

1 KATHY BAZOIAN PHELPS (State Bar No. 155564)  
2 *kphelps@diamondmccarthy.com*  
3 DIAMOND MCCARTHY LLP  
4 1999 Avenue of the Stars, Suite 1100  
5 Los Angeles, California 90067-4402  
6 Telephone: (310) 651-2997

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 RIVER  
16 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 GROUP  
25 IV LLC; CLEAR SAILING GROUP V  
26 LLC,

27 Relief Defendants.  
28

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

**DECLARATION OF KATHY BAZOIAN  
PHELPS IN SUPPORT OF  
ADMINISTRATIVE MOTION 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

1 I, Kathy Bazoian Phelps, declare:

2 1. I am the Receiver appointed by this Court for SRA Management Associates, LLC,  
3 SRA I LLC, SRA II LLC, SRA III, LLC, Clear Sailing Group IV LLC, Clear Sailing Group V  
4 LLC, NYPA Fund I LLC, NYPA II Fund II LLC, NYPA Management Associates LLC, Felix  
5 Multi-Opportunity Funds I and II, LLC, and FMOF Management Associates, LLC (collectively,  
6 “Receivership Entities”), pursuant to the Revised Order Appointing Receiver entered on February  
7 28, 2019 (“Receiver Order”). I have personal knowledge of the facts set forth in this Declaration,  
8 and, if called to testify, could testify competently thereto.

9 2. I submit this Declaration in support of the Motion of Receiver, Kathy Bazoian  
10 Phelps, for Order Approving Settlement with Gregory M. Messer, the Chapter 7 trustee of the  
11 John Bivona Bankruptcy Estate (the “Bivona Trustee”) and The Eliv Group (“Eliv”).

12 3. In accordance with Local Rule 7-11, prior to filing this Administrative Motion, I  
13 conferred with counsel for the Securities and Exchange Commission, John Yun, counsel for the  
14 SRA Funds Investor Group, Jonathan Levine, and counsel for Progresso Ventures LLC  
15 (“Progresso”), Avi Israeli, who each advised that they do not object to the settlement.

16 4. A true and correct copy of the Settlement Agreement with the Bivona Trustee and  
17 Eliv is attached hereto as Exhibit “1.”

18 5. I believe in my business judgment that the Agreement is fair, reasonable and is in  
19 the best interest of the receivership estate. The Agreement provides for the return to the  
20 receivership estate of funds in accounts in the names of the Receivership Entities and their  
21 affiliates, as well as 50% of the funds located in accounts of John Bivona’s attorney accounts. The  
22 Agreement also fixes the amount of Eliv’s claim in the amounts the Receiver believes are  
23 allowable against the estate. The settlement relating to the Eliv Claim confirms the investor  
24 portion of the claim for shares Eliv thought it as investing in as well as an unsecured claim for  
25 funds invested with the Receivership Entities that were misappropriated.

26 6. John Vincent Bivona (“Bivona”) filed a voluntary chapter 7 bankruptcy petition  
27 with the U.S. Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”  
28

1 and, together with the District Court, the “Courts”) on October 21, 2016, Case No. 16-12961  
 2 (SCC), and the Bivona Trustee was appointed as the chapter 7 trustee. Bivona was one of the  
 3 principals of the Receivership Entities. He is a licensed attorney who was involved in the creation  
 4 and management of various investment funds formed for the primary purpose of investing in pre-  
 5 IPO, non-public companies. The Receivership Entities are some of those funds. The SEC alleged  
 6 in the Receivership Case that Bivona was engaged in fraudulent activity in connection with the  
 7 Receivership Entities and the investment funds. The Bivona Trustee alleged in the Bivona  
 8 Bankruptcy Case that Bivona improperly used his attorney escrow accounts to conceal his assets  
 9 from creditors.

10 7. I believe that many, if not all, of the funds in Bivona’s attorney escrow accounts  
 11 constitute funds belonging to the Receivership Entities. Additionally, the funds in the names of  
 12 the Receivership Entities are clearly property belonging the Receivership Estate.

13 8. Progresso has filed claims in both the Receivership Case and in the Bivona  
 14 Bankruptcy Case. Progresso’s claims are based upon a Judgment obtained against FB  
 15 Management Associates, LLC in Case No. 650614/2015 pending in the Supreme Court of the  
 16 State of New York, County of New York (the “FB Litigation”), in the total amount of  
 17 \$5,529,364.26 (the “Judgment”), which was entered on January 9, 2017.

