

**OFFICE OF THE CLERK  
UNITED STATES DISTRICT COURT  
Northern District of California**

**CIVIL MINUTES**

**Date:** May 13, 2020

**Time:** 11:06-1:30=  
2 Hours; 36 Minutes

**Judge:** EDWARD M. CHEN

**Case No.:** [16-cv-01386-EMC](#)  
Related to: [20-cv-02915-EMC](#)

**Case Name:** Securities and Exchange Commission v. Bivona  
Phelps v. Sabrin

**Attorneys for Plaintiff:** John Yun, Marc Katz, Patricia Schrage, Chris Sullivan

**Receiver:** Kathy Phelps

**Attorneys for SRA Investor Group:** Jonathan Levine, Avi Israel, Patrick Gibbs, Esfand Nafisi

**Deputy Clerk:** Angella Meuleman

**Court Reporter:** Belle Ball

**PROCEEDINGS HELD BY ZOOM WEBINAR**

[570], [572], [575], [583] – Held.

**SUMMARY**

**Initial Case Management Conference (20-cv-02915)**

Held in related case. Parties are to meet and confer regarding resolution of this case.

Further Case Management Conference set for 6/25/2020 at 10:30 AM. Joint Case Management Conference Statement due 6/18/2020.

**Motions Hearing (16-cv-01386):**

Parties stated appearances and proffered argument.

**Receiver’s Motion for Final Approval (Docket No. 570)**

With respect to the SEC’s objection to the Receiver’s Motion for Final Approval as to claims related to failed investments, the Court finds that it is appropriate to defer final resolution of this objection until later. The Court reiterated that it rejects a rescission argument, but is open to recognizing the benefit of the tax loss generated by the failed investment as a means of providing potential compensation for failed investments, but only to the extent such tax benefits have contributed to the receivership assets. Court was inclined to permit the SEC to devote disgorged funds (the “Anne Bivona Funds”) to failed investors in recognition. The Plan already affords the SEC such discretion. As the ultimate amount of the tax benefit, if any, generated by the failed investments cannot be determined until later, the Court reserved judgment as to whether such an

allocation would be appropriate: the Court will await the Receiver's recommendation as to amount (if any) and relative priority at the appropriate time. Ruling is thus so reserved.

With respect to the SRPO objection to the Receiver's Motion for Final Approval presented by Mr. Chandler, the Court heard argument on the objection but overrules it for the reasons stated on the record. Back-end fees and interest claimed by SRPO is disallowed. The court expresses no opinion as to whether SRPO may have other legal remedies outside the receivership.

The Court finds the form and manner of notice provided by the Receiver regarding the hearing was constitutionally adequate for the reasons stated on the record.

**SEC's Objections to Mazzola and Cilano Claims (Docket No. 572)**

In the absence of any opposition to the SEC's objection, the Court sustained the SEC's objection as to the claims of Michele Mazzola.

With respect to the claims of Mr. Cilano, the Court defers ruling on this objection until there is more information regarding the finances of the receivership and whether there is likely to be profit upon satisfaction of all current claims. Mr. Cilano agreed that his claim for back-end fees would be subordinate to all five Classes; his claim would attach to the ultimate distribution of any surplus after all five classes are paid pursuant to the Plan. The SRA Investment Group supports Mr. Cilano participating in that ultimate distribution, if any. At the appropriate time, if it appears there will be surplus funds after the five classes are compensated, the Court will examine: (1) whether Mr. Cilano has legal standing to seek back end fees through the receivership (since he contracted with Alexander, which had a contract with SRA wherein payment to Alexander was based upon moneys received by SRA), and (2) whether Mr. Cilano is truly non-culpable (including *inter alia*, the accuracy of his statement that SRA was the only way to invest in Palantir and other Silicon-Valley entities).

**Receiver's Motion to Disallow Claims (Docket No. 575)**

In the absence of any opposition to the Receiver's Motion to Disallow Claims, the Court grants the motion.

**Receiver's Motion for Instructions Re: Investor Advisory Committee (Docket No. 583)**

The Court permits Mr. Cilano to serve on the Investor Advisory Committee.

The Receiver will submit an updated Distribution Plan in accordance with what was discussed on the record.