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

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

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

19 Defendants, and

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

23 Relief Defendants.
24

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

**DECLARATION OF JOSHUA CILANO
IN RESPONSE TO COURT'S
SEPTEMBER 22, 2017 ORDER**

Date: September 28, 2017

Time: 1:30 PM

Courtroom: 5

Judge: Hon. Edward M. Chen

25 I, Joshua Cilano, declare as follows:

26 1. I am the managing member of Investors Rights, LLC, the proposed new manager for
27 the SRA Funds under the Alternative Plan of Distribution being proposed by the SRA Funds
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1 Investor Group (the “Investor Group”). I submit this declaration in response to the Court’s
2 September 22, 2017 Order Requiring Parties to Submit Additional Information and Requiring
3 Joshua Cilano to Respond (the “Order”). I have personal knowledge of the facts stated herein and,
4 if called upon to do so, could and would testify completely thereto.

5 2. Pursuant to the Order, this declaration responds to issues raised by the SEC, the
6 Receiver and one of the creditors of the receivership estate, Global Generation Partners, about me
7 and the proposed role of Investor Rights LLC as the new manager for the SRA Funds if the
8 Alternative Plan of Distribution proposed by the Investor Group is adopted by the Court.

9 **I. The Views of the SRA Funds Investors**

10 3. In order to invest in the SRA Funds, an investor needed to be an accredited investor
11 under the customary definition -- assets of more than \$1 million (excluding a primary residence) or
12 annual income of more than \$200,000. Based on my personal interactions with many of the SRA
13 Funds investors, I know that many of the investors are sophisticated investors with prior experience
14 investing in non-publicly traded securities. Many of the investors are professionals, including
15 partners in law firms, accountants, business executives, executives in the financial sector, and
16 partners in business consulting firms.

17 4. Accredited SRA Funds investors holding at least 79% of the money still invested in
18 those Funds affirmatively support the Investor Group’s Alternative Plan of Distribution and
19 strongly oppose the SEC and the Receiver’s proposed Joint Distribution Plan. To my knowledge,
20 no SRA Funds investor has come forward to support the SEC and the Receiver’s proposal. In
21 contrast, no SRA Funds investor has come forward to oppose the Alternative Plan of Distribution.
22 This is true even though the Alternative Plan of Distribution would not compensate those SRA
23 Funds investors who invested in companies that have failed in the ordinary course of business, as
24 the Joint Distribution Plan would.

25 5. There is the same level of support (79%) among accredited SRA Funds investors for
26 Investor Rights LLC to serve as the new manager of the SRA Funds on a going forward basis if the
27 Alternative Plan of Distribution is approved by the Court. Again, no SRA Funds investor has come
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1 forward to oppose Investor Rights LLC's proposed role as the new manager. This is true even
2 though all of those investors have now been apprised of the allegations and opinions of the SEC,
3 the Receiver and Global Generation Partners concerning my background and involvement with the
4 SRA Funds.

5 6. In sum, the vast majority of SRA Funds investors affirmatively support the
6 Alternative Plan of Distribution and Investor Rights LLC's role as the new manager of the SRA
7 Funds, and affirmatively oppose the Joint Distribution Plan. Every SRA Funds investor that has
8 appeared to date to make his or her views known to the Court supports the Investor Group's
9 Alternative Plan of Distribution and opposes the SEC and the Receiver's proposed Joint
10 Distribution Plan. I believe that this uniformity in the views of the SRA Funds investors, the people
11 most affected by the Court's ultimate decision, is telling with respect to the relative merits and
12 fairness of the two competing plans and, at the least, their preference between the two competing
13 proposals.