18 9. Prior to the filing of the Bivona Bankruptcy Case, Progresso obtained an  
 19 Attachment Order in connection with the FB Litigation, and as of the date of this Agreement, the  
 20 following bank accounts located at TD Bank remain subject to the Attachment Order:

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

27  
 28 (collectively, the “Attached Accounts” and the funds in the Attached Accounts, are the “Attached

1 Funds”).

2 10. On June 27, 2019, this Court entered the Stipulation and Order Fixing the Allowed  
3 Amount of Progresso’s Unsecured Creditor Claim (No. 502) pursuant to which, among other  
4 things, Progresso agreed to (1) release any and all claims to the Attached Funds, and (2) file any  
5 and all papers in the FB Litigation and that certain New York guarantor action, and/or submit all  
6 papers to TD Bank necessary to obtain the release of the garnishment on the Attached Funds. I  
7 believe that the Attached Funds are property belonging to the Receivership Entities and should be  
8 returned to the Receivership estate.

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

13 12. I believe in my business judgment that the Agreement is fair, reasonable, and is in  
14 the best interest of the receivership estate. The Agreement provides the delivery to the estate of all  
15 of the funds in the name of the Receivership Entities and their affiliates as well as 50% of the  
16 funds in the Bivona Esq accounts. The Agreement resolves disputed issues that would have been  
17 extremely costly to litigate. The Bivona Trustee disputed my claims to the funds in the Bivona  
18 Esq accounts and a legal determination finding that the funds belong to the Receivership Estate  
19 would be extremely costly and with some risk of loss. I evaluated the likely cost of litigation and  
20 success and determined that the terms of the Agreement were resulted in a much better outcome  
21 than the likely result if the matter had been litigated. While I believe that I would have been able  
22 to obtain the Attached Accounts through litigation, the Agreement avoids substantial costs and  
23 risks of litigation.

24 13. The settlement also resolves the disputed the claim of Eliv and avoids the need for  
25 litigation over the nature of Eliv’s claim in the Receivership or Eliv’s claims to a portion of the  
26 Attached Funds. The Agreement allows Eliv’s Claim in an amount and classification that I  
27 believe Eliv would have otherwise been entitled to. The claim for shares reflects that exact  
28

1 amount of the investment, and the unsecured claim reflects actual dollars invested by Eliv that  
2  
3 were misappropriated and not returned to Eliv. The Agreement avoids the costs and uncertainty of  
4 litigation.

5  
6 I declare under penalty of perjury under the laws of the United States of America that the  
7 foregoing is true and correct. Executed on February 24, 2020, at Los Angeles, California.

8  
9 /s/ Kathy Bazoian Phelps  
10 Kathy Bazoian Phelps, Receiver  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Exhibit 1

## AGREEMENT

This Agreement (the “Agreement”) dated February \_\_, 2020, is entered into by and among Kathy Bazoian Phelps, solely in her capacity as the court appointed receiver (“Receiver”) in the case of *Securities and Exchange Commission v. John v. Bivona, Saddle River Advisors, LLC, SRA Management Associates, LLC; Frank Gregory Mazzola*, Case No. 3:16-cv-01386-EMC pending in the U.S. District Court for the Northern District of California (the “Receivership Case”), Gregory M. Messer, the Chapter 7 Trustee (the “Trustee”) of the estate of John Vincent Bivona (the “Bivona Estate”), Bk. Case No. 16-12961-SCC, pending in the U.S. Bankruptcy Court for the Southern District of New York (the “Bivona Bankruptcy Case”), and The Eliv Group (“Eliv”). The Receiver, the Trustee, and Eliv are referred to herein individually as a “Party” and collectively as the “Parties.”

## RECITALS

A. On October 16, 2016, the U.S. District Court for the Northern District of California (the “District Court”) entered the Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Be Granted (the “TRO”). Pursuant to the TRO, Sherwood Partners was appointed as the temporary receiver over the assets of SRA Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, SRA Management Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, and NYPA Management Associates, LLC (collectively, the “Receivership Entities” and their estates the “Receivership Estate”).

B. Pursuant to the Revised Order Appointing Receiver entered by the District Court on February 28, 2019, Kathy Bazoian Phelps was appointed as the successor receiver to Sherwood Partners over the Receivership Entities, and Solis Associates Fund LLC was subsequently added as one of the Receivership Entities.

