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5 *Receiver*

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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

**EIGHTH 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 OCTOBER 1, 2021 TO
SEPTEMBER 30, 2022**

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

1 Kathy Bazoian Phelps, receiver (the “Receiver”) for Denari Capital LLC (“Denari”),
2 Travis Capson (“Capson”), and Arnab Sarkar (“Sarkar,” and collectively, the “Receivership
3 Defendants”) pursuant to the November 24, 2021 Consent Order for Permanent Injunction,
4 Restitution, and Civil Monetary Penalty (Dkt. No. 119), hereby files, pursuant to Local Civil Rule
5 7-11, this Eighth Administrative Motion for the Approval of Fees and Expenses for the Receiver,
6 Raines Feldman LLP, and Miller Kaplan Arase LLP from October 1, 2021 through September 30,
7 2022 (the “Motion”).¹

8 **I. Relief Requested**

9 The Receiver seeks approval of compensation in the amount of \$4,797.50 for services
10 rendered from October 1, 2021 through September 30, 2022 (the “Motion Period”). Raines
11 Feldman LLP (“Raines Feldman”), the Receiver’s general counsel, seeks compensation in the
12 amount of \$2,999.00 for services rendered during the Motion Period. Miller Kaplan Arase LLP
13 (“Miller Kaplan”), Receiver’s tax counsel, seeks compensation in the amount of \$6,265.00 for
14 services rendered and \$55 in costs during the Motion Period.

15 **II. Previous Fee Motions**

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

22 On August 12, 2020, the Court entered an Order approving the Receiver’s second interim
23 application for payment of fees and expenses for the period April 1, 2020 through June 30, 2020,
24 as follows: (i) the Receiver’s fees in the amount of \$53,838.00; (ii) Diamond McCarthy’s fees in
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26 ¹ The Motion is based upon this Motion, the Declarations of the Receiver and Julia Damasco and
27 the proposed order. In addition to service by ECF, the Receiver intends to serve this Motion and
28 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 the amount of \$53,472.00 and reimbursement of expenses in the amount of \$254.23; (iii)
2 Schinner & Shain's fees in the amount of \$6,850.00, and (iv) Miller Kaplan's fees in the amount
3 of \$3,808.00.

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

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

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

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

25 On November 3, 2021, the Court entered an Order approving the Receiver's seventh
26 interim application for payment of fees and expenses for the period July 1, 2021 through
27 September 30, 2021, as follows: (i) the Receiver's fees in the amount of \$7,552.50; (ii) Raines
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1 Feldman’s fees in the amount of \$7,200.00; and (iii) Miller Kaplan’s fees in the amount of
2 \$3,217.20.

3 **III. Case Status**

4 On November 5, 2019, the Commodity Futures Trading Commission (“CFTC”) filed a
5 Complaint (Doc. No. 1) against the Receivership Defendants. On December 4, 2019, this Court
6 entered an Order Appointing a Temporary Receiver (Doc. No. 37) appointing the Receiver as the
7 temporary receiver with full powers of an equity receiver for the Receivership Defendants and all
8 of their assets, except as set forth therein.

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

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

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

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

27 In July 2021, the Receiver received from the California Franchise Tax Board a new claim,
28 dated June 30, 2021, for unpaid taxes and fees in the amount of \$1,775.96. The Receiver has paid

1 all known outstanding California state tax liability and believes that this claim has now been
2 satisfied in full.

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

10 As of September 30, 2022, the Receivership Estate had \$263,917.29 of cash on hand.
11 Attached to the Receiver's Declaration as Exhibit "1" is a financial summary showing cash
12 receipts and disbursements from the First Quarter 2020 through the Third Quarter 2022, cash on
13 hand as of September 30, 2022, and the requested professional fees in this Motion. As stated in
14 the Receiver's motion of August 9, 2021 (Doc. No. 109), the Receiver intends to hold these cash
15 reserves pending the running of the tax audit period following the filing of the 2021 tax returns,
16 which will be in 2025.

