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

11 COMMODITY FUTURES TRADING
COMMISSION,

12 Plaintiff,

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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

**SEVENTH ADMINISTRATIVE MOTION
FOR AN ORDER PURSUANT TO LOCAL
RULE 7-11 FOR THE APPROVAL OF FEES
AND EXPENSES FOR RECEIVER, RAINES
FELDMAN LLP, AND MILLER KAPLAN
ARASE LLP FROM JULY 1, 2021 TO
SEPTEMBER 30, 2021**

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

1 Kathy Bazoian Phelps, temporary receiver (the “Receiver”) for Denari Capital LLC
2 (“Denari”), Travis Capson (“Capson”), and Arnab Sarkar (“Sarkar,” and collectively, the
3 “Receivership Defendants”), hereby files, pursuant to Local Civil Rule 7-11, this Seventh
4 Administrative Motion for the Approval of Fees and Expenses for the Receiver, Raines Feldman
5 LLP, and Miller Kaplan Arase LLP from July 1, 2021 through September 30, 2021 (the
6 “Motion”).¹

7 **I. Relief Requested**

8 The Receiver seeks approval of compensation in the amount of \$7,552.50 for services
9 rendered from July 1, 2021 through September 30, 2021 (the “Motion Period”). Raines Feldman
10 LLP (“Raines Feldman”), the Receiver’s general counsel, seeks compensation in the amount of
11 \$7,200.00 for services rendered during the Motion Period. Miller Kaplan Arase LLP (“Miller
12 Kaplan”), Receiver’s tax counsel, seeks compensation in the amount of \$3,217.20 for services
13 rendered during the Motion Period.

14 **II. Previous Fee Motions**

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

21 On August 12, 2020, the Court entered an Order approving the Receiver’s second interim
22 application for payment of fees and expenses for the period April 1, 2020 through June 30, 2020,
23 as follows: (i) the Receiver’s fees in the amount of \$53,838.00; (ii) Diamond McCarthy’s fees in
24 the amount of \$53,472.00 and reimbursement of expenses in the amount of \$254.23; (iii)

25 _____
26 ¹ The Motion is based upon this Motion, the Declarations of the Receiver, David Castleman, and
27 Julia Damasco and the proposed order. In addition to service by ECF, the Receiver intends to
28 serve this Motion and supporting documents on the affected claimants via email. *See* Civil L.R.
66-6. The Receiver has conferred with the CFTC and the Defendants’ counsel, who do not
oppose the Motion.

1 Schinner & Shain's fees in the amount of \$6,850.00, and (iv) Miller Kaplan's fees in the amount
2 of \$3,808.00.

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

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

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

19 On August 2, 2021, the Court entered an Order approving the Receiver's sixth interim
20 application for payment of fees and expenses for the period April 1, 2021 through June 30, 2021,
21 as follows: (i) the Receiver's fees in the amount of \$6,045.53; (ii) Diamond McCarthy's fees in
22 the amount of \$3,650.00; (iii) Raines Feldman's fees in the amount of \$7,000.00; and (iv) Miller
23 Kaplan's fees in the amount of \$1,367.60.

24 **III. Case Status**

25 On November 5, 2019, the CFTC filed a Complaint (Doc. No. 1) against the Receivership
26 Defendants. On December 4, 2019, this Court entered an Order Appointing a Temporary Receiver
27 (Doc. No. 37) appointing the Receiver as the temporary receiver with full powers of an equity
28 receiver for the Receivership Defendants and all of their assets, except as set forth therein.

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

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

11 On December 17, the Receiver filed a Motion for Entry of an Order approving an interim
12 distribution to Claimants, in the amount of 50% of the amount of the Claimants' cash claims
13 (Doc. No. 87). On December 23, the Court granted this motion. (Doc. No. 88.) On December
14 24, 2020, the Receiver wired funds to those claimants that requested distribution by wire transfer
15 and sent checks to those claimants that requested distribution by check. The three claimants who
16 had been sent distribution checks cashed them in early January 2021.

