

1 KATHY BAZOIAN PHELPS (State Bar No. 155564)
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3 DIAMOND MCCARTHY LLP
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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 CHRISTOPHER
SULLIVAN IN SUPPORT EIGHTH
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
OCTOBER 1, 2020 THROUGH DECEMBER
31, 2020**

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

1 I, Christopher Sullivan, declare:

2 1. I am an attorney duly licensed to practice in the State of California and a partner at the
3 firm of Diamond McCarthy LLP (“Diamond McCarthy” or “Firm”), counsel of record for the
4 Receiver Kathy Bazoian Phelps in this case. I have personal knowledge of the matters set forth
5 below and if called as a witness, I would and could testify competently to the matters stated herein.

6 2. This declaration is made in support of the Seventh Interim Administrative Motion for an
7 Order Pursuant to Local Rule 7-11 for the Approval of Fees and Expenses for the Successor Receiver,
8 Diamond McCarthy LLP, and Miller Kaplan Arase LLP from October 1, 2020 Through December
9 31, 2020 (“Motion”).

10 3. On March 20, 2019, the Court entered an order authorizing the Receiver to employ
11 Diamond McCarthy as the Receiver’s general counsel retroactively to February 1, 2019 (“DM
12 Employment Order”). I am one of the attorneys now principally responsible for representing the
13 Receiver. I directly supervise the professionals and staff of Diamond McCarthy with respect to this
14 representation.

15 4. In recognition of the efficiencies and benefits to the estate, Diamond McCarthy has
16 divided its time among different billing categories. For the period of October 1, 2020 through
17 December 31, 2020 (“Motion Period”), Diamond McCarthy performed services between the
18 following 2 billing categories:

19 2622-00013 – Plan Implementation

20 2622-00015 – Asset Analysis and Recovery

21 In the interests of the estate and pursuant to the DM Employment Order, I have capped my hourly
22 rate at \$425, as have Diamond McCarthy partners Stacey Pratt and Justin Strother, and senior counsel
23 David Castleman. The hourly rates of paralegals have also been discounted.

24 5. Expenses are billed under 2622-00014. Attached hereto as Exhibit “4” are true and
25 correct copies of the billing statements itemizing the legal services provided and the costs incurred
26 in this case.

27 2622-00013 – Plan Implementation

28 6. Attached as Exhibit “4-1” hereto are true and correct copies of billing statements

1 itemizing services provided by Diamond McCarthy during the Motion Period in connection with
2 implementing the Receiver’s Plan of Distribution (“Plan”) approved by the Court on May 25, 2020
3 (Dkt. No. 613). Diamond McCarthy performed 78.30 hours for total fees of \$33,277.50.

4 7. Subsequent to Court approval of the Plan, the Firm studied the distribution schedules
5 and the Plan, and worked with the Receiver on options and strategy for implementing the Plan.

6 8. On July 20, 2020, the Court approved the Motion for Order Approving Sale and
7 Distribution of Publicly Traded Securities Pursuant to the Distribution Plan (Dkt. No. 619), which
8 set forth detailed distribution schedules for investors holding publicly traded securities and sought
9 Court approval for the sale of securities in order to fund the Plan Fund and the Tax Holding Account.

10 9. During the Motion Period, the Firm continued to assist the Receiver in processing the
11 first interim distributions. Diamond McCarthy analyzed the sale of securities and researched security
12 prices, prepared necessary forms and documents, and created reports to track and reconcile
13 distributions. The Firm communicated extensively with Wells Fargo Bank to supervise and prepare
14 the distributions and improve the processes involved and validated the stock sale data from Wells
15 Fargo.

16 10. Diamond McCarthy also received calls and emails from dozens of claimants regarding
17 distributions and numerous logistical issues arising therefrom, and conducted analysis to provide
18 information to claimants.

19 11. Diamond McCarthy assisted the Receiver with respect to the implementation of the
20 Order Authorizing Lockup Agreement and Approving Sale of Securities Pursuant to Distribution
21 Plan (Dkt. No. 622). The Firm assisted the Receiver in implementing the sale of nearly one million
22 shares of Palantir for nearly \$10 million. The Firm also participated in discussions with the Receiver,
23 her securities counsel, and the Investor Advisory Committee regarding the motion and Palantir
24 distributions. The Firm also drafted an initial draft of the motion for the distribution of the Palantir
25 shares, which the Receiver expects to file next month or when the Palantir lock up period expires.

