 Under the Plan and Disclosure Statement billing category, *i.e.*, Plan Implementation,
12 Diamond McCarthy's services were limited to reviewing distribution proposals from the
13 Receivership Defendants, because the claims bar date had not yet passed.

14 Last, Diamond McCarthy's limited, reasonable, and necessary expenses for which it seeks
15 reimbursement include delivery fees, filing fees, and lien search fees in connection with ensuring
16 the Receiver's knowledge of all possible priority and secured claims against the Receivership
17 Estate.

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

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

24 Dated: April 24, 2020

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