

1 KATHY BAZOIAN PHELPS (State Bar No. 155564)
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7 *Successor Receiver*

8
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
17 ADVISORS, LLC; SRA
18 MANAGEMENT ASSOCIATES,
19 LLC; FRANK GREGORY
20 MAZZOLA,

21 Defendants, and

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

28 Relief Defendants.

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

**DECLARATION OF FREDERICK KOENEN
IN SUPPORT OF FOURTH INTERIM
ADMINISTRATIVE MOTION FOR AN
ORDER PURSUANT TO LOCAL RULE 7-11
FOR THE APPROVAL OF FEES AND
EXPENSES FOR THE SUCCEOR
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 LLP THROUGH
DECEMBER 31, 2019**

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

1 I, Frederick Koenen, declare:

2 1. I am a partner at Schinner & Shain, securities counsel for Kathy Bazoian Phelps, the
3 Court appointed Receiver (the "Receiver") in the case of *Securities and Exchange Commission v.*
4 *Bivona et. al.* (the "Action") before the United States District Court for the Northern District of
5 California (the "Court"). I have personal knowledge of the matters set forth below and if called as a
6 witness, I would and could testify competently to the matters stated herein.

7 2. This declaration is made in support of the Fourth Interim Administrative Motion for an
8 Order Pursuant to Local Rule 7-11 for the Approval of Fees and Expenses for the Successor
9 Receiver and Counsel from October 1, 2019 through December 31, 2019; Approval of Fees for
10 Miller Kaplan Arase LLC from August 2019 through December 31, 2019; and Approval of Fees
11 for Schinner & Shain, LLP through December 31, 2019 ("Motion").

12 3. The following is a summary of the legal services Schinner & Shain, LLP has provided
13 to date to the Receiver. We were retained to advise the Receiver on the application of federal
14 securities laws to proposed transfers of stock held by entities for which the Court had appointed
15 Mr. Phelps as receiver (the "Receivership Entities"). The Receivership Entities had purchased or
16 had acquired rights to purchase shares of various companies (the "Subject Companies") before
17 these companies had conducted an initial public offering of their stock. In some cases, the
18 Receivership Entity had acquired the stock from a shareholder of the Subject Company. In other
19 cases, the Receivership Entity had entered into forward purchase contracts with the shareholder to
20 buy those shares. Under these forward purchase contracts, the Receivership Entity paid the
21 shareholder the purchase price for the shares at or near the time the contract was executed and the
22 shareholder agreed to deliver the shares to the Receivership Entity after contractual restrictions on
23 the transfer of those shares had expired.

24 4. We advised the Receiver on whether she could sell or otherwise transfer these shares
25 without registration under the Securities Act of 1933, as amended (the "Securities Act"). In
26 providing this advice, we examined whether the safe harbor to the registration requirements in Rule
27 144 of the Securities and Exchange Commission (the "SEC") would be available to those transfers.
28 We: (1) reviewed share purchase contracts and forward purchase contracts that the Receivership

1 Entities had entered into to acquire stock of 15 Subject Companies from multiple shareholders; (2)
2 reviewed shareholding information on periodic reports on the SEC EDGAR database of those of
3 the Subject Companies that had filed reports with the SEC; (3) obtained information directly from
4 those of the Subject Companies that had not yet conducted a public offering that would be needed
5 to confirm that none of the Receivership Entities was an affiliate of the Subject Company for the
6 purposes of Rule 144; and (4) conducted an examination of other facts and legal authority (such as
7 federal case law, SEC regulations and SEC no-action letters) that we deemed relevant for our
8 analysis. We provided our analysis and conclusions to the Receiver on these issues.

9 5. The Receiver also requested that we advise her on a settlement agreement into which
10 the Receiver was proposing to enter with Equity Acquisition Company Ltd. We examined the
11 applicability of federal securities laws to the transactions contemplated in the settlement agreement.
12 We also provided the Receiver with recommendations of terms to insert into the settlement
13 agreement to address securities law and other legal issues.

14 6. The Receiver asked that we provide her with advice related to a report she and the
15 Court had received from the Investor Group, LLC, which recommended that the shares of the
16 Subject Companies that were not yet traded be removed from the qualified settlement fund and
17 administered separately from the receivership. The Receiver asked us to examine the ramifications
18 of establishing an entity (such as a trust, limited liability company or limited partnership) under
19 federal securities laws. We provided our analysis of this issue for the Receiver, which she
20 incorporated into a motion she filed with the Court in December 2019.

21 7. Attached hereto as Exhibit "6" are true and correct copies of our detailed time entries
22 reflecting the services we provided in this matter. I believe that the time incurred was reasonable
23 and necessary under the circumstances.