26 2622-00015 – Asset Analysis and Recovery

27 12. Attached as Exhibit “4-2” hereto are true and correct copies of billing statements
28 itemizing services provided by Diamond McCarthy in connection with analyzing the estate’s assets

1 and recovering those assets during the Motion Period. Diamond McCarthy performed 24.50 hours
2 for total fees of \$10,281.70.

3 13. Prior to the Motion Period, Diamond McCarthy filed a complaint against Ben Sabrin for
4 return of the 6,250 shares of MongoDB or the value thereof that he owes to the estate. During the
5 Motion Period, Diamond McCarthy performed a number of tasks with respect to the lawsuit against
6 Mr. Sabrin, including but not limited to preparing discovery requests, exchanging initial disclosures,
7 preparing a stipulated protective order, obtaining documents via a subpoena, and analyzing
8 documents produced.

9 14. The Firm also evaluated a settlement offer received from Mr. Sabrin, reviewed further
10 detailed correspondence from opposing counsel regarding his client's position and communicated
11 with both the Receiver and opposing counsel on the same. The Firm has continued to represent the
12 Receiver in connection with the Sabrin litigation and to negotiate with opposing counsel on
13 settlement terms.

14 2622-00014 – Expenses

15 15. Attached as Exhibit "4-2" hereto is a billing statement itemizing costs incurred by
16 Diamond McCarthy in connection with the services rendered to the Receiver. The costs incurred
17 during the Motion Period total \$9.60.

18 16. To the best of my knowledge, information and belief formed after reasonable inquiry, all
19 the fees and expenses requested in the attached billing statements are true and correct and complies
20 with the Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and
21 Exchange Commission.

22 17. The fees that Diamond McCarthy has charged are reasonable, necessary, and
23 commensurate with the skill and experience required for the activity performed. Diamond
24 McCarthy's services and time expenditures are reasonable in light of the labor required for the
25 matters for which Diamond McCarthy was retained and the balancing that must be performed to
26 efficiently and effectively represent the Receiver. Diamond McCarthy respectfully submits that it
27 has not expended time unnecessarily and that it has rendered efficient and effective services.

28 18. Diamond McCarthy has not included in the amount for which reimbursement of costs is

1 sought, amortization of the cost of any equipment, investment or capital outlay.

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3 I declare under penalty of perjury that the foregoing is true and correct. Executed on this 21st
4 day of January 2021 at San Francisco, California.

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/s/ Christopher D. Sullivan
Christopher Sullivan

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EXHIBIT 4-1



DIAMOND McCARTHY LLP

**150 California St., Suite 2200
San Francisco, CA 94111**

Fed. Tax I.D. #76-0631446

Counsel to K. Phelps, Receiver re: SEC v. Saddle River
Diamond McCarthy LLP
1999 Avenue of The Stars
Suite 100
Los Angeles, CA 90067

Invoice 35674
January 15, 2021

ID: 2622-00013 - KBP

Re: Plan Implementation

For Services Rendered Through 12/31/2020

Previous Balance		79,714.75
Payments		-79,714.75
Balance Forward		0.00
Current Fees	33,277.50	
Total Current Charges		33,277.50
Total Due		33,277.50

Diamond McCarthy LLP

Counsel to K. Phelps, Receiver re: SEC v. Saddle River
 I.D. 2622-00013 - KBP
 Re: Plan Implementation

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Fee Recap

		Hours	Rate/Hour	Amount
David A. Castleman	Senior Counsel	78.30	425.00	33,277.50
Totals		78.30		33,277.50

