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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  
ADVISORS, LLC; SRA  
19 MANAGEMENT ASSOCIATES,  
LLC; FRANK GREGORY  
20 MAZZOLA,

21 Defendants, and

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

25 Relief Defendants.  
26  
27  
28

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

**DECLARATION OF KATHY BAZOIAN  
PHELPS IN SUPPORT OF RECEIVER'S  
REPLY TO OPPOSITION OF JOSHUA  
CILANO TO PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION'S  
OBJECTIONS TO RECEIVERSHIP  
CLAIMS BY MICHELE MAZZOLA AND  
JOSHUA CILANO FOR MANAGEMENT  
FEES**

Date: May 13, 2020  
Time: 10:00 A.M.  
Location: Courtroom 5, 17<sup>th</sup> Floor  
450 Golden Gate Ave.  
San Francisco, CA 94102  
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 duly  
4 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 Reply to the Opposition of Joshua Cilano  
8 (the “Cilano Opposition”) to Plaintiff’s Securities and Exchange Commission’s Objections to  
9 Receivership Claims by Michele Mazzola and Joshua Cilano for Management Fees [Doc. No. 572].  
10 I, as Receiver, joined in the Securities and Exchange Commission’s (“SEC”) objections [Doc. No.  
11 579].

12 3. Contrary to the representations made in the Cilano Opposition at page 2, I have never  
13 reached an agreement with Mr. Cilano regarding his claim and was startled to see that  
14 representation made. After reviewing the Cilano Opposition, I contacted counsel for Cilano, Esfand  
15 Nafisi, regarding the statement made in the Cilano Opposition about a supposed compromise of the  
16 Cilano claim. I noted that such a statement was not included in the Cilano declaration. Although  
17 counsel insisted on the veracity of the statement in the Opposition, the Cilano Declaration has not  
18 been amended to include such a statement regarding a supposed settlement.

19 4. A true and correct copy of the portion of the June 27, 2019 Transcript, p. 32, lines 1-4,  
20 is attached hereto as Exhibit “1,” which reflects the Court’s findings that, based on everything I’ve  
21 seen, whether or not he was personally culpable for some of the alleged misconduct, he did play a  
22 central role in the transaction and the process.”

23 5. Following the Court’s June 27, 2019 Minute Order that provided that Cilano’s claim  
24 for backend fees was to be disallowed, I did not engage in any discussions with Cilano regarding  
25 allowance of his claim, which would have been in contravention of the Court’s Order.

26 6. A true and correct copy of the portion of the January 30, 2020 transcript, which reflects  
27 the parties’ and the Court’s discussion of the objectionable nature of Cilano’s claims is attached  
28

1 hereto as Exhibit “2.” Cilano’s counsel argued that Cilano was entitled to due process notice of an  
2 objection to his claims, so clearly, no “compromise” on the claim had been reached.

3 7. Following the January 30, 2020 hearing, I then had multiple communications with  
4 Cilano’s then counsel of record, Jonathan Levine and Elizabeth Pritzker, about the objectionable  
5 nature of Cilano’s claim. Mr. Levine advised that Cilano would be engaging new counsel to deal  
6 with the claim objection issue. There is no doubt that Mr. Levine knew that no “compromise” of  
7 the claim had been reached.

8 8. I have proceeded to negotiate with the parties and proposed a Plan of Distribution  
9 based upon the Court’s prior rulings in this case, including the June 27, 2019 Order that provided  
10 that Cilano would not be allowed an unsecured claim for backend fees. The allowance of a claim  
11 for Cilano for backend fees would significantly change the equities of the Plan.

12 9. I am advised that Cilano has already received commissions of about \$675,000 in  
13 connection with his efforts to “guide” investors into this scheme. I do not believe that payment of  
14 any additional fees or commissions is appropriate.

15  
16 I declare under penalty of perjury under the laws of the United States of America that the  
17 foregoing is true and correct. Executed on this 1st day of April 2020 at Los Angeles, California.

