

1 KATHY BAZOIAN PHELPS (State Bar No. 155564)  
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5 *Successor Receiver*

6  
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.  
23  
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Case No. 3:16-cv-01386-EMC

**DECLARATION OF KATHY BAZOIAN  
PHELPS IN SUPPORT OF  
ADMINISTRATIVE MOTION BY  
RECEIVER KATHY BAZOIAN PHELPS  
PURSUANT TO LOCAL CIVIL RULE 7-11  
FOR ORDER APPROVING SETTLEMENT  
WITH BEN SABRIN**

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

1 I, Kathy Bazoian Phelps, declare:

2 1. Pursuant to this Court’s Revised Order Appointing Receiver, entered February 28,  
3 2019, I was appointed as the successor receiver (“Receiver”) in this case. I am also an attorney  
4 duly licensed to practice in the State of California and am senior counsel at the firm of Diamond  
5 McCarthy LLP (“Diamond McCarthy”). I have personal knowledge of the matters set forth below  
6 and if called as a witness, I would and could testify competently to the matters stated herein.

7 2. This declaration is made in support of the Motion by Receiver Kathy Bazoian Phelps  
8 Pursuant to Local Civil Rule 7-11 for an Order Approving Settlement with Ben Sabrin (the  
9 “Motion”).

10 3. I have consulted with counsel for the Securities and Exchange Commission and  
11 Progresso Ventures Group LLC, who do not oppose the Motion.

12 4. .A true and correct copy of the Settlement Agreement with Ben Sabrin Is attached  
13 hereto as Exhibit “1.”

14 5. On April 28, 2020, I filed a complaint against Sabrin, which was assigned Case  
15 No. 3:20-cv-02915 (the “Proceeding”) in the District Court. The complaint alleged that Sabrin  
16 entered into a written promissory note dated March 5, 2014 (the “Note”), under which Clear  
17 Sailing IV lent \$250,000 to Sabrin, and that Sabrin entered into a related side letter also dated  
18 March 5, 2014, (the “Side Letter”) under which Sabrin agreed transfer what were ultimately 6,250  
19 MongoDB shares to Clear Sailing IV in full satisfaction of Sabrin’s obligations under the Note  
20 once “any and all restrictions have been lifted with respect to the transfer of ownership of such  
21 Shares.” The Side Letter and Note are collectively referred to as the “MongoDB Agreement”. The  
22 Receiver’s complaint alleged that Sabrin owes the estate 6,250 shares of MongoDB or the present  
23 value thereof (the “MongoDB Shares”).

24 6. Mr. Sabrin engaged counsel and has asserted defenses in the Proceeding. Through  
25 my counsel and Mr. Sabrin’s counsel, the parties engaged in settlement discussions. Mr. Sabrin  
26 produced certain financial information to me regarding collectability of any judgment against  
27 him.. We ultimately reached a settlement agreement which fully resolves the issues in the  
28 Proceeding.



# EXHIBIT 1

## AGREEMENT

This Agreement (the “Agreement”) dated March 5, 2021, is entered into by and among Kathy Bazoian Phelps, solely in her capacity as the court appointed receiver (“Receiver”) in the case of *Securities and Exchange Commission v. John v. Bivona, Saddle River Advisors, LLC, SRA Management Associates, LLC; Frank Gregory Mazzola*, Case No. 3:16-cv-01386-EMC pending in the U.S. District Court for the Northern District of California (the “Receivership Case”), and Ben Sabrin (“Sabrin”). The Receiver and Sabrin are referred to herein individually as a “Party” and collectively as the “Parties.”

## RECITALS

A. On October 16, 2016, the U.S. District Court for the Northern District of California (the “District Court”) entered the Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Be Granted (the “TRO”). Pursuant to the TRO, Sherwood Partners was appointed as the temporary receiver over the assets of SRA Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, SRA Management Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, and NYPA Management Associates, LLC (collectively, the “Receivership Entities” and their estates the “Receivership Estate”).

