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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 v.

18 JOHN V. BIVONA; SADDLE RIVER
19 ADVISORS, LLC; SRA
20 MANAGEMENT ASSOCIATES,
21 LLC; FRANK GREGORY
22 MAZZOLA,

23 Defendants, and

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

Relief Defendants.

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

**NOTICE OF HEARING ON MOTION
FOR:**

**(1) FINAL APPROVAL OF RECEIVER’S
PLAN OF DISTRIBUTION; AND**

**(2) FOR ORDER APPROVING FORM
AND MANNER OF NOTICE;**

AND

**NOTICE OF OPPORTUNITY TO
SERVE ON INVESTMENT ADVISORY
COMMITTEE**

*Memorandum of Points and Authorities and
Supporting Declaration Filed Concurrently*

Date: April 7, 2020

Time: 10:30 a.m.

Place: Courtroom: 5

450 Golden Gate Ave

San Francisco, CA

Judge: Edward M. Chen

1 **PLEASE TAKE NOTICE THAT** on April 7, 2020, at 10:30 a.m., in Courtroom 5 of the
2 above-entitled Court located at 450 Golden Gate Ave., San Francisco, California, a hearing will be
3 held on Successor Receiver Kathy Bazoian Phelps’s Motion for (1) Final Approval of the Plan of
4 Distribution; and (2) Order Approving Form and Manner of Notice; and Notice of Opportunity to
5 Serve on Investment Advisory Committee (the “Motion”).

6 **PLEASE TAKE FURTHER NOTICE THAT** if you oppose all or part of the relief
7 requested in this Motion, you are required to file your written opposition with the Office of the
8 Clerk, United States District Court, 450 Golden Gate Ave., San Francisco, California 94102, and
9 serve the same on the undersigned not later than March 16, 2020. **IF YOU FAIL TO FILE AND**
10 **SERVE A WRITTEN OPPOSITION** by March 16, 2020, the Court may grant the requested relief
11 without further notice.

12 If you wish to receive a hard copy of the Plan by regular mail, please contact Kathy Bazoian
13 Phelps by email to kphelps@diamondmccarthy.com or by regular mail at Diamond McCarthy,
14 1999 Avenue of the Stars, Ste 1100, Los Angeles, CA 90067.

15 **NOTICE OF OPPORTUNITY TO SERVE ON INVESTOR ADVISORY**
16 **COMMITTEE**

17 One of the provisions of the Plan provides for the formation of an Investor Advisory
18 Committee (“IAC”) to consult with the Receiver regarding the liquidation of securities in
19 connection with the Plan implementation. This Motion invites any investor who is interested in
20 serving on the IAC to submit an application to the Receiver by March 9, 2020. The Receiver will
21 consider new nominations as well as members of the SRA Funds Investor Group pursuant to the
22 SRA Funds Investor Group’s Proposed Alternative Distribution Plan [Doc No. 407-1] as
23 candidates for an IAC. All individuals wishing to nominate themselves to serve on the IAC must
24 submit an application to the Receiver by email to kphelps@diamondmccarthy.com or regular mail
25 to Kathy Bazoian Phelps, Diamond McCarthy, 1999 Avenue of the Stars, Ste 1100, Los Angeles,
26 CA 90067, no later than March 9, 2020. The IAC application must include: (1) the investor name;
27 (2) mailing address; (3) email address; (4) phone number; and (5) brief statement of qualifications
28 to serve on the IAC.

1 Submission of an application to serve on the IAC is not a guarantee of a position to serve on
2 the IAC.

3 Following March 9, 2020, the Receiver will meet and confer with the SEC, the SRA
4 Investor Group, and Progresso Ventures, LLC to review the applications submitted and to try to
5 reach agreement on the individuals who will serve on the IAC. If the parties cannot agree, then the
6 Receiver shall file a request for instructions on who shall serve on the IAC by March 16, 2020. Any
7 responses to the Receiver's request for instructions shall be filed on or before March 20, 2020, and
8 any replies shall be filed on or before March 24, 2020.

9 **PLEASE TAKE FURTHER NOTICE THAT** if you wish to submit an application to
10 serve on the Investment Advisory Committee, you must submit your application to the Receiver no
11 later than March 9, 2020, by email to kphelps@diamondmccarthy.com or regular mail to Kathy
12 Bazoian Phelps, Diamond McCarthy, 1999 Avenue of the Stars, Ste 1100, Los Angeles, CA 90067.