14 7. The Receiver appears to suggest in its reply that the 21% of SRA Funds investors
15 that have not joined the Investor Group are the ones not being compensated under the Investor
16 Group's Alternative Plan of Distribution and that the Court should infer that this group is opposed
17 to that plan. This is not true. There are at least 47 SRA Funds investors within the Investor Group
18 who purchased \$6.7 million of investments in the six companies (i.e., Jawbone, Jumio, Glam Media,
19 Badgeville, oDesk and Virtual Instruments) that have essentially failed in the ordinary course of
20 business and will not be compensated for those investments under the Alternative Plan of
21 Distribution because the shares of those companies are now worthless. Based on the information
22 available to me at this time, this represents about 70% of the total money invested in these six
23 companies by the SRA Funds. Nonetheless, all 47 of these investors still affirmatively support the
24 Alternative Plan of Distribution and oppose the Joint Distribution Plan because overall the
25 Alternative Plan of Distribution is fairer and more consistent with their original investment
26 objectives.

1 8. Moreover, the inference the Receiver asks the Court to draw, that SRA Funds
2 investors who are silent oppose the Alternative Plan of Distribution and may support the Joint
3 Distribution Plan, is unsupported by anything in the record before the Court. Such an inference
4 would be contrary to the views of the 79% of investors that support the Alternative Plan of
5 Distribution and oppose the Joint Distribution Plan. It would also be contrary to the original,
6 documented investment objectives of the SRA Funds and, presumably, the investors in those Funds,
7 since all the Alternative Plan of Distribution seeks to do is fulfill the original, documented
8 investment objectives of the Funds to the extent possible.

9 9. The relatively small percentage of SRA Funds investors that have chosen to stay
10 silent may have done so for any number of reasons. For example, they could be of the view that
11 their SRA Funds investments are now being adequately protected by the Investor Group and its
12 counsel and see no need to become personally involved. Or, they might simply be unaware of what
13 is now before the Court because of lack of interest or lack of reliable contact information. In my
14 opinion, there is nothing before the Court that would allow it to infer that the investors who have
15 remained silent support or oppose either of the two plans.

16 **II. My Background and Involvement with the SRA Funds**

17 10. The SEC, the Receiver and Global Generation Partners appear to have no answer for
18 the fact that the overwhelming majority of SRA Funds investors (including those investors that will
19 not be compensated under the Alternative Plan of Distribution) affirmatively support the Alternative
20 Plan of Distribution and oppose the Joint Distribution Plan. Nor do they have an answer for the
21 fact that the SEC and the Receiver never solicited the views of any SRA Funds investors in crafting
22 their Joint Distribution Plan and that it now has zero support from SRA Funds investors.

23 11. Rather than address these important facts, the SEC, the Receiver and Global
24 Generation Partners, in their oppositions to the Alternative Plan of Distribution, attempt to make
25 this dispute about me personally instead, suggesting that I was intimately involved in the business
26 of the SRA Funds, personally profited from it, intend to somehow continue the alleged fraud
27 perpetrated by the defendants, and cannot be relied upon to faithfully act in the best interests of the
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1 investors. The SEC and the Receiver then call the Investor Group’s Alternative Plan of Distribution
2 the “Cilano Plan,” as if changing the name will improve their arguments and obscure the fact that
3 their plan has no support and the Alternative Distribution Plan has overwhelming support from the
4 true parties in interest – the investors.

5 12. The Court should reject the efforts of the SEC, the Receiver and Global Generation
6 Partners to wrongfully make this dispute about me personally through innuendo and misstatements.
7 First, the SEC, the Receiver and Global Generation Partners’ observations about me are either
8 wrong, contrary to the record, or misleading by omitting key facts or taking facts out of context.
9 Second, this dispute is not about me, and while I firmly believe that there is nothing in my past that
10 would prevent the Court from appointing Investor Rights LLC as the new manager of the SRA
11 Funds (particularly with all of the oversight and reporting that has been proposed as prudent checks
12 and balances), if the Court believes that there are legitimate issues, I would be willing to work
13 together with a reputable co-manager to implement the Alternative Plan of Distribution that the
14 SRA Funds investors overwhelmingly support.

15 13. As to my general background, I have been working actively as a professional in the
16 securities industry for more than 17 years. I have never personally been disciplined, suspended,
17 sanctioned or fined by any regulatory body with oversight of any aspect of the securities industry,
18 including the SEC and FINRA.