B. Pursuant to the Revised Order Appointing Receiver entered by the District Court on February 28, 2019, Kathy Bazoian Phelps was appointed as the successor receiver to Sherwood Partners over the Receivership Entities, and Solis Associates Fund LLC was subsequently added as one of the Receivership Entities.

C. On April 28, 2020, the Receiver filed a complaint against Sabrin, which was assigned Case No. 3:20-cv-02915 (the “Proceeding”) in the District Court. The Receiver’s complaint alleged that Sabrin entered into a written promissory note dated March 5, 2014 (the “Note”), under which Clear Sailing IV lent \$250,000 to Sabrin, and that Sabrin entered into a related side letter also dated March 5, 2014, (the “Side Letter”) under which Sabrin agreed transfer what were ultimately 6,250 MongoDB shares to Clear Sailing IV in full satisfaction of Sabrin’s obligations under the Note once “any and all restrictions have been lifted with respect to the transfer of ownership of such Shares.” The Side Letter and Note are collectively referred to as the “MongoDB Agreement”. The Receiver’s complaint alleged that Sabrin owes the estate 6,250 shares of MongoDB or the present value thereof (the “MongoDB Shares”).

D. Sabrin has asserted defenses in the Proceeding.

E. The Parties wish resolve competing claims to the MongoDB Shares and the claims arising in the Proceeding.

F. In consideration of the facts and circumstances of these matters, the Parties have determined to resolve all claims and defenses and potential claims and defenses arising out of or related in any way to the MongoDB Agreement or the MongoDB Shares pursuant to the terms

set forth herein.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree, subject to approval by the Court, in the form of entry of a final, non-appealable order, as follows:

**AGREEMENT**

1. **Court Approval:** This Agreement is contingent upon approval by the District Court.

2. **Settlement and Stipulation of Judgment:** Given the uncertainties of trial, the Receiver and Sabrin have agreed to settle the Receiver's claims against Sabrin for the amount of \$402,000.00 (the "Debt"). Sabrin has signed a Stipulation for Entry of Judgment in favor of the Receiver in the amount of \$402,000, and delivered the same to the Receiver, a copy of which is attached hereto as Exhibit "1" ("Stipulation for Judgment"). The Receiver agrees to forbear on the immediate collection of the then-remaining Debt in full on the condition that Sabrin make installment payments of principal pursuant to payment schedule described in Section 3, below. The Receiver shall hold the Stipulation for Judgment and not seek to have it entered or enforced against Sabrin unless and until Sabrin defaults on the payments due pursuant to Section 3 below and fails to cure such default within ten business days of being notified in writing of the default by the Receiver or her counsel. If such default occurs and is not cured within ten business days of Sabrin receiving written notice, the Receiver may, in her sole discretion, take all steps necessary to have the Stipulation for Judgment filed and judgment entered and enforced against Sabrin by all available means.

3. **Settlement Payment:** In consideration of and subject to the covenants and conditions herein, Sabrin agrees to pay the Receiver the total sum of \$402,000.00 (the "Settlement Payment"), in installments as follows:

- a. \$250,000.02 at the time of execution of this Agreement;
- b. \$25,333.33 on or before July 1, 2021;
- c. \$25,333.33 on or before October 1, 2021;
- d. \$25,333.33 on or before January 1, 2021;
- e. \$25,333.33 on or before March 1, 2022;
- f. \$25,333.33 on or before July 1, 2022;
- g. \$25,333.33 on or before October 1, 2022;

Each of the foregoing monthly installment payments is to be made either: by check payable to "Kathy Bazoian Phelps, Receiver" delivered to Diamond McCarthy LLP, 1999 Avenue of the Stars, Suite 1100, Los Angeles, California 90067; or by wire transfer to the Receiver's account.

4. **Dismissal of Proceeding.** Upon execution of this Agreement the Parties shall notify the Court that this matter is settled and that it should be stayed until October 15, 2022. Upon

payment of the final installment of the Settlement Payment, the Debt shall be completely satisfied. Within ten business days of complete payment of the Settlement Payment, the Receiver shall file Notice of Dismissal of the Proceeding with prejudice, and the original Stipulated Judgment will be destroyed.