Fees

Date	Atty	Description	Hours	Rate	Amount
10/01/20	DAC	Emails with various claimants regarding distribution plan issues and transfer information.	2.10	425.00	892.50
10/02/20	DAC	Analysis of cash claimants and review of applicable records; create chart summarizing same.	2.80	425.00	1,190.00
10/05/20	DAC	Emails with various claimants regarding distribution plan questions.	0.60	425.00	255.00
10/06/20	DAC	Emails with various claimants regarding distribution of publicly traded securities; answer claimant questions regarding distribution.	1.10	425.00	467.50
10/07/20	DAC	Calls with S. Soler regarding Fortuna distribution; call with K. Phelps regarding cash claimants, Palantir strategy, and upcoming status report.	1.50	425.00	637.50
10/08/20	DAC	Draft motion for interim distribution to cash claimants and supporting documents and exhibits; analysis of first interim distribution; draft Q3 2020 interim status report and prepare attached exhibits; emails with claimants regarding distribution.	9.30	425.00	3,952.50
10/09/20	DAC	Revisions to motion to distribute to cash claimants and email K. Phelps regarding same.	0.70	425.00	297.50
10/11/20	DAC	Finalize Palantir sale log and update cash distribution chart; emails regarding same; emails regarding claimant regarding Palantir and Square.	1.20	425.00	510.00
10/12/20	DAC	Calls and emails with claimants regarding Palantir and Publicly Traded Securities distributions; research regarding claims; updates to log; review potential reversal transactions.	1.80	425.00	765.00
10/13/20	DAC	Emails with Wells Fargo regarding distributions; review holdback's; revisions to status update and motion to distribute cash; call with K. Phelps regarding same; email Miller Kaplan regarding accounting.	3.30	425.00	1,402.50
10/14/20	DAC	Emails and calls with various claimants regarding Palantir and Publicly Traded Securities distributions.	1.20	425.00	510.00
10/15/20	DAC	Draft Frequently Asked Questions regarding distribution process and Plan for website; call with claimant regarding distribution.	3.40	425.00	1,445.00
10/16/20	DAC	Draft summary of recent events for website; review and revise motion for cash distribution; emails with claimants regarding distribution matters.	2.90	425.00	1,232.50
10/19/20	DAC	Communications with various claimants and Wells Fargo re distribution of publicly traded securities and Palantir.	2.50	425.00	1,062.50

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Date	Atty	Description	Hours	Rate	Amount
10/19/20	DAC	Analysis of Bloom distribution and summary of hard-coded error regarding one claimant.	0.80	425.00	340.00
10/20/20	DAC	Communications with various claimants and Wells Fargo regarding distribution of publicly traded securities and Palantir.	1.30	425.00	552.50
10/21/20	DAC	Analysis of Plan Fund contributions and audit of cash transfers; draft summary of same and related emails and call with K. Phelps.	2.50	425.00	1,062.50
10/21/20	DAC	Communications with various claimants regarding distribution of publicly traded securities and Palantir.	0.80	425.00	340.00
10/21/20	DAC	Updates to status report and class 3 motion and related emails.	0.40	425.00	170.00
10/22/20	DAC	Communications with various claimants regarding distribution of Palantir.	0.80	425.00	340.00
10/23/20	DAC	Communications with various claimants regarding distribution of Palantir and IRA issues.	0.50	425.00	212.50
10/27/20	DAC	Revisions to status report and distribution chart of publicly traded securities.	1.20	425.00	510.00
10/28/20	DAC	Communications with various claimants and Wells Fargo regarding distribution of publicly traded securities and Palantir.	2.10	425.00	892.50
10/28/20	DAC	Review Miller Kaplan analysis of cash management situation.	0.10	425.00	42.50
10/29/20	DAC	Call with K. Phelps regarding cash distribution motion.	0.30	425.00	127.50
11/01/20	DAC	Communications with various claimants regarding distribution of Palantir.	0.70	425.00	297.50
11/02/20	DAC	Communications with various claimants regarding distribution questions, special handling issues, and failed investments.	1.30	425.00	552.50
11/04/20	DAC	Revisions to list of publicly traded securities investor list and related emails with claimants.	1.70	425.00	722.50
11/05/20	DAC	Emails with various claimants regarding distribution information and related issues.	0.70	425.00	297.50
11/06/20	DAC	Communications with K. Phelps and claimant regarding distribution of class 3 claims.	0.40	425.00	170.00
11/09/20	DAC	Communications with various claimants regarding Palantir, distribution of class 3 claims, and other related questions.	1.20	425.00	510.00
11/11/20	DAC	Revisions to Class 3 overview spreadsheet and related communications with various claimants regarding distribution of class 3 claims and distribution of securities.	2.40	425.00	1,020.00
11/12/20	DAC	Emails with claimants re distribution of publicly traded securities.	0.50	425.00	212.50
11/16/20	DAC	Emails with claimants and their representatives regarding distribution of publicly traded securities.	0.50	425.00	212.50
11/17/20	DAC	Emails with claimants and regarding account information for distribution of publicly traded securities and Wells Fargo regarding transfers.	1.10	425.00	467.50
11/18/20	DAC	Emails with claimant regarding distribution questions and potential new claim regarding Palantir.	0.60	425.00	255.00
11/19/20	DAC	Call with claimant regarding distribution questions regarding	0.10	425.00	42.50

