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Counsel to Receiver Kathy Bazoian Phelps

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

DENARI CAPITAL LLC, TRAVIS
CAPSON, and ARNAB SARKAR,

Defendants.

Case No.: 19-cv-07284-EMC

Assigned to: Hon. Edward M. Chen

**DECLARATION OF KATHY BAZOIAN
PHELPS IN SUPPORT OF NOTICE OF
MOTION AND ADMINISTRATIVE
MOTION BY RECEIVER KATHY
BAZOIAN PHELPS FOR ENTRY OF AN
ORDER:**

**(1) APPROVING SECOND INTERIM
DISTRIBUTION;**

**(2) APPROVING THE RESOLUTION OF
CERTAIN TAX MATTERS; AND**

(3) BARRING FUTURE CLAIMS

Date: No Hearing Set

Time: No Hearing Set

Judge: Edward M. Chen

1 I, Kathy Bazoian Phelps, declare:

2 1. Pursuant to this Court's Order entered December 4, 2019, I was appointed as the
3 temporary receiver ("Receiver") in this case. I am also an attorney duly licensed to practice in the
4 State of California and am a partner at the firm of Raines Feldman LLP ("Raines Feldman"). I have
5 personal knowledge of the matters set forth below and if called as a witness, I would and could
6 testify competently to the matters stated herein.

7 2. This declaration is made in support of the Administrative Motion for Order (1)
8 Approving Second Interim Distribution; (2) Approving Payment of Claims to Franchise Tax Board;
9 and (3) Barring Future Claims (the "Motion").¹

10 3. I have conferred with counsel for the CFTC and for the Defendants, who each do
11 not oppose the Motion.

12 4. I received eighteen claims submitted in the ordinary course (one of which was
13 withdrawn), plus one priority claim from the Franchise Tax Board (the "FTB") for \$800 and
14 supplemental claim by the FTB for \$1,775.96. Prior to the receipt of the supplemental FTB Claim,
15 the total allowed claims were valued at \$3,683,082.

16 5. I have taken possession of \$56,666.83 in funds located in the Wells Fargo account
17 of URHG pursuant to the court-approved settlement. I have also been paid \$101,445.06 for the
18 purchase of URHG shares pursuant to the agreement approved by the Court (Dkt. 81).

19 6. The real estate transaction contemplated in the URHG Settlement required an
20 additional \$150,000 cash payment to the receivership and was supposed to close at the end of
21 October 2020. Although that closing was delayed, I received those funds and deposited them into
22 the estate accounts on April 21, 2021.

23 7. As of June 30, 2021, the estate held \$464,860.95 in cash.

24 8. The current allowed cash claims are \$1,090,697.08, as set forth in Exhibit "1"

25
26 ¹ All capitalized terms used but not otherwise defined herein shall have the meanings given to
27 them in the Motion.

1 attached hereto (excluding the FTB claims discussed below). A 15% distribution of those claims
2 will require a cash outlay of \$163,604.56.

3 9. I have conferred with my accountants and they agree that holding a reserve of
4 \$280,000 for priority and administrative costs and contingencies after this second interim
5 distribution is made is prudent and sufficient to protect the estate. I believe an interim distribution
6 of 15% of the allowed cash claim to claimants is prudent, consistent with conservative financial
7 management of the receivership estate, and serves the receivership estate's ultimate goal of
8 providing distributions to claimants.

9 10. I do not anticipate that there will be costs associated with wiring funds to claimants
10 but in the event there are wire charges assessed by the bank, I request authority to pay those from
11 the estate.

12 11. The initial claim from the FTB was for \$800, which this Court authorized me to
13 pay in December 2020. I sent a check to the FTB but it was never cashed. I received a subsequent
14 claim from the FTB for \$1,775.96, dated June 30, 2021, with an unspecified amount for 2019
15 possible tax liability. That Claim is attached hereto as Exhibit "2." I am currently investigating
16 this claim, in consultation with my own tax counsel and with defendants' counsel to the extent the
17 FTB's claim involves pre-receivership liability. I have no indication that the total FTB claim
18 amount with respect to the estate will be more than the sum of those two claims, or \$2,575.96.
19 However, as a matter of precaution and to mitigate the costs to the estate, I request authority to
20 pay up to \$5,000 without further order of the Court should the FTB seek to increase its claim
21 amount in connection with the unspecified portion of its claim.

22 12. I am not in possession of records that would enable me to file a pre-Receivership
23 2019 tax return, but Defendants Capson and Sarkar do have such records, and have communicated
24 with me through counsel that they are willing to file the federal and state tax returns for Denari
25 Capital LLC ("Denari"). Because Denari is a limited liability claim and the pre-receivership
26 returns were filed as partnership returns, any tax liability for the pre-receivership period for 2019
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1 will flow through to the owners individually. I have filed the Qualified Settlement Fund tax return
2 for the stub period of December 4 – 31, 2019, and for 2020. I believe that the tax liability of the
3 estate for state and federal taxes is fixed and paid.

