

1 KATHY BAZOIAN PHELPS (State Bar No. 155564)  
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5 *Temporary Receiver*  
6  
7

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

12 COMMODITY FUTURES TRADING  
13 COMMISSION,

14 Plaintiff,

15 v.

16 DENARI CAPITAL LLC, TRAVIS  
CAPSON, and ARNAB SARKAR

17 Defendants.  
18  
19  
20  
21  
22

Case No. 19-cv-07284-EC

**DECLARATION OF KATHY BAZOIAN  
PHELPS IN SUPPORT OF  
ADMINISTRATIVE MOTION BY  
RECEIVER KATHY BAZOIAN PHELPS  
PURSUANT TO LOCAL CIVIL  
RULE 7-11 FOR ORDER APPROVING  
EMPLOYMENT OF:**

- (1) **DIAMOND McCARTHY LLP, AS  
GENERAL COUNSEL;**
- (2) **EMPLOY MILLER KAPLAN LLP  
AS TAX ADVISOR; AND**
- (3) **SCHINNER & SHAIN AS  
SECURITIES COUNSEL**

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

1 I, Kathy Bazoian Phelps, declare:

2 1. I am the receiver appointed by this Court as temporary receiver (the “Receiver”),  
3 until further order of the Court, with the full powers of an equity receiver, for Denari Capital,  
4 LLC (“Denari”), Travis Capson, and Arnab Sarkar (collectively with Denari, the “Receivership  
5 Defendants”), and all of their assets, except as set forth therein.

6 2. I submit this Declaration in support of the Motion of Receiver, Kathy Bazoian  
7 Phelps, for Administrative Relief for Order Approving Employment of (1) Diamond McCarthy  
8 LLP as General Counsel; (2) Miller Kapan LLP as Tax Advisors, and (3) Schinner & Shain as her  
9 securities counsel (the “Motion”).<sup>1</sup>

10 3. I have personal knowledge of the facts set forth in this Declaration, and, if called to  
11 testify, could testify competently thereto.

12 4. Prior to filing this Motion, I conferred with counsel for the CFTC, and counsel for  
13 the Receivership Defendants, in accordance with Local Rule 7-11. They both advised me that  
14 they do not oppose the Motion.

15 5. I seek to retain Diamond McCarthy as counsel of record and Miller Kaplan as Tax  
16 Advisors. As reflected on the first page of this Motion, Diamond McCarthy is the law firm at  
17 which I am employed, and I am senior counsel in the firm.

18 6. In my reasonable business judgment, I have determined that, in order to perform  
19 my duties and obligations as defined by this Court’s Receiver Order, I require the assistance of  
20 counsel. I therefore request that the Court approve the employment of Diamond McCarthy as my  
21 general counsel, effective as of December 4, 2019, Miller Kaplan as my tax advisors, and  
22 Schinner & Shain as my securities counsel.

23 7. My duties and responsibilities under the Receiver Order depend significantly upon  
24 my ability to manage and liquidate commodities and securities and to implement a distribution  
25 plan. I will need the assistance of counsel in order to, among other things: (i) analyze potential  
26 assets of the Receivership Entities including, but not limited to, the securities holdings in the

27 \_\_\_\_\_  
28 <sup>1</sup> All capitalized terms used but not otherwise defined herein shall have the meanings given to them  
in the Motion.

1 Receivership Estate and the best method and appropriate time for liquidating those assets for the  
2 benefit of creditors; (ii) evaluate claims filed against the Receivership and file claim objections  
3 where necessary and appropriate; (iii) evaluate business transactions that might impact estate  
4 assets and the Defendants' shareholder interests in other companies; (v) assist with analyzing the  
5 status and action items related to Denari's trading account at a Retail Foreign Exchange Dealer in  
6 which Denari engaged in retail forex transactions; and (vi) bring litigation or enter into  
7 settlements as may be necessary in connection with recovering assets for the Receivership Estate.

8         8. For these reasons, and to assist me with other legal issues that may arise in the  
9 administration of the Receivership Estate, I have determined that I require counsel in my capacity  
10 as Receiver. Diamond McCarthy began assisting me immediately upon her receipt of notification  
11 of my appointment. As such, I seek to employ Diamond McCarthy as my general counsel,  
12 effective as of December 4, 2019. I believe that Diamond McCarthy's employment is appropriate  
13 and in the best interests of the Receivership Estate for several reasons. Upon learning about the  
14 case, it was my judgment that I needed to act quickly and seek the assistance of counsel to deal  
15 with the immediate legal issues arising in connection with the Receivership Defendants'  
16 ownership of securities and other assets the value of which may be subject to volatility based  
17 upon time and other market factors out of my control. Diamond McCarthy acted immediately  
18 without waiting until its employment was confirmed, understanding and assuming the attendant  
19 risks.

20         9. I believe that Diamond McCarthy is qualified to serve as my general counsel. The  
21 firm's qualifications are detailed in the summary of the Diamond McCarthy firm and the  
22 biographies of partner Sheryl Gugliano and associate Joshua Herr, who will be the primary  
23 lawyers at Diamond McCarthy working on this matter, which attached hereto as **Exhibit 1**. I  
24 anticipate that I will be able to complete most of my administrative duties without legal  
25 assistance. To the extent that I require legal counsel, Ms. Giugliano is a partner at Diamond  
26 McCarthy with nearly 12 years of experience representing trustees and other fiduciaries. Other  
27 members of Diamond McCarthy have experience in receivership and trustee representation as  
28 well as securities matters. Joshua Herr, an associate in Los Angeles at the firm, who is anticipated

1 to be another of the attorneys primarily providing legal services to the Receiver, also has  
2 experience in fiduciary representation of bankruptcy trustees and receivers.

3 10. To the best of my knowledge, Diamond McCarthy and all of its partners,  
4 associates and employees are disinterested persons, and neither Diamond McCarthy nor any  
5 partners, associates or employees of Diamond McCarthy are connected with the Receivership  
6 Defendants, their investors, or their creditors.

7 11. Diamond McCarthy agrees to accept compensation in such sum as the Court may  
8 deem reasonable. Diamond McCarthy has not received nor is it seeking any retainer or advance  
9 payment of fees.

10 12. Attached as **Exhibit 2** are Diamond McCarthy's regular hourly rates. Any  
11 expenses will be charged at actual cost. Diamond McCarthy has agreed to discount its regularly  
12 hourly rates for the professionals it anticipates will be performing the primary services for the  
13 Receiver by 20%. I will not record my time for services rendered as Receiver in the services  
14 provided as counsel by Diamond McCarthy.

15 13. I have identified Miller Kaplan as a tax advisor. I require the assistance of a tax  
16 advisor to assist with tax issues that may arise in the administration of the Receivership Estate  
17 including but not limited to preparing and filing tax returns, valuing and liquidating assets of the  
18 Receivership Estate, prosecuting claims on behalf of the Receivership Estate, objecting or  
19 approving of claims filed against the Receivership Estate, communicating with Denari's investors  
20 to the extent necessary to respond to particular tax questions that may arise, and to prepare tax  
21 returns. I may also require tax advice regarding the tax treatment of estate assets and the sale or  
22 distribution of securities. Miller Kaplan has agreed to provide its services at the same hourly rates  
23 as those provided to SEC fair funds in which Miller Kaplan is appointed as the tax administrator.  
24 These discounted SEC rates are less than Miller Kaplan's normal rates as set forth in its  
25 engagement letter attached as **Exhibit 3**. The qualifications of Miller Kaplan to provide the  
26 services in this case are set forth in detail in **Exhibit 4** attached hereto.