18  
19 /s/ Kathy Bazoian Phelps  
20 Kathy Bazoian Phelps  
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# Exhibit 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

SECURITIES AND EXCHANGE )  
COMMISSION, )

Plaintiff, )

VS. )

No. C 16-1386 EMC

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

Defendants. )

San Francisco, California  
Thursday, June 27, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

U.S. SECURITIES AND EXCHANGE COMMISSION  
44 Montgomery Street, Suite 2800  
San Francisco, California 94104

**BY: JOHN S. YUN, ESQ.**

U.S. SECURITIES & EXCHANGE COMMISSION  
200 Vesey Street, Suite 400  
New York, New York 10281-1013

**BY: PATRICIA SCHRAGE, ESQ.**  
(Appearing by telephone)

(Appearances continued on next page)

Reported By: Katherine Powell Sullivan, CSR #5812, CRR, RMR  
Official Reporter - U.S. District Court

**APPEARANCES:**

For Defendants the SRA Funds Investor Group:

PRITZKER LEVINE LLP  
180 Grand Avenue, Suite 1390  
Oakland, California 94612

**BY: ELIZABETH C. PRITZKER, ESQ.**

For Successor Receiver:

DIAMOND MCCARTHY LLP  
1999 Avenue of the Stars, Suite 1100  
Los Angeles, California 90067-4402

**BY: KATHY BAZOIAN PHELPS, ESQ.**

For Interested Party Progresso Ventures, LLC:

HOLWELL SHUSTER & GOLDBERG LLP  
425 Lexington Avenue  
New York, New York 10017

**BY: AVI ISRAELI, ESQ.**

For Claimant Pradeep Sindhu:

BINDER & MALTER, LLP  
2775 Park Avenue  
Santa Clara, California 95050

**BY: WENDY W. SMITH, ESQ.**  
(Appearing by telephone)

1 Thursday - June 27, 2019

3:06 p.m.

2 P R O C E E D I N G S

3 ---000---

4 **THE CLERK:** Calling civil action 16-3816,  
5 Securities and Exchange Commission versus Bivona, et al.

6 Counsel, please state your appearances for the record.

7 **MR. YUN:** Good morning, Your Honor. John Yun  
8 appearing on behalf of the Securities and Exchange Commission.

9 The receiver is outside, changing a flight.

10 **THE COURT:** Okay.

11 **MS. PRITZKER:** Good afternoon, Your Honor. Elizabeth  
12 Pritzker, Pritzker Levine. I'm here on behalf of the SRA Funds  
13 Investor Group.

14 **THE COURT:** Great. Thank you, Ms. Pritzker.

15 **MR. ISRAELI:** Good afternoon, Your Honor. Avi  
16 Israeli, Holwell Shuster & Goldberg, on behalf of Progresso  
17 Ventures.

18 **THE COURT:** All right. Thank you, Mr. Israeli.

19 **MR. YUN:** I think there are people on the phone too.

20 **MS. PHELPS:** Good afternoon, Your Honor. Kathy Phelps  
21 with the receiver.

22 **THE COURT:** All right. Good afternoon, Ms. Phelps.

23 And on the phone.

24 **MS. SMITH:** This is Wendy Smith, of Binder & Malter,  
25 on behalf of Claimant Pradeep Sindhu.

1           **MS. SCHRAGE:** Your Honor, Patricia Schrage, with the  
2 Securities and Exchange Commission in New York.

3           **THE COURT:** Okay. All right. Is that it? Great.  
4 Thank you.

5           Hopefully, we're close to the end of the road in terms of  
6 what we have to do. I am pleased that the parties have come to  
7 see things on the same page for the most part. There are a few  
8 details that I do want to clarify, so let me just go over a  
9 couple of those.

10           One is how the unsecured creditors will be paid. I think  
11 the notion is that they will be paid along with investors on a  
12 rolling basis. I guess, how would that work?

13           There's a liquidity event. And I know that there are  
14 certain priority things are going to have to go out, including  
15 the amount for the plan funds and some other things. But when  
16 we actually get to the point where there is a liquidity event,  
17 how is that going to work in terms of the creditors?

18           **MS. PHELPS:** Well, Your Honor, you zeroed right in on  
19 the biggest problem with the previous plan and the logistical  
20 issues with this plan. So, congratulations.

21           **THE COURT:** Well, thank you.

22           **MS. PHELPS:** Can I back up before I answer that  
23 question?

24           **THE COURT:** Yeah.

25           **MS. PHELPS:** We've come a really, really long way.