5. **Release.** Effective upon the Receiver's receipt of the Settlement Payment, and except for the enforcement of the terms and provisions of this Agreement, each of the Parties (and, as to the Receiver, on behalf of herself, the Receivership Entities, and the estate) releases and forever discharges the other Party and its agents, successors, predecessors, assigns, subsidiary companies, parent companies, affiliates, trustees, beneficiaries, attorneys, employees, directors, insurers, trusts, including but not limited to grantor trusts, trustees, receivers, representatives and all other persons, parties, or entities affiliated with, associated with, or in any way representative of the other Party, of and from any and all loss, costs, claims, actions, lawsuits, administrative claims, arbitration claims, causes of action, demands, damages, or expenses of any type whatsoever, in law or in equity, imposed by contract, statute, common law or otherwise, whether or not known now, anticipated, unanticipated, suspected or claimed, fixed or contingent, direct or indirect, liquidated or unliquidated, accrued or unaccrued, irrespective of legal theory and whether damage has resulted from such or not, arising from or in any way related to the MongoDB Agreement or MongoDB Shares.

6. Waiver of Cal Civil Code Section 1542. The Parties expressly waives any and all rights and claims under Section 1542 of the California Civil Code (or any analogous state law of federal law or regulation), which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.**

By executing this Agreement, the Parties expressly waive and release the rights or benefits of Section 1542 of the Civil Code of the State of California, and any similar statute, code, law or regulation of any state, territory, commonwealth or possession of the United States, or the United States, to the full extent that they may waive all such rights and benefits pertaining to the claims released herein. The Parties, and each of them, acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true pertaining to the claims released herein. Nevertheless, it is the intention of the Parties, and each of them, through this Agreement to fully, finally and forever release all of the claims each of them respectively releases herein. The releases herein given shall be and remain in effect as a full and complete release of the claims released herein notwithstanding the discovery or existence of any such additional or different claims or facts relative thereto. Without limitation or expansion thereof, the foregoing releases do not apply to any claim that there has been a breach of any of the terms of this Agreement.

7. The Parties acknowledge that the Receiver is acting solely in her capacity as the receiver for SRA Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, SRA Management Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, NYPA Management Associates, LLC, and Solis Associates Fund LLC, and their subsidiaries and affiliates, and that she has no personal liability whatsoever with respect to this Agreement or the transactions described herein.

8. Except as otherwise specifically provided for herein, nothing contained in this Agreement shall create any rights, remedies or defenses in favor of any party in interest that is not a Party to this Agreement.

9. The Parties mutually warrant and represent that, prior to the execution of this Agreement: (a) each of them has thoroughly read this Agreement and conducted an independent and thorough investigation of all pertinent facts; (b) each of them has thoroughly informed themselves of the terms, covenants, conditions and effects of this Agreement; (c) each of them has obtained the advice and benefit of counsel of their own choosing, or had the opportunity to do so; (d) no representations of any kind have been made by or on behalf of any of the Parties other than as expressly set forth in this Agreement; and (e) each of them thereafter elected knowingly and voluntarily to execute and enter into this Agreement.

10. Each of the Parties stipulates, agrees and warrants that: (a) the terms of this Agreement are reasonable; (b) they will not challenge or contest in any way the capacity or the authority of any Party hereto to make the agreements, covenants, waivers, stipulations, and representations set forth herein; (c) the person executing this Agreement on behalf of each Party has the necessary and appropriate authority and capacity to execute this Agreement and to make this Agreement binding upon and enforceable against that Party; and (d) the consideration for this Agreement is mutual and adequate.

11. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements, stipulations, understandings, promises or negotiations relating to such subject matter. No Party to this Agreement has made or is relying on (and each Party disclaims the existence or materiality of) any representations, warranties, or promises not expressly set forth in this Agreement. This Agreement can be modified only by a writing executed by each of the Parties hereto.

12. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective current, former, and future partners, members, lawyers, predecessors, affiliates, parents, subsidiaries, shareholders, officers, directors, employees, agents, trustees, managers, representatives, successors and assigns.

13. Each Party hereto agrees to bear its/her own legal and other costs and expenses incurred in connection with the negotiation, preparation, and obtaining approval from the Courts of this Agreement.

14. Nothing in this Agreement shall be deemed to be an admission of liability by any Party. Neither this Agreement nor any action taken to comply with this Agreement shall be



construed as, or used as, an admission of any fault, wrongdoing, responsibility or liability whatsoever in this or any other matter.

15. **Jurisdiction and Governing Law.** The Parties agree to submit to the exclusive jurisdiction of the District Court, which shall hear any dispute, claim, or controversy arising in connection with or relating to this Agreement, including, but not limited to the validity, breach, enforcement, or termination thereof. This Agreement and all related matters, acts, or failures to act shall be governed and construed in accordance with the laws of California without regard to conflicts of law principles.

16. **Severability.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability.

17. **No Construction Against Drafter.** The Parties hereby mutually agree and stipulate that this Agreement is the result of negotiations between the Parties and that the terms hereof are negotiated terms. Accordingly, any rules of interpretation or construction resolving any ambiguity against the drafter that might otherwise apply, shall not apply hereto.

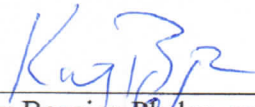
18. **Counterparts.** This Agreement may be executed in counterparts, in which case all such counterparts shall constitute one and the same Agreement. Furthermore, the executed signature pages may be transmitted by facsimile or .pdf, and such signatures shall be deemed original and sufficient to bind the Parties hereto.

19. **Headings.** All headings in this Agreement have been inserted for ease of reference only, and are not to be considered a part of this Agreement, and are to have no effect on the interpretation of this Agreement.

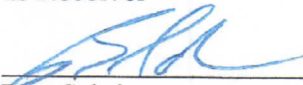
20. The Parties hereto agree to execute such other documents as may be reasonably required and which may otherwise be deemed necessary to effectuate the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered as of the date reflected below.

Dated: March 9, 2021

  
\_\_\_\_\_  
Kathy Bazoian Phelps, solely in her capacity  
as Receiver

Dated: March 8, 2021

  
\_\_\_\_\_  
Ben Sabrin

**EXHIBIT 1  
TO SETTLEMENT  
AGREEMENT**

1 CHRISTOPHER D. SULLIVAN (148083)  
2 *csullivan@diamondmccarthy.com*  
3 STACEY L. PRATT (124892)  
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9 Houston, Texas 77010  
10 Phone: (713) 333-5100

11 *Attorneys for Plaintiff*  
12 *Kathy Bazoian Phelps, solely*  
13 *in her capacity as Receiver*

14  
15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**

18 KATHY BAZOIAN PHELPS, RECEIVER  
19 OF SRA MANAGEMENT ASSOCIATES  
20 LLC; SRA I LLC; SRA II LLC; SRA III  
21 LLC; CLEAR SAILING GROUP IV LLC;  
22 CLEAR SAILING GROUP V LLC; NYPA  
23 FUND I LLC; NYPA II FUND LLC; NYPA  
24 MANAGEMENT ASSOCIATES; FELIX  
25 MULTI-OPPORTUNITY FUNDS I AND II,  
26 LLC; FMOF MANAGEMENT  
27 ASSOCIATES; AND SOLIS ASSOCIATES  
28 FUND, LLC,

Plaintiff,

v.

BEN SABRIN, an individual,

Defendant.