C. John Vincent Bivona (“Bivona”) filed a voluntary chapter 7 bankruptcy petition with the U.S. Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court” and, together with the District Court, the “Courts”) on October 21, 2016, Case No. 16-12961 (SCC) and the Trustee was appointed as the chapter 7 trustee.

D. Bivona was one of the principals of the Receivership Entities. He is a licensed attorney who was involved in the creation and management of various investment funds formed for the primary purpose of investing in pre-IPO, non-public companies. The Receivership Entities are some of those funds.

E. The SEC alleged in the Receivership Case that Bivona was engaged in fraudulent activity in connection with the Receivership Entities and the investment funds.

F. The Trustee alleged in the Bivona Bankruptcy Case that Bivona improperly used his attorney escrow accounts to conceal his assets from creditors.

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

H. Progresso Ventures LLC ("Progresso") has filed claims in both the Receivership Case and in the Bivona Bankruptcy Case. Progresso's claim is based upon a Judgment obtained against FB Management Associates, LLC in Case No. 650614/2015 pending in the Supreme Court of the State of New York, County of New York (the "FB Litigation"), in the total amount of \$5,529,364.26 (the "Judgment"), which was entered on January 9, 2017.

I. Prior to the filing of the Bivona Bankruptcy Case, Progresso obtained an Attachment Order in connection with the FB Litigation, and as of the date of this Agreement, the 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

(collectively, the "Attached Accounts" and the funds in the Attached Accounts, are the "Attached Funds").

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

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

L. Eliv, an investor in the Receivership Entities, filed a claim in the Receivership Case on account of its investment with the Receivership Entities (the "Eliv Claim"), but has not filed a claim in the Bivona Bankruptcy Case. Eliv has asserted rights to the Attached Funds in connection with its claim against the Receivership Entities.

M. The Parties wish resolve competing claims to the Attached Funds.



N. In consideration of the facts and circumstances of these matters, the Parties have determined to resolve all claims and defenses and potential claims and defenses arising out of or related in any way to the Attached Funds pursuant to the terms set forth herein.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree, subject to approval by both Courts, in the form of entry of final, non-appealable orders, as follows:

**AGREEMENT**

1. **Court Approval:** This Agreement is contingent upon approval by the United States District Court presiding over the Receivership Case and upon approval by the United States Bankruptcy Court presiding over the Bivona Bankruptcy Case. If both Courts do not approve this Agreement, this Agreement shall be null and void *ab initio* and the Parties shall be restored to their positions, rights and interests the same as they had maintained immediately prior to the execution date hereof. Within fourteen (14) days of execution of this Agreement, the Trustee and the Receiver agree to seek Bankruptcy Court and District Court approval, respectively, of the settlement terms set forth herein.

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

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

<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

(the “Attached Receivership Entity Funds”);

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

<u>Account Holder</u>	<u>Account Number</u>
John V. Bivona Esq./Nina Dazzo	4312716785
John V. Bivona Esq./Nina Dazzo	4312716793

(the “Bivona Esq Funds”);

- c. Eliv hereby releases, any and all claims in and to the Attached Funds.
- d. Progresso has already committed to execute any documents necessary to release the Attached Funds, and ensure that they are filed in the appropriate courts of jurisdiction, if necessary, and delivered to any parties necessary. If required, Progresso has agreed to file all papers in the FB Litigation necessary to obtain the release of the garnishment and to direct TD Bank to deliver the Attached Funds to the Receiver and the Trustee as set forth in this Agreement.
- e. TD Bank shall be directed in the orders entered by the District Court and the Bankruptcy Court to deliver the Attached Funds pursuant to the terms of this Agreement.

3. **Allowance of Eliv’s Claim.** The Eliv Claim shall be allowed in the Receivership Case as follows and shall receive any distributions from the Receivership Case pursuant to a Court approved distribution plan:

- a. The Eliv Claim is allowed as follows as a general unsecured claim:

<b>Intended Investment</b>	<b>Allowed Cash Claim</b>
Square, Inc.	\$263,443
Alibaba Group Holding Limited	\$150,000
Box, Inc.	\$41,587
Flurry, Inc.	\$48,727
Jump Tap, Inc.	\$591

- b. The Eliv Claim is allowed as an investor claim for the particular investments as follows:

<b>Intended Investment</b>	<b>Gross Investment</b>	<b>Net Investment</b>	<b>Allowed Shares (post split)</b>
Addepar, Inc.	\$15,718	\$15,718	15,718
Bloom Energy, Inc.	\$174,803	\$168,403	5,466

