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5 *Receiver*

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

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**SAN FRANCISCO DIVISION**

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COMMODITY FUTURES TRADING  
COMMISSION,

**Case No.: 19-cv-07284-EMC**

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Plaintiff,

Assigned to: Hon. Edward M. Chen

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v.

**NINTH ADMINISTRATIVE MOTION  
FOR AN ORDER PURSUANT TO  
LOCAL RULE 7-11 FOR THE  
APPROVAL OF FEES AND EXPENSES  
FOR RECEIVER, RAINES FELDMAN  
LITTRELL LLP, AND MILLER  
KAPLAN ARASE LLP FROM  
OCTOBER 1, 2022 TO DECEMBER 31,  
2023**

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DENARI CAPITAL LLC, TRAVIS  
CAPSON, and ARNAB SARKAR,

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Defendants.

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

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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  
5 Rule 7-11, this Ninth Administrative Motion for the Approval of Fees and Expenses for the  
6 Receiver, Raines Feldman Littrell LLP, and Miller Kaplan Arase LLP from October 1, 2022  
7 through December 31, 2023 (the “Motion”).<sup>1</sup>

### 8 **I. Relief Requested**

9 The Receiver seeks approval of compensation in the amount of \$2,375.00 for services  
10 rendered from October 1, 2022 through December 31, 2023 (the “Motion Period”). Raines  
11 Feldman Littrell LLP (“Raines Feldman”), the Receiver’s general counsel, seeks compensation  
12 in the amount of \$6,248.40 for services rendered during the Motion Period. Miller Kaplan  
13 Arase LLP (“Miller Kaplan”), Receiver’s tax counsel, seeks compensation in the amount of  
14 \$3,360.40 for services rendered and \$50 in costs during the Motion Period.

### 15 **II. Previous Fee Motions**

16 This is the Receiver’s ninth 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  
18 the period December 4, 2019 through March 31, 2020, as follows: (i) the Receiver’s fees in  
19 the amount of \$59,580.10 and reimbursement of expenses in the amount of \$1,358.27; and (ii)  
20 her 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  
23 interim application for payment of fees and expenses for the period April 1, 2020 through June  
24 30, 2020, as follows: (i) the Receiver’s fees in the amount of \$53,838.00; (ii) Diamond

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

1 McCarthy's fees in the amount of \$53,472.00 and reimbursement of expenses in the amount  
2 of \$254.23; (iii) Schinner & Shain's fees in the amount of \$6,850.00, and (iv) Miller Kaplan's  
3 fees in the amount of \$3,808.00.

4 On November 6, 2020, the Court entered an Order approving the Receiver's third  
5 interim application for payment of fees and expenses for the period July 1, 2020 through  
6 September 30, 2020, as follows: (i) the Receiver's fees in the amount of \$19,118.50 and  
7 reimbursement of expenses in the amount of \$397.20; (ii) Diamond McCarthy's fees in the  
8 amount of \$41,658.00; 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  
17 31, 2021, as follows: (i) the Receiver's fees in the amount of \$3,916.00; (ii) Diamond  
18 McCarthy's fees in the amount of \$3,050.00; and (iii) Miller Kaplan's fees in the amount of  
19 \$627.60 and 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,  
22 2021, as follows: (i) the Receiver's fees in the amount of \$6,045.53; (ii) Diamond McCarthy's  
23 fees in the amount of \$3,650.00; (iii) Raines Feldman's fees in the amount of \$7,000.00; and  
24 (iv) Miller 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 On November 4, 2022, the Court entered an Order approving the Receiver’s eighth  
4 interim application for payment of fees and expenses for the period October 1, 2021 through  
5 September 30, 2022, as follows: (i) the Receiver’s fees in the amount of \$4,797.50; (ii) Raines  
6 Feldman’s fees in the amount of \$2,999.00; and (iii) Miller Kaplan’s fees in the amount of  
7 \$6,265.00 and reimbursement of costs in the amount of \$55.00.

8 **III. Case Status**

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

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

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

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

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

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

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

17 As of December 31, 2023, the Receivership Estate had \$258,956.94 of cash on hand.  
18 Attached to the Receiver's Declaration as Exhibit "1" is a financial summary showing cash  
19 receipts and disbursements from the First Quarter 2020 through the Fourth Quarter 2023, cash  
20 on hand as of December 31, 2023, and the requested professional fees in this Motion. As stated  
21 in the Receiver's motion of August 9, 2021 (Doc. No. 109), the Receiver intends to hold these  
22 cash reserves pending the running of the tax audit period following the filing of the 2021 tax  
23 returns, which will be in 2025.

