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

**ADMINISTRATIVE MOTION BY  
RECEIVER KATHY BAZOIAN PHELPS  
PURSUANT TO LOCAL CIVIL RULE 7-11  
FOR ORDER APPROVING SETTLEMENT  
WITH TRUSTEE OF JOHN BIVONA  
BANKRUPTCY ESTATE AND THE ELIV  
GROUP**

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

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1 Kathy Bazoian Phelps, the successor receiver herein (the “Receiver”), hereby files this  
2 Motion for Order Approving Settlement with Gregory M. Messer, the Chapter 7 trustee of the John  
3 Bivona Bankruptcy Estate (the “Bivona Trustee”) and The Eliv Group (“Eliv”).

4 **I. Introduction**

5 The Receiver has reached a settlement with the Bivona Trustee and Eliv over competing  
6 claims to bank accounts that were attached by Progresso Ventures LLC (“Progresso”) prior to the  
7 commencement of the Receivership. Progresso has already separately waived any claim to those  
8 funds. The Receiver contends that the funds in the accounts appropriately belong in the  
9 Receivership Estate (defined below). The Bivona Trustee contends that the funds located in  
10 attorney accounts for John Bivona belong in the Bivona Bankruptcy Case (defined below), and  
11 Eliv contends that a portion of the funds are monies due to Eliv that were misappropriated.

12 The parties have reached a settlement agreement (the “Agreement”), Exhibit “1” attached  
13 to the Declaration of Kathy Bazoian Phelps, resolving the competing claims to the funds and also  
14 resolving treatment of Eliv’s claim against the Receivership Estate. The settlement obtains for the  
15 Receivership Estate’s benefit turnover of all of the funds located in the names of the Receivership  
16 Entities and their affiliates as well as 50% of the funds located in the Bivona Esq accounts. The  
17 settlement also allows Eliv’s claims against the Receivership Estate as set forth in the agreement,  
18 which confirms the investor portion of the claim for shares Eliv thought it was investing in as well  
19 as an unsecured claim for funds invested with the Receivership Entities that were  
20 misappropriated.

21 The Receiver has conferred with counsel for the Securities and Exchange Commission,  
22 SRA Funds Investor Group and Progresso who each do not oppose the Motion. A stipulation with  
23 all parties was deemed impractical given, among other things, the entry of judgment against the  
24 defendants and pending bankruptcy of defendant John Bivona. (L.R. 7-11 1(a)).

25 **II. Statement of Facts**

26 1. On October 16, 2016, this Court entered the Temporary Restraining Order and  
27 Order to Show Cause Why Preliminary Injunction Should Not Be Granted (the “TRO”). Pursuant  
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1 to the TRO, Sherwood Partners was appointed as the temporary receiver over the assets of SRA  
2 Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, SRA Management  
3 Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity  
4 Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA  
5 Fund I, LLC, NYPA Fund II, LLC, and NYPA Management Associates, LLC (collectively, the  
6 “Receivership Entities” and their estates the “Receivership Estate”). Pursuant to the Revised  
7 Order Appointing Receiver entered by the District Court on February 28, 2019, Kathy Bazoian  
8 Phelps was appointed as the successor receiver over the Receivership Entities, and Solis  
9 Associates Fund LLC was subsequently added as one of the Receivership Entities.

10 2. John Vincent Bivona (“Bivona”) filed a voluntary chapter 7 bankruptcy petition  
11 with the U.S. Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”  
12 and, together with this Court, the “Courts”) on October 21, 2016, Case No. 16-12961 (SCC) (the  
13 “Bivona Bankruptcy Case”), and the Bivona Trustee was appointed as the chapter 7 trustee. Bivona  
14 was one of the principals of the Receivership Entities. He is a licensed attorney who was involved  
15 in the creation and management of various investment funds formed for the primary purpose of  
16 investing in pre-IPO, non-public companies. The Receivership Entities are some of those funds.  
17 The SEC alleged in the Receivership Case that Bivona was engaged in fraudulent activity in  
18 connection with the Receivership Entities and the investment funds. The Bivona Trustee alleged in  
19 the Bivona Bankruptcy Case that Bivona improperly used his attorney escrow accounts to conceal  
20 his assets from creditors.