1           One is the claim of Mr. Solano. And, based on everything  
2 I've seen, whether or not he was personally culpable for some  
3 of the alleged misconduct, he did play a central role in the  
4 transaction and the process.

5           And I think there's a strong equitable argument that it  
6 would be inevitable for him to earn commissions and back-end  
7 fees. And so I'm inclined to disallow that claim.

8           Nobody here objects to that.

9           **MS. PRITZKER:** We don't represent Mr. Solano  
10 personally, so I'm at pains to make an argument on his behalf.

11           **THE COURT:** Okay. Well, you know, I want to be fair  
12 to everyone, but it does seem a pretty strong equitable basis  
13 for saying that he should not be entitled to that.

14           And then there's a stipulation with respect to Progresso's  
15 claim that's been reached. And I will approve that  
16 stipulation.

17           Advisory committee we just talked about.

18           Authorization to commence litigation, that will be done, I  
19 guess, on a case-by-case basis as you decide you need to  
20 initiate litigation.

21           **MS. PHELPS:** Does that mean, Your Honor, before I want  
22 to file any lawsuit I should seek approval of the Court?

23           **THE COURT:** Well, let me ask your view.

24           Do you view that as too burdensome or too slow a process?  
25 Does that -- what are the views of people in this room about



# Exhibit 2

Pages 1 - 57

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

SECURITIES AND EXCHANGE COMMISSION, )  
Plaintiff )  
VS. ) NO. C 16-01386 EMC  
JOHN V. BIVONA, et al., ) San Francisco, California  
Defendants. )

Thursday, January 30, 2020

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiff: U.S. SECURITIES AND EXCHANGE COMMISSION  
44 Montgomery Street  
Suite 2800  
San Francisco, California 94104  
**BY: JOHN S. YUN, ESQ.**

For Interested Party SRA Funds Investor Group:  
PRITZKER LEVINE, LLP  
180 Grand Avenue  
Suite 1390  
Oakland, California 94612  
**BY: JONATHAN K. LEVINE, ESQ.  
ELIZABETH PRITZKER, ESQ.  
PATRICIA SCHRAGE (Telephonic)**

Also Present: **KATHY PHELPS, Receiver**

Reported By: **BELLE BALL, CSR 8785, CRR, RDR**  
Official Reporter, U.S. District Court

1 **Thursday - January 30, 2020** **2:13 p.m.**

2 **PROCEEDINGS**

3 **THE CLERK:** Calling Civil Action 16-1386, Securities

4 and Exchange Commission versus Bivona, et al.

5 Counsel, please approach the podium and state your

6 appearances for the record.

7 **MR. YUN:** Good afternoon, Your Honor. John Yun

8 appearing on behalf of plaintiff United States Securities and

9 Exchange Commission.

10 **THE COURT:** All right. Good afternoon, Mr. Yun.

11 **MS. PHELPS:** Good afternoon, Your Honor. Kathy

12 Phelps, the Court-appointed successor receiver in this matter.

13 **THE COURT:** Good afternoon, Ms. Phelps.

14 **MS. PRITZKER:** Good day, Your Honor. Elizabeth

15 Pritzker, Pritzker Levine, on behalf of the SRA investors

16 group.

17 **THE COURT:** Good afternoon, Ms. Pritzker.

18 **MR. LEVINE:** Good afternoon, Your Honor. Jonathan

19 Levine, also for the investor group.

20 **THE COURT:** Thank you, Mr. Levine.

21 It seems to me there are -- there are arguments, if we get

22 into the weeds about whether or not there was a QSF formed upon

23 entry of this Court's order, and what it extends to. I mean, I

24 could see some argument, depending on how you read these

25 things. But the problem is there are risks attendant to taking

1 the more aggressive position.

2 That is, yes, there may be an argument. But in order to

3 pursue the argument and pursue the alternative -- which, I do

4 want to find out more about what the alternative is so I make

5 sure I understand it -- I want to point out that means -- that

6 may mean I don't know if we get a ruling or we wait until the

7 IRS makes its move and then we have to hold a certain amount of

8 funds in -- you know, it -- it's certainly not a clear path to

9 sort of ignore the QSF route. There may be a way out, but it

10 seems a little iffy to me.