24 The parties reached a settlement that resolves all of the charges alleged in the  
25 Complaint filed by the CFTC against the Receivership Defendants. The parties jointly  
26 stipulated to the entry of a proposed Consent Order of Permanent Injunction, Civil Monetary  
27 Penalty, and Other Equitable Relief, without admitting or denying the allegations of the  
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1 Complaint. On November 24, 2021, the Court entered the Consent Order for Permanent  
2 Injunction, Restitution, and Civil Monetary Penalty (the “Consent Order”), which appointed  
3 the Receiver as Permanent Receiver and granted her granted the full powers of a federal equity  
4 receiver, and ordered the Receivership Defendants to pay, jointly and severally,  
5 (\$3,663,282.14) (the “Restitution Obligation”). (Doc. No. 119). The Restitution Obligation  
6 will be offset up to the full amount by any distributions made by the Receiver to claimants  
7 pursuant to the Plan of Distribution (Doc. No. 69-1), which was previously approved by the  
8 Court (Doc. No. 79). (Doc. No. 119). The Receiver will receive restitution payments from the  
9 Receivership Defendants and make distributions as set forth in the Consent Order. (*Id.*) The  
10 Receiver will oversee the Restitution Obligation pursuant to the Consent Order and will have  
11 the discretion to determine the manner of distribution of such funds in an equitable fashion to  
12 Receivership Defendants’ pool participants who have made claims to the Receiver, or may  
13 defer distribution until such time as the Receiver deems appropriate. (*Id.*) At the beginning of  
14 each calendar year, pursuant to the Consent Order, the Receiver will provide the CFTC with a  
15 report detailing the disbursement of funds to the Receivership Defendants’ pool participants  
16 during the previous year. (*Id.*) In the Consent Order, the Court also ordered Defendants Capson  
17 and Sarkar to each pay a civil monetary penalty in the amount of their respective gains from  
18 the violations described in the Consent Order, which they neither admit nor deny, with Capson  
19 to pay \$250,000 and Sarkar to pay \$166,000 (the “CMP Obligation”). (*Id.*)

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

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

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

Matter / Category	Hours	Fees	Expenses
Case Administration (B110)	4.10	\$1,947.50	n/a
Asset Analysis and Recovery (B120)	0.20	\$95.00	n/a
Fee Applications/Objections (B160)	0.70	\$332.50	n/a
<b>TOTAL</b>	<b>5.00</b>	<b>\$2,375.00</b>	<b>n/a</b>

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12 Under Case Administration, the Receiver communicated with CFTC regarding the  
13 case, worked with her accountants on tax matters, and managed the funds of the Receivership  
14 Estate. Under Asset Analysis and Recovery, I communicated regarding interest on bank  
15 accounts. Under Fee Applications/Objections, the Receiver prepared the Eighth Interim Fee  
16 Request.

17 **V. Raines Feldman's Fee Request**

18 As detailed in the Receiver's Declaration, Raines Feldman established separate billing  
19 categories for services provided, which enabled Raines Feldman to monitor its activities and  
20 appropriately account for the time expended. The billing statements itemizing the services  
21 provided are attached as Exhibit "3" to the Receiver's Declaration. The categories and amounts  
22 for each are as follows:

Category	Hours	Fees	Expenses
Case Administration (B110)	7.10	\$2,248.80	n/a
Fee Applications/Objections (B160)	10.10	\$3,999.60	n/a
<b>TOTAL</b>	<b>17.20</b>	<b>\$6,248.40</b>	<b>n/a</b>

1 In Case Administration, Raines Feldman assisted the Receiver in analyzing various  
2 issues related to the estate and prepared the cash disbursement schedule. In Fee  
3 Applications/Objections, Raines Feldman assisted the Receiver with the Eighth Interim Fee  
4 Request.

5 **VI. Miller Kaplan's Fee Request**

6 As detailed in the Sanchez Declaration, Miller Kaplan was retained solely as tax  
7 advisers and counsel, and created categories for general tax advice and preparation of the  
8 qualified settlement fund tax forms. The billing statements itemizing the services provided are  
9 contained in Exhibit "4" attached thereto. Miller Kaplan's services during the relevant period  
10 for \$3,360.40 included preparation and filing of the 2022 Qualified Settlement Fund Income  
11 Tax Return and estimated 2023 quarterly tax payments. Miller Kaplan incurred \$50.00 in costs  
12 including information reporting forms.

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

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16 Dated: March 18, 2024

RAINES FELDMAN LITRELL LLP

17 By: /s/ Kathy Bazoian Phelps  
18 Kathy Bazoian Phelps  
19 Receiver

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