27 14. I require the services of securities counsel to advise me regarding the sale or  
28 distribution of both the publicly traded stock and the private shares that are property of the

1 Receivership Estate. Schinner & Shain will assist me in evaluating whether the securities may be  
2 sold or distributed and, if so, whether those shares will need to bear a restrictive legend. The  
3 services to be performed will entail a review of the circumstances relating to the shares to be sold  
4 or distributed and a review of the underlying transactions by which the Defendants acquired the  
5 shares. Schinner has agreed to a public service discount of 10% off its regular rates as set forth in  
6 detail in the engagement letter attached as **Exhibit 5**. The qualifications of Schinner to provide  
7 the requested services are set forth in detail in Exhibit A to Schinner's engagement letter.

8 15. I believe that Diamond McCarthy is well qualified to serve as my counsel, Miller  
9 Kaplan is well qualified to serve as tax advisors, and Schinner & Shain is well-qualified to serve  
10 as securities counsel, in this case. I will monitor the work of my professionals to ensure that the  
11 services provided are necessary for my administration of the Receivership Estate.

12 I declare under penalty of perjury under the laws of the United States of America that the  
13 foregoing is true and correct. Executed on January 8, 2020, at Los Angeles, California.

14  
15  
16  
17 /s/ Kathy Bazoian Phelps  
Kathy Bazoian Phelps, Temporary Receiver

# Exhibit 1



Diamond McCarthy is a national litigation boutique practicing in complex and high-stakes business cases with a national bankruptcy practice focused on complex business cases. The firm has a global reputation and track record in litigating domestic and international high profile corporate fraud, Ponzi scheme, and professional liability cases.

Our lawyers have decades of experience in restructurings, fiduciary representation, and bankruptcy and commercial litigation throughout the United States and around the globe. We have substantial experience in international litigation and insolvency matters in Europe, Asia, South and Latin American, and the Caribbean, including matters involving cross-border joint protocol and enforcement and collection of foreign assets, among many others. Several of the lawyers at the firm also serve as Chapter 11 trustees.

Our clients include trustees, liquidating trustees, foreign liquidators, receivers, creditors, creditors' committees, corporate debtors, and litigants in insolvency proceedings. The cases we handle cross a host of industries, including technology companies, industrial concerns, financial businesses, law firms, retail and wholesale food companies, energy, mining and oil & gas companies, agricultural companies and cooperatives, and local, state, national and foreign governments.

Our legal team has extensive experience in:

- Fiduciary representation and administration of complex insolvency cases
- Corporate restructurings and representing various constituents in chapter 11 cases
- All aspects of commercial, financial, and other complex litigation

Our firm has a successful and unique history representing trustees, liquidating trustees, and receivers to:

- Handle the administration of complex cases involving the largest sums of money recovered in cases and with thousands of creditors
- Protect, preserve and monetize estate assets
- Investigate, analyze, and prepare for potential estate litigation
- Position the client to best pursue such claims on behalf of the estate
- Work within the case to find funding for the litigation

The firm offers flexible fee arrangements, often on a contingent or shared risk basis, and works with its clients to provide the most value in a cost-efficient manner. Diamond McCarthy is a highly experienced and cost efficient legal team.

Our record of success is second to none. We have extensive successful business litigation experience involving federal and state jury trials, bench trials and appeals before virtually every United States Circuit in the country and the U.S. Supreme Court. The firm has played a lead or significant role in many of the largest and most well-known corporate and accounting fraud cases in the world, including domestic and international Ponzi schemes – litigation where fraud, avoidance claims, breaches of fiduciary duties, aiding and abetting, conspiracy, and professional

liability claims take center stage. To name just a few, Diamond McCarthy was lead special trial counsel in Enron/LJM2, Parmalat, Livent, Bayou Funds, USA Commercial Mortgage, Equipment Acquisition Corp., Bank United, Inverworld, Appalachian Fuels, Precept, and Syntax-Brilliant. All of these cases involved either hundreds of millions or billions of dollars of fraud.

In representing bankruptcy trustees as well as federal equity receivers, the firm handles all aspects of these cases. Of special note, over the past six years the Firm has been representing the Chapter 11 bankruptcy trustee for Dreier, LLP, which involves the Ponzi scheme perpetrated by lawyer Marc Dreier involving more than \$750 million. The case involved complex issues arising in the intersection of criminal and civil government forfeiture proceedings, SEC receivership and bankruptcy proceedings, and the firm's work in the Dreier case has resulted in one of the largest and most successful coordination agreements between a bankruptcy estate trustee and the United States government involving asset seizure and forfeitures in U.S. history. The Firm is currently representing SEC receivers in cases pending in Los Angeles, as well as the Chapter 11 trustees in the bankruptcy cases pending in Sacramento, California, arising from the Wannakuwatte Ponzi scheme involving hundreds of millions of dollars in fraudulent investments. The Wannakuwatte case is one of the largest, if not the largest, Ponzi scheme case in the history of the Eastern District of California.

In its role as counsel to fiduciaries, Diamond McCarthy handles large portfolios of fraudulent transfer and preference litigation as well as litigation claims against third party tort defendants involving complex financial, professional liability, banking, insurance, and bankruptcy issues. The lawyers in the firm deservedly are known as creative, sophisticated, thorough and tenacious litigators on both sides of the docket. We frequently are asked to tackle issues of first impression in the courts and regularly argue such issues in the trial and appellate courts. Across the country and around the world, in courts, arbitration forums, and in alternative dispute resolutions, we provide premier representation for our clients.

When major law firms must refer clients and cases due to conflicts, Diamond McCarthy is often on their short list. This is because Diamond McCarthy has garnered a reputation for excellence in the legal community by working with - and often opposing - many of the most formidable large firms in the country with much success. The firm is also noted for our superior forensic work in the discovery phase and our ability to augment the value of various economic and financial experts with our lawyers' strong business, finance and accounting acumen. Various lawyers in the firm have public accounting backgrounds or are certified fraud examiners.

Diamond McCarthy's value is reflected in our results, in our cost-effective, no-nonsense approach, our responsiveness and service, and in our client commitment. The Firm zealously advocates for its clients to the fullest while never compromising its highest sense of ethics, moral character and professionalism.





## SHERYL P. GIUGLIANO

Partner

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[sgiugliano@diamondmccarthy.com](mailto:sgiugliano@diamondmccarthy.com)

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### Summary

Sheryl P. Giugliano is a Partner in Diamond McCarthy's New York office. Her experience includes restructuring, bankruptcy, and litigation. Sheryl works with companies facing solvency issues to identify a solution and implement a strategic response, which includes negotiating with interested parties, creditors, and shareholders, and may also include filing for bankruptcy protection, or facilitating an out-of-court wind down.

She has represented several middle-market companies facing operational or litigation issues, guiding them through the chapter 11 or chapter 7 process to a successful reorganization or liquidation. Sheryl also has represented trustees by assisting in the analysis and recovery of assets and prosecution of litigation claims, as well as secured and unsecured creditors identifying and enforcing their rights, assisting in their efforts to extend financing or consent to the use of cash collateral. In addition, Sheryl has represented contract counterparties negotiating for the highest possible cure payment or claim, defendants in preference and fraudulent conveyance actions (both in bankruptcy litigation and negotiating settlements to avoid protracted litigation), and purchasers in bankruptcy auctions.

She earned her LL.M. degree in Bankruptcy from St. John's University School of Law, and has utilized her extensive experience in bankruptcy to expand her practice as a business-oriented lawyer. Sheryl's litigation experience includes representing parties in bankruptcy litigation and general commercial matters. She has represented parties engaged in contract disputes in state and federal court, as well as arbitration matters before AAA and JAMS, and mediation, successfully negotiating on behalf of her clients to reach the best outcome possible.

In addition to practicing law, Sheryl has written several articles on the application and interpretation of Bankruptcy Code section 546(e)'s "safe harbor", and is an avid runner, completing four marathons, ten half-marathons, and countless 10 mile, 10K, and 5K races.

