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 14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

17 SECURITIES AND EXCHANGE
 18 COMMISSION,

19 Plaintiff,

20 vs.

21 JOHN V. BIVONA, et al.,

22 Defendants, and

23 SRA I LLC, et al.,

24 Relief Defendants.

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

**THE SRA FUNDS INVESTOR
 GROUP AND CLAIMANT JOSHUA
 CILANO’S JOINT RESPONSE TO
 THE SEC’S OBJECTION TO MR.
 CILANO’S APPOINTMENT TO
 THE INVESTOR ADVISORY
 COMMITTEE**

Date: May 13, 2020
 Time: 10:00 AM
 Courtroom: 5
 Judge: Hon. Edward M. Chen

1 **INTRODUCTION**

2 The SRA Funds Investor Group (“Investor Group”) and Claimant Joshua Cilano respectfully
3 submit this joint response to the Securities and Exchange Commission’s objection to Mr. Cilano’s
4 appointment to the Investor Advisory Committee (“IAC”). For the reasons set forth below, the SEC’s
5 objection should be overruled and Mr. Cilano should be appointed to the IAC.

6 **ARGUMENT**

7 The IAC that will be created by the proposed distribution plan now before the Court is purely
8 advisory, has no decision-making authority, and exists solely to assist the receiver in implementing
9 certain aspects of the distribution plan, and only then when the receiver has affirmatively asked for
10 the IAC’s advice. Even when the advice has been requested and provided, the receiver is under no
11 obligation to follow it. And, if the receiver does not ask for assistance, the IAC may ultimately have
12 no role at all. Against this backdrop, it is astounding that the receiver, who previously stated that the
13 composition of the IAC was “not a significant issue”¹ that does not “matter[] all that much,”² felt the
14 need to waste receivership funds filing yet another “motion for instructions,” and that the SEC felt
15 compelled to waste money and judicial resources objecting to Mr. Cilano’s appointment to a purely
16 advisory committee with no power.

17 Mr. Cilano has requested to be appointed to the IAC and is eminently qualified to serve in
18 that role. He has important (and needed) investment expertise, an ongoing relationship with most of
19 the investors still in the SRA Funds, and extensive knowledge of the SRA Funds -- all as demonstrated
20 in earlier filings in this case. The vast majority of investors *want* Mr. Cilano appointed to the IAC for
21 these very reasons, and because Mr. Cilano steadfastly championed the investors’ interests
22 throughout this receivership. Moreover, as the receiver has pointed out in her filing (Dkt. No. 583 at
23 p. 5), the Court invited Mr. Cilano to serve on the IAC precisely because of his relevant expertise:

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25 ¹ Transcript of Proceedings, Dkt. No 507, 28:3-4 (June 27, 2019) (“Again, to me, this is a – it’s
not a significant issue to me because I’m going to talk to anybody anyway.”)

26 ² *Id.* at 27:10-11 (“So from my personal viewpoint, I’m not sure that it matters all that much to me
27 who’s on this advisory group, because I will talk to anybody whether they’re on this committee or
not.”)

1 While the Court declines to adopt the governance model, Mr. Cilano, who is himself
2 a member of the Investor Group, can still contribute his expertise to the Receiver as
3 a member of the investment advisory committee.

4 Dec. 20, 2018 Order re Proposed Distribution Plans, Dkt. No. 443, fn. 4.

5 The SEC ignores all of these facts, arguing that because Mr. Cilano has now also asserted a
6 claim as a creditor (in addition to his investor claim), he has a potential conflict with investors who
7 only have investor claims. The SEC's objection, based on this purported conflict between Mr.
8 Cilano's role as an investor claimant and as a creditor claimant is meritless and should be overruled.
9 As an initial matter, Mr. Cilano only filed one claim, more than two years ago. Thus, when the parties
10 were before the Court in December 2018 discussing Mr. Cilano's potential role on the IAC (instead
11 of his role as an operational manager), and the Court then invited Mr. Cilano to contribute as a
12 member of the IAC, the very fact that Mr. Cilano had both an investor claim and a creditor claim had
13 been known to all for months. The SEC's objection is thus too little and too late.

14 Substantively, the SEC's objection is based on a false premise and completely ignores the
15 limited advisory role of the IAC. The SEC assumes that Mr. Cilano has some potential conflict with
16 other investors because his creditor claim is potentially worth far more than his investor claim. But,
17 this assumption ignores the nature of his creditor claim and the history of this case to date. Mr.
18 Cilano's creditor claim, if allowed, is a subordinated contingent claim. He will be paid on this claim,
19 if at all, only if all administrative claims, priority claims, investor claims and creditor claims are first
20 paid in full. Mr. Cilano thus has every incentive to work on behalf of the estate to maximize the
21 recovery to the estate for the benefit of everyone – investors and creditors alike – to increase the
22 chances that he may see some recovery on his subordinated creditor claim.

23 The SEC posits a scenario where the investors want an early pre-IPO liquidation of some
24 securities and Mr. Cilano might object to that because it would limit his potential recovery as a
25 creditor. This scenario has no basis in fact and nothing Mr. Cilano has done to date on behalf of
26 investors in this case suggest that this would occur. The SEC's scenario also ignores that the IAC is
27 advisory, that the receiver may never seek input from the IAC, and that the receiver is free to ignore
28 that advice if she believes it is not in the best interest of the receivership. The SEC also ignores the

1 fact that there are other members of the IAC who are free to take a different view than Mr. Cilano
2 about the timing of sales of securities. Finally, the SEC ignores that the receiver has already said that
3 the receivership will not sell pre-IPO securities.

4 In sum, the SEC's objection is based on speculation and conjecture, not fact. There is no actual
5 or potential conflict and no reason for Mr. Cilano not to be appointed to the IAC.

6 **CONCLUSION**

7 For all of the foregoing reasons, the SEC's objection to Mr. Cilano's appointment to the IAC
8 should be overruled. Mr. Cilano should be appointed to the IAC.

9 Respectfully submitted,

10 DATED: April 2, 2020

PRITZKER LEVINE LLP

11 By: /s/ Jonathan K. Levine

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ATTESTATION

I, Jonathan K. Levine, am the ECF user whose ID and password are being used to file this document. In compliance with Local Rule 5-1(i)(3), I hereby attest that all other signatories listed have concurred in this filing.

/s/ Jonathan K. Levine _____
Jonathan K. Levine