13 **Meet and Confer:** The Receiver has met and conferred with counsel for the Securities and
14 Exchange Commission ("SEC"), counsel for the SRA Investor Group, and counsel for Progresso
15 Ventures LLC prior to filing this pleading and they have identified particular issues that might be
16 the subject of an objection or further briefing.

17 **Relief Requested in Motion.** The Motion seeks final approval of the Receiver's
18 Distribution Plan, a copy of which is attached to the Declaration of Kathy Bazoian Phelps, filed in
19 support of the Motion, as Exhibit "A." The Motion is made on grounds that, in the Receiver's
20 business judgment, the proposed distribution plan is logical, fair and reasonable. As noted above,
21 the Motion also seeks to invite any interested investor to submit an application to the Receiver if
22 they wish to serve on the Investment Advisory Committee, as described in the Plan.

23 **SUMMARY OF PLAN TERMS**

24 Creditors, investors and interested parties are encouraged to review the complete terms of
25 the Plan attached as Exhibit "A" to the Declaration of Kathy Bazoian Phelps, filed with the Motion.
26 Without modifying in any respect the terms of the Plan, the following summary of the basis terms
27 of the Plan is as follows:
28

1 **A. Classes of Claimants**

2 The Receiver has categorized the claims which are deemed Allowed Claims¹ under the
3 Plan into the following classes of claimants:

4 **1. Class 1**

5 Class 1 consists of the Administrative Claims. It is contemplated these Administrative
6 Claims will consist primarily of the Receiver’s fees and costs and the fees and costs of professional
7 retained by the Receiver.

8 **2. Class 2**

9 Class 2 consists of the Priority Claims. The priority claims will likely consist substantially,
10 if not entirely, of tax claims. At the present time, two tax claims have been submitted by the New
11 York Department of Tax and Finance in the amount of \$20,940.

12 Other anticipated tax claims that would constitute Priority Claims are tax liability at both
13 the federal and state levels attributable to the sale and disbursement of securities. The amount of
14 the tax liability that will be realized from the sale of securities to fund the payments to the Class 1,
15 2 and 3 classes and from the disbursement of securities to Class 4 is presently unknown.

16 The Plan contemplates that additional securities will be sold as necessary to fund the
17 estimated tax liability from the sale and distribution of securities and that those proceeds will be
18 held in the Tax Holding Account and available to pay taxes.

19 The Plan does not provide any tax advice, and all Unsecured Creditors and Investor
20 Claimants are encouraged to consult their own tax advisor regarding any tax consequences of this
21 Plan.

22 No distribution will be made to Classes 3, 4 or 5 until such time as Class 1 and 2 claims
23 have been paid in full or sufficient reserves are held to ensure payment in full to Classes 1 and 2.

24 **3. Class 3**

25 Class 3 consists of the Unsecured Creditor Claims. The Plan contemplates that the
26 Unsecured Claims will be paid from the Plan Fund, which shall be funded by cash generated from
27 _____

28 ¹ All capitalized terms shall have the meanings identified in the Plan.

1 the sale of securities as set forth in detail below. A listing of the presently allowed Class 3 claims
 2 is attached to the Plan (Exhibit “A” to the Declaration of Kathy Bazoian Phelps filed herewith), as
 3 Exhibit “1.” The Plan Fund will be used to pay Classes 1 and 3, and possibly to pay a portion of
 4 Class 2 subject to a request for an Equitable Adjustment and further order of the Court. To the
 5 extent there is a surplus of cash following payment of Classes 1, 2, and 3, the surplus will be used
 6 to pay Class 5 claims on a *pro rata* basis. To the extent there is a deficiency: (a) Class 1 will be
 7 paid in full from the Plan Fund; (b) the Receiver may seek an Equitable Adjustment regarding
 8 payment of a portion of Class 2 Claims from the Plan Fund; and (c) Class 3 will receive a *pro rata*
 9 distribution on account of their claims from the remaining funds in the Plan Fund following
 10 payment in full to Classes 1 and 2 claimants pursuant to the terms of the Plan. It is contemplated
 11 that Class 2 claims will be paid from the Tax Holding Account; however, to the extent that either
 12 there are insufficient funds in the Tax Holding Account to pay Class 2 claims in full or the
 13 Receiver believes that an Equitable Adjustment is appropriate and that a portion of Class 2 claims
 14 should be paid from the Plan Fund, the Receiver may request to use the Plan Fund to satisfy such
 15 Class 2 claims upon further order of the Court.