11 And then we do also have the opinions of the consultants

12 that the receiver have retained indicating that -- I don't know

13 if you want to call it the more conservative or the more

14 cautious route to go is one that makes the most sense, at least

15 from a tax perspective.

16 I guess I would like to know more from both sides, that if

17 we were to go the route of the investor group, what does that

18 look like? And what would that require, and what does it take?

19 why don't you map that out for me.

20 **MR. LEVINE:** If I -- thank you, Your Honor. Let me

21 just address sort of the QSF issue first, if I may. I actually

22 think it's not complicated. And it doesn't need an SEC

23 advisory, an IRS advisory opinion.

24 As I understand, sort of big-picture, the argument of the

25 receiver, as I understand that, is that the act of creating the

1 order that the Court signs that creates the receivership

2 simultaneously creates a QSF over all the assets of that

3 receivership. That's the fundamental premise, I think, of the

4 receivership.

5 **THE COURT:** Does it effectively -- segregated, in a

6 sense, segregated the funds or put them under the jurisdiction

7 or the control of the -- the receiver?

8 **MR. LEVINE:** well, so -- well, before we get to

9 segregation, let's just take the broad principle that I think

10 is being espoused, that when Your Honor signed the order

11 creating the receivership, that automatically, as a matter of

12 law, created a qualified settlement fund over all of the assets

13 that are part of that receivership.

14 And we think that premise is fundamentally flawed. It's

15 without basis in the law or fact. All receiverships are not

16 QSFs. If that is the case, why do you need language in a

17 receivership order specifically creating a QSF over only pieces

18 of the receivership? I mean, why do you need that? It's

19 surplusage.

20 We know that there are other receiverships, including SEC

21 receiverships, in this district in which there is no QSF. It

22 is not part of the order, and no QSF has been established.

23 So the act -- and there is no authority that says:

24 Receivership equals -- if we turn it into a math equation --

25 receivership equals QSF. That is -- that proposition I just

1 investment advisory group. And I want that changed to make  
2 sure that group is still there.

3 With respect to disallowance of claims by Joshua Solano,  
4 in the June order I'd permitted him to recover on his personal  
5 investor claim. And I think that should be clarified.

6 I don't know if there are other points in the --

7 **MR. LEVINE:** Well, yes, Your Honor. As a procedural  
8 matter, we don't represent Mr. Solano individually, but his  
9 claim -- the receiver filed a motion to disallow certain  
10 claims. Mr. Solano's claim was not included in that motion.  
11 He was not provided notice that his claim was going to be  
12 disallowed. He's had no opportunity to hire a lawyer yet, or  
13 to be heard on it.

14 As just a matter of fairness, if the Court is going to  
15 disallow it based upon the SEC getting up in the middle of a  
16 hearing, Mr. Solano should have an opportunity to be heard, and  
17 to hire a lawyer to argue --

18 **THE COURT:** Well, if he gets the notice that we're  
19 talking about, he'll get -- he'll certainly have an  
20 opportunity, and I will listen to him if he objects to that  
21 part of the plan -- the proposed plan.

22 **MR. LEVINE:** Yeah. I mean, I think there's also a  
23 problem that he's deemed an insider, which this Court has ruled  
24 he's not an insider. We've had that fight a dozen times  
25 already. So for it to keep reappearing in plans is kind of

1 frustrating.

2 But I don't represent Mr. Solano individually, but he  
3 should have an opportunity to be heard. And the investor  
4 group, you know, should -- should remain.

5 **THE COURT:** Well, as I recall, I did address this  
6 issue in the June order. And that's what I'm saying. I want  
7 what's going to be noticed to reflect that June order, and not  
8 a change. If he has an objection to that, he'll have a  
9 due-process opportunity to do -- and everybody else who have  
10 other objections may do so as well.

11 But I do want to get this to the next stage, because it's  
12 now been pending, and we delayed this for the tax treatment for  
13 a long time.

14 **MR. YUN:** And yes, on the advisory group, I thought  
15 that had been rather thoroughly discussed at a prior hearing.

16 Ms. Phelps said: I will talk to anyone, anyway. I mean,  
17 I don't need to have a formal group to get input. And I  
18 thought that was where things were left. So long as she was  
19 soliciting input from investors, we were where we needed to be,  
20 whether or not a formal committee was ever appointed. That's  
21 my recollection.