Diamond McCarthy LLP

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Date	Atty	Description	Hours	Rate	Amount
		Palantir.			
11/20/20	DAC	Email with claimant regarding distribution questions regarding Palantir.	0.10	425.00	42.50
11/23/20	DAC	Communications with claimant regarding distribution issues for deceased claimant.	0.60	425.00	255.00
11/24/20	DAC	Create spreadsheets with wire transfer information and related emails.	2.30	425.00	977.50
11/24/20	DAC	Emails with claimants regarding distribution of publicly traded securities.	0.50	425.00	212.50
11/25/20	DAC	Emails with claimant regarding class 3 distribution.	0.10	425.00	42.50
11/29/20	DAC	Create wire transfer forms for class 3 distribution and review of claims to validate same.	1.50	425.00	637.50
11/30/20	DAC	Call with J. Peevy (East West Bank), revisions to wire transfer forms, and related emails.	0.80	425.00	340.00
11/30/20	DAC	Emails with Wells Fargo and various claimants regarding distribution of publicly traded securities.	0.30	425.00	127.50
12/01/20	DAC	Analysis of tax consequences of sale and distribution and email with Tax counsel regarding same.	0.60	425.00	255.00
12/01/20	DAC	Emails with claimant regarding class 3 distributions.	0.10	425.00	42.50
12/02/20	DAC	Emails with claimants regarding class 3 distributions and distributions of publicly traded securities.	1.50	425.00	637.50
12/03/20	DAC	Draft revised letter of instruction and related emails.	1.00	425.00	425.00
12/04/20	DAC	Emails with claimant regarding class 3 distributions.	0.30	425.00	127.50
12/07/20	DAC	Analysis of AirBnb IPO filings and contracts and related email to counterparty regarding stock transfer.	2.50	425.00	1,062.50
12/07/20	DAC	Emails with claimants regarding class 3 distributions and draft of related form.	0.30	425.00	127.50
12/07/20	DAC	Call with K. Phelps regarding upcoming distributions and related matters.	0.30	425.00	127.50
12/08/20	DAC	Emails with K. Phelps and various claimants regarding distribution of Palantir shares, AirBnb shares, and class 3 issues; related analysis of Airbnb distribution information.	1.70	425.00	722.50
12/09/20	DAC	Prepare DTC letter for Claimant and related emails.	0.60	425.00	255.00
12/09/20	DAC	Prepare wire transfer forms and related emails.	0.50	425.00	212.50
12/10/20	DAC	Email with claimants regarding distribution logistics.	0.30	425.00	127.50
12/22/20	DAC	Email K. Phelps and others regarding claimant question and analysis of Palantir scenarios and other distribution issues.	0.40	425.00	170.00
12/22/20	DAC	Draft motion for distribution of Palantir shares; email same to K. Phelps.	5.20	425.00	2,210.00
12/23/20	DAC	Emails with claimants regarding distribution and holdback details.	0.30	425.00	127.50
12/31/20	DAC	Email with H. Choi regarding claimant question.	0.10	425.00	42.50
Total Fees			78.30		33,277.50

Diamond McCarthy LLP

Counsel to K. Phelps, Receiver re: SEC v. Saddle River
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Re: Plan Implementation

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Total Fees and Disbursements	33,277.50
Total Current Charges	33,277.50

*The above amount may not include third party expenses for which we have not yet been billed.
REMITTANCE WITHIN 20 DAYS IS APPRECIATED*

EXHIBIT 4-2


DIAMOND McCARTHY LLP

**150 California St., Suite 2200
San Francisco, CA 94111**

Fed. Tax I.D. #76-0631446

Counsel to K. Phelps, Receiver re: SEC v. Saddle River
Diamond McCarthy LLP
1999 Avenue of The Stars
Suite 100
Los Angeles, CA 90067

Invoice 35675
January 15, 2021

ID: 2622-00015 - KBP

Re: Asset Analysis and Recovery

For Services Rendered Through 12/31/2020

Previous Balance		17,544.32
Payments		-17,543.82
Balance Forward		0.50
Current Fees	10,281.70	
Current Disbursements	9.60	
Total Current Charges		10,291.30
Total Due		10,291.80

Open Invoices

Invoice Date	Invoice Number	Original Amount	Payments and Credits	Balance
07/22/19	32987	4,717.50	4,717.00	0.50
Totals		4,717.50	4,717.00	0.50

Diamond McCarthy LLP

Counsel to K. Phelps, Receiver re: SEC v. Saddle River
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 Re: Asset Analysis and Recovery