16 4. Class 4

17 Class 4 consists of the Investor Claims, which have been divided by the company in which
 18 the claimants invested. The Class 4 claims are identified by Investor I.D. number and by intended
 19 investment in Exhibits “2” through “15” attached to the Plan and identified as follows:

20	Class 4A:	Addepar	Exhibit “2”
	Class 4B:	Airbnb	Exhibit “3”
21	Class 4C:	Bloom Energy	Exhibit “4”
	Class 4D:	Cloudera	Exhibit “5”
22	Class 4E:	Dropbox	Exhibit “6”
	Class 4F:	Evernote	Exhibit “7”
23	Class 4G:	Lookout	Exhibit “8”
	Class 4H:	Lyft	Exhibit “9”
24	Class 4I:	MongoDB	Exhibit “10”
	Class 4J:	Palantir	Exhibit “11”
25	Class 4K:	Pinterest	Exhibit “12”
	Class 4M:	Snap, Inc.	Exhibit “13”
26	Class 4N:	Uber	Exhibit “14”
	Class 4O:	ZocDoc	Exhibit “15”
27			
28			

The following chart reflects that shares that have been confirmed by the Receiver as owned by the estate, the gross amount invested in those shares, and 30% of the gross invested amount for purposes of calculating the Plan Fund as set forth herein.

Company	Securities Owned by Estate	Shares Claimed by Investors	Gross Investment Amount	30% of Gross Investment Amount
Addepar, Inc.	995,509	995,509	\$1,150,684	\$ 345,205
Airbnb	11,125	11,125	\$842,654	\$ 252,796
Bloom Energy Inc.	147,429	139,583	\$3,724,498	\$1,117,349
Cloudera, Inc.	37,639	37,639	\$637,245	\$ 191,174
Dropbox, Inc.	46,000	46,001	\$1,783,457	\$ 535,037
Evernote Corp.	96,108	88,287	\$1,179,964	\$ 353,989
Lookout, Inc.	174,800	171,797	\$1,976,853	\$ 593,056
Lyft, Inc.	9,479	9,479	\$250,756	\$ 75,227
MongoDB Inc.	20,000 ²	22,171	\$1,002,322	\$ 300,687
Palantir Technologies Inc.	5,740,249	5,895,853	\$32,551,706	\$9,765,512
Pinterest, Inc.	23,206	23,206	\$550,470	\$ 165,141
Snap, Inc.	31,172	31,173	\$549,821	\$ 164,946
Uber Inc.	500	500	\$19,388	\$ 5,816
ZocDoc, Inc.	21,599 ³	21,598	\$187,218	\$ 56,165

This Plan contemplates that some of these securities will be liquidated to fund payment of the Class 1, 2, and 3 claims as set forth in the Plan. “Investor Deficiency Claim” means any remaining unpaid Investor Claim following distribution of shares pursuant to the terms of the Plan that should be calculated as follows: The gross dollar amount invested by an Investor less 30% of the gross investment amount, less the Investor’s pro rata share of the total dollar value generated to fund the Tax Holding Account, less the value of any shares actually distributed to the Investor under the terms of this Plan calculated as the posted value of those shares as of the close of business on the dates that the shares are actually distributed to the Investor.

5. Class 5

Class 5 consists of the Subordinated Claims. It is presently unknown whether any

² The estate is owed another 6,250 shares from Ben Sabrin.

³ Of these shares, 20,000 have not yet been confirmed by the Receiver.

1 distribution will be made to Class 5 creditors. After the distributions to Class 4 claimants has been
 2 completed, or substantially completed, and all likely administrative expenses, priority expenses,
 3 Class 1 claims, Class 2 claims and Class 3 claims have been provided for in full, the Receiver shall
 4 determine whether any surplus money remains in the Plan Fund or the Tax Holding Account. Such
 5 surplus money may then be distributed by the Receiver to the Class 5 Subordinated Claimants on a
 6 *pro rata* basis. The Class 5 Subordinated Claims that are presently known are:

7	Progresso Ventures:	\$552,936.43
8	Kenneth Lacey:	\$500,000.00
9	Alexander Pisemski	\$500,000.00
10	Carsten Klein:	\$100,000.00
11	Investor Deficiency Claims	Unknown

12 **6. Surplus Funds**

13 To the extent that any surplus funds remain following payment in full of Class 5 claims,
 14 those funds shall be distributed to the Investors on a *pro rata* basis using their gross investment
 15 amount.