Dropbox, Inc.	\$145,504	\$145,104	3,380
MongoDB, Inc.	\$1,067	\$1,067	24
Palantir Technologies, Inc.	\$270,000	\$262,600	58,116
ZocDoc, Inc.	\$107,218	\$99,840	5,873

- c. The Eliv Claim shall be disallowed for the following investments that have either been distributed or the investments have failed:

<b>Intended Investment</b>	<b>Gross Investment</b>	<b>Net Investment</b>
Check, Inc.	\$61,416	\$60,416
Chegg, Inc.	\$50,000	\$46,000
Twitter, Inc.	\$401,000	\$383,100
Candi Controls, Inc.	\$100,000	\$100,000
EngageClick, Inc.	\$180,000	\$180,000
Kumbuya, Inc.	\$60,000	\$60,000
Onstream Media Corporation	\$20,000	\$20,000
Redwood Fund	\$300,000	\$300,000
US Interventional Corp.	\$75,000	\$75,000
Aliphcom dba Jawbone, Inc.	\$110,395	\$108,395
Badgeville, Inc.	\$220,000	\$212,600
Glam Media, Inc.	\$52,957	\$52,557
Jumio, Inc.	\$60,000	\$55,200
Odesk Corp.	\$73,130	\$68,730
Practice Fusion, Inc.	\$141,843	\$139,843
Virtual Instruments Corp.	\$17,555	\$17,555

- d. No claim shall be allowed for the benefit of Eliv in the Bivona Bankruptcy Case.

4. **Sole Ownership of Claims.** The Parties have not assigned or transferred or purported to assign or transfer to any person or unrelated entity any claims or other matters released, except as otherwise expressly provided herein. The Parties shall and hereby do indemnify, defend, and hold harmless from and against any claims, liabilities, actions, causes of action, demands, injuries, damages, costs, and expenses (including, but not limited to reasonable attorneys' fees), based upon or arising in connection with any such prior assignment or transfer, or any such purported assignment or transfer, of any claims or other matters released herein.

5. **Releases.**

- a. **The Trustee Parties' Release of Receiver Parties; Receiver Parties' Release of Trustee Parties.** Except as to the rights and obligations as otherwise set forth in this Agreement, upon receipt and clearance by the Trustee of fifty percent (50%) of the Bivona Esq Funds, and upon receipt and clearance by the Receiver of fifty percent (50%) of the Bivona Esq Funds and Attached Receivership Entity Funds,

excluding the obligations pursuant to this Agreement, the Trustee, on behalf of himself and the Bivona Estate (the “Trustee Parties”), shall be deemed to have released and forever discharged the Receiver, on behalf of herself and the Receivership Estate (the “Receiver Parties”), and the Receiver Parties shall be deemed to have released and forever discharged the Trustee Parties, from any and all claims, demands, causes of action, damages, appeals, obligations, suits, debts and liabilities of any nature whatsoever, fixed or contingent, known or unknown, liquidated or unliquidated, that any one or more of the Trustee Parties or Receiver Parties, as applicable, has now or ever had or may have in the future, against any one or more of the Receiver Parties or the Trustee Parties, as applicable, relating to and/or arising out of the Bivona Estate’s interest and the Receivership Estate’s interest in the Attached Funds and/or the Attached Accounts, from the beginning of the world to the date of this Agreement. .

- b. Without limitation or expansion thereof, the foregoing releases do not apply to any claim that there has been a breach of any of the terms of this Agreement.
- c. In connection with the releases set forth above, the Parties expressly waive and release any rights or benefits that they may have under Section 1542 of the Civil Code of the State of California which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in its, his, or her favor at the time of executing the release, and that if known by it, him, or her, must have materially affected its, his or her settlement with the debtor or released party.**

- d. By executing this Agreement, the Parties expressly waive and release the rights or benefits of Section 1542 of the Civil Code of the State of California, and any similar statute, code, law or regulation of any state, territory, commonwealth or possession of the United States, or the United States, to the full extent that they may waive all such rights and benefits pertaining to the claims released herein. The Parties, and each of them, acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true pertaining to the claims released herein. Nevertheless, it is the intention of the Parties, and each of them, through this Agreement to fully, finally and forever release all of the claims each of them respectively releases herein. The releases herein given shall be and remain in effect as a full and complete release of the claims released herein notwithstanding the discovery or existence of any such additional or different claims or facts relative thereto.

