

1 KATHY BAZOIAN PHELPS (State Bar No. 155564)
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3 DIAMOND MCCARTHY LLP
4 1999 Avenue of the Stars, Suite 1100
5 Los Angeles, California 90067-4402
6 Telephone: (310) 651-2997

7 *Successor Receiver*

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

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

16 JOHN V. BIVONA; SADDLE RIVER
17 ADVISORS, LLC; SRA
18 MANAGEMENT ASSOCIATES,
19 LLC; FRANK GREGORY
20 MAZZOLA,

21 Defendants, and

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

28 Relief Defendants.

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

**DECLARATION OF JULIA DAMASCO IN
SUPPORT OF SEVENTH INTERIM
ADMINISTRATIVE MOTION FOR AN
ORDER PURSUANT TO LOCAL RULE 7-11
FOR THE APPROVAL OF FEES AND
EXPENSES FOR THE SUCCESOR
RECEIVER, DIAMOND McCARTHY LLP,
MILLER KAPLAN ARASE LLP AND
SCHINNER & SHAIN LLP FROM JULY 1,
2020 THROUGH SEPTEMBER 30, 2020**

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

1 I, Julia Damasco, declare:

2 1. I am a partner at Miller Kaplan Arase LLP, tax advisor for Kathy Bazoian Phelps, the
3 Court appointed Receiver (the “Receiver”) in the case of *Securities and Exchange Commission v.*
4 *Bivona et. al.* (the “Action”) before the United States District Court for the Northern District of
5 California (the “Court”). I am an attorney at law licensed to practice in all of the courts of the states
6 of California and Washington, the United States District Court for the Northern District of
7 California and the United States Tax Court. I have personal knowledge of the matters set forth
8 below and if called as a witness, I would and could testify competently to the matters stated herein.

9 2. This declaration is made in support of the Seventh Interim Administrative Motion for
10 an Order Pursuant to Local Rule 7-11 for the Approval of Fees and Expenses for the Successor
11 Receiver, Diamond McCarthy LLC, Miller Kaplan Arase LLP and Schinner & Shain LLP From
12 July 1, 2020 through September 30, 2020 (“Motion”).

13 3. A true and correct copy of my firm’s invoice reflecting the detailed time entries for the
14 services we provided through September 30, 2020, which includes some services provided prior to
15 July 2020, is attached hereto as Exhibit “5.” Miller Kaplan provided services totaling \$25,996.40
16 and incurred costs in the amount of \$99.03.

17 4. The last page of the invoice contains the discounted rates quoted in the engagement
18 letter in this matter (discounted by 20%) and the current rates for 2020 for those staff members and
19 partners whose work is billed in the attached invoice.

20 5. We have assisted the Receiver in finalizing schedules of the distributions of shares to
21 be transferred to investors and generated projected tax calculations for shares sold.

22 6. We also prepared the 2016 through 2019 tax returns for Qualified Settlement Fund,
23 which as evident from the billing entries, involved a considerable amount of work. We reviewed
24 tax returns filed by the former receiver and documentation to determine the appropriate amount of
25 tax deductions to claim on the tax returns. We communicated with the Receiver regarding the
26 specific tax facts in the case, including the timing of acquisition of certain securities as well as the
27 tax consequences of certain tax splits.

28 7. The fees requested are reasonable, necessary, and commensurate with the skill and

1 experience required for the activity performed. Our services and time expenditures are reasonable
2 in light of the labor required for the matters for which we were retained. Miller Kaplan respectfully
3 submits that it has not expended time unnecessarily and that it has rendered efficient and effective
4 services.

5 8. To the best of my knowledge, information and belief formed after reasonable inquiry,
6 all the fees requested in the attached billing statements are true and correct and comply with the
7 Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and
8 Exchange Commission.

9 9. Miller Kaplan has not included in the amount for which reimbursement of costs is
10 sought, amortization of the cost of any equipment, investment or capital outlay.