16 **B. Methods of Distribution Under the Plan**

17 **1. Sale of Securities to Create Plan Fund and Tax Holding Account**

18 The Receiver shall sell securities to generate the Plan Fund and Tax Holding Account as
 19 follows:

- 20 (a) Securities shall be sold to generate an amount of 30% of the gross amounts invested by
 21 the Investor Claimants in Successful Investments to fund the Plan Fund.
- 22 (b) Any surplus securities for any of the Successful Investments shall be sold and the
 23 proceeds shall be added to the Plan Fund.
- 24 (c) Additional securities shall be sold to generate sufficient funds to pay any estimated
 25 Priority Tax Claims generated from the sale of securities and the distribution of shares
 26 back to Investors and said sales proceeds shall be deposited in the Tax Holding
 27 Account.

1 (d) The Receiver shall sell securities as follows for the Successful Investments following a
2 liquidity event for a given Successful Investment.

3 (e) The 30% to fund the Plan Fund shall be net of any brokerage fees paid in connection
4 with the sale of the securities. In other words, the amount to be held in the Plan Fund
5 following payment of brokerage fees shall equal 30% of the gross amount invested.

6 (f) The Receiver shall sell the securities in a manner consistent with state and federal
7 corporate and securities laws. The Receiver anticipates that such distributions or sales
8 shall be done in accordance with Section 5 of the Securities Act of 1933 (“Securities
9 Act”) or in accordance with exemptions from registration provided in the Rules
10 promulgated by the Commission pursuant to the Securities Act.

11 If all of the remaining investments that are not Failed Investments ultimately become
12 Successful Investments, the dollar value of securities to be sold to create the Plan Fund shall be
13 \$13,972,323 in the aggregate for the 30% figure. The dollar value of the surplus shares is presently
14 unknown. The amount of any tax liability that may be generated is presently unknown and
15 therefore the amount of securities to be sold to fund the Tax Holding Account is presently
16 unknown. The Plan Fund will be less if not all of the pre-IPO investments become Successful
17 Investments.

18 **2. Priority of Payment of Claims from Plan Fund and Tax Holding Account**

19 Claims shall be paid from the Plan Fund and the Tax Holding Account in the following
20 priority:

21 Class 1: Administrative Claims shall be paid in full from the Plan Fund. The
22 Administrative Cash Reserve shall retain sufficient funds and the Administrative Stock Reserve
23 shall retain sufficient shares to pay projected Administrative Claims through the close of the
24 Receivership Estate.

25 Class 2: It is presently contemplated that that Class 2 Claims shall be paid in full from the
26 Tax Holding Account, subject to an Equitable Adjustment.⁴ The Tax Holding Account and the
27

28 ⁴ An Equitable Adjustment is defined under the Plan as a request by the Receiver to modify the

1 Administrative Stock Reserve shall retain sufficient shares to pay projected Class 2 Claims through
2 the close of the Receivership Estate. If the Tax Holding Account is not sufficient to pay Class 2
3 claims in full, the Receiver shall sell additional securities to increase the Tax Holding Account to
4 an amount sufficient to pay the Class 2 claims in full. The payment of funds from the Tax Holding
5 Account to pay Class 2 Claims may be subject to an Equitable Adjustment.

6 Class 3: Unsecured Creditor Claims shall be paid from the Plan Fund. If the Plan Fund is
7 insufficient to pay the Unsecured Creditor Claims in full, the Unsecured Creditor Claims shall be
8 paid on a *pro rata* basis. The Receiver shall not be obligated to make any payment to the allowed
9 Class 3 claims if there are not sufficient securities to liquidate to pay all Class 1 and 2 claims in
10 full.

11 Class 5: To the extent that there remain any surplus funds in the Plan Fund or the Tax
12 Holding Account following payment in full of Class 1, 2 and 3 claims, the Receiver shall distribute
13 the balance of the Plan Fund and the Tax Holding Account to the Class 5 claimants on a *pro rata*
14 basis up to the full amount of the Class 5 claims.

15 To the extent that any surplus funds remain following payment in full of Class 5 claims,
16 those funds shall be distributed to the Investors on a *pro rata* basis using their gross investment
17 amount.

18 The Receiver shall endeavor to make distributions from the Plan Fund as soon as
19 practicable following a liquidity event for a given investment. The Receiver anticipates holding a
20 balance in the Plan Fund and the Tax Holding Account pending receipt of final tax clearance from
21 the IRS at the end of the case and will distribute any excess funds after such clearance is received.