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

19 In July 2021, the Receiver received from the California Franchise Tax Board a new claim,
20 dated June 30, 2021, for unpaid taxes and fees in the amount of \$1,775.96. The Receiver has paid
21 all known outstanding California state tax liability and believes that this claim has now been
22 satisfied in full.

23 On August 9, 2021, the Receiver moved the Court for an entry of an order approving a
24 second interim distribution order, approving the resolution of certain tax matters, and barring
25 future claims (Doc. No. 109). The Court granted that motion on August 23, 2021, which
26 instructed the Receiver to distribute \$163,604.56, representing 15% of the total cash claims (Doc
27 No. 112). On August 25, 2021, the Receiver completed the distribution by wire transfer to all but
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1 one of the claimants, in the amount of \$163,264.96, and the final claimant deposited a check for
2 \$339.60 on September 15, 2021. That distribution is now complete.

3 As of September 30, 2021, the Receivership Estate presently had approximately \$280,000
4 of cash on hand. Attached to the Receiver's Declaration as Exhibit "1" is a financial summary
5 showing cash receipts and disbursements during the Third Quarter 2021, cash on hand as of
6 September 30, 2021, and the requested professional fees in this Motion. As stated in the
7 Receiver's motion of August 9 (Doc. No. 109), the Receiver intends to hold these cash reserves
8 until the final tax liabilities of the Receivership estate may be ascertained, likely in 2025. In order
9 to minimize costs and fees, the Receiver requests that she be given discretion to file fee
10 applications and cash disbursement reports less than once per quarter, but in no event less than
11 once per year. The Receiver will continue to keep the Court apprised of all significant events.

12 **IV. The Receiver's Fee Request**

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

Matter / Category	Hours	Fees	Expenses
Case Administration (B110)	12.70	\$6,032.50	n/a
Asset Analysis and Recovery (B120)	0.20	\$95.00	n/a
Plan Implementation (B320)	3.00	\$1,425.00	n/a
TOTAL	15.90	\$7,552.50	n/a

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20 Under Case Administration, the Receiver and her staff communicated with investors
21 regarding the various queries, communicated with CFTC regarding the case, worked with her
22 accountants on tax matters, and managed the funds of the Receivership Estate. Under Asset
23 Analysis and Recovery, the Receiver handled communications regarding a safety deposit box.
24 Under Plan Implementation, the Receiver filed a motion to make a second interim distribution and
25 implemented that distribution.
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1 **V. Raines Feldman’s Fee Request**

2 As detailed in the Castleman Declaration, Raines Feldman established separate billing
3 categories for services provided, which enabled Raines Feldman to monitor its activities and
4 appropriately account for the time expended. The billing statements itemizing the services
5 provided are attached as Exhibit “3” to the Castleman Declaration. The categories and amounts
6 for each are as follows:

7 Category	Hours	Fees	Expenses
8 Case Administration (B110)	0.70	\$350.00	n/a
9 Plan Implementation (B320)	11.00	\$5,500.00	n/a
10 Fee Applications/Objections (B160)	2.70	\$1,350.00	n/a
	TOTAL	14.40	\$7,200.00
			n/a

11 In Case Administration, Raines Feldman assisted the Receiver in analyzing various issues
12 related to the estate. In Fee Applications/Objections, Raines Feldman assisted the Receiver with
13 the Sixth Interim Fee Request. Under Plan Implementation, Raines Feldman assisted the Receiver
14 with filing a motion to make a second interim distribution and implementing that distribution, and
15 in fielding questions and concerns from claimants.

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

17 As detailed in the Damasco Declaration, Miller Kaplan was retained solely as tax advisers
18 and counsel, and created categories for general tax advice and preparation of the qualified
19 settlement fund tax forms. The billing statements itemizing the services provided are contained in
20 Exhibit “4” attached thereto. Miller Kaplan’s services during the relevant period for \$3,217.20
21 included advising her and her counsel on various tax matters (\$1,536.00), and in filing the 2020
22 tax return, 2019/2020 disregarded entity return, and 2021 CA Form 568 (\$1,681.20).

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

24 Dated: November 3, 2021

RAINES FELDMAN LLP

26 By: /s/ David A. Castleman

27 David A. Castleman
28 Counsel to Receiver