11 I declare under penalty of perjury that the foregoing is true and correct. Executed on this 4th
12 day of November 2020 at San Francisco, California.
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15 Julia Damasco
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EXHIBIT 5



4123 Lankershim Boulevard
North Hollywood, CA 91602

Kathy Bazoian Phelps

Receivers Account Estate of Saddle River Management (SRA
Receivership)
Diamond McCarthy LLP
1999 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067

Invoice: 534342

Client ID: 3012290

Date: 10/20/2020
Due Date: 11/19/2020

For professional services rendered as follows:

| <u>DATE</u> | <u>SERVICE</u> | <u>STAFF</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------|---------------|
| General Consulting Services | | | | |
| 07/01/2020 | Review Data Review revisions to stock tax basis calculations and discuss with Q.Dinuri | JD | 1.00 | 456.00 |
| 07/01/2020 | Calculations Call with JPD to discuss stock split information and updates to distribution schedule. Prepare and dispatch email to K. Phelps with additional information needed. | QAD | 1.80 | 453.60 |
| 07/02/2020 | Calculations Update distribution schedules and clear K. Phelps review comments. Dispatch revised distribution schedule and respond to K. Phelps email. | QAD | 1.50 | 378.00 |
| 07/07/2020 | Calculations Per K. Phelps request, updated the SRA-Publicly Traded Securities Distribution Schedule to account for shortage on Bloom Energy shares to be covered by Bloom - Solis. | QAD | 0.70 | 176.40 |
| 07/10/2020 | Calculations Update SRA - Distribution Schedule to fix additional bugs that K. Phelps discovered. | QAD | 0.50 | 126.00 |
| 07/20/2020 | Calculations Per D. Castleman's request, review updates made to the SRA - Distribution Schedules. | QAD | 0.50 | 126.00 |
| 07/23/2020 | Review Per David Castleman's request, review updates to the SRA- Publicly Traded Securities Distribution Schedules related to change on commissions to a fixed | QAD | 0.30 | 75.60 |

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| | | | | |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------|----------|
| | price. | | | |
| 07/25/2020 | Calculations Per K. Phelps request, prepare projected tax calculation for shares sold on 07/23/20. | QAD | 1.50 | 378.00 |
| 07/26/2020 | Calculations Per K. Phelps request, update distribution accounting worksheet to include certain formulas for the tax calculation and the % distribution of claim calculation. | QAD | 1.00 | 252.00 |
| 07/27/2020 | Calculations Per K. Phelps, made additional updates to the Distribution Accounting worksheet. | QAD | 0.50 | 126.00 |
| 08/20/2020 | Discussions/Meetings Meeting with JPD re open questions for receiver. Prepare for meeting with Receiver. | JMD | 1.00 | 456.00 |
| 08/21/2020 | Tax Planning Conference call w/K.Phelps | JD | 0.75 | 342.00 |
| 08/24/2020 | Prepare/Draft/Edit/Finalize Review documents available on Diamond McCarthy website and indicate which should be saved to file. | JAC | 2.30 | 386.40 |
| 09/11/2020 | Research Research related to question of whether the QSF could take a deduction on the shares that the receivership entities purchased pre-receivership but never received. | QAD | 1.20 | 302.40 |
| 10/06/2020 | Discussions/Meetings Conference call with K. Phelps re tax return filing | JD | 0.50 | 228.00 |
| | | Subtotal | | 4,262.40 |

Qualified Settlement Fund Services

| | | | | |
|------------|---------------------------------------------------------------------------|-----|------|--------|
| 02/13/2020 | Intake Establish QSF income tax return services for Receivership. | ER | 0.50 | 80.00 |
| 02/14/2020 | Intake Governing documents, 2017 return, valuation, TIN establishment. | ER | 0.25 | 40.00 |
| 02/20/2020 | Intake QSF name troubleshooting for IRS limitations. | ER | 0.25 | 40.00 |
| 02/21/2020 | Intake Obtain QSF TIN and prepare W-9 for Kathy Phelps. | ER | 0.50 | 80.00 |
| 02/23/2020 | Intake EFTPS enrollment. UltraTax setup for 2016 back-year filing. | ER | 0.35 | 56.00 |
| 06/15/2020 | Preparation Preparation and filing of the 2019 | JAC | 0.80 | 134.40 |