21 3. The Receiver believes that many, if not all, of the funds in Bivona’s attorney escrow  
22 accounts constitute funds belonging to the Receivership Entities.

23 4. Progresso filed claims in both the Receivership Case and in the Bivona Bankruptcy  
24 Case. Progresso’s claims are based upon a Judgment obtained against FB Management Associates,  
25 LLC in Case No. 650614/2015 pending in the Supreme Court of the State of New York, County of  
26 New York (the “FB Litigation”), in the total amount of \$5,529,364.26 (the “Judgment”), which was  
27 entered on January 9, 2017.

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1           5.       Prior to the filing of the Bivona Bankruptcy Case, Progresso obtained an  
2 Attachment Order in connection with the FB Litigation, and as of the date of the Agreement, the  
3 following bank accounts located at TD Bank remain subject to the Attachment Order:

<u>Account Holder</u>	<u>Account Number</u>
Clear Sailing Group IV LLC	4316039076
NYPA Fund I, LLC	4321047543
NYPA Fund II, LLC	4321047551
SRA I, LLC	4316038804
SRA II, LLC	4316038797
SRA III, LLC	4316038789
Saddle River General Account LLC	4316038846
SRA Management Associates LLC	4316038771
John V. Bivona Esq./Nina Dazzo	4312716785
John V. Bivona Esq./Nina Dazzo	4312716793

11 (collectively, the “Attached Accounts” and the funds in the Attached Accounts, are the “Attached  
12 Funds”).

13           6.       On June 27, 2019, this Court entered the Stipulation and Order Fixing the Allowed  
14 Amount of Progresso’s Unsecured Creditor Claim (Doc. No. 502) pursuant to which, among other  
15 things, Progresso agreed to (1) release any and all claims to the Attached Funds, and (2) file any  
16 and all papers in the FB Litigation and that certain New York guarantor action, and/or submit all  
17 papers to TD Bank necessary to obtain the release of the garnishment on the Attached Funds.

18           7.       The Receiver contends that the Attached Funds are property belonging to the  
19 Receivership Entities and should be returned to the Receiver.

20           8.       Eliv, an investor in the Receivership Entities, filed a claim in the Receivership  
21 Case on account of its investment with the Receivership Entities (the “Eliv Claim”), but has not  
22 filed a claim in the Bivona Bankruptcy Case. Eliv has asserted rights to the Attached Funds in  
23 connection with its claim against the Receivership Entities.

### 24           **III.       Terms of Settlement Agreement**

25           The Agreement resolves competing claims to the Attached Funds. Without modifying the  
26 terms of the Agreement, the Agreement provides generally as follows:

27           **1. Court Approval:** The Agreement is subject to Court approval by both Courts.

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2 **2. Release and Distribution of the Attached Funds.** The Attached Funds shall be divided  
and distributed as follows:

3 a. The funds in the following accounts shall be delivered to the Receiver:

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<u>Account Holder</u>	<u>Account Number</u>
Clear Sailing Group IV LLC	4316039076
Clear Sailing Group V, LLC	4306892096
NYPA Fund I, LLC	4321047543
NYPA Fund II, LLC	4321047551
SRA I, LLC	4316038804
SRA II, LLC	4316038797
SRA III, LLC	4316038789
Saddle River General Account LLC	4316038846
SRA Management Associates LLC	4316038771

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11 (collectively, the “Attached Receivership Entity Funds”);

12 b. The funds in the following two accounts shall be divided equally between the  
Receiver and the Bivona Trustee, for the benefit of their respective estates:

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<u>Account Holder</u>	<u>Account Number</u>	<u>Last Known Balance</u>
John V. Bivona Esq./Nina Dazzo	4312716785	\$432,602.82
John V. Bivona Esq./Nina Dazzo	4312716793	\$ 26,337.56

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16 (the “Bivona Esq Funds”);

17 c. Eliv releases, any and all claims in and to the Attached Funds.

