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

12 SECURITIES AND EXCHANGE COMMISSION,

13 Plaintiff,

14 v.

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

17 Defendants, and

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

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

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S REPLY TO
SRA INVESTOR GROUP OPPOSITION
REGARDING RECEIVER'S TAX
OPINIONS AND REQUEST FOR
INSTRUCTIONS**

Date: January 30, 2020

Time: 1:30 p.m.

Courtroom: 5

Judge: Edward M. Chen

PLAINTIFF'S REPLY TO SRA INVESTOR GROUP OPPOSITION

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2 Plaintiff Securities and Exchange Commission (“the SEC” or “the Commission”) hereby
3 replies to the SRA Investor Group’s Opposition to the Receiver’s professional tax opinions and
4 proposed instructions. ECF 549. The Receiver’s Supplemental Statement provided a detailed
5 discussion of the receivership’s Qualified Settlement Fund tax issues and of the difficulties with
6 creating a Special Purpose Entity to distribute the receivership’s shares to investors. ECF 538 at 7-
7 25. Based upon the materials submitted, the SEC believes that the Receiver has exercised her
8 reasonable business judgment to recommend creating a tax fund to hold back the necessary taxes for
9 distributions through a Qualified Settlement Fund (“QSF”). *Id.* at 1-4. A court should normally defer
10 to a receiver’s reasonable business judgment.

11 The SRA Investor Group’s arguments for voiding or eliminating treatment of the receivership
12 estate as a QSF are misdirected to this Court, even assuming that such arguments have legal or
13 factual substance. It is for the Internal Revenue Service (“IRS”), and not this Court, to determine
14 whether there is some justification for the receivership to avoid taxation as a QSF. As the Receiver
15 points out, she believes she can only pursue a plan that eliminates QSF tax treatment of the
16 receivership estate upon obtaining an IRS ruling approving that plan. However, seeking such an IRS
17 determination could involve significant cost and delays that the Receiver does not consider to be
18 justified.

19 Dated: January 21, 2020

Respectfully submitted,

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21 /s/ John S. Yun

John S. Yun

Marc Katz

Attorneys for the Plaintiff Securities and Exchange
Commission