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5 Counsel for Successor Receiver,  
Kathy Bazoian Phelps

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

12 SECURITIES AND EXCHANGE  
13 COMMISSION,

14 Plaintiff,

15 v.

16 JOHN V. BIVONA; SADDLE RIVER  
ADVISORS, LLC; SRA  
17 MANAGEMENT ASSOCIATES,  
LLC; FRANK GREGORY  
18 MAZZOLA,

19 Defendants, and

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

23 Relief Defendants.  
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Case No. 3:16-cv-01386-EMC

**DECLARATION OF KATHY BAZOIAN  
PHELPS IN SUPPORT OF RECEIVER'S  
OPPOSITION TO SRA FUNDS INVESTOR  
GROUP'S ADMINISTRATIVE MOTION  
RE RECEIVER'S MOTION TO EMPLOY  
TAX AND SECURITIES COUNSEL**

Hearing Date: [No Hearing Set]

Time:

Location: Courtroom 5, 17<sup>th</sup> Floor  
450 Golden Gate Ave.  
San Francisco, CA 94102

1 I, Kathy Bazoian Phelps, declare:

2 1. Pursuant to this Court’s Revised Order Appointing Receiver, entered on February 28,  
3 2019, I was appointed as the successor receiver (“Receiver”) in this case. I am also an attorney  
4 duly licensed to practice in the State of California and am senior counsel at the firm of Diamond  
5 McCarthy LLP (“Diamond McCarthy”). I have personal knowledge of the matters set forth below  
6 and if called as a witness, I would and could testify competently to the matters stated herein.

7 2. This declaration is made in support of the Receiver’s Opposition (“Opposition”) to the  
8 SRA Funds Investor Group’s Administrative Motion to Employ Tax Advisor and Securities  
9 Counsel (the “Administrative Motion”).

10 3. On October 8, 2019, the Court authorized me to employ a tax advisor and securities  
11 counsel and also directed me to have the tax advisor specifically explore issues raised by the SRA  
12 Investor Group. I also suggested that my securities counsel might need to be consulted regarding  
13 potential securities issues with the questions that the Investor Group wanted me to explore. I  
14 complied with the Court’s directive, and on December 16, 2019, I filed a Supplement that  
15 comprehensively responds to the issues I was asked to address with my tax and securities  
16 professionals.

17 4. In the week leading up to my filing the Supplement, I reached out to the Investor  
18 Group’s counsel, Jonathan Levine and Elizabeth Pritzker, to address the upcoming filing and  
19 seeking to meet and confer on the substantive issues and the proposed motion to seal the reports as  
20 was contemplated at the October 2019 hearing. Prior to finalization of any reports, I had  
21 contemplated filing final opinion letters/reports of tax and securities counsel under seal and subject  
22 to a non-disclosure agreement (“NDA”) with Investor Group counsel. I sought an agreement with  
23 counsel for the Investor Group to have the reports filed under seal. I also sought an NDA with the  
24 Investor Group counsel to obtain an agreement that the final opinions would be treated as expert  
25 reports, with an agreement that they would not assert that disclosing the final opinion letters would  
26 waive the attorney-client privilege or any other similar protections and that they would not seek  
27 documents or information beyond the opinion letters/reports, such as drafts or my communications

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1 with my counsel. The Investor Group would not so agree and repeated the simple explanation that  
2 they felt that an NDA was already in place in the case that would prohibit disclosure of any reports.  
3 I explained to them my position that the prior protective order issued by the Court in 2017 did not  
4 include me as a party and did not address the circumstances involving expert reports and attorney-  
5 client privileged communications and protected work product since the focus of that earlier  
6 protective order appears to have been sharing confidential share valuation information. Mr. Levine  
7 and Ms. Pritzker declined to respond to my concerns about production of my privileged and  
8 protected communications and work product or the fact that I was not a party to the prior  
9 stipulation giving rise to the prior protective order.

