

1 **RAINES FELDMAN LLP**
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7 *Receiver*

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

11 COMMODITY FUTURES TRADING
12 COMMISSION,

13 Plaintiff,

14 v.

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

17 Defendants.

Case No. 19-cv-07284-EC

**ADMINISTRATIVE MOTION BY
RECEIVER KATHY BAZOIAN
PHELPS PURSUANT TO LOCAL
CIVIL RULE 7-11 FOR ORDER
APPROVING SUBSTITUTION OF
COUNSEL AND EMPLOYMENT
OF RAINES FELDMAN LLP**

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

21 **I. Introduction and Basis for the Motion**

22 Kathy Bazoian Phelps, the successor receiver herein (the “Receiver”), files this Motion
23 to Employ Raines Feldman LLP in light of her recent change of firms and the change in firms
24 of her primary counsel. The Receiver wishes to substitute in her new firm, Raines Feldman
25 LLP, as her general counsel in this case, and to deem the employment of Diamond McCarthy
26 as terminated as of April 22, 2021.
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1 The Receiver has conferred with counsel for the Commodity Futures Trading
2 Commission and counsel for Defendants and is advised that they do not oppose the Motion. A
3 stipulation with all parties was deemed impractical given, among other things, the entry of
4 judgment against the defendants and pending bankruptcy of defendant John Bivona. (L.R. 7-
5 11 1(a)).

6 The Receiver has determined that, in order to perform her duties and obligations under
7 the Receiver Order, she continues to require the assistance of counsel. The Receiver and her
8 primary counsel, David Castleman, have recently joined the firm of Raines Feldman LLP, and
9 she believes that Raines Feldman will be best suited to serve as her general counsel going
10 forward in this case to cause the least amount of disruption in the case. This administrative
11 motion is supported by the Declarations of Kathy Bazoian Phelps and David Castleman.

12 **II. Receiver's Need for General Counsel**

13 The Receiver's duties and responsibilities under the Receiver Order depend
14 significantly upon her ability to manage and liquidate commodities and securities and to
15 implement a distribution plan. Although the case is almost concluded, the Receiver will
16 continue need the assistance of counsel in order to, among other things: (i) finalize the Sparks
17 transaction contemplated under the Distribution Plan; (ii) finalize the distribution under the
18 Plan; (iii) prepare a file a motion to close the case upon final distribution; and (iv) handle any
19 other legal issues as may arise in the concluding of this receivership case.

20 The Receiver recently changed law firms, as did her primary counsel on this case,
21 David Castleman, and they are now partners in the firm of Raines Feldman. The Receiver seeks
22 to substitute in Raines Feldman as her general counsel in this case, and to deem the
23 employment of Diamond McCarthy as terminated. The Receiver's former firm and Raines
24 Feldman have signed a Substitution of Attorney form, which is attached to the Phelps
25 Declaration as Exhibit "1."

26 The Receiver has determined that, in order to perform my duties and obligations as
27 defined by this Court's Receiver Order, she continues to require the assistance of counsel to
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1 aid in the implementation of the distribution plan in this case. She will need assistance in
2 releasing the lien on the Sparks property and closing that transaction. She will need to make
3 further distributions which will require the assistance of counsel to address any legal issues
4 that arise in the implementation of the Plan and any other legal issues that may arise in the
5 process of closing the case.

6 For these reasons, and to assist the Receiver with other legal issues that may arise in
7 the administration of the receivership estate, she believes she continues to require counsel in
8 order to assist with the implementation of the distribution plan. David Castleman has been the
9 lawyer primarily responsible for assisting the Receiver as counsel, and he too has changed
10 firms and joined Raines Feldman. The Receiver believes that Raines Feldman's employment
11 is appropriate and in the best interests of the receivership for several reasons. Mr. Castleman
12 is not only well-qualified to serve as the Receiver's counsel, but he is also extremely
13 knowledgeable about the facts of this case. This change in counsel will therefore not cost the
14 estate anything extra as there is no risk of additional legal fees to learn about the case and no
15 risk of duplication. Raines Feldman is able to act immediately without waiting until its
16 employment is confirmed, understanding and assuming the attendant risks. Other counsel
17 would have had to expend time to familiarize themselves with the facts in this case.

18 Raines Feldman has agreed to discount its regular hourly rates in this matter and will
19 charge a maximum hourly rate for legal services of \$500.00 per hour. I anticipate primary
20 legal services will be provided by David Castleman, a partner whose regular hourly rate is
21 \$625 and will be discounted to \$500 per hour. Hourly rates for other partners or associates at
22 the firm who may perform work on the matter will be discounted by 15% and their hourly rates
23 will be capped at \$500. A copy of the Firm's regular rates is attached to the Declaration of
24 David Castleman as Exhibit "2".

25 Attached to the Declaration of David Castleman as Exhibit "3" is the resume of Raines
26 Feldman and the biography of David Castleman, who is expected to perform the primary legal
27 services on this matter.

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III. The Court Has Broad Supervisory Authority to Approve Employment of the Receiver’s Professionals

The Court has broad powers to determine what is necessary for the administration and supervision of an equity receivership. *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005) (“A district court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad”); *CFTC v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) (“This court affords ‘broad deference’ to the [district] court’s supervisory role”). It is respectfully submitted that the Court should exercise its broad powers to authorize the relief requested in this Motion.

IV. Conclusion

For these reasons, the Receiver respectfully requests that the Court approve the substitution in of Raines Feldman as her general counsel effective as of April 23, 2021, and to deem the employment of Diamond McCarthy as terminated as of April 22, 2021. The Receiver requests all other appropriate relief.

Dated: April 28, 2021

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