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| Qualified Settlement Fund Income Tax Return. | | | | |
|----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|-----|------|----------|
| 06/24/2020 | Preparation | JAC | 0.90 | 151.20 |
| | Preparation of QSF tax returns. | | | |
| 06/25/2020 | Preparation | JAC | 5.50 | 924.00 |
| | Preparation of QSF tax returns. | | | |
| 06/26/2020 | Preparation | JAC | 0.70 | 117.60 |
| | Preparation of QSF tax returns. | | | |
| 06/29/2020 | Preparation | JAC | 3.90 | 655.20 |
| | Preparation of QSF tax returns. | | | |
| 06/30/2020 | Preparation | JAC | 0.75 | 126.00 |
| | Preparation of QSF tax returns. | | | |
| 07/09/2020 | Preparation | JAC | 0.70 | 117.60 |
| | Preparation of 2019 tax returns. | | | |
| 08/19/2020 | Review | JD | 1.00 | 456.00 |
| | Review of Saddle returns to incorporate in QSF filing | | | |
| 08/20/2020 | Preparation | JD | 5.00 | 2,280.00 |
| | Review of prior year returns (SRA) and prior Receiver quarterly reports to determine reportable transactions for 2016 through 2018 | | | |
| 08/20/2020 | Preparation | JAC | 3.30 | 554.40 |
| | Prepare for conference call re: preparation of 2016 - 2019 tax returns. | | | |
| 08/21/2020 | Preparation | JD | 0.75 | 342.00 |
| | Review available data and determine missing info | | | |
| 08/21/2020 | Discussions/Meetings | JAC | 0.90 | 151.20 |
| | Participate in conference call re: preparation of 2016 - 2019 tax returns. | | | |
| 08/26/2020 | Preparation | JAC | 0.25 | 42.00 |
| | Preparation of QSF tax returns. | | | |
| 09/11/2020 | Preparation | JAC | 2.20 | 369.60 |
| | Preparation of QSF tax returns. | | | |
| 09/14/2020 | Preparation | JAC | 1.30 | 218.40 |
| | Preparation of QSF tax returns. | | | |
| 09/15/2020 | Preparation | JAC | 3.50 | 588.00 |
| | Preparation of QSF tax returns. | | | |
| 09/16/2020 | Preparation | JAC | 1.70 | 285.60 |
| | Preparation of QSF tax returns. | | | |
| 09/17/2020 | Preparation | JAC | 4.50 | 756.00 |
| | Preparation of QSF tax returns. | | | |
| 09/18/2020 | Preparation | JAC | 5.60 | 940.80 |
| | Preparation of QSF tax returns. | | | |
| 09/22/2020 | Preparation | JAC | 8.00 | 1,344.00 |
| | Preparation of QSF tax returns. | | | |

| | | | | |
|------------|------------------------------------------------------------------------------------------------------------------|-----|------|----------|
| 09/23/2020 | Preparation Preparation of QSF tax returns. | JAC | 7.40 | 1,243.20 |
| 09/24/2020 | Preparation Preparation of QSF tax returns. | JAC | 1.50 | 252.00 |
| 09/24/2020 | Preparation Preparation of QSF tax returns. | JAC | 2.20 | 369.60 |
| 09/24/2020 | Preparation Preparation of QSF tax returns. | JAC | 3.50 | 588.00 |
| 09/24/2020 | Review status review | JD | 2.00 | 912.00 |
| 09/25/2020 | Preparation Preparation of QSF tax returns. | JAC | 2.50 | 420.00 |
| 09/29/2020 | Preparation Preparation of 2019 tax returns. | JAC | 0.10 | 16.80 |
| 09/30/2020 | Preparation Preparation of QSF tax returns. | JAC | 0.20 | 33.60 |
| 10/02/2020 | Review Review 2016 through 2019 tax returns. | JGM | 3.90 | 826.80 |
| 10/04/2020 | Review Review 2016 through 2019 tax returns. | JGM | 3.20 | 678.40 |
| 10/05/2020 | Preparation Review of the 2016-2019 Qualified Settlement Fund Income Tax Returns. | JGM | 1.50 | 318.00 |
| 10/05/2020 | Preparation Preparation of QSF tax returns. | JAC | 1.80 | 302.40 |
| 10/05/2020 | Review Review 2016 through 2019 QSF returns | JD | 4.00 | 1,824.00 |
| 10/06/2020 | Preparation Prepare for and attend conference call re: 2016-2019 QSF tax returns. | JAC | 1.60 | 268.80 |
| 10/06/2020 | Review File review--prepare for conference call | JD | 1.00 | 456.00 |
| 10/06/2020 | Discussions/Meetings Attend call with K. Phelps, JAC, JPD, and D. Castleman to discuss the draft tax returns. | QAD | 0.60 | 151.20 |
| 10/07/2020 | Assemble Assemble (4 QSF returns) 2016-2019 1120SF with CA returns | NAN | 0.75 | 48.00 |
| 10/07/2020 | Final Review Final review of 2016 through 2019 QSF returns and release for assembly and dispatch | JD | 1.00 | 456.00 |
| 10/07/2020 | Preparation Preparation of QSF tax returns. | JAC | 0.90 | 151.20 |
| 10/08/2020 | Delivery Dispatch 2016, 2017, 2018 & 2019 QSF Tax Returns | CJQ | 0.80 | 105.60 |