4 13. Out of an abundance of caution, I am requesting authority to satisfy the FTB claims
5 in full, up to an amount of \$5,000. If the FTB claims are larger than \$5,000, and therefore much
6 larger than anticipated, I believe it is prudent to return to the Court to seek additional authority to
7 satisfy such claims.

8 14. I believe that by filing both the Form 568 with the FTB for 2020 and 2021, and by
9 terminating Denari with the California Secretary of State, I will be able to resolve the FTB's
10 outstanding claims concerning Denari's LLC fees and ensure that Denari does not incur any
11 additional LLC fees.

12 15. I had several communications with National Gold Mining Company ("NGMC")
13 and its agents in connection with my administration of the Receivership estate throughout 2020,
14 beginning in April. At no point in 2020 did anyone from NGMC indicate that it may have an
15 independent creditor claim against the estate, nor did NGMC file a claim.

16 16. The first time I heard of NGMC's potential issues with some of the Receivership
17 defendants was in early 2021, long after the estate's distribution of securities was complete. The
18 first time NGMC even raised the possibility that it might have a claim against the estate was in
19 the letter by its counsel dated April 28, 2021.

20 17. I am not aware of any other unfiled claims against the estate, other than as set forth
21 above concerning NGMC and the June 2021 FTB claim.

22 18. I am advised by my accountants that the tax liability generated from my sale and
23 distribution activities in 2020 will not be fixed until the expiration of the tax audit period, which
24 is three years from the date of the filing of the tax return for a given year. As such, my advisors
25 have instructed me to retain a reserve until the tax audit period has expired. At that time, assuming
26 that the tax assessment figures do not change, I will be in a position to make a final distribution,
27

1 which I will do upon further Court order.

2 I declare under penalty of perjury that the foregoing is true and correct. Executed on
3 this 9th day of August 2021 at Los Angeles, California.

4 /s/ Kathy Bazoian Phelps
5 Kathy Bazoian Phelps
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EXHIBIT 1

Exhibit 1: Proposed Second Interim Distribution

Percentage: 65% of Cash Claims Distributed

Claimant	Total Cash Claim	First Interim Amount (50%)	Second Interim Amount (15%)	Remaining Amount
1	\$200,000.00	\$100,000.00	\$30,000.00	\$70,000.00
2	\$97,020.00	\$48,510.00	\$14,553.00	\$33,957.00
3	\$20,000.00	\$10,000.00	\$3,000.00	\$7,000.00
4	\$100,000.00	\$50,000.00	\$15,000.00	\$35,000.00
5	\$92,500.00	\$46,250.00	\$13,875.00	\$32,375.00
6	\$222,207.08	\$111,103.54	\$33,331.06	\$77,772.48
7	\$79,986.00	\$39,993.00	\$11,997.90	\$27,995.10
8	\$177,720.00	\$88,860.00	\$26,658.00	\$62,202.00
11	\$2,264.00	\$1,132.00	\$339.60	\$792.40
16	\$80,000.00	\$40,000.00	\$12,000.00	\$28,000.00
18	\$19,000.00	\$9,500.00	\$2,850.00	\$6,650.00
Total	\$1,090,697.08	\$545,348.54	\$163,604.56	\$381,743.98

** Excludes FTB Claims*

EXHIBIT 2



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
SPECIAL PROCEDURES SECTION
PO BOX 2952
SACRAMENTO CA 95812-2952

Notice Date: 06/30/21

PROOF OF CLAIM RECEIVERSHIP

DENARI CAPITAL, LLC
KATHY BAZIOAN PHELPS, RECEIVER
STE 1100
1999 AVENUE OF THE STARS
LOS ANGELES CA 90067-4402

Subject : TAX CLAIM OF THE STATE OF CALIFORNIA

Debtor Name : DENARI CAPITAL, LLC

SOS Number : [REDACTED]

FEIN :

Receivership Date : 02/06/2020

Interest Computed to : 06/30/2021

Amount Due : \$1,775.96

This is a claim for taxes due from the above named limited liability company that entered into receivership.

SUMMARY OF BALANCE DUE

TYPE OF ASSESSMENT	TAXABLE YEAR(S)	TAX	PENALTY	INTEREST	TOTAL
LLC	★ 12/31/2019	\$0.00	\$0.00	\$0.00	\$0.00
LLC	12/31/2020	\$800.00	\$88.00	\$30.95	\$918.95
LLC	12/31/2021	\$800.00	\$52.00	\$5.01	\$857.01
					\$0.00
					\$0.00
					\$0.00
					\$0.00
★ TO BE DETERMINED				TOTAL BALANCE DUE	\$1,775.96

Additional interest is charged on the unpaid amount at the rate set by law from the "Interest Computed to" date shown above until the date FTB receives payment. Please return this letter promptly with payment in full. The remittance should be made payable to the **Franchise Tax Board** and mailed to the address shown above. If you do not make payment in full, send a copy of the final accounting showing the disposition of assets.

Authorized Representative

Telephone: [REDACTED]

Rebecca Estonilo

Assistance for persons with disabilities: We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments please call TTY/TDD (800) 822-6268.

Website at: www.ftb.ca.gov

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