Case No. 3:20-cv-02915-EMC

**STIPULATION FOR ENTRY OF FINAL  
JUDGMENT AND JUDGMENT  
THEREON**

Plaintiff Kathy Bazoian Phelps, solely in her capacity as the Court appointed receiver (“Receiver” or “Plaintiff”) in the case of *Securities and Exchange Commission v. John v. Bivona, Saddle River Advisors, LLC, SRA Management Associates, LLC; Frank Gregory Mazzola, Case*

1 No. 3:16-cv-01386-EMC pending in the U.S. District Court for the Northern District of California  
2 (the “Receivership Case”), and Ben Sabrin (“Sabrin” or “Defendant”). Plaintiff and Defendant  
3 (collectively referred to as the “Parties”), hereby stipulate as follows:

4 1. On April 28, 2020, the Receiver filed a complaint against Sabrin, which was  
5 assigned Case No. 3:20-cv-02915 (the “Proceeding”) in the District Court.

6 2. The Parties mediated and thereafter settled their dispute, and memorialized that  
7 settlement in a written settlement agreement (the “Settlement Agreement”).

8 3. The Settlement Agreement provides for the Defendant to pay \$402,000.00 as  
9 follows: An initial payment of \$250,000.02 at the time of execution of the Settlement Agreement  
10 and quarterly payments of \$25,333.33 until the total sum of \$402,000 has been paid.

11 4. The Settlement Agreement further provides that in the event of default that is not  
12 cured and notice as provided for in the Settlement Agreement, the Receiver may enter this  
13 Stipulated Judgment in the amount of \$402,000 minus sums paid at the time of submission of the  
14 Stipulation.

15 5. The Court has jurisdiction over the subject matter of this action, jurisdiction over  
16 the Parties to this action, and venue is proper in this Court. Defendant submits to the jurisdiction  
17 of the Court for purposes of entry of and enforcement of this Judgment.

18 6. The Parties hereby waive any right to move for a new trial or otherwise seek to set  
19 aside the Judgment through any collateral attack, and further waive their right to appeal from the  
20 Judgment.

21 7. All signatories to this stipulation on behalf of the Parties specifically represent that  
22 they have been authorized by the party on behalf of whom they are signing to enter into this  
23 Stipulation.

24 8. This Stipulation may be executed in counterparts, each of which shall be deemed  
25 to constitute an original counterpart of this Stipulation, and all of which shall together constitute  
26 one and the same Stipulation. One or more counterparts of this Stipulation may be delivered by  
27 facsimile or electronic transmission with the intent that it, or they, shall constitute an original  
28 counterpart of this Stipulation.

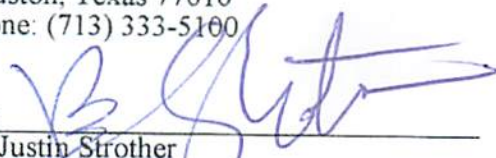
1  
2 Dated: March 5, 2021


MARKUN ZUSMAN FRENIERE & COMPTON LLP  
Attorneys for Defendant  
465 California Street, Suite 401  
San Francisco, CA 94104  
415.438.4449

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4  
5  
6 By: /s/ Edward S. Zusman  
Edward S. Zusman

7  
8   
9 \_\_\_\_\_  
Ben Sabrin

10  
11 DIAMOND MCCARTHY, LLP  
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14 909 Fannin Street, 37th Floor  
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15 Phone: (713) 333-5100

16  
17 By:   
Justin Strother

18   
19 \_\_\_\_\_  
Kathy Bazonian Phelps, solely in her  
Capacity as Receiver

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[Proposed] Judgment

Having reviewed the Declaration of Justin Strother (or his designee) accompanying this Stipulated Judgment, and the Parties having agreed to the entry of Judgment on the terms set forth therein, the Court orders as follows:

1. This Court has jurisdiction over the subject matter of this action and the Parties hereto;
2. Venue is proper in this Court;
3. Judgment is entered in favor of Kathy Bazoian Phelps, solely in her capacity as Receiver, and against defendant Ben Sabrin as follows:
4. Defendant shall pay Plaintiffs:
  1. \$ \_\_\_\_\_, which represents the amount in default under the Settlement Agreement entered into by the Parties.
  2. Reasonable attorneys' fees and costs associated with filing and enforcing this Stipulated Judgment, subject to proof.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Edward M. Chen, Judge  
United States District Court  
Northern District of California