10         5. Based on the results of those discussions, and since I was unwilling to waive the  
11 attorney-client privilege and work product protection, and before any final opinions had been  
12 issued, I tried to find a cost-effective and efficient alternative to convey the substantive information  
13 while preserving the attorney-client privilege and work product protections for communications  
14 with counsel. I determined the most efficient, cost-effective way to provide the substantive  
15 responses to the Investor Group's questions was for my lawyers to prepare a legal brief that  
16 contained the applicable law, factual considerations that would have been the substance of separate  
17 reports. That legal brief was filed in the form of the Supplement on December 16, 2019. I  
18 determined that the Supplement complied with the Court's direction to me to file an amendment or  
19 supplement to my papers and believe that all of the information that would have been provided in  
20 separate reports prepared by my tax advisor and securities counsel has been included in the  
21 Supplement. My lawyers have not held back any information from the Supplement, so there is no  
22 additional information to be provided on the underlying subject matter.

23         6. My lawyers, including my tax and securities counsel, have advised me on the law, and  
24 they assisted in the preparation of the Supplement to address the QSF and the alternatives regarding  
25 tax consequences of distribution of shares under the current version of the Plan to try to minimize  
26 taxes. The "report" that the Investor Group seeks regarding the QSF and other potential tax  
27 mitigation strategies has been presented to the Court, the SEC, the Investor Group, and other  
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1 interested parties, in the filed public document. There is simply no more substantive information to  
2 provide to the Investor Group regarding the tax and securities analysis of the QSF and alternatives  
3 to address and try to minimize tax consequences under applicable tax and securities laws. I advised  
4 Mr. Levine and Ms. Pritzker of this fact prior to their filing of the Administrative Motion.

5 7. My goal in filing the Supplement was to provide the Investor Group with all the legal  
6 authority on the issues I was asked to address that responded to the QSF questions and the tax  
7 mitigation structures alternatives raised at the October 8, 2019 hearing. The basis for the analysis  
8 is detailed exhaustively in the Supplement, as in any other legal brief.

9 8. I am advised that the Investor Group is comprised of sophisticated investors, and they  
10 have actively engaged counsel. It is reasonable to expect that they have access to tax counsel, tax  
11 advisors, and securities counsel that can review and assess the analysis detailed in the Supplement.  
12 My goal was to lay out for them the detailed legal authority and analysis on the tax and securities  
13 issues so that their legal, tax and securities advisors could assess my conclusions, review the factual  
14 and legal foundation described, and examine the legal authorities and the alternatives set forth to  
15 reach their own conclusions. The Court has set a briefing schedule regarding this supplement and I  
16 do not believe that any additional delays are appropriate.

17 9. Since I was appointed as Successor Receiver at the end of February 2019, I have asked  
18 counsel for the Investor Group periodically to identify for me the specific investors the Pritzker  
19 Levine firm represents. I have been advised that the firm has indicated it represents a majority of  
20 investors, up to as much as 85% of the investors. However, when I have reviewed the notices  
21 regarding the firm's representation in the Court filings and have taken into account investors who  
22 have directly communicated with me to advise that they are no longer a part of the Investor Group,  
23 I can only account for the firm representing 93 investors with allowed claims. In comparison, there  
24 are a total of 291 investors with allowed claims, excluding Global Generation, Progresso Ventures,  
25 and Pradeep Sindhu. For some time, I have become concerned regarding the scope of the Investor  
26 Group's counsel's representation in the context of service issues and regarding potential conflicts  
27 of interest, and for that reason have made multiple requests for a current list of their investor  
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1 clients.

2 10. On December 13, 2019, in my further communications with Mr. Levine and Ms.  
3 Pritzker, I asked again for a current list of their clients. Mr. Levine told me he did not want to  
4 charge his clients to take the time to go through all of his emails and correspondence to compile a  
5 current list of the Investor Group included within his firm's representation. I expressed concern that  
6 they did not seem to know which investors currently comprise the Investor Group. Based on my  
7 examination of the records which show that the Investor Group represented by the Investor Group  
8 counsel may only represent roughly 32% of the total number of investors with allowed claims, I am  
9 requesting that the Investor Group counsel provide me with a current identification of all of their  
10 clients comprising the Investor Group so that the Court, and I as Receiver, can ensure that the  
11 extent to which the Investor Group represents the views of investors with allowed claims and so  
12 that more streamlined and accurate noticing can be provided to interested parties.

13 I declare under penalty of perjury that the foregoing is true and correct. Executed on this  
14 20th day of December 2019 at Los Angeles, California.

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Kathy Bazoian Phelps