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Fee Recap

		Hours	Rate/Hour	Amount
Stacey L. Pratt	Senior Counsel	0.20	425.00	85.00
Justin Strother	Partner	23.80	425.00	10,115.00
Catherine A. Burrow	Paralegal	0.30	195.00	58.50
Erika R. Shannon	Paralegal	0.20	116.00	23.20
Totals		24.50		10,281.70

Fees

Date	Atty	Description	Hours	Rate	Amount
10/07/20	JS	Redact and produce bank records demonstrating \$250,000 wire to Defendant in 2014.	0.60	425.00	255.00
10/08/20	JS	Research multiple legal issues raised in Defendant's counsel's letter and prepare communication to receiver regarding same.	1.80	425.00	765.00
10/09/20	JS	Prepare settlement statement pursuant to local mediation rules and confer with client regarding same.	2.40	425.00	1,020.00
10/12/20	JS	Compile documentary evidence for mediation and serve on opposing counsel (.5); finalize mediation statement and key documents and send to mediator (.8).	1.30	425.00	552.50
10/14/20	JS	Prepare for pre-mediation conference with mediator and client (.2); conference with mediator and client in advance of mediation (.5).	0.70	425.00	297.50
10/16/20	JS	Receive and review sworn financial statement and communicate to client regarding same.	0.20	425.00	85.00
10/19/20	JS	Attend Northern District mediation with N. Healy as mediator.	4.40	425.00	1,870.00
10/20/20	JS	Prepare list of information needed from Defendant to evaluate his financial condition.	0.40	425.00	170.00
10/30/20	ERS	Communicate with Court re correct due date for Joint Statement for upcoming hearing.	0.20	116.00	23.20
10/30/20	SLP	Follow up on due date for Joint Case Management Conference Statement.	0.20	425.00	85.00
10/31/20	JS	Prepare and serve response to Defendant's First Set of Requests for Production on opposing counsel.	1.20	425.00	510.00
10/31/20	JS	Begin draft of case management conference statement per court's order.	0.80	425.00	340.00
10/31/20	JS	Receive and review post-mediation materials from Defendant regarding net worth and assets.	3.00	425.00	1,275.00
11/04/20	JS	Prepare report of review of Sabrin's post-mediation financial information that he submitted to support his low settlement offer (1.0); exchange multiple communications with opposing counsel and client regarding shortcomings in Sabrin's production and additional information needed to negotiate further (.4).	1.40	425.00	595.00

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Date	Atty	Description	Hours	Rate	Amount
11/09/20	JS	Telephone conference with opposing counsel regarding necessary updates to case management statement, due by November 12.	0.30	425.00	127.50
11/10/20	JS	Prepare draft of amended case management statement and communication to opposing counsel regarding preparation of statement.	0.70	425.00	297.50
11/12/20	JS	Review alterations and comments to case management statement made by defendant's counsel and exchange communications regarding same.	0.80	425.00	340.00
11/12/20	CAB	Finalize and file amended case management statement in Sabrin case at request of J. Strother.	0.30	195.00	58.50
11/16/20	JS	Receive and review new information from Sabrin to explain his expenditures and what he spent the stock proceeds on; prepare correspondence to opposing counsel regarding cash expenditures.	1.20	425.00	510.00
11/19/20	JS	Prepare for and attend case management conference as required by Judge Chen.	1.20	425.00	510.00
12/04/20	JS	Telephone conference with opposing counsel regarding request for final information (.1); receive and review spreadsheet from defendant explaining large cash transactions (.3); prepare communication to client regarding review and ideas for further collection efforts (.1).	0.50	425.00	212.50
12/10/20	JS	Prepare settlement demand to opposing counsel (.2); exchange emails with opposing counsel to schedule settlement conference call (.1).	0.30	425.00	127.50
12/11/20	JS	Telephone conference with opposing counsel and receiver regarding settlement negotiations.	0.30	425.00	127.50
12/29/20	JS	Receive and review new settlement offer from Defendant's counsel and prepare communication to client regarding same.	0.30	425.00	127.50
Total Fees			24.50		10,281.70

Disbursements

Date	Description	Amount
	On-Line Research; PACER 4th Qtr 2020 research	9.60
Total Disbursements		9.60

Diamond McCarthy LLP

Counsel to K. Phelps, Receiver re: SEC v. Saddle River
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Total Fees and Disbursements	10,291.30
Total Current Charges	10,291.30
Balance Forward	0.50
Total Amount Due	10,291.80

*The above amount may not include third party expenses for which we have not yet been billed.
REMITTANCE WITHIN 20 DAYS IS APPRECIATED*