

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 CHRISTOPHER D. SULLIVAN (148083)  
9 [csullivan@diamondmccarthy.com](mailto:csullivan@diamondmccarthy.com)  
10 STACEY L. PRATT (124892)  
11 [stacey.pratt@diamondmccarthy.com](mailto:stacey.pratt@diamondmccarthy.com)  
12 DIAMOND MCCARTHY LLP  
13 150 California Street, Suite 2200  
14 San Francisco, CA 94111  
15 Telephone: (415) 692-5200  
16 *Counsel for Successor Receiver*

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

Defendants, and

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

Relief Defendants.

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

**DECLARATION OF KATHY BAZOIAN  
PHELPS IN SUPPORT OF RECEIVER'S  
MOTION FOR INSTRUCTIONS  
REGARDING INVESTOR ADVISORY  
COMMITTEE**

Date: April 7, 2020  
Time: 10:30 a.m.  
Place: Courtroom: 5  
450 Golden Gate Ave.  
San Francisco, CA  
Judge: Edward M. Chen

1 I, Kathy Bazoian Phelps, declare:

2 1. Pursuant to this Court’s Revised Order Appointing Receiver, entered on February 28,  
3 2019, I was appointed as the successor receiver (“Receiver”) in this case. I am also an attorney  
4 duly licensed to practice in the State of California and am senior counsel at the firm of Diamond  
5 McCarthy LLP (“Diamond McCarthy”). I have personal knowledge of the matters set forth below  
6 and if called as a witness, I would and could testify competently to the matters stated herein.

7 2. This declaration is made in support of the Motion by Receiver Kathy Bazoian Phelps  
8 for Instructions Regarding Investor Advisory Committee.

9 3. At the time of my appointment, the SEC and the former Receiver, on the one hand, and  
10 the SRA Funds Investor Group (“Investor Group”), on the other hand, were promoting competing  
11 plans of distribution. At the request of the Court, I proposed a distribution plan and at hearings on  
12 June 27, 2019, October 7, 2019 and January 30, 2020, the Court made interim finds and rulings  
13 relating to claims and plan issues.

14 4. Based upon the Court’s prior comments and rulings, and negotiations with the SEC, the  
15 Investor Group, and Progresso Ventures, I filed my motion for approval of my proposed final  
16 Distribution Plan (“Plan”) which is set for hearing on April 7, 2020. (the “Motion”) (Doc. No.  
17 570).

18 5. The Motion provided notice of the opportunity to serve on an Investor Advisory  
19 Committee (“IAC”) to consult with me regarding the liquidation of securities in connection with  
20 the Plan implementation. Any investor who was interested in serving on the IAC was required to  
21 submit an application to me by March 9, 2020. (Doc. No. 570, p. 1). Additionally, I considered as  
22 candidates the members of the Investor Group identified in that Investor Group’s Proposed  
23 Alternative Distribution Plan [Doc No. 407-1].

24 6. I received applications from Demetrios Mallios and Paul A. Lavery. Additionally, I  
25 confirmed that Peter Healy, Charles Pope and Robert Brunner, who had previously been presented  
26 by the Investor Group as candidates to serve on the IAC, each want to serve on the IAC. The  
27 Investor Group had also previously suggested John Woods as a candidate, but I have been unable  
28 to confirm whether Mr. Woods continues to wish to serve on the IAC.

1           7. The Motion further provided that, following the March 9, 2020 deadline for submission  
2 of applications, I would meet and confer with the SEC, the Investor Group, and Progresso  
3 Ventures, LLC regarding the applications submitted in an attempt to reach an agreement on the  
4 individuals who would serve on the IAC. (Doc. No. 570, p. 2)

5           8. On March 10, 2020, I initiated the meet and confer process with the SEC, the Investor  
6 Group, and Progresso Ventures, LLC. The parties were able to reach an agreement as to the six  
7 applicants set forth in paragraph 6 hereof. However, in a March 10, 2020 email, Jonathan Levine,  
8 the Investor Group’s counsel, took the position that Joshua Cilano is entitled to serve on the IAC  
9 because “the Court previously considered him to be a member of the IAC.” I inquired further about  
10 that conclusion since I was not aware of any finding of who should serve on the IAC but have not  
11 received any further information. In the meantime, Joshua Cilano did not submit an application to  
12 serve on the IAC.

13           9. The SEC voiced its objection to the Investor Group regarding its request that Mr.  
14 Cilano be permitted to serve on the IAC. As the parties have been unable to resolve the issue of the  
15 Investor Group’s request that Mr. Cilano serve on the IAC, I bring this motion for the Court’s  
16 instructions in that regard. It is my understanding that the SEC intends to file an objection to Mr.  
17 Cilano’s appointment to the IAC.

18           10. I have not received Mr. Cilano’s statement of qualifications to serve on the IAC.  
19 Additionally, Mr. Cilano has asserted a claim for backend fees, which would be an unsecured  
20 claim, if allowed. The interests of unsecured creditors and investors are not necessarily aligned  
21 under the terms of the Plan, which could place Mr. Cilano in a conflict position. I am nevertheless  
22 willing to communicate with Mr. Cilano, whether on or off the IAC, to the extent he has views he  
23 wishes to share regarding the timing of liquidation of securities. I do not view Mr. Cilano’s, or any  
24 other investors’, participation on the IAC as mutually exclusive of other investors’ ideas.

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1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed on this 13th day of March 2020 at Los Angeles, California.

3 */s/ Kathy Bazoian Phelps*

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Kathy Bazoian Phelps

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