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7 *Successor Receiver*

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

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

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

20 Defendants, and

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

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

**FOURTH INTERIM ADMINISTRATIVE
MOTION FOR AN ORDER PURSUANT TO
LOCAL RULE 7-11 FOR THE APPROVAL
OF FEES AND EXPENSES FOR THE
SUCCESSOR RECEIVER AND COUNSEL
FROM OCTOBER 1, 2019 THROUGH
DECEMBER 31, 2019; FOR THE
APPROVAL OF FEES FOR MILLER
KAPLAN ARASE LLP FROM AUGUST
2019 THROUGH DECEMBER 31, 2019;
AND FOR THE APPROVAL OF FEES FOR
SCHINNER & SHAIN THROUGH
DECEMBER 31, 2019**

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

1 **I. Relief Requested**

2 Pursuant to Local Rule 7-11, the Receiver seeks approval of compensation in the amount of
 3 \$50,187.30¹ for services rendered from October 1, 2019 through December 31, 2019, and
 4 reimbursement of expenses in the amount of \$27.00. Diamond McCarthy seeks compensation in the
 5 amount of \$12,550² for services rendered from October 1, 2019 through December 31, 2019. Miller
 6 Kaplan Arase LLP (“Miller Kaplan”) seeks compensation in the amount of \$42,465.60³ for the period
 7 through December 31, 2019. Schinner & Shain seeks compensation in the amount of \$18,806.20 for
 8 the period through December 31, 2019, against which the \$10,000 retainer shall be applied, leaving a
 9 balance of \$8,806.20 to be paid.⁴ This motion is supported by the Declarations of the Receiver,
 10 Christopher Sullivan, Julia Damasco and Fred Koenen.

11 The Receiver has conferred with counsel for the Securities and Exchange Commission
 12 (“SEC”), and counsel for Progresso Ventures, and the Receiver is advised that they do not oppose the
 13 Motion. Counsel for the SRA Investor Group has declined to take a position on the Motion. A
 14 stipulation with all parties was deemed impractical given, among other things, the entry of judgment
 15 against defendants and pending bankruptcy of John Bivona. (L.R. 7-11(a)).

16 **II. Previous Fee Motions**

17 This is the fourth interim fee motion by the Receiver and her counsel. On June 6, 2019, the
 18 Court entered an order approving \$46,287.00 in fees and \$3,030.33 in costs to the Receiver, and
 19 \$16,802.80 in fees and \$524.67 in costs to Diamond McCarthy for services rendered from the
 20 inception of the Receiver’s activities through March 31, 2019 (20% of the fees were held back until
 21 further order of the Court) (Dkt. 485). On August 13, 2019, the Court entered an order approving the
 22 second interim fee motion (Dkt. No. 515) for services rendered from April 1, 2019 through June 30,
 23 2019. The Court awarded the Receiver fees in the amount of \$85,735.50 and reimbursement of

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 25 ¹ The Receiver has agreed to a holdback of 30% of this amount and therefore request authority to
 pay \$35,131.11.

26 ² Diamond McCarthy has agreed to a holdback of 30% of this amount and therefore requests
 authority to pay \$8,785 at this time.

27 ³ Miller Kaplan has agreed to a holdback of 20% of this amount and therefore requests authority to
 pay \$33,972.48 at this time.

28 ⁴ Schinner & Shain has agreed to a holdback of 20% of this amount and therefore seeks authority to
 be paid \$15,044.96, of which \$10,000 has already been paid pursuant to the retainer.

