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5	Successor Receiver	
6	UNITED STATES DISTRICT COURT	
7	NORTHERN DISTRICT OF CALIFORNIA	
8	SAN FRANCISCO DIVISION	
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0	SECURITIES AND EXCHANGE COMMISSION,	Case No. 3:16-cv-01386-EMC
1	Plaintiff,	ADMINISTRATIVE MOTION BY RECEIVER KATHY BAZOIAN PHELPS
2	v.	PURSUANT TO LOCAL CIVIL RULE 7-11 TO (1) EXCUSE DEADLINE RE TAX
4	JOHN V. BIVONA; SADDLE RIVER ADVISORS, LLC; SRA MANAGEMENT ASSOCIATES, LLC; FRANK GREGORY	OPINION; AND (2) SHORTEN TIME FOR NOTICE ON MOTION TO EMPLOY PROFESSIONALS AND FOR
5	MAZZOLA,	INSTRUCTIONS
6	Defendants, and	Date: No Hearing Set Time: No Hearing Set Judge: Edward M. Chen
7	SRA I LLC; SRA II LLC; SRA III LLC; FELIX INVESTMENTS, LLC; MICHELE J. MAZZOLA; ANNE BIVONA; CLEAR SAILING GROUP	
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20	IV LLC; CLEAR SAILING GROUP V LLC,	
21	Relief Defendants.	
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23	Kathy Bazoian Phelps, the successor receiver herein, hereby files her Administrative	
24	Motion Pursuant to Local Civil Rule 7-11 to Excuse Deadline re Tax Opinion and Shorten Time for	
25	Notice on Motion to Employ Professionals and for Instructions. The Receiver has conferred with	
26	counsel for the Securities and Exchange Commission, for the SRA Investor Group and for	
27	Progresso Ventures LLC and is advised that they do not oppose the Motion.	
28	Case No. 3:16-cv-01386-EMC; RECEIVER'S ADMINISTRATIVE MOTION TO (1) EXCUSE DEADLINE RE TAX OPINION; AND (2) SHORTEN TIME FOR NOTICE ON MOTION TO EMPLOY PROFESSIONALS AND FOR INSTRUCTIONS	

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I. Basis for the Motion

The Receiver proposed a Distribution Plan ("Plan") and, at the last hearing, concerns were raised regarding the tax consequences of the Plan. The Court requested that the Receiver obtain a tax opinion that she could share with the SRA Investor Group and requested that the tax opinion be prepared by August 9, 2019, if possible. The Receiver has identified Miller Kaplan as a tax advisor to render the opinion, and the SEC and Investor Group have both agreed to the selected tax advisor. The Receiver has been in active discussions with Miller Kaplan since the hearing on the Plan on June 27, 2019, and it has become apparent that there two principal approaches to handling the tax issues: (1) Scenario 1 (the circumstances identified in the Plan) is to treat both IPO Shares and Pre-IPO Shares as part of the qualified settlement fund ("QSF"), which is the lower risk, lower cost option but could result in potentially higher taxes; or (2) Scenario 2 (as an alternative approach to try to mitigate tax liability) is to try to obtain an IRS ruling that the Pre-IPO Shares are not part of the QSF, which will be higher risk, higher cost, could result in delays and securities issues, but could potentially result in lower taxes. The Receiver has also consulted with securities counsel to seek guidance on the securities ramifications of proceeding under Scenario 1 or 2. The Receiver is finalizing terms of engagement with both Miller Kaplan and securities counsel, and she intends to file a motion seeking approval of the employment of these professionals, and to also seek instructions from the Court as to whether to pursue Scenario 1 or 2.

The SRA Investor Group has not yet taken a position on these issues and the Receiver believes that a noticed motion (the "Instructions Motion") and hearing are most appropriate to allow the parties to fully consider the issues and formulate a response. The Receiver has conferred with both the SEC and the SRA Investor Group to discuss the timing of the Instructions Motion, and the parties believe that shortened time for hearing on the Instructions Motion is appropriate so that the case can move forward as quickly and efficiently as possible. This Administrative Motion requests that the Court excuse the suggested deadline of August 9, 2019 to issue a tax opinion and shorten the time for hearing on the Instructions Motion (to be filed on August 15, 2019) as set forth herein.