22 **THE COURT:** Well, are you --

23 **MS. PHELPS:** Your Honor, I don't mind having a  
24 committee. But I do think that there was a bit of an issue as  
25 to who was going to be on that committee.

1 **MR. YUN:** Right.

2 **MS. PHELPS:** Right?

3 **THE COURT:** I do have a question about that, because  
4 I -- I think I sent out an order asking for an explanation  
5 about that. And it appears that the group represents 34,  
6 roughly, percent of the investors? Or what?

7 **MR. LEVINE:** No, Your Honor. The group -- I mean,  
8 the group -- we've never counted by numbers. We've counted by  
9 value of initial investment. That was always the baseline  
10 which we used. It was about 80 percent of the original money  
11 invested. The number has gone up since we first started in the  
12 case. Not down. Some of those claims have been disallowed.

13 But that wasn't the question that was asked. The question  
14 was: Who is in the investor group? The answer is: The people  
15 for which we have identified in our various notices, our  
16 understanding is that represents approximately 80 percent of  
17 the original money that was at issue in this case.

18 And obviously, Telesoft also stands with us in terms of  
19 our position in the case.

20 **THE COURT:** Well, so, I mean, I don't see what the  
21 problem is.

22 I mean, maybe as a matter of fairness, due process, the  
23 proposed order could say that if somebody else wants to be on  
24 the advisory committee or whatever it's called, they can submit  
25 an application so that if you're not in that group, you're not

1 necessarily foreclosed.

2 But I would leave it to the --

3 **MS. PHELPS:** I thought there were specific names.

4 **MR. YUN:** Yes. That was the other issue, which is  
5 that the investor group had put forward five names. And our  
6 concern was because this is a committee operating in a  
7 receivership created by the Court, it should be an open  
8 process, rather than one group of investors designating the  
9 representatives.

10 That was a concern we had, a process question.

11 **THE COURT:** All right. Maybe we should phrase it as  
12 -- in this order, we should say: Those who -- if you're  
13 interested in being on the advisory committee, submit your  
14 application.

15 And chances are, if nobody else submits their application  
16 and these five are there, that's who I'm going to go with. And  
17 that may very well happen, but you're right, I think there may  
18 be somebody else out there that's significant, may have an  
19 interest. And I want to be democratic about this.

20 **MS. PHELPS:** Yes, Your Honor. And I do think that  
21 the 34 percent is bodies who are investors. And they do --

22 **THE COURT:** By number of people, as opposed to  
23 interests held.

24 **MS. PHELPS:** Exactly. And you know, I think every  
25 person should have an opportunity to receive notice --

1 the receiver plans on filing, we'd like to see --

2 **MS. PHELPS:** Of course.

3 **THE COURT:** Okay.

4 **MR. LEVINE:** -- and maybe try to comment beforehand.

5 **THE COURT:** Okay.

6 **MR. LEVINE:** Otherwise we're going to have to file a

7 response.

8 **MS. PHELPS:** It's going to look like the redline

9 there, with the changes to the investor group that we just

10 discussed today. But yes, I'm happy to share that.

11 **THE COURT:** All right. So that will be the next

12 step. Do we need to set a -- I mean, you're going to set that

13 hearing date. Do we --

14 **MS. PHELPS:** I will set a hearing date when I file

15 the final motion.

16 **THE COURT:** So I don't need to set a further status.

17 That will be our next status date, I assume.

18 **MS. PHELPS:** Yes, I believe so.

19 **THE COURT:** Great. Thank you.

20 **MS. PHELPS:** Thank you very much, Your Honor.

21 **MR. LEVINE:** Thank you, Your Honor.

22 **THE COURT:** Thank you.

23 (Proceedings concluded)

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4 **CERTIFICATE OF REPORTER**

5 I, BELLE BALL, Official Reporter for the United States

6 Court, Northern District of California, hereby certify that the

7 foregoing is a correct transcript from the record of

8 proceedings in the above-entitled matter.

9

10 *Belle Ball*

11 \_\_\_\_\_

12 /s/ Belle Ball

13 Belle Ball, CSR 8785, CRR, RDR

14 Monday, February 10, 2020

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