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5 *Successor Receiver*

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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

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

17 Defendants, and

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

22 Relief Defendants.
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Case No. 3:16-cv-01386-EMC

**ADMINISTRATIVE MOTION BY
RECEIVER KATHY BAZOIAN PHELPS
PURSUANT TO LOCAL CIVIL RULE 7-11
FOR ORDER TO MAKE INTERIM
DISTRIBUTION TO CLASS 3 CLAIMANTS**

Date: No Hearing Set
Time: No Hearing Set
Judge: Edward M. Chen

1 Kathy Bazoian Phelps, the successor receiver herein (the “Receiver”) of SRA
 2 Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, Clear Sailing Group
 3 IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-
 4 Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA
 5 Fund II, LLC, NYPA Management Associates, LLC and Solis Associates Fund LLC
 6 (collectively, the “Receivership Entities” and their estates the “Receivership Estate”), hereby files
 7 this Motion for Order to Make an Interim Distribution to the Class 3 Claimants (the “Motion”).¹

8 **I. Introduction**

9 Pursuant to the Court-approved Distribution Plan, the Receiver is required to sell certain
 10 of the estate’s security holdings, in the amount of 30% of the Gross Investment Amount, in order
 11 to fund the Plan Fund. The Plan provides that the Plan Fund is to be used to pay Class 1
 12 Administrative Claims (primarily the Receiver’s fees and costs and the costs and fees of
 13 professionals retained by the Receiver), Class 2 Priority Claims (tax claims to the extent there is
 14 any shortfall in the Tax Holding Account), Class 3 Unsecured Creditor Claims (currently totaling
 15 \$9,652,191) and, if there is a surplus in the Plan Fund after other classes are paid, Class 5
 16 Subordinated Claims. As stated in the Plan, the total possible Plan Fund is \$13,972,323, but that
 17 figure may decrease if any of the pre-IPO securities held by the Estate do not become Successful
 18 Investments.

19 Over the last few months, in the course of implementing the Distribution Plan, the
 20 Receiver has sold securities for nine of the investments, resulting in a total of \$12,320,901 that
 21 has been contributed to the Plan Fund, or 88% of the maximum. The Receiver believes it is
 22 appropriate to retain sufficient funds in the estate to pay for any adjustments to tax liabilities as
 23 may be required following submission of the estate tax returns as well as to pay Class 1
 24 Administrative Claims.

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 27 ¹ The Receiver will serve this Motion and supporting documents on all interested parties pursuant
 28 to Civil Local Rule 66-6, and will post the papers on the Receivership website. Any interested party
 has four days to file any opposition to or support for this motion. *See* Civil L.R. 7-11.

1 The Receiver does not believe, however, that the estate needs to retain over \$12 million in
2 cash to cover future Class 1 and Class 2 claims. In consultation with her professionals, the
3 Receiver has concluded that a distribution of 80% of the Class 3 allowed claims is appropriate at
4 this time, for a total cash distribution of \$7,721,753. That would leave nearly \$4.6 million
5 remaining in the Plan Fund following distribution, which will continue to accrue interest.

6 The Receiver has conferred with counsel for the Securities and Exchange Commission,
7 counsel for Progresso Ventures, LLC, who each do not oppose the Motion. A stipulation with all
8 parties was deemed impractical given, among other things, the entry of judgment against the
9 defendants and pending bankruptcy of defendant John Bivona. (L.R. 7-11 1(a).)

10 **II. Background and Recommendation**

11 The Court approved the Plan in this case by Order entered on May 25, 2020 [Dkt No.
12 613]. Pursuant to the Plan, the Receiver is to distribute securities to claimants for those shares
13 that are publicly traded and free of restrictions, in addition to the other requirements of the Plan
14 such as the creation of the Plan Fund and Tax Holding Account. As set forth in the Receiver's
15 Interim Status Report for the Third Quarter of 2020, the Receiver has spent the last quarter
16 implementing the Plan in a number of ways, two of which are pertinent for this Motion.