### Seminars & Events

- Diamond McCarthy Partner Sheryl P. Giugliano to Moderate Upcoming AIRA Panel
- Sheryl P. Giugliano to speak on Ethics panel at American Bankruptcy Institute Mid-Level Professionals Conference
- Sheryl P. Giugliano to Moderate Turnaround Management Association's "Women in the Law: A Lookback 50+ Years"
- Sheryl P. Giugliano to Speak at Asset Recovery in America Conference, "Fraud Litigation, Enforcement & Contentious Insolvency"
- "Financial Advisors' Toolbox," Association of Insolvency and Restructuring Advisors 35th Annual Conference, Boston, MA, June 2019
- "Financial Advisors' Toolbox," Association of Insolvency and Restructuring Advisors 33rd Annual Conference, Dallas, TX, June 2017

### Location

[New York, NY](#)

### Education

St. John's University School of Law (LL.M., 2010)

St. John's University School of Law (J.D., 2008)

University of Michigan (B.A. in Political Science, 2003)

### Areas of Practice:

[Arbitration, Mediation & Alternative Dispute Resolution](#)

[Business Insolvency & Restructuring](#)

[Complex & High-Stakes Litigation](#)

[Bankruptcy, Third Party & Professional Liability](#)

[Breach of Contract](#)

[Fiduciary Representation](#)

### Admitted to Practice:

New York

United States District Court, Southern District of New York

United States District Court, Eastern District of New York

- NYS Bar Association, Creditors' Rights and Bankruptcy Litigation Committee of the Commercial and Federal Litigation Section "In House Insights", Co-Moderated by Sheryl P. Giugliano
- Turnaround Management Association, Long Island Chapter: Politics and the Economy. Moderated by: Sheryl P. Giugliano
- "Financial Advisors' Toolbox," Association of Insolvency and Restructuring Advisors 32nd Annual Conference, Coronado Island, CA, June 2016

#### Speeches & Publications

- Business Bankruptcy Basics: Part I: Creditor Strategies at the Beginning of the Bankruptcy Case
- SCOTUS: No Safe Harbor Protection Where Financial Institutions Are Mere Intermediaries
- Expansion of the Barton Doctrine To Unsecured Creditors' Committees
- The Intent of Section 546(e)
- Seventh Circuit Takes the Road Less Traveled, and Looks to the Substance of Section 546(e)
- Valuing Bids in Bankruptcy Auctions
- Spotlight On The Section 546(e) Rift
- Assignment of Rents: Assignment of Rents: Substance Over Form and Meaning of 'Property of the Estate'

#### Memberships

- Chapter 11 Advisory Committee, U.S. Bankruptcy Court for the Eastern District of New York (2018 to Present)
- Turnaround Management Association, Long Island Chapter
  - Board of Directors (2014 – 2016)
  - Executive Vice President/President Elect (2017)
  - President (2018)
  - Vice President Programming (2019)
- Turnaround Management Association, New York Chapter
  - Programming Committee member (2015 – 2017)
- American Bankruptcy Institute
- New York City Bar Association
  - Bankruptcy & Corporate Reorganization Committee, Affiliate Member (2019-2020)
  - Bankruptcy & Corporate Reorganization Committee, Member (2016 – 2018)
  - Co-Chair of the Third-Party Release Subcommittee (2018 – 2019)
  - Chair of the Third-Party Release Subcommittee (2019 – 2020)
- Association of Insolvency and Restructuring Advisors
- New York State Bar Association
  - Federal and Commercial Litigation Section (2017 – Present)
  - Co-Chair of the Bankruptcy & Creditors' Rights Litigation Committee (2017 – Present)

#### Awards / Honors

- Selected as a New York Metro "Rising Star" by SuperLawyers for 2015-2019.
- Received the Turnaround Management Association Long Island Chapter 2016 "Spirit Award" for Outstanding Service

Sheryl P. Giugliano

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## JOSHUA H. HERR

Associate

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### Summary

An Associate in Diamond McCarthy's Los Angeles office, Joshua focuses his practice on matters involving entertainment, intellectual property, civil fraud, and insurance disputes.

Joshua is also an effective mediator having resolved multiple civil matters since obtaining his Master of Dispute Resolution from Pepperdine University.

Joshua earned his J.D. from Pepperdine University School of Law, where he served as Editor of the *Pepperdine Law Review*, and his B.A. in Political Science, Economics and German, with honors, from Calvin College.

### News & Press Releases

- [Diamond McCarthy Welcomes Five Attorneys in Los Angeles Office](#)

### Location

[Los Angeles, CA](#)

### Education

Pepperdine University School of Law  
(J.D., 2014)

Calvin College (B.A. in Political Science,  
Economics and German, *with honors*,  
2011)

### Areas of Practice:

[Complex & High-Stakes Litigation](#)

[Insurance Coverage](#)

[Arbitration, Mediation & Alternative  
Dispute Resolution](#)

### Admitted to Practice:

California

### Languages:

German

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# Exhibit 2

**DIAMOND McCARTHY LLP  
FEE SCHEDULE FOR 2019**

*2019 Standard Rates*

**Partners**

HO	Allan Diamond	\$750.00
HO	Paul Berry	\$750.00
HO	Steve Loden	\$550.00
HO	Sofia Adroque	\$650.00
HO	Lauren Valastro	\$340.00
DA	J. Gregory Taylor	\$690.00
DA	James McCarthy	\$675.00
DA	Mark Sales	\$675.00
DA	MaryAnn Joerres	\$550.00
DA	Jason Fulton	\$525.00
DA	Christie Newkirk	\$350.00
DA	David Reynolds	\$360.00
NY	Richard Janvey	\$690.00
NY	Juliya Arbisman	\$850.00
NY	Lon Seidman	\$650.00
NY	Charles Rubio	\$525.00
NY	Sheryl Giugliano	\$485.00
SF	Christopher Sullivan	\$650.00
SF	Matthew Blackburn	\$610.00
SF	Roxanne Bahadurji	\$340.00
LA	Thomas Watson	\$850.00
LA	Robert Mockler	\$850.00
LA	Ryan Lapine	\$850.00

**Associates**

LA	Joshua Herr	\$495.00
HO	Brian Hogue	\$340.00
NY	James King	\$350.00
HO	Julian Cokic	\$325.00
SF	Karen Diep	\$315.00
SF	Quentin Roberts	\$275.00
DA	Nicole Karam	\$265.00
DA	Shelby Taylor	\$265.00
HO	Jose Gonzalez	\$295.00
HO	Connor McKinney	\$295.00

**Senior Counsel**

LA	Kathy Phelps	\$675.00
DA	Bart Sloan	\$560.00
HO	Clay Rogers	\$700.00
SF	Stacey Pratt	\$550.00
DA	Mark Shank	\$495.00
SF	Jack Valinoti	\$425.00
SF	Lynn Hollenbeck	\$378.00
LA	David Castleman	\$625.00

**Legal Assistants**

DA	Jaime McDonald	\$220.00
HO	Catherine Burrow	\$220.00
NY	Tasia Pavalis	\$220.00
NY	Nancy Sullivan	\$145.00
SF	Erika (Ari) Shannon	\$145.00
SF	Yolanda Nesbitt	\$145.00

# Exhibit 3



December 31, 2019

Kathy Bazoian Phelps | Senior Counsel  
Diamond McCarthy LLP  
1999 Avenue of the Stars, 11th Floor  
Los Angeles, CA 90067

via AdobeSign –[kp Phelps@diamondmccarthy.com](mailto:kp Phelps@diamondmccarthy.com)

**Re: Denari Capital Receivership Estate**

Dear Ms. Phelps,

Thank you for choosing Miller Kaplan to be the accountants, advisors and tax preparers for Denari Capital Receivership Estate and other Receivership entities as you require.

This letter confirms and specifies the terms of our engagement with you and the nature and extent of the accounting, tax and consulting services we will provide. The 2019 income tax returns are due April 15, 2020.

We will perform the work contemplated by this engagement letter other than the fixed fee work at reduced fees which we offer to other government related engagements. The reduced fees are 20% less than our standard hourly rates.

