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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**
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11 COMMODITY FUTURES TRADING
12 COMMISSION,

13 Plaintiff,

14 v.

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

17 Defendants.
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Case No.: 19-cv-07284-EMC

Assigned to: Hon. Edward M. Chen

**SIXTH ADMINISTRATIVE MOTION FOR
AN ORDER PURSUANT TO LOCAL RULE
7-11 FOR THE APPROVAL OF FEES AND
EXPENSES FOR RECEIVER, RAINES
FELDMAN LLP, DIAMOND MCCARTHY
LLP, AND MILLER KAPLAN ARASE LLP
FROM APRIL 1, 2021 TO JUNE 30, 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
3 approval of compensation in the amount of \$6,045.53 for services rendered from April 1, 2021
4 through June 30, 2021, of which \$2,602.00 was incurred while she was at Diamond McCarthy
5 LLP (“Diamond McCarthy”) from April 1-22, and \$3,443.53 was incurred while she was at
6 Raines Feldman LLP (“Raines Feldman”) from April 23 to June 30. Diamond McCarthy, the
7 Receiver’s general counsel from April 1-22, seeks compensation in the amount of \$3,650.00 for
8 services rendered during that time. Raines Feldman, approved by the Court as the Receiver’s
9 general counsel effective April 23, 2021, seeks compensation in the amount of \$5,850.00 for
10 services rendered from April 23 to June 30. Miller Kaplan Arase LLP (“Miller Kaplan”),
11 Receiver’s tax counsel, seeks compensation in the amount of \$1,367.60 for services rendered
12 from April 1, 2021 through June 30, 2021. This motion (“Motion”) is supported by the
13 Declarations of the Receiver, David Castleman of Raines Feldman, and Julia Damasco of Miller
14 Kaplan. The Receiver has conferred with counsel to the Commodity Futures Tradition
15 Commission (“CFTC”), and counsel to the Receivership Defendants (defined below), and is
16 advised that they do not oppose the Motion.

17 **II. Previous Fee Motions**

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

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

1 the amount of \$3,808.00.

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

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

13 On April 23, 2021, the Court entered an Order approving the Receiver's fifth interim
14 application for payment of fees and expenses for the period January 1, 2021 through March 31,
15 2021, as follows: (i) the Receiver's fees in the amount of \$3,916.00; (ii) Diamond McCarthy's
16 fees in the amount of \$3,050.00; and (iii) Miller Kaplan's fees in the amount of \$627.60 and
17 reimbursement of expenses in the amount of \$50.00.

18 **III. Case Status**

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

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

27 On August 27, 2020, the Receiver filed Motions for Entry of Orders approving (1) the
28 Receiver's Plan for Distribution; (2) the Sierra Gold LLC Agreement; (3) the Form Agreements

1 with Investors; (4) the Form and Manner of Notice; (5) the Settlement with United Resource
2 Holdings Group, Inc., United Milling and Refining Corp., and Springbok Development LLC; (6)
3 the Sale of Publicly Traded Shares; and (7) the Settlement of Claim Asserted by Investor Gregory
4 Capson (Doc. Nos. 69-72). On October 1, 2020, the Court granted all of these Motions (Doc.
5 Nos. 78-82). The Receiver implemented the distribution of the securities soon thereafter.

6 On December 17, the Receiver filed a Motion for Entry of an Order approving an interim
7 distribution to Claimants, in the amount of 50% of the amount of the Claimants' cash claims
8 (Doc. No. 87). On December 23, the Court granted this motion. (Doc. No. 88.) On December
9 24, 2020, the Receiver wired funds to those claimants that requested distribution by wire transfer,
10 and sent checks to those claimants that requested distribution by check. The three claimants who
11 had been sent distribution checks cashed them in early January 2021.

12 On April 21, 2021, the Receivership Estate received \$150,000.00 as a result of the closing
13 of the Sparks Property as set forth in the URHG Settlement (Doc. No. 80).

14 On April 28, 2021, the Receiver received a letter from an attorney representing National
15 Gold Mining Company ("NGMC") that contended it might have a potential additional claim. The
16 Receiver responded on May 11, 2021, giving NGMC thirty days to file a claim, reserving all
17 rights concerning timeliness and substance of such a claim. NGMC did not file a claim in that
18 period.

