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5 *Successor Receiver*

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

10 SECURITIES AND EXCHANGE
COMMISSION,

11 Plaintiff,

12 v.

13 JOHN V. BIVONA; SADDLE RIVER
14 ADVISORS, LLC; SRA
MANAGEMENT ASSOCIATES,
15 LLC; FRANK GREGORY
MAZZOLA,

16 Defendants, and

17 SRA I LLC; SRA II LLC; SRA III
18 LLC; FELIX INVESTMENTS, LLC;
MICHELE J. MAZZOLA; ANNE
19 BIVONA; CLEAR SAILING GROUP
IV LLC; CLEAR SAILING GROUP V
20 LLC,

21 Relief Defendants.

Case No. 3:16-cv-01386-EMC

**DECLARATION OF KATHY BAZOIAN
PHELPS IN SUPPORT OF
ADMINISTRATIVE MOTION BY
RECEIVER KATHY BAZOIAN PHELPS
PURSUANT TO LOCAL CIVIL RULE 7-11
FOR ORDER APPROVING
EMPLOYMENT OF:**

- (1) **DIAMOND McCARTHY LLP, AS
GENERAL COUNSEL;**
- (2) **GROBSTEIN TEEPLE LLC AS
ACCOUNTANTS; AND**
- (3) **STRETTO AS CLAIMS AGENT**

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

1 I, Kathy Bazoian Phelps, declare:

2 1. I am the Receiver appointed by this Court for SRA Management Associates, LLC,
3 SRA I LLC, SRA II LLC, SRA III, LLC, Clear Sailing Group IV LLC, Clear Sailing Group V
4 LLC, NYPA Fund I LLC, NYPA II Fund II LLC, NYPA Management Associates LLC, Felix
5 Multi-Opportunity Funds I and II, LLC, and FMOF Management Associates, LLC (collectively,
6 “Receivership Entities”), pursuant to the Revised Order Appointing Receiver entered on February
7 28, 2019 (“Receiver Order”).

8 2. I submit this Declaration in support of the Motion of Receiver, Kathy Bazoian
9 Phelps, for Administrative Relief for Order Approving Employment of (1) Diamond McCarthy
10 LLP as General Counsel; (2) Grobstein Teeple LLC as Accountants; and (3) Stretto as Claims
11 Agent.

12 3. I have personal knowledge of the facts set forth in this Declaration, and, if called to
13 testify, could testify competently thereto.

14 4. Prior to filing this Administrative Motion, I conferred with counsel for the
15 Securities and Exchange Commission, John Yun, counsel for the SRA Investor Group, Jonathan
16 Levine, and counsel for Progresso Ventures, Avi Israeli, in accordance with Local Rule 7-11.
17 They both advised me that they do not oppose the Motion.

18 5. I seek to retain Diamond McCarthy LLP (“Diamond McCarthy”) as counsel of
19 record, Grobstein Teeple LLC as forensic accountants and Stretto as claims agent. As reflected
20 on the first page of this Motion, Diamond McCarthy is the law firm at which I am employed, and
21 I am senior counsel in the firm.

22 6. In my reasonable business judgment, I have determined that, in order to perform
23 my duties and obligations as defined by this Court’s Receiver Order, I require the assistance of
24 counsel. I therefore request that the Court approve the employment and compensation of
25 Diamond McCarthy, LLP (“Diamond McCarthy”) as my general counsel, effective as of February
26 1, 2019.

27 7. The proposed plan involves different classes of creditors, and I will need the
28 assistance of counsel to evaluate and file claims objections where necessary, advise me regarding

1 the management of the Solis Fund Associates LLC, evaluate complexities in types of claims,
2 document settlements, enforce forward contracts, assist with resolution of issues with EAC, and
3 bring litigation as may be necessary in connection with obtaining the return of stock to the estate,
4 among other legal issues as may arise.

5 8. For these reasons, and to assist me with other legal issues that may arise in the
6 administration of the receivership estate, I have determined that I require counsel in order to assist
7 with my implementation of the distribution plan. I immediately retained Diamond McCarthy LLP
8 as my general counsel, effective as of February 1, 2019 in anticipation of the imminent entry of
9 the Receiver Order. Diamond McCarthy began assisting me in the weeks leading up to the entry
10 of the Receiver Order so that I could formulate opinions and comments on the competing
11 distribution plans, among other things. I believe that Diamond McCarthy's employment is
12 appropriate and in the best interests of the receivership for several reasons. Upon learning about
13 the case, it was my judgment that I needed to act quickly and seek the immediate assistance and
14 advice of counsel to deal with the above-described urgent legal issues and take the above
15 described immediate legal action. Diamond McCarthy acted immediately without waiting until its
16 employment was confirmed, understanding and assuming the attendant risks.