As a tax advisor, we will provide tax and consulting services as necessary to determine the income tax reporting requirements applicable to the QSF and other Receivership entities as you require. We will provide you with consultation as may be necessary to address any tax issues which come to our attention, including information reporting requirements (Form 1099) as they pertain to payments made to vendors, creditors, investors and other stakeholders. We will assist as requested by performing the tasks necessary to comply with the requirements of the Internal Revenue Code and relevant state tax authority, if any.

Our fees for these services are described in the table below.

**FIXED FEE TAX COMPLIANCE SERVICES**

1. Prepare annual Federal income tax returns (Forms 1120-SF and others) and (where required) related state income tax return.
2. Calculate estimated quarterly tax payments.
3. Prepare annual election for estimated quarterly tax calculation method (IRS Form 8842).
4. Apply for and obtain Employer Identification Number (initial year).



5. Calculation of tax reserve required upon distribution of funds to vendors, creditors, investors and other stakeholders.
6. Prepare extension of time to file (if required).
7. Review of governing documents for relevant tax compliance and tax reporting services.

**OTHER SERVICES**

8. Preparation of loss carryback return (claim for refund) if required.
9. Review and respond to notices from federal and/or state tax authorities.
10. Other tax and consulting services not covered above (i.e. calculations related to stock sale or distribution transactions; preparation of Relation Back Election).
11. Preparation, printing and mailing of 1099s for reportable payments related to distribution to class members.
12. Preparation, printing and mailing of 1099s for payments from QSF for attorney fees, claims administrator fees, and other reportable payments.

SERVICE	SERVICE TYPE	FEE
Income tax returns, items 1-7 <sup>1</sup>	Fixed Fee	\$2,500 (Annually for QSF) Other entities discounted hourly rates.
Claim for refund, item 8	Fixed Fee	\$900
Other services, items 9-10 (as required)	Standard Hourly Rates	Discounted hourly rates and costs
Other services, items 11-12 (print, mail & e-file)	Fixed Fee <sup>2</sup>	Base fee of \$50 for up to 30 forms for print, mailing & e-filing <sup>3</sup>
Other services, items 11-12 (e-file only)	Fixed Fee <sup>2</sup>	Base fee of \$25, plus \$0.15 per unit e-filed

Our fees for the fixed charges above include all fees and costs for overhead and processing charges for administrative support, fax, telephone, postage, delivery, scan charges and software access. Accordingly, there will be no separately stated charges for these costs and services. Invoices are due upon receipt. All services which are not included in items 1-8, above, Fixed Fee Tax Compliance Services, will be provided at our standard hourly rates plus costs. A schedule of our hourly rates is provided below. Our invoice is due and payable upon presentation and is considered delinquent if not paid within 30 days.

<sup>1</sup> Item 1 includes the cost of one annual state income tax return which in most cases will be sufficient. Additional state returns, if required, will be charged at \$375 per return.

<sup>2</sup> Hourly rates may be billed, in addition, with respect to data files for claimant distributions, or for large and complicated data files.

<sup>3</sup> For funds requiring over 30 forms, the base fee is \$10, plus \$1.50 per unit for print, mailing & e-filing.

**MILLER KAPLAN ARASE LLP**  
**SCHEDULE OF CURRENT FEES AS OF DECEMBER 1, 2019**

STAFF LEVEL	CURRENT RATES PER HOUR	DISCOUNTED RATES
Administrative Staff, SMEs & Project Managers	\$70 – \$200	\$56 – \$160
Accounting Staff	\$110 – \$210	\$88 – \$168
Senior Accounting Staff	\$195 – \$285	\$156 – \$228
Attorney	\$250 – \$350	\$200 – \$280
Partner	\$410 – \$560	\$328 – \$448

We reserve the right to suspend our services or to withdraw from this engagement in the event that any of our invoices are deemed delinquent. In the event that any collection action is required to collect unpaid balances due us, you agree to reimburse us for our costs of collection, including attorneys' fees. If we elect to terminate our services for nonpayment, or for any other reason provided for in this letter, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our services. You will be obligated to compensate us for all time expended, and to reimburse us for all of our out-of-pocket costs, through the date of termination.

We will use our professional judgment in preparing the returns. Whenever we are aware that applicable tax law is unclear or that there are conflicting interpretations of the law by authorities (e.g., tax agencies and courts), we will explain the possible positions which may be taken. We will adopt any position you request on the returns, consistent with the applicable tax law. If a taxing authority should later contest the position taken, there may be an assessment of additional tax plus interest and penalties. We assume no liability for any such additional assessments. You may appeal any adjustments proposed by the tax authorities.

Other additional services which may be requested would include requests for abatement of penalties. We believe the decision should be made on a case-by-case basis as to whether it is cost effective to request abatement of penalties.

We will prepare the returns from information which you will furnish to us. It is your responsibility to provide all the information required for the preparation of complete and accurate returns. Our services will not include procedures designed to discover irregularities or illegal acts, including fraud or defalcations should any exist. We understand that any information provided to us is of a confidential nature and we will treat such information accordingly.

We use third-party software providers to process and file the returns. While certain information is transmitted to these software providers, we remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your personal information. By executing this Engagement Letter, you hereby provide your consent to our use of third-party software providers.

In connection with this engagement, we may communicate with you or others via email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and

Denari Capital Receivership Estate  
Tax and Consulting Services Engagement Letter

December 31, 2019  
Page 4

only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure of emails transmitted by us in connection with the performance of this engagement. We will provide you with a secure portal and will use the secure portal to exchange confidential and protected information.

**Any and all disputes regarding the meaning, performance or enforcement of this engagement shall remain subject to the jurisdiction of the United States District Court for the Northern District of California. If any dispute arises between you and the Firm regarding the meaning, performance or enforcement of this engagement or any prior engagement that we have performed for you, you and the Firm agree to try first in good faith to settle the dispute by mediation administered by the American Arbitration Association (AAA) under its Rules for Professional Accounting and Related Services Disputes. The parties may then jointly elect to decide all unresolved disputes by final and binding arbitration in accordance with the Rules for Professional Accounting and Related Services of the AAA, but the parties are not required to do so. The parties participating in the mediation shall bear their own costs, except fees charged by any mediators, arbitrators or the AAA shall be shared equally by all parties. IN THE EVENT THE PARTIES AGREE TO ARBITRATION, WE BOTH ACKNOWLEDGE THAT IN THE EVENT OF A DISPUTE, EACH OF US IS GIVING UP THE RIGHT TO HAVE THE DISPUTE DECIDED IN A COURT OF LAW BEFORE A JUDGE OR JURY AND INSTEAD WE ARE ACCEPTING THE USE OF ARBITRATION FOR RESOLUTION. Any mediation or arbitration under this Engagement Letter shall be administered within the County of Los Angeles and State of California, unless we agree to a different venue for our mutual convenience.**

If, after full consideration, you agree to authorize us to prepare the returns contemplated in this letter pursuant to the terms set forth above, please execute this letter on the line below designated for your signature. You should keep a copy of this fully executed letter for your records. If you have any questions concerning our engagement, please call us at (415) 694-7014.

We very much appreciate the opportunity to serve you and trust that our client relationship will be a long and pleasant one.

This Agreement is subject to Court approval. As set forth herein, the Firm understands that, following Court approval of this Agreement, all fees and expenses will be subject to Court approval.