19 After the quarter ended, the Receiver received from the California Franchise Tax Board a
20 new claim, dated June 30, 2021, for unpaid taxes and fees in the amount of \$1,775.96. The
21 Receiver is evaluating that claim and communicating with the Defendants' counsel.

22 As of June 30, 2021, the Receivership Estate presently had approximately \$465,000 of
23 cash on hand. Attached to the Receiver's Declaration as Exhibit "1" is a financial summary
24 showing cash receipts and disbursements during the Second Quarter 2021, and cash on hand as of
25 June 30, 2021. The Receiver intends to move the Court for authorization to make a second
26 interim distribution during the Third Quarter 2021 that will be the subject of a subsequent motion.
27 The cash summary attached as Exhibit "1" also includes a projected summary of the cash position
28 of the estate assuming allowance of the requested professional fees, payment of a new tax claim,

1 and payment of a second interim distribution to the cash claimants.

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

3 As detailed in the Declaration of the Receiver, the Receiver established separate billing
4 matters for services provided while at Diamond McCarthy and separate categories while at Raines
5 Feldman. The billing statements itemizing the services provided are contained in Exhibits "2A"
6 and "2B" to the Receiver's Declaration. The categories and amounts are as follows:

Matter / Category	Hours	Fees	Expenses
Case Administration	13.60	\$5,903.03	n/a
Asset Disposition	0.30	\$142.50	n/a
TOTAL	13.90	\$6,045.53	n/a

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11 The Receiver's fees are divided as \$2,602.00 incurred while she was at Diamond
12 McCarthy as set forth in Exhibit "2A" and \$3,443.53 while at Raines Feldman as set forth in
13 Exhibit "2B." Under Case Administration, the Receiver and her staff communicated with
14 investors regarding the plan, managed the website, communicated with CFTC regarding the plan,
15 worked with her accountants on tax matters, and managed the funds of the Receivership Estate.
16 Under Asset Disposition, the Receiver had multiple communications regarding closing of the
17 Sparks Property.

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

19 As detailed in the Castleman Declaration, Diamond McCarthy established separate billing
20 matters for services provided, which enabled Diamond McCarthy to monitor its activities and
21 appropriately account for the time expended. The billing statements itemizing the services
22 provided are attached as Exhibit "3A" to the Castleman Declaration. The categories and amounts
23 for each are as follows:

Matter	Hours	Fees	Expenses
Case Administration	2.60	\$1,300.00	n/a
Plan and Disclosure Statement	1.10	\$550.00	n/a
Fee Applications/Objections	3.60	\$1,800.00	n/a
TOTAL	6.10	\$3,650.00	n/a

1 Under Case Administration, Diamond McCarthy assisted the Receiver in preparing the
 2 first quarter financial reporting and analysis of tax matters. Under Plan and Disclosure Statement,
 3 Diamond McCarthy assisted the firm in analysis of issues related to the closing of the Sparks
 4 property. Fee Applications/Objections include assistance to the Receiver with the Fifth Interim
 5 Fee Request.

6 **VI. Raines Feldman's Fee Request**

7 As detailed in the Castleman Declaration, Raines Feldman established separate billing
 8 categories for services provided, which enabled Raines Feldman to monitor its activities and
 9 appropriately account for the time expended. The billing statements itemizing the services
 10 provided are attached as Exhibit "3B" to the Castleman Declaration. The categories and amounts
 11 for each are as follows:

Category	Hours	Fees	Expenses
Case Administration	14.00	\$7,000.00	n/a
TOTAL	14.00	\$7,000.00	n/a

15 Raines Feldman assisted the Receiver in responding to the NGMC letter, analyzing tax
 16 strategy, creating a new website for the receivership, and strategizing regarding the closing of case.

17 **VII. 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
 21 the relevant period for \$1,367.60 included assisting the Receiver in filing the 2020 tax return and
 22 in advising her and her counsel on various tax matters.

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

24 Dated: July 27, 2021

RAINES FELDMAN LLP

26 By: /s/ David A. Castleman

27 David A. Castleman
 28 Counsel to Receiver