19 14. The SEC and Global Generation Partners suggest that I am not suitable to serve as
20 the new manager because four brokerage firms that I worked at in the past were subsequently
21 expelled by FINRA and are no longer in business. But, the facts are that I was not employed by
22 any of those firms when they were expelled and I have never been investigated or accused of
23 wrongdoing in connection with any of those firms. In fact, three of the firms were expelled years
24 after I left (for example, Legend was expelled eight years after I left), and while Halcyon was
25 expelled six months after I left, as my broker check record shows, I worked at that firm for less than
26 three months, and left quickly specifically because of my concerns about its business practices and
27 operations.

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1 15. With respect to my business dealings with the SRA Funds in particular, the fact that
2 I recommended the SRA Funds to many clients and that I was a major source of investors for the
3 SRA Funds (at least before any problems with the management of the Funds came to light) was not
4 a secret to either the SEC or to any of the SRA Funds investors that I was working with then or am
5 working with now. It is exactly for that reason that I am seeking to protect their investments at this
6 time.

7 16. I was always upfront with investors I worked with about the extent of my business
8 relationship with the SRA Funds. And, in my very first communication in May 2017 about this
9 lawsuit to potential members of the Investor Group, I made clear to everyone that I had represented
10 numerous investors in connection with their investments in the SRA Funds.

11 17. I have personally spoken with most, if not all, members of the Investor Group and
12 have always been forthcoming about my role in placing investors in the SRA Funds. This is not
13 something I hide – in fact, it is one of the reasons I have stepped forward now to try to help the
14 SRA Funds investors preserve their investments.

15 18. Many SRA Funds investors have asked me why I am willing to serve in a
16 management capacity pursuant to the Alternative Plan of Distribution in the face of opposition from
17 the SEC and the Receiver. The answer is, and has been, that I am willing to do so because: (i) a
18 number of SRA Funds investors asked me to step forward to do something to protect their
19 investments; (ii) I feel a personal obligation to do whatever I can to help the many investors that I
20 placed into the SRA Funds and, without my involvement, it appears that the views of these investors
21 would not be heard by the Court, and their investments in the SRA Funds would be unnecessarily
22 harmed by the Joint Distribution Plan; (iii) I want to preserve my good client relationships with the
23 investors; and (iv) receipt of the applicable management fees on a going forward basis will allow
24 me to satisfy the SRA Funds' broker obligations that remain outstanding.

25 19. The fact that so many SRA Funds investors have now come forward solely as a result
26 of my efforts, have organized and joined together to oppose the Joint Distribution Plan, and have
27 even committed additional funds to allow the SRA Funds to continue to operate, in my mind
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1 validates my efforts and refutes any suggestion by the SEC, the Receiver and Global Generation
2 Partners that I am not acting in the best interests of the SRA Funds investors.

3 20. Approximately \$16 million of the money invested in the SRA Funds came from
4 investors I was working with at the time of the investments. The total compensation I received for
5 these efforts was about \$674,000, which represents 4% of the \$16 million invested. There was
6 nothing improper about this compensation, which was both fully disclosed in the offering
7 documents for each of the Funds and well within the range of customary compensation for similar
8 services. For example, the Private Placement Memorandum (PPM) for SRA I LLC contains several
9 bolded paragraphs in the Introduction and Overview on pages 2-3 discussing the fact of and amount
10 of compensation that may be provided to placement agents. The Summary of Terms in the PPM
11 on pages 9-10 also explains in detail the marketing agent and placement fees and performance bonus
12 fees that may be paid to placement agents. The fees I received from the SRA Funds were disclosed
13 at inception and within the ranges set forth in the PPMs.

14 21. With respect to the SEC, according to documents it filed in opposition to the
15 Alternative Plan of Distribution, the SEC has been aware of my business relationship with the SRA
16 Funds for more than two and a half years (since at least January 2015). The SEC has known that I
17 had business dealings with the SRA Funds, that I was a major source of investors for the SRA
18 Funds, and that I received compensation from the SRA Funds for my work. The SEC has also had
19 complete access to all of the SRA Funds books and records for some time and has questioned all of
20 the corporate insiders.