18 d. TD Bank shall be directed in the orders entered by the Courts to deliver the  
Attached Funds pursuant to the terms of this Agreement.

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20 **3. Allowance of Eliv’s Claim.** The Eliv Claim shall be allowed in the Receivership Case  
as set forth in the Agreement and shall receive any distributions from the Receivership  
Case pursuant to a Court approved distribution plan. No claim shall be allowed for the  
benefit of Eliv in the Bivona Bankruptcy Case.

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23 **4. Releases:** The Bivona Trustee and the Receiver shall exchange mutual general releases  
as set forth in the Agreement.

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25 **IV. The Agreement is in the Best Interest of the Receivership Estate**

26 The Receiver believes in her business judgment that the Agreement is fair, reasonable, and  
27 is in the best interest of the Receivership Estate. The Agreement provides the delivery to the  
28 Receivership Estate of all of the funds in the name of the Receivership Entities and their affiliates

1 as well as 50% of the funds in the Bivona Esq accounts. The settlement also resolves disputed the  
2 claim of Eliv and avoids the need for litigation over the nature of Eliv's claim in the Receivership  
3 or Eliv's claims to a portion of the Attached Funds.

4 There are "no federal rules [that] prescribe a particular standard for approving settlements  
5 in the context of an equity receivership; instead a district court has wide discretion to determine  
6 what relief is appropriate." *Gordon v. Dadante*, 336 F. App'x 540, 549 (6th Cir. 2009).  
7 Nevertheless, courts in federal receiverships often look to the following factors, which pertain to  
8 compromises reached in bankruptcy actions, when examining a proposed settlement: the  
9 probability of success in the litigation; the difficulties, if any, to be encountered in collection; the  
10 complexity of the litigation and the expense, inconvenience, and delay associated therewith; and  
11 the paramount interest of creditors. *See Secs. & Exch. Comm'n v. Ruderman*, No. CV 09-02974,  
12 2011 WL 5857452, at \*3 (C.D. Calif. Nov. 21, 2011) (considering these factors in approving  
13 receivership settlement. Because compromises are favored in bankruptcy actions, courts generally  
14 give deference to a trustee's business judgment and approve settlements that are negotiated in  
15 good faith and are "reasonable, fair, and equitable." *Ruderman*, 2011 WL 5857452, at \*3.

16 The settlement is in the best interest of the Receivership Estate because the Receiver's  
17 ability to avoid the uncertainty of the outcome over ownership of the Attached Accounts and the  
18 Eliv Claim. *See Ruderman*, 2011 WL 5857452, at \*4 (explaining uncertainty of outcome of  
19 litigation "weigh[ed] heavily" in favor of approval of settlement reached by receiver). While the  
20 Receiver believes that she would have been able to obtain the Attached Accounts through  
21 litigation, the Agreement avoids substantial costs and risks of litigation. Additionally, the  
22 Agreement allows Eliv's Claim in an amount and classification that the Receiver believes Eliv  
23 would have otherwise been entitled to. The claim for shares reflects that exact amount of the  
24 investment, and the unsecured claim reflects actual dollars invested by Eliv that were  
25 misappropriated and not returned to Eliv. The Agreement avoids the uncertainty of litigation.  
26 Moreover, litigation regarding these interests will be time consuming and costly, draining the  
27 assets of the Receivership Estate.

28 The Bivona Trustee has filed a motion with the Bankruptcy Court seeking approval of the  
Agreement in the Bivona Bankruptcy Case.

#### **IV. Conclusion**

The Receiver respectfully requests that the Court approve the Agreement and requests all

1 other appropriate relief.

2 DATED: February 25, 2020

By: /s/ Kathy Bazoian Phelps  
Kathy Bazoian Phelps  
Receiver

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