6. The Parties acknowledge that the Receiver is acting solely in her capacity as the receiver for SRA Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, SRA Management Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix

Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, NYPA Management Associates, LLC, and Solis Associates Fund LLC, and their subsidiaries and affiliates, and that she has no personal liability whatsoever with respect to this Agreement or the transactions described herein.

7. The Parties acknowledge that the Trustee is acting solely in his capacity as the chapter 7 trustee for the estate of John Vincent Bivona and that the Trustee has no personal liability whatsoever with respect to this Agreement or the transactions described herein.

8. Except as otherwise specifically provided for herein, nothing contained in this Agreement shall create any rights, remedies or defenses in favor of any party in interest that is not a Party to this Agreement.

9. The Parties mutually warrant and represent that, prior to the execution of this Agreement: (a) each of them has thoroughly read this Agreement and conducted an independent and thorough investigation of all pertinent facts; (b) each of them has thoroughly informed themselves of the terms, covenants, conditions and effects of this Agreement; (c) each of them has obtained the advice and benefit of counsel of their own choosing, or had the opportunity to do so; (d) no representations of any kind have been made by or on behalf of any of the Parties other than as expressly set forth in this Agreement; and (e) each of them thereafter elected knowingly and voluntarily to execute and enter into this Agreement.

10. Each of the Parties stipulates, agrees and warrants that: (a) the terms of this Agreement are reasonable; (b) they will not challenge or contest in any way the capacity or the authority of any Party hereto to make the agreements, covenants, waivers, stipulations, and representations set forth herein; (c) the person executing this Agreement on behalf of each Party has the necessary and appropriate authority and capacity to execute this Agreement and to make this Agreement binding upon and enforceable against that Party; and (d) the consideration for this Agreement is mutual and adequate.

11. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements, stipulations, understandings, promises or negotiations relating to such subject matter. No Party to this Agreement has made or is relying on (and each Party disclaims the existence or materiality of) any representations, warranties, or promises not expressly set forth in this Agreement. This Agreement can be modified only by a writing executed by each of the Parties hereto.

12. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective current, former, and future partners, members, lawyers, predecessors, affiliates, parents, subsidiaries, shareholders, officers, directors, employees, agents, trustees, managers, representatives, successors and assigns.

13. Each Party hereto agrees to bear its/her own legal and other costs and expenses incurred in connection with the negotiation, preparation, and obtaining approval from the Courts of this Agreement.

14. Nothing in this Agreement shall be deemed to be an admission of liability by any Party. Neither this Agreement nor any action taken to comply with this Agreement shall be

construed as, or used as, an admission of any fault, wrongdoing, responsibility or liability whatsoever in this or any other matter.

15. **Jurisdiction and Governing Law.** The Parties agree to submit to the exclusive jurisdiction of the District Court, which shall hear any dispute, claim, or controversy arising in connection with or relating to this Agreement, including, but not limited to the validity, breach, enforcement, or termination thereof. This Agreement shall be governed and construed in accordance with the laws of California without regard to conflicts of law principles.

16. **Notices.** All communications or requests, if any, contemplated by this Agreement shall be effective (a) if sent by email, as soon as sent to the following email addresses, (b) if sent by overnight mail which can be tracked, as soon as delivery is confirmed, or (c) if sent by first class mail, certified return receipt, two (2) days after placing the notice in the mail:

To the Receiver: Kathy Bazoian Phelps, solely as Receiver  
1999 Avenue of the Stars, Suite 1100  
Los Angeles, CA 90067-4402  
Email: kphelps@diamondmccarthy.com

With a copy to: Diamond McCarthy LLP  
Attn: Christopher Sullivan  
150 California St. Suite 2200  
San Francisco, CA 94111  
Email: csullivan@diamondmccaarthy.com

If to the Trustee: Gregory Messer, solely as Trustee  
Law Office of Gregory Messer  
26 Court St. #2400  
Brooklyn, NY 11242  
(718) 858-1474

With a copy to: Fred Stevens  
Klestadt Winters Jureller  
Southard & Stevens, LLP  
200 West 41st Street, 17th Floor  
New York, New York 10036-7203  
FStevens@Klestadt.com

If to the Eliv Group: Mary E. Langan  
Assistant United States Attorney  
United States Attorney's Office  
Northern District of New York  
100 South Clinton Street, Room 900  
Syracuse, NY 13261  
Mary.Langan@usdoj.gov



17. **Severability.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability.

