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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;
FELIX INVESTMENTS, LLC; MICHELE J.
21 MAZZOLA; ANNE BIVONA; CLEAR
SAILING GROUP IV LLC; CLEAR
22 SAILING GROUP V LLC,

23 Relief Defendants.
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Case No: 3:16-cv-01386-EMC

**THE SRA FUNDS INVESTOR GROUP'S
RESPONSE TO THE RECEIVER'S
APRIL 11, 2018 EXPEDITED
APPLICATION RE CLAIMS
ADMINISTRATOR'S FEES AND WORK**

Date: N/A
Time: N/A
Courtroom: 5
Judge: Hon. Edward M. Chen

1 The SRA Funds Investor Group (the “Investor Group”) respectfully submits this response
2 to the Receiver’s April 11, 2018 administrative application for (i) the retroactive approval of fees
3 incurred to date by claims administrator JND Corporate Services (“JND”); and (ii) the approval of
4 additional work to be performed by JND, along with additional fees to be paid to JND for that work.
5 The Investor Group is both surprised and frustrated by the Receiver’s application. While the
6 Investor Group wants the claims administration process to be completed quickly so that the Court
7 and the parties will know definitively whether there are any share shortfalls in any of the SRA Funds
8 and in what amounts, the Receiver’s recent revelation that it neither contemplated nor budgeted for
9 a full claims process that would provide these answers comes as a bit of a shock. More distressing
10 to the Investor Group is the Receiver’s proposal to spend at least another \$45,000—three times the
11 amount previously applied for and approved by the Court—and substantial additional time to
12 complete a claims process to address this core question.

13 It has been obvious for some time that before any distribution plan can be approved and
14 implemented, the core question of whether or not there are share shortfalls in any of the SRA Funds
15 (and how big those shortfalls, if any, might be) needs to be answered. It has been equally obvious
16 to all involved that the only way to answer this question is to administer a claims process, and not
17 rely on the corporate records of the SRA Funds that are known to be incomplete. To this end, the
18 Court approved a claim form in November 2017, and in December 2017, it approved a notice
19 procedure and set a cut-off date for the submission of claims forms. *See* ECF Nos. 279 and 288.

20 In December 2017, the Receiver asked the Court to approve the retention of JND as the
21 claims administrator to administer the claims process, which included sending out the claim forms,
22 processing the completed forms and communicating with investors and creditors about the claims
23 process. *See* ECF Nos. 282 and 282-1. The budget provided at the time was \$15,000, which seemed
24 appropriate considering that most of the claim forms would be pre-populated and that the number
25 of claim forms to be send out and then processed was limited. The Court approved the retention of
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1 JND as the claims administrator and instructed the Receiver to seek the Court's permission if JND's
2 work was going to exceed \$15,000. *See* ECF No. 283.

3 What the Receiver submitted in early December 2017 and asked the Court to approve was
4 a typical claims process, including both notice and claims administration. At the end of that process,
5 the Receiver should have been able to provide the Court and the parties with a list of valid timely-
6 submitted, potentially valid late-submitted claims, and claims deemed invalid. At no point in its
7 December 2017 application did the Receiver inform the Court or the parties that what it was
8 submitting in its application was simply "stage one" of a multi-stage process that would end up
9 costing exponentially more than \$15,000, and take months and months to complete. Nor did the
10 Receiver inform the Court or the parties that what it was actually proposing four months ago was
11 that JND would simply send out claim forms and enter claim information for returned forms, but
12 not take any steps to validate returned forms. Typically, that is precisely what the process of "claims
13 administration" means.

14 The Receiver suggests in its current application that the four-fold cost increase and lengthy
15 process now proposed was not contemplated when the original application to retain JND was
16 submitted, and that the Receiver only understood a full claims process would be necessary after the
17 Court, in the Receiver's view, increased the scope of the work the claims administrator needs to
18 perform in its February 9, 2018 order, which directed the Receiver "*to complete its review, including*
19 *validation of the claims*" received by the claims administrator. *See* ECF No. 326 at p. 2, citing Feb.
20 9, 2018 Order (ECF No. 309) (italics added). The Receiver's contention on this point cannot be
21 squared with the record, however.

22 The Investor Group does not view the Court's February 9 Order as a directive to the
23 Receiver that it enlarge the work of the claims administrator but, rather, as a reiteration of the
24 Court's expectation that the Receiver would, as a result of the previously-approved claims
25 administration process, provide the Court and the parties with a list of valid claims and identify any
26 share shortfalls determined in that process—and that the Receiver would do so promptly, that is,

1 within a few weeks. *See* ECF No. 309. The Court's Order does not specify, nor contemplate, that
2 JND's claims administration duties would expand in any way. It merely directs that the process be
3 completed to address the core share shortfall issue. This is precisely what the claims process
4 originally proposed by the Receiver should have determined.

5 For the Receiver to now claim surprise that the Court and the parties need this necessary
6 information, and to admit that it never intended to provide it when the JND application was
7 originally submitted, reflects very poorly on the Receiver and on the SEC, which has been standing
8 side-by-side with the Receiver throughout this process and certainly should know better. Did the
9 Receiver and the SEC really think that a process by which claim forms were mailed out and
10 returned, but not validated, would provide any meaningful information to the Court and the parties?

11 Regrettably, the claims process is apparently still not completed (the Receiver has not
12 provided a date certain) and will—if the Receiver's current application is approved—end up costing
13 the investors more than \$80,000 when done (the \$60,000 estimate does not include the Receiver's
14 costs, which are likely to be substantial too). Some of these increased costs have already been
15 incurred without the Court's prior approval. Using the budget now proposed, the Receiver
16 ultimately anticipates spending almost \$100 to process each claim form, on average. This is a
17 significant sum, particularly in case such as this, which involves a limited universe of claimants.
18 The Investor Group certainly would have raised a concern had it known of this additional expense
19 back in December 2017. And, it is at least likely that the Court would have probed the Receiver on
20 the reasonableness and necessity for this expense in deciding whether to approve the Receiver's
21 original claims administration application.

22 The Investor Group understands that the claims process needs to be completed. Indeed, that
23 is precisely why it supported the original application to retain JND as the claims administrator. But,
24 the Investor Group does not support the excessive claims administration costs now proposed. Nor
25 does it support the lengthy delays and the burdens this has imposed on the Court and the parties.

1 The Investor Group respectfully requests that the Court give careful scrutiny to the overall
2 cost of the claims administration process in this case (including any fees that will be billed by the
3 Receiver), and that the Court set a firm deadline by which the claims process be completed. The
4 Court should also consider whether some or all of the increased claims administration costs now
5 being requested by the Receiver, if approved, not be billed to SRA investors but be paid for, in
6 whole or in part, from other sources.

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Respectfully submitted,

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DATED: April 16, 2018

PRITZKER LEVINE LLP

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By: /s/ Jonathan K. Levine

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Jonathan K. Levine

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Attorneys for the SRA Funds Investor Group

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