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7 *Successor Receiver*

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

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

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

20 Defendants, and

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

27 Relief Defendants.
28

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

**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 Kathy Bazoian Phelps, the successor receiver herein (the “Receiver”), hereby files this
2 Motion for Order Approving Settlement with Ben Sabrin (“Sabrin”).
3

4 **I. Introduction**

5 The Receiver has reached a settlement with Sabrin over competing claims to MongoDB
6 shares that the Receiver contends Sabrin owes the estate. The parties have reached a settlement
7 agreement (the “Agreement”), Exhibit “1” attached to the Declaration of Kathy Bazoian Phelps,
8 resolving the competing claims to the shares which fully resolves the issues pending the Receiver’s
9 complaint against Sabrin. The settlement obtains for the Receivership Estate’s benefit the sum of
10 \$402,000.

11 The Receiver has conferred with counsel for the Securities and Exchange Commission, SRA
12 Funds Investor Group and Progresso who each do not have any opposition to the terms of the
13 settlement. A stipulation with all parties was deemed impractical given, among other things, the
14 entry of judgment against the defendants and pending bankruptcy of defendant John Bivona. (L.R.
15 7-11 1(a)).
16

17 **II. Statement of Facts**

18 1. On October 16, 2016, this Court entered the Temporary Restraining Order and Order
19 to Show Cause Why Preliminary Injunction Should Not Be Granted (the “TRO”). Pursuant to the
20 TRO, Sherwood Partners was appointed as the temporary receiver over the assets of SRA
21 Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, SRA Management
22 Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity
23 Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA
24 Fund I, LLC, NYPA Fund II, LLC, and NYPA Management Associates, LLC (collectively, the
25 “Receivership Entities” and their estates the “Receivership Estate”). Pursuant to the Revised Order
26 Appointing Receiver entered by the District Court on February 28, 2019, Kathy Bazoian Phelps
27 was appointed as the successor receiver over the Receivership Entities, and Solis Associates Fund
28

1 LLC was subsequently added as one of the Receivership Entities.

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

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

16 4. Sabrin has asserted defenses in the Proceeding.

17 5. The parties engaged in settlement discussions, and Sabrin produced certain financial
18 information to the Receiver regarding collectability of any judgment against Sabrin. The parties
19 ultimately reached a settlement agreement which fully resolves the issues in the Proceeding.

20 6. Sabrin has paid the first installment of \$250,000 under the settlement.

21 6. The Receiver intends to segregate the settlement proceeds in an account titled
22 MongoDB Reserve, which may later also hold funds relating to the MongoDB investments, and
23 she will seek further Court approval prior to distributing the proceeds.

24
25 **III. Terms of Settlement Agreement**

26 The Agreement resolves competing claims to the Attached Funds. Without modifying the
27 terms of the Agreement, the Agreement provides generally as follows:
28

- 1 **1. Court Approval:** The Agreement is contingent upon approval by the District Court.
- 2 **2. Settlement and Stipulation of Judgment:** The Receiver and Sabrin have agreed to settle
- 3 the Receiver’s claims against Sabrin for the amount of \$402,000.00 (the “Debt”). Sabrin
- 4 has signed a Stipulation for Entry of Judgment in favor of the Receiver in the amount of
- 5 \$402,000, and delivered the same to the Receiver, a copy of which is attached hereto as
- 6 Exhibit “1” (“Stipulation for Judgment”). The Receiver agrees to forbear on the
- 7 immediate collection of the then-remaining Debt in full on the condition that Sabrin make
- 8 installment payments of principal pursuant to payment schedule described in Section 3,
- 9 below. The Receiver shall hold the Stipulation for Judgment and not seek to have it
- 10 entered or enforced against Sabrin unless and until Sabrin defaults on the payments due
- 11 pursuant to the Agreement and fails to cure such default within ten business days of being
- 12 notified in writing of the default by the Receiver or her counsel. If such default occurs
- 13 and is not cured within ten business days of Sabrin receiving written notice, the Receiver
- 14 may, in her sole discretion, take all steps necessary to have the Stipulation for Judgment
- 15 filed and judgment entered and enforced against Sabrin by all available means.
- 16 **3. Settlement Payment:** In consideration of and subject to the covenants and conditions
- 17 herein, Sabrin agrees to pay the Receiver the total sum of \$402,000.00 (the “Settlement
- 18 Payment”), in installments as follows:
- 19 a. \$250,000.02 at the time of execution of this Agreement;
 - 20 b. \$25,333.33 on or before July 1, 2021;
 - 21 c. \$25,333.33 on or before October 1, 2021;
 - 22 d. \$25,333.33 on or before January 1, 2021;
 - 23 e. \$25,333.33 on or before March 1, 2022;
 - 24 f. \$25,333.33 on or before July 1, 2022;
 - 25 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.