17 9. Diamond McCarthy has a unique expertise dealing with the legal issues involving
18 receiverships and insolvent entities, including advising on claims objections, implementation of
19 distribution plans, and winding down businesses. Other counsel would have had to expend time
20 to familiarize themselves with the facts in this case.

21 10. Diamond McCarthy has a New York office and is well equipped to monitor the
22 John Bivona bankruptcy case pending in New York. Additionally, I am advised that, prior to the
23 institution of the receivership, Progresso Ventures sought an attachment of certain bank accounts
24 in connection with a lawsuit in New York which has since been resolved by judgment entered
25 post-receivership. The attachment of bank accounts held in the names of some of the Receivership
26 Entities remains in place and requires resolution. Accordingly, I believe it is appropriate to use
27 Diamond McCarthy to handle the New York matters as well and that there is no need to continue
28 with the employment with Allen Kadish and Archer & Greiner as local counsel in New York. I

1 have discussed this matter with Mr. Kadish who concurs in that conclusion.

2 11. I therefore seek the Court's approval for my employment of Diamond McCarthy as
3 my general counsel to advise me and represent me with regard to the implementation of the plan
4 and related matters including those noted above.

5 12. Diamond McCarthy has agreed to discount its regular hourly rates in this matter
6 and will charge a maximum hourly rate for legal services of \$425.00 per hour. I anticipate
7 primary legal services will be provided by Lesley Anne Hawes, a partner whose regular hourly
8 rate is \$595 and will be discounted to \$425 per hour, and Karen K. Diep, whose regular hourly
9 rate is \$295 and will be discounted to \$265 per hour. Hourly rates for other partners or associates
10 at the firm who may perform work on the matter will be discounted by 20% and their hourly rates
11 will be capped at \$425.

12 13. I also require the assistance of accountants to address tax issues and prepare tax
13 returns. I therefore request that the Court approve the employment and compensation of Grobstein
14 Teeple as my accountants.

15 14. Grobstein Teeple has significant experience in receivership matters and accounting
16 and tax services for receivers and trustees, including in federal equity receiverships. Grobstein
17 Teeple has agreed to reduce its regular hourly rates by 20% for purposes of this engagement. I
18 have engaged Grobstein Teeple in the past in an unrelated case to serve as accountants for me as a
19 fiduciary. Howard Grobstein has also engaged me and Diamond McCarthy in unrelated cases in
20 the past to serve as his counsel in his capacity as a fiduciary. I do not believe that any of those
21 unrelated engagements present any conflict of interest in this case.

22 15. I believe that Diamond McCarthy and Grobstein Teeple are well qualified to serve
23 as my counsel and accountants, respectively, in this case. I will monitor the work of my
24 professionals to ensure that the services provided are necessary for my administration of this
25 receivership estate.

26 16. I also request approval for my employment of the claims administrator Stretto,
27 formerly JND Corporate Restructuring. JND's employment as claims administrator for the
28 former receiver was previously approved by the Court, and JND was recently acquired by Stretto.

1 While much of the claims work has been completed, I anticipate utilizing the claims agent to send
2 out large mailings and to mail out disbursements in the case. Otherwise, I anticipate tracking the
3 claims in-house and I have requested that JND turn over of all of the claims and schedules it has
4 prepared to date. Stretto has agreed to honor the same rates in this case previously approved by
5 the Court under the prior Receiver. A schedule of those rates is attached hereto as Exhibit "5."
6 Stretto has now delivered to me its files and work product in this case. Although the firm initially
7 presented me with an invoice for over \$3,500 of time actually spent in transitioning the case,
8 Stretto has agreed to charge a flat fee of \$350 for the transition time. Going forward, I do not
9 anticipate substantial time being incurred by Stretto other than time and costs spent for sending
10 out notices and disbursements pursuant to the rates set forth in Exhibit "5."

11
12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct. Executed on March 15, 2019, at Los Angeles, California.

14
15 /s/ Kathy Bazoian Phelps
16 Kathy Bazoian Phelps, Receiver