II. Statement of Facts

- 1. The Receiver's Plan contemplates that all of the securities that will be sold or liquidated pursuant to the terms of the proposed Plan are part of a QSF that was established when the receivership was formed on October 11, 2016.
- 2. At the last hearing in connection with the Plan, on June 27, 2019, the SRA Investor Group requested a tax opinion regarding the tax consequences of the Plan and the Court requested that the Receiver endeavor to provide such an opinion by August 9, 2019. The Receiver has been in active discussions with her proposed tax advisors and they are considering alternative avenues for administrating the assets of the estate to potentially mitigate the tax consequences of the Plan. The different avenues, however, come with different costs, risks and delays, and the Receiver believes that it is appropriate that both the Court and the interest parties be advised of these issues before a determination is made as to how to proceed.
- 3. Some of the securities are currently publicly traded (the "IPO Shares") and other securities are pre-IPO with the estate owed the right to securities pursuant to forward contracts or holding stock certificates in private companies ("Pre-IPO Shares").
- 4. The Receiver is aware of authority stating that all assets of a receivership are deemed to be part of a QSF (Scenario 1); however, an issue has been raised as to whether the Receiver could assert that the Pre-IPO shares might be excluded from the QSF if they could be distributed directly from the transferor to the investors (Scenario 2). There are costs, delays and securities and logistical issues to be considered in connection with Scenario 2, which the Receiver believes need to be briefed and brought to the Court's attention before the Receiver can move forward with employing a tax advisor to pursue Scenario 2.
- 5. Since the last hearing on June 27, 2019, the Receiver has also been in communication with securities counsel regarding the potential securities ramifications of the proposed Plan. Engagement terms are being finalized with both professionals and the Receiver intends to file a motion seeking approval of these professionals, as well as a motion for instructions, by August 15, 2019.

6. The SEC and the SRA Investor Group have agreed to shortened time for hearing so that the Motion, to be filed on August 15, 2019, could be heard on September 12, 2019, with any opposition due on August 29, 2019 and any reply due on September 5, 2019.

III. Extension of Deadline and Shortened Time for Notice are Appropriate

In considering the tax and securities implications of the Plan, the Receiver has identified the following principal issues that require the assistance of tax and securities advisors: (1) whether and how the sale and distribution of the IPO Shares are to be taxed and be deemed compliant with securities regulations if deemed to be part of the QSF (Scenario 1); and (2) whether it is appropriate to exclude the Pre-IPO Shares from the QSF and what the securities implications are of such exclusion (Scenario 2). There are differing costs, risks, and consequences of pursuing Scenario 1 or 2. The Receiver believes that these issues need to be more fully briefed and that the parties need to be afforded an opportunity to review, analyze and take a position on the different scenarios.

The Receiver is mindful that this receivership case has been pending since October 2016 and that all parties are anxious to see a distribution plan approved and distribution of the IPO Shares distributed as soon as possible. The next step necessary to move this matter forward is to determine the tax and securities consequences of the Plan with the assistance of professionals in these two areas. The Receiver has yet been unable to obtain a tax opinion as requested by the SRA Investor Group because of the different possible scenarios. The type of tax services to be provided will vary significantly on which Scenario is pursued and on what securities counsel advises are the ramifications of the Scenarios. The discussions have been ongoing regarding possible options to consider in an effort to mitigate the tax consequences of the Plan and it has recently become clear that the Court's involvement in the discussion will be necessary before the type of services to be provided can be decided.

Accordingly, the Receiver asks that the Court excuse the August 9, 2019 suggested deadline to obtain a tax opinion and that the Court allow shortened time for notice on the Instructions Motion to be filed on August 15, 2019 to employ professionals and to request instructions on how to proceed.

IV. Conclusion

For these reasons, the Receiver respectfully requests that the Court (1) excuse the suggested deadline of August 9, 2019 to obtain a tax opinion; and (2) approve shortened time for notice on the Instructions Motion to be filed no later than August 15, 2019, with a hearing to be set for September 12, 2019, any opposition due on August 29, 2019, and any reply due on September 5, 2019. The Receiver requests all other appropriate relief.

DATED: August 9, 2019

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