21 22. Notwithstanding all of this information, which the SEC has possessed for some time,
22 (i) I was never a subject of the SEC investigation involving the SRA Funds, (ii) I was never
23 subpoenaed for documents, (iii) I was never interviewed by the SEC, and (iv) I was never deposed
24 by the SEC in the action. Moreover, neither the SEC nor the Receiver have identified me in their
25 Joint Distribution Plan as an insider of the defendants who should be excluded from participating
26 in any settlement distribution because I may have received commingled funds or personally have
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1 benefitted from the original sponsors' alleged fraud. I respectfully believe that I have always
2 conducted myself in an honest and forthright manner.

3 23. The SEC's lack of action, speaks far louder than its words. If the SEC truly thought
4 I had engaged in any wrongdoing with respect to the management of the SRA Funds or somehow
5 profited from those Funds in an improper manner, it would have acted on those beliefs. The fact
6 that the SEC did not do so should be dispositive at this late point in the proceeding; for the SEC to
7 insinuate otherwise in its opposition to the Alternative Plan of Distribution is misleading,
8 disappointing and damaging to my reputation.

9 **III. Tax Liens**

10 24. The SEC claims that I have \$140,000 of tax liens pending against me and questions
11 whether this information was disclosed to members of the Investor Group and whether it makes me
12 unsuitable to serve as the manager of the SRA Funds.

13 25. Because my income and business expenses vary in terms of timing and amounts, I
14 have had legitimate, good faith disputes with the IRS over the past decade about my federal tax
15 liability each year. While these disputes are ongoing, the IRS has filed tax liens against me with
16 respect to the disputed amounts, which represent only a portion of my income each year. I have
17 always paid the undisputed amounts when due and these are not the subject of any tax liens.

18 26. The SEC claims that the tax liens now total \$140,000. My understanding is that the
19 liens are substantially less than that amount. In any event, I have been working with my accountant
20 and the IRS over the past few months to resolve this ongoing dispute and expect to have all of the
21 tax liens resolved in the near future. I do not believe that the tax liens will in any way impact my
22 ability to serve as the manager of the SRA Funds.

23 27. I have attached as Exhibit A to this declaration a letter from my accountant
24 confirming that the liens are the result of legitimate disputes about my tax liability and that the liens
25 are in the process of being settled for substantially less than \$140,000.

26 28. As to the disclosure issue, information about my tax liens was emailed to all
27 members of the Investor Group. Any investor that wished to withdraw his or her support for the
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1 Alternative Plan of Distribution or for my role as the new investment manager for the SRA Funds
2 in light of this information was asked to contact the Investor Group's counsel. As of the filing of
3 this declaration, I am unaware of any member of the Investor Group who has done so, and a number
4 of SRA Funds investors have contacted me since receiving the email to express their continued
5 support for my efforts on behalf of all SRA Funds investors.

6 **IV. Information Provided to the Investor Group**

7 29. As I have stated above, I have always been forthcoming with SRA Funds investors
8 about the extent of my business relationship with the SRA Funds. Individuals and entities I was
9 working with at the time they invested in the SRA Funds knew that I had actively referred investors
10 into those Funds. And, when I set out to organize the Investor Group, I disclosed that fact in my
11 first communication.

12 30. In response to the Order, an additional update was emailed to all members of the
13 Investor Group providing information about my past business dealings with the SRA Funds and
14 about my tax liens. The update asked members of the Investor Group to contact the Investor
15 Group's counsel if any of the information set forth in the update raised any concerns or might cause
16 that individual to seek to withdraw his or her support for the Alternative Plan of Distribution or
17 having Investor Rights LLC serve as the new manager for the SRA Funds.

18 31. Counsel for the Investor Group will inform the Court at the hearing on September
19 28 whether any member of the Investor Group has advised as to whether he or she has withdrawn
20 his or her support in light of the latest update.

21 **V. The Commitments for Additional Capital**

22 32. The SEC and the Receiver question the nature and seriousness of the financial
23 commitments members of the Investor Group have made to contribute up to \$5 million in new
24 capital if the Alternative Plan of Distribution is approved by the Court. The Receiver has gone so
25 far as to claim that the commitments are not worth the paper they are written on. I disagree with
26 this view for several reasons.

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