Sincerely,  
MILLER KAPLAN ARASE LLP



Julia Mandeville Damasco, J.D., LL.M. Taxation  
Partner/Tax Attorney

**ACCEPTED AND AGREED:**

**Signature:** Kathy Bazoian Phelps  
Kathy Bazoian Phelps (Dec 31, 2019)

**Email:** kphelps@diamondmccarthy.com

Kathy Bazoian Phelps as Receiver for Denari Capital, LLC






# Denari Capital Receivership Estate engagement letter

Final Audit Report

2019-12-31

Created:	2019-12-31
By:	Miller Kaplan Arase LLP (DAdministration@millerkaplan.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAR6DhwGfJQTTrU1LLdIHVsjaLd2O1sYUA

## "Denari Capital Receivership Estate engagement letter" History

-  Document created by Miller Kaplan Arase LLP (DAdministration@millerkaplan.com)  
2019-12-31 - 5:28:42 PM GMT- IP address: 12.250.139.134
-  Document emailed to Kathy Bazoian Phelps (kphelps@diamondmccarthy.com) for signature  
2019-12-31 - 5:29:08 PM GMT
-  Email viewed by Kathy Bazoian Phelps (kphelps@diamondmccarthy.com)  
2019-12-31 - 6:30:13 PM GMT- IP address: 38.104.35.66
-  Document e-signed by Kathy Bazoian Phelps (kphelps@diamondmccarthy.com)  
Signature Date: 2019-12-31 - 6:33:34 PM GMT - Time Source: server- IP address: 38.104.35.66
-  Signed document emailed to Kathy Bazoian Phelps (kphelps@diamondmccarthy.com) and Miller Kaplan Arase LLP (DAdministration@millerkaplan.com)  
2019-12-31 - 6:33:34 PM GMT

# Exhibit 4

**JULIA MANDEVILLE DAMASCO**

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**PARTNER/TAX ATTORNEY**  
Miller Kaplan Arase LLP  
Two Embarcadero Center, Suite 2280  
San Francisco, CA 94111  
415-694-7014

**EDUCATION**

LL.M., Taxation	2005
<i>Golden Gate University</i>	<i>San Francisco, CA</i>
Juris Doctor	1982
<i>Santa Clara University School of Law</i>	<i>Santa Clara, CA</i>
B. S. Modern European History	1979
<i>Scripps College</i>	<i>Claremont, CA</i>

**EMPLOYMENT**

<i>Miller Kaplan Arase LLP</i>	October 2016 to Present
Partner and member of Managing Partner Committee	<i>San Francisco, CA</i>

Julia Mandeville Damasco is an attorney admitted to practice in all the courts of the State of California and Washington, the United States Tax Court and the 9th Circuit Court of Appeals. Ms. Damasco holds an LL.M. in taxation. The author of continuing legal education programs on the taxation of funds of money established to resolve claims, information return reporting, law practice management and the elimination of bias, Ms. Damasco also has extensive experience in systems for large and complex case management, including the Coordinated Asbestos Insurance Litigation, and criminal tax litigation. She provides opinions to litigants, counsel and settlement funds on tax issues and obtains rulings from the IRS on issues related to settlement funds and other litigation. She supervises tax procedure engagements and practice before the IRS with an emphasis on issues raised in the administration of funds of money established to resolve claims, information return reporting, employment taxation, technical database issues, QSFs, Receiverships and Bankruptcy estates.

She has extensive experience in settlement fund taxation and has become established as expert in this field. Currently, she provides tax advice, compliance, and controversy services to more than 700 active settlement funds, fiduciaries, public agencies and to the U.S. Securities & Exchange Commission fair funds. She has served as a member of multidisciplinary teams addressing voluntary and mandated remediation in securities and other matters.

Her firm has provided tax services on the following matters – all a matter of public record - and her firm has served as the Tax Administrator for the SEC Fair Funds since 2005. She is one of two lead partners on this engagement.



**The National Mortgage Settlement** – tax compliance and obtained a Revenue Ruling on information return reporting to benefit the borrowers receiving funds from the settlement.

**Independent Foreclosure Review** – OCC/FRB.

**Microsoft Temporary Workers Settlement** – Class Action.

**NCAA Coaches Settlement** – Class Action.

*Damasco & Associates LLP* May 1999 to October 2016  
*San Francisco and Half Moon Bay, CA*  
Partner in a public accounting and consulting firm. Tax opinions, taxpayer representation, systems and procedures consulting, fiduciary activities, monitor of claims and administration procedures for qualified settlement fund administrators.

*The Law Office of Julia Mandeville Damasco* June 1997 to Present  
*San Francisco, CA*  
Specializing in Taxation; Tax Policy and Procedure; Administrative Law; Settlements and Judgments; Receiverships; Sports and Entertainment Law; and resolution of Controversies and Risk Events.

*ASSISTANT CITY ATTORNEY* January 1993 to May 1997  
*City of Santa Clara* *Santa Clara, CA*  
Assistant City Attorney for Charter City with in excess of 900 full time employees and approximately 95,000 residents. Responsibilities included: real property, economic development, land use, information technology contracts and telecommunications.

**EMPLOYMENT WITH SAN FRANCISCO BAY AREA FIRMS** 1985 to 1993  
*Aaron, Riechert, Carpol, Riffle & Mandeville, Redwood City, CA.* Shareholder in A-V rated general civil practice firm. Areas of specialty included real property, construction and business transactions and litigation. Provided litigation support for estates, trusts, and capacity proceedings practice of other shareholders.  
REFERENCE: Peter G. Riechert, Esq.

*Jorgenson, Cosgrove, Siegel, McClure & Flegel, Menlo Park, CA.* Associate attorney with full case load in general civil practice, including real property, public law, land use and business. Practice included transactions and litigation. Experience in all phases of litigation, administrative proceedings and capacity proceedings. Provided litigation support for estate planning practice.  
REFERENCE: William L. McClure, Esq

*Julia A. Mandeville, Attorney at Law, Saratoga, CA.* Represented individuals and corporations in tax and banking litigation in U.S. District Court, U.S. Tax Court and in Ninth Circuit of Appeals.

*Associate Counsel in U.S. v. Margolis, No. CR85-2086-RPA, Result: Judgment of Acquittal, July 1986.* Associate Counsel in six-month criminal tax fraud trial.

*Heller, Ehrman, White & McAuliffe, San Francisco, CA.* As a law clerk, supported trial team in judicially coordinated litigation. Negotiated contract for document indexing system and for full-text transcript computer system. Contract was executed by more than 20 law firms on behalf of more than 40 parties and the Court.

REFERENCE: Wondie Russell, Esq

## **OTHER EMPLOYMENT**

*McGuire, Barnes and Andrascik, San Francisco, CA.* Assisted Walter McGuire, Esq., in the planning of the Olympic Torch Relay Route for the 1984 Los Angeles Olympic Games. Supervised the "advance" team of 12 individuals located throughout the United States. Served as liaison between AT&T, the Olympic Committee and McGuire, Barnes and Andrascik. Worked closely with IBM in designing and using the computer programs which documented the Torch Relay Route.



## **CIVIC, VOLUNTEER AND PROFESSIONAL ACTIVITIES**

### **California Lawyers**

Beginning October 2019  
Executive Committee of the Taxation Section

### **National Association of Federal Equity Receivers**

Member  
Chair – IRS Liaison Committee

### **San Francisco General Hospital Foundation.**

Member of the Board  
Audit and Governance Committees

### **Queen's Bench Bar Association of the San Francisco Bay Area**

Officer and Member, Board of Directors (former)  
Delegate, California State Bar Conference of Delegates (former)  
Recipient, Award of Merit, 1993

### **San Mateo County Bar Association**

Chair, Real Estate Section (former)

### **Sequoia Audubon Society**

Member, Board of Directors and President (former)

### **Audubon Canyon Ranch**

Member, Board of Directors and Secretary (former)  
Member, Advisory Board and Chair of the Legal Committee (former)

### **Other Affiliations:**

- State Bar of California, Taxation section.
- Washington State Bar Association
- American Bar Association, Taxation section.

