

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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

**AMENDED ORDER RE MOTIONS:**

- (1) FOR FINAL APPROVAL OF RECEIVER’S PLAN OF DISTRIBUTION AND FOR ORDER APPROVING FORM AND MANNER OF NOTICE [DKT NO 570];**
- (2) TO DISALLOW PURPORTED GUARANTEE CLAIMS [DKT NO 575]; AND**
- (3) FOR INSTRUCTIONS RE INVESTOR ADVISORY COMMITTEE [DKT NO 583]**

Date: May 13, 2020  
 Time: 10:00 a.m.  
 Place: Zoom webinar  
 450 Golden Gate Ave.  
 San Francisco, CA  
 Judge: Edward M. Chen

1 The following matters came on for hearing at the above-referenced date and time and were  
2 conducted by Zoom webinar before the Honorable Edward M. Chen, United States District Judge  
3 presiding:

- 4 • Receiver’s Motion for (1) Final Approval of Receiver’s Plan of Distribution; and (2)  
5 For Order Approving Form and Manner of Notice, and Notice of Opportunity to  
6 Serve on Investment Advisory Committee (Dkt. No. 570) (the “Plan Motion”);
- 7 • Receiver’s Motion to Disallow Purported Guarantee Claims (Dkt. No. 575) (the  
8 “Guaranty Claim Motion”);
- 9 • Receiver’s Motion for Instructions Regarding Investors Advisory Committee (Dkt.  
10 No. 583) (the “Motion for Instructions”); and
- 11 • Plaintiff Securities and Exchange Commission’s Objection to Receivership Claims  
12 by Michelle Mazzola and Joshua Cilano for Management Fees (Dkt. No. 572) (the  
13 “SEC Claim Objection”);

14 Appearances were as noted on the record. The Court having reviewed and considered the  
15 motions, the supporting declarations and accompanying exhibits, all oppositions or responses to  
16 the motions, all the papers and files in this matter, and having heard the comments of counsel and  
17 interested parties at the time of hearing, for GOOD CAUSE APPEARING,

18 IT IS HEREBY ORDERED that:

19 1. The Receiver’s Plan Motion and all relief sought therein is GRANTED except as  
20 modified by this Order.

21 2. The Receiver’s Guaranty Claim Motion and all relief sought therein is  
22 GRANTED.

23 3. The Receiver’s Distribution Plan (the “Plan”) is approved in the form of Exhibit  
24 “A”, attached to the Declaration of Kathy Bazoian Phelps in support of the Plan Motion, except as  
25 modified in this Order.

26 4. The Court defers final resolution on the SEC’s Opposition [Dkt. No. 582] to the  
27 Plan Motion related to the treatment of the failed investments, while reiterating the Court’s  
28

1 rejection of the rescission argument and remaining open to recognizing the benefit of the tax loss  
2 generated by the Failed Investments.

3         5. After the Receiver is able to determine the ultimate tax benefit, if any, generated  
4 by the Failed Investments, the Receiver may move to update and modify the Plan to allow  
5 payment on account of Failed Investment Claims in an amount not to exceed the benefit to the  
6 estate derived from tax losses on account of the Failed Investments that serve to reduce the  
7 amount of tax liability to the estate. The Court reserves ruling on the amount, if any, and priority  
8 of payments to the Failed Investment Claimants, vis-à-vis the Class 5 Claimants, and allowance  
9 of any payment to the Failed Investment Claimants shall be subject to further Court approval. All  
10 parties reserve their rights with respect to any motion to modify the Plan to allow for any payment  
11 from the Tax Holding Account to the Failed Investment Claimants.

12         6. The Court overrules SRPO's objection to the Plan Motion and denies SRPO's  
13 claim for back-end fees and interest.

14         7. The Court sustains the SEC Claim Objection as to the claim of Michele Mazzola  
15 and disallows that claim.

16         8. The Court defers ruling on the SEC's Claim Objection as to the creditor claim of  
17 Joshua Cilano for backend fees (the "Cilano Claim"). The Court will consider later modification  
18 of the Plan to include an additional Class, entitled Class 6, that would be subordinated to payment  
19 in full to Classes 1 through 5. If the Court determines to allow the Cilano Claim, it would be  
20 classified as a Class 6 claim. The Court defers making a determination on the allowance of such a  
21 claim for Mr. Cilano until such time as it appears likely that a distribution could be made to Class  
22 6. At the appropriate time, if it appears there will be surplus funds after the five classes are  
23 compensated, the Court will examine (1) whether Mr. Cilano has legal standing to seek back end  
24 fees through the receivership (since he contracted with Alexander Capital, which had a contract  
25 with SRA Management wherein payment to Alexander Capital was based upon moneys received  
26 by SRA Management); and (2) whether Mr. Cilano is truly non-culpable (including, *inter alia*, the  
27 accuracy of his statement to prospective investors that SRA Funds was the only way to invest in  
28

1 Palantir and other Silicon Valley entities). The Court may also make a determination regarding  
2 appropriate discovery in connection with the Cilano Claim.

3 9. The form and manner of notice to investors and creditors as provided in the Plan  
4 Motion is approved.

5 10. With respect to the Receiver's Motion for Instructions, the Court rules that Mr.  
6 Cilano is permitted to be a member of the Investor Advisory Committee.

7  
8 Dated: May 25, 2020



\_\_\_\_\_  
Honorable Edward M. Chen  
United States District Court

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28