22 **3. Administrative Cash Reserve:**

23 The Receiver shall have the authority to retain a reserve from the Plan Fund and the Tax
24 Holding Account to ensure that sufficient funds will be available to pay:

25 _____
26 (continued)

27 proposed allocation of Class 1 claims to be paid from the Plan Fund and Class 2 Claims to be paid
28 from the Tax Holding Account, which request can be made by the Receiver if she determines that
the presently contemplated allocation will not result in an equitable result as between the Investors
and Unsecured Creditors.

- 1 a. Class 1 and 2 claims in full through the close of the case;
- 2 b. Any and all estimated tax liability generated from the sale of securities to
- 3 generate the Plan Fund, the Tax Holding Account, and in connection with the
- 4 transfer of shares to Class 4 claimants.
- 5 c. The fees and costs to wind up the Receivership Estate; and
- 6 d. Any unanticipated costs of the Receivership Estate.

7 Although it is presently contemplated that Class 1 Claims will be paid from the Plan Fund
8 and Class 2 Claims will be paid from the Tax Holding Account, the allocations of those payments
9 may be subject to an Equitable Adjustment.

10 **4. Anne Bivona Funds:**

11 The Disgorgement Funds obtained by the SEC from relief defendant Anne Bivona are not
12 assets of the Receivership Estate and may be distributed or transferred at the SEC's discretion on
13 receiving any necessary court approval.

14 **5. Final Distribution of Cash:**

15 Following the last liquidity event for the last Successful Investment, the expiration of any
16 lockup period, and the distribution of the cash from the Plan Fund and the securities in connection
17 with that particular Successful Investment as set forth herein, the Receiver shall prepare and file
18 final tax returns and, upon receipt of final tax clearance, shall seek authority from the Court to
19 make a final distribution of any funds remaining in the Plan Fund and the Tax Holding Account at
20 that time.

21 **6. Distribution of Securities to Investor Claims**

22 Class 4 Investor Claims shall receive distributions following: (a) a liquidity event for a
23 Successful Investment; (b) the expiration of any lockup period or contractual restrictions on
24 transfer imposed by the issuer of the securities; (c) the sale of securities to create the Plan Fund and
25 Tax Holding Account; (d) a determination of estimated Priority Claims generated from the
26 anticipated distributions and the sale of securities to generate funds to pay the anticipated tax
27 liability; (e) the sale of securities sufficient to generate funds sufficient to pay such estimated
28 Priority Claims; and (f) approval by the Court of the Final Schedule of Proposed Stock

1 Distributions for a particular Successful Investment.

2 If the Receivership Estate does not ultimately obtain securities for a Successful Investment,
3 the Investor Claimants shall be treated as Class 5 Subordinated Claims.

4 To the extent that there is any shortfall in the number of shares to distribute for a particular
5 Successful Investment, the number of shares distributed to investors shall be reduced on a *pro rata*
6 basis and such distribution shall be deemed full satisfaction of the Investor Claims with respect to
7 that particular Successful Investment. The Investor Deficiency Claims shall be treated as Class 5
8 Claims. Notwithstanding the foregoing, Investor Claims may receive a distribution pursuant to
9 Section VII.A.2 of the Plan to the extent that any surplus funds remain following payment in full of
10 Class 5 claims.

11 The Receiver shall retain an Administrative Stock Reserve of shares from each of the
12 Successful Investments to ensure that sufficient funds will be available to pay:

- 13 a. Class 1 and 2 claims in full through the close of the case;
- 14 b. Any and all tax liability generated from the sale of securities to generate the
15 Plan Fund and the Tax Holding Account and in connection with the transfer of
16 shares to Class 5 claimants;
- 17 c. The fees and costs to wind up the Receivership Estate; and
- 18 d. Any unanticipated costs of the Receivership Estate.

19 The Receiver may delay such distribution until such time as the tax liability for the
20 liquidation of the shares has been established.

21 Each of the Final Schedules of Proposed Stock Distributions and distributions made to
22 Class 4 Investor Claimants shall comply with all securities law requirements.