**NICHOLAS A. SANCHEZ**

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**PARTNER/TAX ATTORNEY**  
Miller Kaplan Arase LLP  
Two Embarcadero Center, Suite 2280  
San Francisco, CA 94111  
415-694-7008

**EDUCATION**

Master of Laws in Taxation, LL.M. Golden Gate University School of Law, San Francisco, CA	August 2006
Juris Doctor, J.D. University of San Francisco School of Law, San Francisco, CA	May 2005
Bachelors of Arts, History and Psychology University of California, Los Angeles, CA	June 2002

**EMPLOYMENT**

Miller Kaplan Arase LLP, San Francisco, CA <i>Partner</i>	March 2018 – Present
Miller Kaplan Arase LLP, San Francisco, CA <i>Tax Attorney</i>	October 2016 – February 2018
Damasco & Associates LLP, San Francisco, CA <i>Tax Attorney</i>	December 2005 – September 2016
Damasco & Associates LLP, San Francisco, CA <i>Law Clerk</i>	July 2004 – December 2005

**HONORS & AWARDS**

“Rising Star” in the accounting industry, San Fernando Valley Business Journal, May 29, 2017

**COURSES**

*Taxation of Qualified Settlement Funds*, co-authored and co-instructed with Jude P. Damasco and Julia Mandeville Damasco, approved for Continuing Legal Education Credit by state bars in several states, including California and New York

## **PUBLICATIONS**

*The Verdict*, Spring 2005, Alameda-Contra Costa Trial Lawyers' Association, "Taxes, recovery and the first quarter of 2005"

*Developments In Administrative and Regulatory Law 2004-2005*, American Bar Association, "Developments in the Taxation of Attorney's Fees"

*Spreading Justice*, American Bar Association, Section of Litigation, Pro Bono and Public Interest Practice Committee, Fall 2005, "Cy Pres Awards in Class Action Litigation: Tax Lesson for Litigators"

*Consumer Class Actions* (9th ed. 2016), National Consumer Law Center, acknowledged contributor

*Daily Journal*, "Attorneys: Get up to speed on Tax Cuts and Jobs Act," December 22, 2017

"Tax Changes for Qualified Settlement Funds Under the Tax Cuts and Jobs Act," self-published on LinkedIn, January 26, 2018

American Bar Association, Section of Litigation, Class Actions and Derivative Suits Committee, "The Business of Class Actions and Recent Developments," October 31, 2018

"California Employer No Longer Subject to FUTA Credit Reduction," self-published on LinkedIn, November 16, 2018

"IRS Implements Information Reporting Due Date Extension Procedural Changes," self-published on LinkedIn, November 16, 2018

## **ASSOCIATIONS & MEMBERSHIP**

California State Bar (238088), Admitted in 2005, Member of the Section of Taxation

United States Tax Court, Admitted in 2006

American Bar Association, Member of the Section of Taxation

National Association of Federal Equity Receivers (NAFER), Industry Member, IRS Liaison Committee

Santa Barbara County Bar Association, Member

California Lawyers Association, Member of the Taxation Section

**QIVA A. DINURI**

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SENIOR MANAGER/TAX ATTORNEY  
Miller Kaplan Arase LLP  
Two Embarcadero Center, Suite 2280  
San Francisco, CA 94111  
415-434-5510

## EDUCATION

University of San Diego School of Law, San Diego, CA  
LL.M. in Taxation, *summa cum laude*, Dec. 2014  
J.D., *cum laude*, Order of the Coif, May 2014  
Honors: Master of Laws: Dean's Tax Scholar; CALI Award (Highest Grade),  
International Taxation, Fall 2013; Phi Delta Phi Legal Honor Society  
Activities: *San Diego Law Review*, Comments Editor

University of California, San Diego, La Jolla, CA  
B.S. in Management Science and B.A. in Psychology, June 2006  
Undergraduate Business Certificate, June 2006  
Honors: Provost Honors, Fall 2002, Winter 2002, Fall 2005  
Activities: University of Sussex, Brighton, United Kingdom, Summer 2005

## EMPLOYMENT

**Miller Kaplan Arase, LLP, San Francisco, CA** Feb. 2018–Present  
*Senior Manager / Tax Attorney*

*Perform legal research on a multitude of tax issues to develop tax planning strategies, including an expertise and focus on tax research for issues related to Qualified Settlement Funds. Prepare and perform detailed, technical review of individual, trust, estate, and gift tax returns and review all related workpapers. Compose comments, tax opinions, memoranda, and letters for clients and government agencies related to a variety of tax topics, including comments on proposed treasury regulations, opinions on the taxability of certain distributions from a Qualified Settlement Fund, and memoranda on the tax consequences of expatriation. Draft, review, and analyze responses, protests, and appeals to tax notices and audit inquiries. Research tax legislation to assist in understanding the impact on compliance and consulting. Support partners generally in providing tax services.*

**GW & Wade, LLC, Palo Alto, CA** Sept. 2016–Feb. 2018  
*Staff Attorney*

*Provided comprehensive tax planning for high net worth individuals, which included preparing individual, trust, estate, gift, and business tax returns and resolving tax disputes. Assisted Counselors with a multitude of tasks that included managing and constructing investment portfolios, preparing retirement and other forward-looking plans such as stock purchase plans, and architecting estate plans and gifting strategies including charitable giving.*

**Ernst & Young, LLP, San Francisco, CA**  
Tax Senior Associate

Jan. 2015–Aug. 2016

*Composed opinions, memoranda, and letters for clients and government agencies related to a range of tax topics, including treaty application, changing tax domicile, determining subpart F income and effectively connected income, and transactional issues. Coordinated domestic and international team staffing, work product, and client communications. Prepared and reviewed domestic and international tax returns, computations, filings, and statements. Drafted statement of work, performed engagement economics analysis, and ensured timely billing and collection. Mentored, trained, and assisted new staff and interns.*

**U.S. District Court, Southern District of California, San Diego, CA**      Sept. 2013–Nov. 2013  
Judicial Extern for the Honorable Ruben B. Brooks, Magistrate Judge

*Analyzed case files, conducted legal research, and drafted orders and reports and recommendations. Met regularly with Judge and law clerks regarding department cases. Observed court proceedings.*

**Ernst & Young, LLP, San Francisco, CA**  
Tax Summer Intern

June 2013–Aug. 2013

*Prepared federal and state tax returns for ultra-high net worth individuals, single member LLCs, and partnerships. Prepared foreign reporting disclosure forms. Researched tax credit and tax equity financing issues. Assisted with analyzing expatriation tax issues.*

**Ryan, Carvalho & White, LLP, San Diego, CA**  
Law Clerk

May 2012–March 2013

*Prepared case reports, intra-office memoranda, letters to clients, objections, and motions. Researched procedural and legal issues. Assisted attorneys with discovery and depositions.*

## **CIVIC AND VOLUNTEER ACTIVITIES**

Save The Bay  
Volunteer, June 2017–Present

Burlingame Beautification Commission  
Beautification Commissioner, Appointed June 2017

## **PROFESSIONAL MEMBERSHIPS**

State Bar of California, Admitted Dec. 2014

California Lawyers Association

American Bar Association

National Association of Federal Equity Receivers

EMILY W. RANSOM

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**PROJECT MANAGER**

Miller Kaplan Arase LLP  
Two Embarcadero Center, Suite 2280  
San Francisco, CA 94111  
415-694-7011

**EDUCATION**

Bachelor of Arts, Theater Arts June 1999  
University of California, Santa Cruz, CA

Income Tax coursework, H&R Block

Financial Accounting coursework, UC Berkeley Extension

Project Management coursework, UC Berkeley Extension

**EMPLOYMENT**

Miller Kaplan Arase LLP, San Francisco, CA October 2016 –Present  
*Project Manager*

Damasco & Associates LLP, San Francisco, CA December 1999 – September 2016  
*Office Manager / Administrative Assistant*

**Emily Ransom** is the firm's information return reporting subject matter expert. Emily has extensive knowledge of information return reporting on a federal and state level. She works closely with Julia Damasco and Nicholas Sanchez on complex information reporting engagements. Emily has participated in the creation of teaching materials on the Taxation of Qualified Settlement Funds and the Foreign Account Tax Compliance Act.

She has extensive experience in the validation of Forms W-9 and W-8, and utilization of the Internal Revenue Service TIN matching service. She supervises the calculation of withholding taxes and facilitates multi-jurisdictional withholding tax deposits and their associated reconciliation filings.