17 First, on July 13, 2020, the Receiver requested authority from this Court to sell shares in
18 eight publicly traded securities – Bloom Energy, Cloudera, Dropbox, Lyft, MongoDB, Pinterest,
19 Snapchat, and Uber (collectively, the “Publicly Traded Securities”) – to fund the Plan Fund and to
20 make an interim distribution to Class 4 Claimants [Dkt No. 617] and was granted that authority on
21 July 20, 2020 [Dkt No. 619]. The sales of those shares on or about July 23, 2020 were sufficient
22 to make full contributions to the Plan Fund with respect to those securities, for a total of
23 \$2,555,389 to the Plan Fund, and an additional \$1,302,949 to the Tax Holding Account.

24 Second, on September 4, 2020, the Receiver requested authority from this Court to
25 execute a lock-up agreement with respect to Palantir that would permit 1,148,050 shares of
26 Palantir to become immediately unrestricted [Dkt No. 622]. The Receiver in that motion also
27 requested authority to sell up to 1,000,000 shares at a minimum price of \$10 per share in order to
28 fund the Plan Fund and pay associated commissions and taxes. The Court granted the Receiver's

1 motion on September 9, 2020 [Dkt No. 626]. Palantir began trading on September 30, and over
2 the course of the week of October 6, the Receiver sold 966,995 shares of Palantir, which resulted
3 in a contribution of \$9,765,512 to the Plan Fund, after commissions were paid and \$88,598 was
4 placed in the Tax Holding Account.

5 The result of these various sales has resulted in a total contribution to the Plan Fund of
6 \$12,320,900, which is over 88% of the maximum possible contemplated Plan Fund if all of the
7 investments are successful. The Receiver believes in conservative management of the Plan Fund
8 and the estate, and is mindful of the fact that many of its tax basis valuations are pre-IPO. The
9 Receiver is confident in the correctness and reasonableness of those valuations, but wishes to be
10 cautious in the event that a higher tax liability is ultimately assessed. Additionally, the time
11 horizon of this case is unknown as some of the securities remain pre-IPO. There are also
12 outstanding Class 1 Administrative Claims in the form of holdbacks. For these reasons, and after
13 consulting with her accountants, the Receiver believes that an 80% distribution to Class 3 claims
14 will leave a sufficient reserve for any unanticipated taxes and future administrative expenses.

15 The total amount of Class 3 administrative claims is \$9,652,191. A distribution of 80% to
16 each claimant's claim, would require a total cash outlay of \$7,721,753, leaving nearly \$4.6
17 million in the Plan Fund. The schedule in Exhibit "1" to the Receiver's declaration sets forth the
18 exact amount that would be paid on each Class 3 claim in this first interim distribution. The
19 Receiver remains hopeful that the remaining 20% will be paid to claimants in due course as this
20 Receivership progresses toward completion, as tax issues are finalized and the Receiver is able to
21 evaluate the equities in the distributions of the case as between the investors and the creditors.

22 The Receiver would like to give the Class 3 claimants the option of receiving their funds
23 by wire transfer or by check to their last known address. In order to ensure that all funds are sent
24 out as expeditiously as possible, the Receiver proposes that claimants be given 14 days from the
25 entry of an order on this Motion to provide the Receiver with wire instructions if they wish to
26 receive their distribution by wire transfer. Otherwise the Receiver will mail the distribution by
27 check to the claimant's last known address. The Plan Fund is located at East West Bank and the
28 bank has agreed to waive all wire fees in connection with the distribution. The Receiver

1 nevertheless requests authority to pay any administrative or wire fees, or to incur any other
2 reasonable administrative expense necessary to make such distribution.

3 **III. Conclusion**

4 The Receiver respectfully requests that the Court grant the Receiver authority to make a
5 first interim distribution to Class 3 claimants, in the amount of 80% of their allowed cash claims,
6 and requests all other appropriate relief.

7 DATED: November 2, 2020

By: /s/ Kathy Bazoian Phelps
Kathy Bazoian Phelps
Successor Receiver

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