24 8. Schinner & Shain's fees total \$18,806.20 for services rendered through December 31,
25 2019. I understand that the SEC has requested that the Receiver hold back 20% of those fees at this
26 time, subject to future court authorization to pay that holdback. Accordingly, I understand and
27 agree that the sum of \$3,761.24 of the approved fees shall be held back as the agreed 20% hold
28 back subject to further Court approval and that the Receiver will pay \$5,044.96 of the fees

1 approved and Schinner & Shain and that the firm may apply the \$10,000 retainer previously paid to
2 the firm.

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4 I declare under penalty of perjury that the foregoing is true and correct. Executed on this 11th
5 day of February 2020 at San Francisco, California.

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EXHIBIT 6

Schinner & Shain, LLP
96 Jessie Street, San Francisco, CA 94105
 Telephone: (415) 369-9050
 Fax: (415) 369-9053

January 3, 2020

Kathy Bazoian Phelps, Receiver SRA Litigation
 c/o Diamond & McCarthy, LLP
 1999 Avenue of the Stars, 11th Floor
 Los Angeles, CA 90067-4400

File # 3674-1

RE: SRA Litigation

DATE:	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
Oct-10-19	FKK	Telephone conference with K. Phelps regarding securities laws implication of creating special purpose entity that would hold shares currently in receivership entities.	1.00	472.50
Oct-23-19	FKK	Review stock trade history and begin reviewing documents related to transfers of shares subject to liquidation proceeding.	3.80	1,795.50
Oct-24-19	FKK	Continue reviewing background information for securities transfer opinions.	1.50	708.75
Nov-05-19	FKK	Review SEC releases concerning Rule 144 as they pertain to commence dates of Rule 144 holding period; prepare e-mail to K. Bazoian Phelps concerning additional information requested for opinions.	0.30	141.75
Nov-07-19	FKK	Begin review of application of Securities Act and Investment Company Act to proposed SPEs to hold non-publicly traded shares; prepare e-mail to K. Phelps discussing securities laws issues related to SPEs.	2.10	992.25
Nov-13-19	FKK	Prepare for call with K. Bazoian Phelps and tax counsel concerning securities laws ramifications of proposed establishment of SPE to hold non-public securities	3.20	1,512.00

		including research of possibility of exemption under Section 3(a)(10)) to registration requirements of Securities Act for issuing interests in SPE; participate in telephone conference call.		
Nov-19-19	FKK	Review forward purchase contract assignment provisions and economic benefit provisions for purpose of preparing memo to tax attorneys re forward-purchase contracts.	1.30	614.25
Nov-20-19	FKK	Further research regarding forward contracts and other securities law issues related to establishment of SPEs.	2.20	1,039.50
Nov-21-19	FKK	Continue research of investment advisor issues and SPE; prepare letter to client and tax counsel addressing status of forward contracts as securities and assignment provisions in forward purchase contracts.	3.60	1,701.00
Nov-22-19	FKK	Finalize letter to K. Bazoian Phelps and J. Mandeville Damasco regarding status of FPAs as securities and assignment provisions; further review of securities laws issues.	1.50	708.75
Nov-25-19	FKK	Telephone conference with K. Bazoian Phelps to discuss securities opinions and proposed settlement agreement with EAC; begin review of EAC settlement documents.	1.40	661.50
Nov-26-19	FKK	Prepare letter to K. Bazoian Phelps regarding impact on no-assignment clauses in FPA on proposed settlement agreement with EAC.	1.90	897.75
Nov-29-19	FKK	Participate in telephone conference with K. Bazoian Phelps and tax counsel regarding tax and securities law ramifications of formation of SPE; brief review of draft memo from tax counsel.	1.30	614.25
Dec-02-19	FKK	Prepare revisions to draft of settlement agreement with EAC and notices to shareholders to comply with assignment provisions of forward purchase contracts and securities registration exemptions.	1.80	850.50

Dec-09-19	FKK	Review proposed revisions to settlement agreements with EAC; responded to K. Bazoian Phelps e-mail regarding settlement agreement; prepare revised instruction letter to Palantir.	1.30	614.25
Dec-10-19	FKK	Work on drafting report to client on securities law issues.	3.50	1,653.75
Dec-11-19	FKK	Complete initial draft of report to receiver regarding securities laws issues.	7.70	3,638.25
Dec-16-19	FKK	Review draft of Supplemental Brief of Receiver; prepare e-mail to K. Bazoian Phelps and L. Dawes regarding Supplemental Brief.	0.30	141.75
Totals Hours and Fees			39.70	\$18,758.25

DISBURSEMENTS

Dec-17-19	American Bar Association – Charge for research article.	47.95
Total Disbursements		\$47.95

TOTAL FEES AND DISBURSEMENTS \$18,806.20

PAYMENTS RECEIVED

Oct 21 -19	Payment from Estate of Saddle River Management – Deposit to Trust	\$10,000.00
Dec 26 -19	Amount Applied to Charges from Trust	(\$10,000.00)

BALANCE DUE **\$8,806.20**

Billing Rates of Professionals

FKK: \$472.50 Per Hour