# Exhibit 5

**SCHINNER & SHAIN. LLP  
RETAINER AND FEE AGREEMENT**

THIS RETAINER AND FEE AGREEMENT is entered into as of January 3, 2020 between **SCHINNER & SHAIN, LLP** (the “Firm”) and **KATHY BAZOLIAN PHELPS, solely in her capacity as Receiver for Travis Capson, Arnab Sarkar, Denari Capital, LLC and subsidiaries and affiliates of the foregoing persons (collectively, the “Receivership Persons”) in the case of Commodity Futures Trading Commission v. Denari Capital LLC, Travis Capson, and Arnab Sarkar, United States District Court for the Northern District of California (the “Court”)**, Case No: 3:19-cv-07284-EC (the “Client”).

**RECITALS**

- A. This Retainer and Fee Agreement (“Agreement”) is executed pursuant to Section 6148 of the Business and Professions Code of the State of California and is intended to fulfill all requirements of that Section. In addition, the Client and the Firm wish to have a written agreement setting forth the terms of the Firm’s representation in order to avoid any misunderstanding.
- B. The general nature of the legal services to be provided by the Firm for and on behalf of the Client is set forth in Section “II” below.
- C. All parties wish to proceed with the legal representation by the Firm, subject to the terms and provisions contained herein.

**AGREEMENT**

In consideration of the Firm’s agreement to perform legal services on behalf of the Client and the Client’s willingness to pay for these legal services, the parties agree as follows:

- I. Recitals.** The above Recitals are incorporated herein by this reference.
- II. Legal Services to be Provided.** The Client is the court-appointed receiver of the assets of the Receivership Persons. The Firm will advise the Client on whether she may sell or otherwise transfer shares of stock that she holds as receiver of two entities that are affiliated with the Receivership Persons without registration of those shares under the Securities Act of 1933, as amended (the “Act”) and to prepare opinions of counsel to the Client as to whether those shares may be sold without registration under the Act. The Firm will provide the Client with such other legal services with respect to such other matters as the Firm and Client agree. This Agreement will apply to all legal services the Firm provides to the Client unless the parties agree in writing to a different arrangement for any specific legal services.
- III. Respective Responsibilities of the Firm and the Client**
- a) **The Firm:** The Firm will perform the legal services called for by this Agreement, keep the Client informed of progress and developments, and respond promptly to the Client’s inquiries and communications.
- b) **The Client:** The Client will be truthful and cooperate with the Firm, keep the Firm reasonably informed of developments and will make timely payments of fees and costs as required by this Agreement.



**IV. Fees.** The Firm's fees for services it performs for the Client will be billed at a 10% discount off the respective regular hourly rates of the individuals with the Firm who provide the services. The regular rates fall within the following ranges:

\$175.00 to \$575.00 per hour for Attorneys  
\$ 75.00 to \$150.00 per hour for Law Clerks, Paralegals and Legal Assistants.

Frederick Koenen will be the Client's primary contact with the Firm and will be in charge of assigning attorneys with the Firm, who include associates and "of-counsel" attorneys, as well as paralegals and support staff to work on the Client's matters as needed. **The regular billing rate for Mr. Koenen is currently \$550.00 per hour, but he has agreed to charge \$500.00 for this engagement.** The monthly statement will indicate in detail the attorney who performed the work, the respective rate and the time spent on each project. Of-counsel attorneys, such as Mr. Koenen, receive payment for services equal to a stated percentage of revenues collected for work performed for the Firm's clients and a percentage of collections from matters those of-counsel attorneys refer to the Firm. The Firm will make further information available regarding the allocation of fees to the Client at the Client's request.

The Firm will charge in increments of one-tenth of one hour, rounded off for each particular activity to the nearest one-tenth of one hour. The minimum time charged for any particular activity will be one-tenth of one hour.

The Firm will charge for all activities undertaken in providing legal services to the Client under this Agreement, including, but not limited to, the following: conferences, including preparation and participation; correspondence and legal documents (review and preparation); legal research; necessary hearings or other formal or informal proceedings; telephone conversations and in certain instances, travel time. When two or more of the Firm's personnel are engaged in working on the matter at the same time, such as in conferences between them, the time of each will be charged.

If, while this Agreement is in effect, the Firm increases the hourly rates being charged to clients generally for attorneys' fees, that increase may be applied to fees incurred under this Agreement, but only with respect to services provided after written notice of the increase is mailed to the Client. Notice of such increases will be given with the monthly statement next succeeding the effective date of the increase. If the Client chooses not to consent to the increased rates, the Client may terminate the Firm's services under this Agreement by written notice effective when received by the Firm. Notwithstanding any provision contained in this paragraph, the Firm may increase its hourly rates by up to \$25.00 per hour effective as of January 1 of each calendar year without prior notice.

The Firm will endeavor to keep the Client's legal expenses down by utilizing paralegals and law clerks to handle tasks appropriate to their skills. The Firm also reserves complete discretion to select the attorneys within the Firm to whom the Client's work will be assigned.

**V. Costs and Expenses.** The Client authorizes the Firm to incur on the Client's behalf costs and expenses as are reasonably required in connection with the services to be rendered by the Firm under this Agreement. The following are some typical examples:

- messenger, mail and overnight express delivery charges
- parking, tolls and other local travel expenses
- overnight transportation, meals and lodging expenses
- long distance telephone charges
- photocopying charges

- facsimile charges
- computerized legal research charges

The Firm is not required to advance individual costs or expenses but may instead direct all corresponding invoices to the Client for full and timely payment thereof.

**VI. Deposit.** If the Firm deems it necessary or prudent in view of the scope, time and commitment required of the Firm to provide the legal services requested, the Firm may in its discretion require the Client to pay a deposit as a condition to continue providing legal services. Such deposit will initially be placed in a client trust account and any interest earned will be paid to the State Bar of California. The Client authorizes the Firm to apply the funds deposited toward payment of the attorneys' fees as incurred by the Client. If, at the termination of services under this Agreement, the total fees incurred by the Client for attorneys' fees and expenses is less than the amount of the deposit, the difference will be refunded promptly to the Client. The deposit, if one is so requested, will not constitute an agreement by the Firm that its charges will be limited to the amount of the deposit

**VII. Court Approval.** This Agreement is subject to Court approval. As set forth below, the Firm understands that, following Court approval of this Agreement, all fees and expenses will be subject to Court approval.

**VIII. Statements and Payments.** The Firm will send Monthly Statements indicating attorneys' fees and costs incurred and their basis, any amounts applied from deposits, and any current balance owed. If no attorneys' fees or costs are incurred for a particular month, or if they are less than \$100.00, the Statement may be held and combined with that for the following month. Though Monthly Statements will be sent monthly and may state that they are due and payable when the statement is rendered, the Firm understands that payment for the Firm's services can only be made upon motion to the Court in the receivership proceeding and after entry of an order of the Court approving and authorizing payment of our fees and expenses. If payment is not timely received following Court approval of the Firm's fees and expenses, the Firm may require each or any of the following:

- a) If the Client fails to pay the Firm's billed fees and expenses for more than 30 days after payment is due and approved by the Court, and if there are sufficient funds in the receivership estate to pay those fees and expenses as well as other administrative expenses of the receivership at that time, the unpaid amount of the Firm's fees and expenses will accrue interest at the rate specified in Section 3289 of the California Civil Code commencing on the date that payment was due and approved by the Court.
- b) Where balances remain unpaid for over 45 days following the date of Court approval of the Firm's fees and expenses, the Firm immediately suspend further services until the account is paid in full;
- c) The Firm may require the Client to deposit an additional sum in such amount to be determined by the Firm, before the Firm provides any further services; and/or
- d) For accounts having unpaid balances for over 60 days following the date of the Court approval of the fees and expenses, the Firm withdraw completely from representation of all matters covered in this Agreement.