1 expenses in the amount of \$185.93 and awarded Diamond McCarthy fees in the amount of \$30,625.00
2 and reimbursement of expenses in the amount of \$1,924.16 (fees were subject to 20% hold back). On
3 November 22, 2019, the Court entered an order approving the third interim fee motion (Dkt. No. 537)
4 for services rendered from July 1, 2019 through September 30, 2019. The Court awarded the Receiver
5 fees in the amount of \$40,349.40 and reimbursement of expenses in the amount of \$542.73 and
6 awarded Diamond McCarthy fees in the amount of \$4,450.90 and reimbursement of expenses in the
7 amount of \$131.35 (fees were subject to 20% hold back). The Court also approved \$5,280.50 in fees
8 for Sherwood Partners and \$3,540.50 in fees for Grobstein Teeple LLC. The Receiver has paid the
9 amounts authorized for payment, net of the holdbacks.

10 **III. Case Status**

11 The Receiver has continued to move forward the process of finalizing a distribution plan.
12 At the request of the SRA Investor Group, the Receiver has obtained supplemental information and
13 advice regarding the distribution plan. That advice has reaffirmed the tax consequences of the plan
14 as identified in the plan proposed by the Receiver in June 2019. The refinement of the facts relating
15 to the assets and claims of the estate, however, has also caused the Receiver to consider the wisdom
16 of pursuing a liquidation plan in lieu of the plan promoted by the Investor Group so as to simplify
17 and streamline the issues and to mitigate ongoing administrative costs. The Receiver anticipates
18 that these issues will continue to be part of the discussion with the Court in connection with the
19 distribution plan.

20 The Receiver has also made significant progress in resolving claims issues and settling
21 disputes over claims. The Receiver continued discussions with Fortuna Funds which resulted in the
22 amendment of the Fortuna claim to remove certain claims asserted against the estate. There may be
23 a few lingering objections to claims relating to guaranty claims, but otherwise the claims
24 administration has largely been completed.

25 The Receiver also actively continued settlement discussions with Equity Acquisition
26 Company Ltd. ("EAC") regarding the resolution of all outstanding issues between the receivership
27 estate and EAC. The Receiver reached a settlement with EAC that was documented and signed by
28 the parties.

1 As of December 31, 2019, the receivership estate presently has \$40,341.82 in cash on hand
 2 in a checking account, \$163,698.80 in money market account and \$502,313.33 in the segregated
 3 Anna Bivona funds. There are known accrued expenses and unpaid expenses of \$116,179.03 and
 4 holdbacks of \$180,517.57. Attached to the Declaration of the Receiver as Exhibit “1” is a financial
 5 summary showing the cash status of the estate as of December 31, 2019. Funds in the amount of
 6 \$55,335⁵ representing first and second quarter fees and expenses have been disbursed during this
 7 period. The Standardized Fund Accounting Report required by the SEC for the fourth quarter 2019
 8 is attached to the Receiver’s Declaration as Exhibit “2.”

9 **IV. The Receiver’s Fee Request**

10 As detailed in the Declaration of the Receiver, pursuant to the Receiver’s proposal for her
 11 appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver has
 12 established separate billing categories for services provided to address legal issues (2598-11- Case
 13 Administration; 2598-13 – Claims Administration/Objection; 2598-14 - Asset Analysis and
 14 Recovery; 2598-16- Plan Implementation) and a separate category for administrative services
 15 provided (2598-12- Receiver Administrative Services). For billing category 2598-12, the Receiver
 16 has agreed to charge \$130.00 per hour for herself and for administrative assistance. For the rest of
 17 the billing categories, the Receiver has discounted her hourly rate of \$675.00 to \$425.00, thereby
 18 generating significant savings to the estate. The billing statements itemizing the services provided
 19 and expenses incurred are contained in Exhibit “3” attached to the Declaration of the Receiver. The
 20 amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	17.70	\$6,042.80	\$27.00
Administrative Services	8.40	\$1,092.00	n/a
Claims Administration/Objection	4.90	\$2,082.50	n/a
Asset Analysis and Recovery	31.50	\$13,387.50	n/a
Plan Implementation	70.10	\$27,582.50	n/a
TOTAL		\$50,187.30	\$27.00

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 5 This sum includes a \$10,000 retainer paid in October 2019 to Schinner & Shain.