17 The parties reached a settlement that resolves all of the charges alleged in the Complaint
18 filed by the CFTC against the Receivership Defendants. The parties jointly stipulated to the entry
19 of a proposed Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other
20 Equitable Relief, without admitting or denying the allegations of the Complaint. On November
21 24, 2021, the Court entered the Consent Order for Permanent Injunction, Restitution, and Civil
22 Monetary Penalty (the "Consent Order"), which appointed the Receiver as Permanent Receiver
23 and granted her granted the full powers of a federal equity receiver, and ordered the Receivership
24 Defendants to pay, jointly and severally, (\$3,663,282.14) (the "Restitution Obligation"). (Doc.
25 No. 119). The Restitution Obligation will be offset up to the full amount by any distributions
26 made by the Receiver to claimants pursuant to the Plan of Distribution (Doc. No. 69-1), which
27 was previously approved by the Court (Doc. No. 79). (Doc. No. 119). The Receiver will receive
28 restitution payments from the Receivership Defendants and make distributions as set forth in the

1 Consent Order. (*Id.*) The Receiver will oversee the Restitution Obligation pursuant to the
 2 Consent Order and will have the discretion to determine the manner of distribution of such funds
 3 in an equitable fashion to Receivership Defendants’ pool participants who have made claims to
 4 the Receiver, or may defer distribution until such time as the Receiver deems appropriate. (*Id.*) At
 5 the beginning of each calendar year, pursuant to the Consent Order, the Receiver will provide the
 6 CFTC with a report detailing the disbursement of funds to the Receivership Defendants’ pool
 7 participants during the previous year. (*Id.*) In the Consent Order, the Court also ordered
 8 Defendants Capson and Sarkar to each pay a civil monetary penalty in the amount of their
 9 respective gains from the violations described in the Consent Order, which they neither admit nor
 10 deny, with Capson to pay \$250,000 and Sarkar to pay \$166,000 (the “CMP Obligation”). (*Id.*)

11 The Consent Order also provides for compensation for the Receiver, which will be paid
 12 exclusively from the funds held by the Receiver in the receivership estate. (*Id.*) The Receiver and
 13 all personnel she hired as previously authorized by the Court, including counsel to the Receiver,
 14 remain entitled to reasonable compensation for the performance of duties pursuant to the Consent
 15 Order and for the cost of actual out-of-pocket expenses incurred by them for those services
 16 authorized by the Consent Order. (*Id.*) The Receiver will file with the Court and serve on the
 17 parties periodic requests for the payment of such reasonable compensation on at least a quarterly
 18 basis pursuant to the Consent Order. (*Id.*) The Receiver will continue to keep the Court apprised
 19 of all significant events.

20 **IV. The Receiver’s Fee Request**

21 As detailed in the Declaration of the Receiver, the Receiver established separate categories
 22 for services provided. The billing statements itemizing the services provided are contained in
 23 Exhibit “2” to the Receiver’s Declaration. The categories and amounts are as follows:

Matter / Category	Hours	Fees	Expenses
Case Administration (B110)	9.70	\$4,607.50	n/a
Fee Applications/Objections (B160)	0.40	\$190.00	n/a
TOTAL	10.10	\$4,797.50	n/a

27 Under Case Administration, the Receiver communicated with CFTC regarding the case,
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1 worked with her accountants on tax matters, and managed the funds of the Receivership Estate.
 2 Under Fee Applications/Objections, the Receiver prepared the Seventh Interim Fee Request.

3 **V. Raines Feldman’s Fee Request**

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

Category	Hours	Fees	Expenses
Case Administration (B110)	3.50	\$1,749.50	n/a
Fee Applications/Objections (B160)	2.50	\$1,249.50	n/a
TOTAL	6.00	\$2,999.00	n/a

13 In Case Administration, Raines Feldman assisted the Receiver in analyzing various issues
 14 related to the estate. In Fee Applications/Objections, Raines Feldman assisted the Receiver with
 15 the Seventh Interim Fee Request.

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 \$6,265.00
 21 included advising her and her counsel on various tax matters (\$3,804.00); in preparing the 2021
 22 tax returns, quarterly estimated return, and 2021 CA Form 568 (\$2,251.40); and information
 23 return reporting services (\$209.60). Miller Kaplan incurred \$55.00 in costs including an LLC
 24 cancellation fee and information reporting forms.

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

Dated: November 4, 2022

RAINES FELDMAN LLP

By: /s/ Kathy Bazoian Phelps
Kathy Bazoian Phelps
Receiver