18. **No Construction Against Drafter.** The Parties hereby mutually agree and stipulate that this Agreement is the result of negotiations between the Parties and that the terms hereof are negotiated terms. Accordingly, any rules of interpretation or construction resolving any ambiguity against the drafter that might otherwise apply, shall not apply hereto.

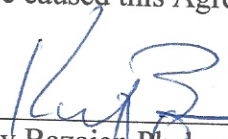
19. **Counterparts.** This Agreement may be executed in counterparts, in which case all such counterparts shall constitute one and the same Agreement. Furthermore, the executed signature pages may be transmitted by facsimile or .pdf, and such signatures shall be deemed original and sufficient to bind the Parties hereto.

20. **Headings.** All headings in this Agreement have been inserted for ease of reference only, and are not to be considered a part of this Agreement, and are to have no effect on the interpretation of this Agreement.

21. The Parties hereto agree to execute such other documents as may be reasonably required and which may otherwise be deemed necessary to effectuate the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered as of the date reflected below.

Dated: February 19, 2020

  
\_\_\_\_\_  
Kathy Bazoian Phelps, solely in her capacity  
as Receiver

Dated: February \_\_, 2020

\_\_\_\_\_  
George Messer, solely in his capacity as  
Chapter 7 Trustee of estate of John Vincent  
Bivona

Dated: February \_\_, 2020

United States Attorneys Office

\_\_\_\_\_  
Mary E. Langan, Assistant United States  
Attorney on behalf of The Eliv Group

17. **Severability.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability.

18. **No Construction Against Drafter.** The Parties hereby mutually agree and stipulate that this Agreement is the result of negotiations between the Parties and that the terms hereof are negotiated terms. Accordingly, any rules of interpretation or construction resolving any ambiguity against the drafter that might otherwise apply, shall not apply hereto.

19. **Counterparts.** This Agreement may be executed in counterparts, in which case all such counterparts shall constitute one and the same Agreement. Furthermore, the executed signature pages may be transmitted by facsimile or .pdf, and such signatures shall be deemed original and sufficient to bind the Parties hereto.

20. **Headings.** All headings in this Agreement have been inserted for ease of reference only, and are not to be considered a part of this Agreement, and are to have no effect on the interpretation of this Agreement.

21. The Parties hereto agree to execute such other documents as may be reasonably required and which may otherwise be deemed necessary to effectuate the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered as of the date reflected below.

Dated: February \_\_, 2020

\_\_\_\_\_  
Kathy Bazoian Phelps, solely in her capacity  
as Receiver

Dated: February \_\_, 2020

\_\_\_\_\_  
George Messer, solely in his capacity as  
Chapter 7 Trustee of estate of John Vincent  
Bivona

Dated: February \_\_, 2020

United States Attorneys Office

\_\_\_\_\_  
Mary E. Langan, Assistant United States  
Attorney on behalf of The Eliv Group



17. **Severability.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability.

18. **No Construction Against Drafter.** The Parties hereby mutually agree and stipulate that this Agreement is the result of negotiations between the Parties and that the terms hereof are negotiated terms. Accordingly, any rules of interpretation or construction resolving any ambiguity against the drafter that might otherwise apply, shall not apply hereto.

19. **Counterparts.** This Agreement may be executed in counterparts, in which case all such counterparts shall constitute one and the same Agreement. Furthermore, the executed signature pages may be transmitted by facsimile or .pdf, and such signatures shall be deemed original and sufficient to bind the Parties hereto.

20. **Headings.** All headings in this Agreement have been inserted for ease of reference only, and are not to be considered a part of this Agreement, and are to have no effect on the interpretation of this Agreement.

21. The Parties hereto agree to execute such other documents as may be reasonably required and which may otherwise be deemed necessary to effectuate the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered as of the date reflected below.

Dated: February \_\_, 2020

\_\_\_\_\_  
Kathy Bazoian Phelps, solely in her capacity  
as Receiver

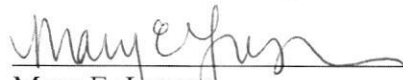
Dated: February \_\_, 2020

\_\_\_\_\_  
George Messer, solely in his capacity as  
Chapter 7 Trustee of estate of John Vincent  
Bivona

Dated: February 19, 2020

GRANT C. JAQUITH  
United States Attorney

By:

  
\_\_\_\_\_  
Mary E. Langan  
Assistant United States Attorney  
On behalf of The Eliv Group