In the event of a dispute of any of the Firm's billings, the Client's obligation is to timely pay the undisputed amount following Court approval. The disputed amount and the attendant finance charge, will be suspended for a period not to exceed an additional 15 days, during which the Firm and the Client agree to utilize their respective best efforts to resolve the disputed amount by conferring within said 15-day

period after the disputed billing is received. If no resolution is reached, all unpaid obligations will be revived and will be immediately due and the Firm reserves the right to pursue collection.

In the event the Firm is required to institute legal proceedings to collect legal fees and costs, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs of collection.

**IX. Dispute Resolution.** Any dispute regarding fees or disbursements in any legal matter covered by this Agreement shall be subject to the jurisdiction of the United States District Court for the Northern District of California.

**X. Client's Duties – Cooperation.** The Client agrees to cooperate and keep the Firm informed of developments relevant to the subject matter hereof. The Firm will provide the Client with copies of all of the Firm's output relative to the Client's matters.

**XI. Files.** The Client's files will be maintained in an orderly fashion by the Firm, shall be the property of the Client, shall be treated as confidential, and, if requested by the Client, shall be turned over to the Client promptly after termination of this Agreement, together with any funds or property of the Client in the Firm's possession.

**XII. Cloud and Email Services.** In order to provide the Client with efficient and convenient legal services, the Firm, its attorneys and other employees will frequently communicate and transmit documents using e-mail. Because e-mail continues to evolve, there may be risks communicating in this manner, including risks related to confidentiality and security. By entering into this Agreement, the Client is consenting to such e-mail transmissions with the Firm, the Client and the Client's representatives and agents. In addition, the Firm uses a cloud computing service with servers located in a facility other than the Firm's office. Most of the Firm's electronic data, including emails and documents, are stored in this manner. By entering into this Agreement, the Client understands and consents to having communications, documents and information pertinent to the Client's matter stored through such a cloud-based service.

**XIII. Mobile Devices.** In order to provide the Client with efficient and convenient legal services, the Firm, its attorneys and other employees may employ the use of mobile devices to communicate with the Client and the Client's representatives and agents and to transmit documents. Due to the rising thefts and incidents involving mobile devices, there may be risks in communicating in this manner, including risks related to confidentiality and security. By entering into this agreement, the Client is consenting to the use of mobile devices to communicate with the Client and the Client's representatives and agents.

**XIV. Termination.** The Client may terminate the Firm as its attorneys at any time, and the Firm may resign as the Client's attorneys at any time, upon giving written notice to the other party for any reason in its discretion, subject to any ethical rules that may limit the right of the Firm to resign as the Client's attorneys without leave of court. Upon termination or resignation, the Client will promptly pay any amounts due to the Firm. After the Firm's services conclude, the Firm will, upon the Client's request, deliver the Client's files to the Client, along with any funds or property of the Client.

**XV. Miscellaneous.** This Agreement will be binding on the successors and assigns of the parties; it shall be governed and interpreted under and pursuant to the laws of the State of California and, if any portion is held to be illegal or unenforceable, the remainder will continue in full force and effect.

**XVI. Conflicts of Interest.** From data supplied by the Client, the Firm has determined it can represent the Client, having ascertained that, as of the date of review, no conflicts of interest exist between the Firm's representation of the Client and the Firm's representation of any of its other clients that would prevent the Firm from representing the Client.

**XVII. Condition Precedent - Effective Date.** The Firm's duty to commence work on the Client's matters shall not arise until this Retainer and Fee Agreement is executed. The effective date of this Agreement will be retroactive to the date the Firm first performed services for the Client. The date at the beginning of this Agreement is for reference only.

**XVIII. Entire Agreement.** The conditions set forth in the paragraphs above constitute the entire Agreement under which the Firm will provide legal representation and may not be modified or amended except by a writing signed by the Firm and the Client. No other promises, conditions or warranties have been made. It is the Firm's hope that this Agreement will avoid misunderstandings.

**[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.  
SIGNATURES APPEAR ON FOLLOWING PAGE.]**

**IN WITNESS WHEREOF**, the parties hereto have signed this Retainer and Fee Agreement as of the date first above written.

**FIRM**

**SCHINNER & SHAIN, LLP**

By: \_\_\_\_\_  
Frederick Koenen, Of Counsel

**CLIENT**

\_\_\_\_\_  
Kathy Bazoian Phelps, solely in her capacity as Receiver

**Address to which notices and invoices are to be sent:**

Kathy Bazoian Phelps, Esq.  
c/o Diamond & McCarthy, LLP  
1999 Avenue of the Stars, 11th Floor  
Los Angeles, CA 90067-4402

Client prefers to receive invoices via (check one):

Paper       Email (provide e-mail address): \_\_\_\_\_

**EXHIBIT A**

**EXHIBIT A TO RETAINER AND FEE AGREEMENT**

**SCHINNER & SHAIN, LLP  
PROJECT ATTORNEY PROFILES**

**Frederick K. Koenen** is of counsel to Schinner & Shain, LLP in San Francisco, California, where his practice includes securities regulatory compliance, venture capital and private placement financing for start-up and emerging growth companies, and mergers and acquisitions. A substantial part of Mr. Koenen's practice during his 33 year career as an attorney has been advising issuers, sellers and purchasers of restricted securities and control securities on compliance with applicable federal and state securities laws related to secondary trading of those securities, including SEC Rule 144. Prior to joining Schinner & Shain, LLP in 2004, Mr. Koenen was a partner with the firm of Foley & Lardner, LLP in its San Francisco office and with the San Francisco-based firm of Evers & Hendrickson, LLP.

Mr. Koenen has been a frequent speaker and lecturer on securities law issues as they related to the needs of smaller private and public companies, and he has been interviewed on these topics for national and regional publications. Mr. Koenen is a member of the Business Law and Intellectual Property Sections of the State Bar of California and the American Bar Association. Mr. Koenen is admitted to practice in the State of California and the U.S. District Court for the Northern District of California. Mr. Koenen received his B.A. from Whitman College in 1983 and his J.D. in 1986 from Willamette University.

**Michael J. Schinner** is a founding partner of Schinner & Shain, LLP, which is the successor to The Schinner Law Group, a firm Mr. Schinner formed in 1999. Mr. Schinner's practice over the past 25 years has included advising businesses and their owners in connection with mergers and acquisitions, private placements of securities and private resales of securities there were initially issued without registration under the Securities Act of 1933, as amended.

Mr. Schinner is recognized as an authority in limited liability companies, particularly with respect to their use for real estate syndicates, venture capital and investment funds. He has published numerous articles in leading law treatises and journals such as Advising California Limited Liability Companies (CEB), California Business Law Practitioner (CEB), Journal of Taxation, Journal of S Corporation Taxation, American Journal of Tax Policy, California Tax Lawyer, Commercial Law Journal, and Trademark World. Mr. Schinner received his B.A. in 1986 from the College of Mount St. Joseph, his J.D. from University of Cincinnati in 1989, and his LL.M in Taxation from Golden Gate University School of Law in 1993.

**Christopher Carin** is an associate attorney with Schinner & Shain, LLP, where he has practiced since 2015 in its corporate law and real property practice groups. Prior to joining Schinner & Shain, Mr. Carin served as a judicial extern for the California Supreme Court under Chief Justice Tani Cantil-Sakauye. Mr. Carin received his B.A. from the University of California San Diego in 2012 and his B.A. from the University of California, Hastings College of Law in 2015.

**ATTORNEYS, STAFF AND BILLING RATES FOR PROJECT**

<b>Name</b>	<b>Title</b>	<b>Standard Hourly Rate</b>	<b>Adjusted Hourly Rate</b>
Frederick Koenen	Of Counsel	\$525.00	\$472.50
Michael Schinner	Partner	\$565.00	\$508.50
Christopher Carin	Associate	\$410.00	\$369.00
Simona Stodulkova	Paralegal	\$110.00	\$99.00