23 **7. Affected Claims Under the Plan**

24 Interested parties and claimants are encouraged to review the definitions under the terms of
25 the Plan attached the Declaration of Kathy Bazoian Phelps as Exhibit "A" filed herewith, as your
26 rights may be impacted as set forth in the Plan. The following definitions will affirmatively
27 disallow claims as follows:

28

1 1. “Disallowed Claims” include claims, whether or not formally and timely filed,
2 belonging to or asserted by or on behalf of or for (i) John V. Bivona; (ii) Frank Mazzola; (iii) Anne
3 Bivona; (iv) Michele Mazzola; (v) David Jurist; (vi) Alice Jurist; (vii) former agents or employees
4 of Saddle River, Felix Investments, LLC, FMOF Management Associates LLC, NYPA
5 Management Associates LLC, SRA Management, Clear Sailing Group IV LLC, Clear Sailing
6 Group V LLC, and the Fortuna Fund Management LLC; (viii) other insiders (including but not
7 limited to Emilio DiSanluciano); (ix) management fees; (x) inter-company claims; (xi) any claim
8 for the guarantee of a debt or financial obligation, including for the benefit of insiders (including
9 but not limited to John V. Bivona, Frank Mazzola, Anne Bivona, Michele Mazzola, David Jurist,
10 and Alice Jurist, by FMOF Management, or NYPA Management or any other of the Receivership
11 Entities); (xii) any claim for the guarantee of a debt or financial obligation in connection with a
12 Failed Investment; (xiii) any claim that has been disallowed by an order of the Court after notice
13 and a hearing; and (xiv) any claim that was filed with the Receiver after May 14, 2019 that has not
14 been expressly allowed by an order of the Court after notice and a hearing. The definition of
15 “Disallowed Claim” excludes a claim or claims filed on behalf of Fortuna Funds by Stephen Soler,
16 unless such claim or claims are disallowed on another basis.

17 2. “Failed Investment” means any of the companies in which the Receivership Entities
18 offered investments in securities in companies which were pre-IPO, did not go public and have a
19 liquidity event, and have failed. Those companies as of the date of this Plan are Alphcom dba
20 Jawbone, Badgeville Inc., Candi Controls, Glam, Jumio Inc., Odesk, Practice Fusion, Virtual
21 Instruments, eSolar and Silver Springs Network. Any intended investment which fails to go public
22 after approval of this Plan is intended to be included in the definition of Failed Investment.

23 3. “Subordinated Claims” means and includes an Allowed Claim for: (1) penalty or
24 other properly subordinated claims in connection with outstanding tax liabilities; (2) claims which
25 have been subordinated pursuant to Court order or agreement between the Receiver and an Eligible
26 Claimant; and (3) Investor Deficiency Claims. The claim of the SEC arising from its Final
27 Judgment is deemed satisfied upon the Court’s approval of a distribution plan and shall not receive
28 any distribution pursuant to this Plan. Subordinated Claims do not include Disallowed Claims.

SUBSTANTIVE CONSOLIDATION OF SOLIS FUND

The assets and claims of Solis Fund Associates LLC (“Solis”) have been consolidated with the assets and liabilities of the other Receivership Entities pursuant to the Court’s order entered on June 27, 2019. Pursuant to the Plan, the Bool Energy shares owned by Solis and the other Receivership Entities shall be consolidated along with the claims made against them, as follows:

Company	Shares Owned	Shares Claimed
Bloom Energy Inc.	88,317	117,017
Bloom Energy Inc. (Solis Funds)	59,111	22,566

Pursuant to the Plan, the total shares owned of 147,428 will be available to satisfy the total shares claims by investors of 139,583, and the 7,845 surplus shares will be liquidated to fund the Plan Fund as set forth herein. The Bloom Energy shares shall otherwise be distributed in accordance with the terms of the Plan.

TAX TREATMENT AND APPORTIONMENT OF TAX LIABILITY

1. The Receivership Estate shall be treated as a Qualified Settlement Fund (“QSF”) effective as of the date of the commencement of the Receivership Estate, October 11, 2016.
2. The assets of the Receivership Entities became property of the QSF as of October 11, 2016.
3. The Receiver shall obtain a valuation of the assets of the Receivership Entities as of October 11, 2016.
4. The sale of securities to create the Plan Fund and the Tax Holding Account, and the transfer of securities to Investors in connection with the Class 4 distributions, shall be treated as taxable events if required by law.
5. The Receiver is authorized to sell securities and to retain monies in the Tax Holding Account to pay any and all tax liability generated from the sale and transfer of securities in connection with this Plan.
6. Any tax liability of the estate shall be paid through the sale of securities to generate sufficient cash in the Tax Holding Account to pay such tax liability. No distributions to Classes 3,

1 4, or 5 shall be paid until such time as the Receiver, in her discretion, determines that sufficient
2 funds are available in the Tax Holding Account to pay all taxes in full.

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4 DATED: February 27, 2020

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

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