Miller Kaplan Arase LLP

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| | | | | |
|----------------|--------------------------------------------------------------------------------------------------------------------------------|-----|-----------------------|--------------------|
| 10/12/2020 | Preparation Preparation of QSF tax returns. | JAC | 0.80 | 134.40 |
| 10/13/2020 | Preparation Preparation of QSF tax returns. | JAC | 2.50 | 420.00 |
| 10/13/2020 | Discussions/Meetings Discuss with JAC the basis calculations and the basis price per stock related to reserve stock-splits. | QAD | 0.50 | 126.00 |
| 10/14/2020 | Final Review Review 2016-2019 tax return revisions | JD | 0.50 | 228.00 |
| 10/14/2020 | Assemble Assembling 2016-2019 1120SF (reprocessed returns) | NAN | 0.80 | 51.20 |
| 10/14/2020 | Preparation Preparation of QSF tax returns. | JAC | 2.60 | 436.80 |
| 10/14/2020 | Delivery Proof & Dispatch 2016, 2017, 2018 & 2019 QSF Tax Returns (Reprocessed) | CJQ | 0.50 | 66.00 |
| | | | Subtotal | 21,734.00 |
| | | | Total for Services | 25,996.40 |
| Charges | | | | |
| 10/04/2020 | Miscellaneous Billable Expense Fedex bill | | 99.03 | 99.03 |
| | | | Subtotal | 99.03 |
| | | | Total for Charges | 99.03 |
| | | | Billed Time & Charges | \$26,095.43 |
| | | | Invoice Total | \$26,095.43 |

| | | | | | |
|-------------------|-------------------|-------------------|-------------------|--------------------|---------------------|
| <u>10/20/2020</u> | <u>09/30/2020</u> | <u>08/31/2020</u> | <u>07/31/2020</u> | <u>06/30/2020+</u> | <u>Total</u> |
| 26,095.43 | 0.00 | 3,279.84 | 0.00 | 8,493.12 | \$37,868.39 |



**Schedule of Rates per
Engagement Letter
as of January 1, 2020**

| STAFF LEVEL | CURRENT RATES PER HOUR | DISCOUNTED RATES PER HOUR |
|--------------------------------------------------------------|-----------------------------------|--------------------------------------|
| Administrative Staff, SMEs & Project Managers | \$70 – \$200 | \$58 – \$100 |
| Accounting Staff | \$110 – \$210 | \$88 – \$168 |
| Senior Accounting Staff | \$185 – \$285 | \$156 – \$228 |
| Attorney | \$250 – \$350 | \$200 – \$280 |
| Partner | \$420 – \$570 | \$336 – \$456 |

**Schedule of Rates
as of January 1, 2020**

| STAFF | CURRENT RATES PER HOUR | DISCOUNTED RATES PER HOUR |
|--------------------------|-----------------------------------|--------------------------------------|
| Damasco, Jude | \$570 | \$456 |
| Damasco, Julia | \$570 | \$456 |
| Sanchez, Nicholas | \$420 | \$336 |
| Dinuri, Olive | \$315 | \$252 |
| Ransom, Emily | \$200 | \$160 |