26 **4. Dismissal of Proceeding.** Upon execution of this Agreement the Parties shall notify the

27 Court that this matter is settled and that it should be stayed until October 15, 2022. Upon

28 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.

29 **2. Releases:** The Receiver and Sabrin shall exchange mutual general releases as set forth

in the Agreement.

IV. The Agreement is in the Best Interest of the Receivership Estate

The Receiver believes in her business judgment that the Agreement is fair, reasonable, and is in the best interest of the Receivership Estate. The Agreement provides the payment of \$402,000

1 to the estate and resolution of the claims to the MongoDB shares.

2 There are “no federal rules [that] prescribe a particular standard for approving settlements
3 in the context of an equity receivership; instead a district court has wide discretion to determine
4 what relief is appropriate.” *Gordon v. Dadante*, 336 F. App’x 540, 549 (6th Cir. 2009).
5 Nevertheless, courts in federal receiverships often look to the following factors, which pertain to
6 compromises reached in bankruptcy actions, when examining a proposed settlement: the probability
7 of success in the litigation; the difficulties, if any, to be encountered in collection; the complexity
8 of the litigation and the expense, inconvenience, and delay associated therewith; and the paramount
9 interest of creditors. *See Secs. & Exch. Comm’n v. Ruderman*, No. CV 09-02974, 2011 WL
10 5857452, at *3 (C.D. Calif. Nov. 21, 2011) (considering these factors in approving receivership
11 settlement. Because compromises are favored in bankruptcy actions, courts generally give
12 deference to a trustee’s business judgment and approve settlements that are negotiated in good faith
13 and are “reasonable, fair, and equitable.” *Ruderman*, 2011 WL 5857452, at *3.

14 The settlement is in the best interest of the Receivership Estate because it fully resolves the
15 litigation and results in a certain outcome. The settlement recovers \$402,000 for the benefit of the
16 estate and avoids the uncertainty of the outcome of the litigation. *See Ruderman*, 2011 WL
17 5857452, at *4 (explaining uncertainty of outcome of litigation “weigh[ed] heavily” in favor of
18 approval of settlement reached by receiver). While the Receiver believes that she would have been
19 able to obtain the MongoDB shares or the value thereof, the Agreement avoids substantial costs
20 and risks of litigation. The Agreement avoids the uncertainty of litigation. Moreover, litigation
21 regarding these interests will be time consuming and costly, draining the assets of the Receivership
22 Estate.

23 In evaluating whether the settlement is in the best interest of the Receivership Estate, the
24 Receiver requested and received sworn financial information from Sabrin. The evaluation of that
25 information indicated that Sabrin did not possess the ability to pay a larger sum, nor the assets to
26 satisfy a larger judgment. The unlikelihood that a larger judgment could be satisfied through
27 collection efforts, combined with the substantial costs of additional litigation and of subsequent
28 (and likely fruitless) collection efforts supports the conclusion that this settlement of \$402,000.00
is in the Receivership Estate’s best interest.

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V. Conclusion

The Receiver respectfully requests that the Court approve the Agreement and requests all other appropriate relief.

DATED: March 19, 2021

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