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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

JOHN V. BIVONA; SADDLE RIVER
ADVISORS, LLC; SRA MANAGEMENT
LLC; FRANK GREGORY MAZZOLA,

Defendants, and

SRA I LLC; SRA II LLC; SRA III LLC;
FELIX INVESTMENTS, LLC; MICHELE J.
MAZZOLA; ANNE BIVONA; CLEAR
SAILING GROUP IV LLC; CLEAR
SAILING GROUP V LLC,

Relief Defendants.

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

**THE SRA FUNDS INVESTOR
GROUP'S RESPONSE TO THE
RECEIVER'S MOTION TO
EMPLOY PROFESSIONALS AND
FOR INSTRUCTIONS FROM THE
COURT (ECF NO. 516)**

Date: October 10, 2019
Time: 10:30 AM
Courtroom: 5
Judge: Hon. Edward M. Chen

**THE INVESTOR GROUP'S RESPONSE TO THE RECEIVER'S MOTION TO EMPLOY
PROFESSIONALS AND FOR INSTRUCTIONS FROM THE COURT**

INTRODUCTION

1
2 The SRA Funds Investor Group (“Investor Group”) respectfully submits this response to the
3 Receiver’s August 15, 2019 motion to employ tax and securities professionals and for further
4 instructions from the Court (ECF No. 516). The Investor Group does not oppose the employment
5 of professionals by the Receiver and, in fact, urges the Receiver to obtain appropriate professional
6 advice to “enable her to maximize the recovery of the investor class” as she is mandated to do under
7 this Court’s Order Re Proposed Distribution Plans. ECF No. 433 at p. 7. As set forth below,
8 however, and as further described in the attached Comments from Scott C. Burack, a tax expert
9 retained by the Investor Group, the Investor Group does have significant concerns about the
10 Receiver’s current motion and its accompanying request for instructional guidance.

11 In particular, the Investor Group is concerned that the path down which the Receiver wishes
12 to proceed deviates significantly from the distribution plan the Court indicated it was prepared to
13 approve. The Receiver lists only two scenarios on which she feels she can proceed.¹ Both are
14 *extremely detrimental* to the SRA investors. As the Investor Group’s expert explains, there are
15 other, far less harmful alternative organizational and taxation scenarios available to the Receiver
16 that more closely adhere to the investment objectives of investors. These alternative scenarios must
17 be explored by the Receiver if the Receiver intends to implement the distribution plan the Court
18 previously indicated it was inclined to approve to protect investors.

19 In summary, if tax professionals are retained by the Receiver, they should be instructed to
20 research and opine on *all* possible alternatives, not just the two limited scenarios the Receiver has
21 come up with. Similarly, the Receiver should be instructed by the Court to explore other alternatives
22 that may be available and that more closely adhere to the distribution plan envisioned by the Court.

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26 ¹ See, e.g., ECF No. 516 at p. 5 (describing the organizational and taxation scenarios the Receiver
27 has considered as: “The Two Possible Scenarios”).

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28**RESPONSE**

As the Court will recall, at the June 27, 2019 hearing in this matter, the Receiver raised for the first time her concerns about potential tax issues that might arise upon the implementation of the distribution plan then before the Court. Following a lengthy discussion between the Court and the parties present, it was ultimately decided at the June 27 hearing that since this was a new matter being raised by the Receiver that required some tax expertise, the Receiver would consult with and obtain a tax opinion from a qualified tax professional. The Investor Group supported this approach at the hearing.

On August 15, 2019, the Receiver filed her motion to employ professionals, including a tax professional, and for instructions from the Court on how she should proceed. ECF 516. It appears from her filing that the Receiver has already had preliminary discussions with the tax professional and has concluded that there are only two possible scenarios under which she can implement a distribution plan in this case. The Receiver asks the Court in her motion for instructions with respect to these two scenarios, and only these two scenarios, and for permission to hire a tax professional to obtain advice and an opinion on only these two scenarios.

As noted above, the Investor Group does not object to the employment of a tax professional. However, the Investor Group does object to path the Receiver is now going down, a path that is apparently limited to one of only two predetermined outcomes, neither of which would allow the distribution plan contemplated by the Court to be implemented in a way that does not harm SRA investors. This might be acceptable if there were in fact only two possible scenarios under which the preliminarily-approved distribution plan could be implemented here, but that is not the case.²

² The Receiver's limited focus stems from her reading of *United States v. Brown*, 348 F.3d 1200 (10th Cir. 2003), a Tenth Circuit case finding that receivership assets were transferred to a Qualified Settlement Fund ("QSF") as of the commencement of the receivership. *Brown* addresses a scenario where a receivership is created not to restore shares to investors, but to liquidate and refund the purchase price of such securities. The Tenth Circuit suggests it may well have reached a different conclusion if the estate instead had "an obligation with respect to some of the victims to provide them with the securities they paid for" as is the case here. *See id.*, at 1211-12.

1 Following the receipt of the Receiver's August 15 motion, the Investor Group retained a tax
 2 expert, Scott C. Burack, to review the Receiver's motion and her two scenarios for implementing a
 3 distribution plan. While Mr. Burack's engagement was necessarily limited in scope and time, he
 4 has, nonetheless, identified other ways in which the Receiver could proceed in this case that would
 5 allow a distribution plan to be implemented in a way that is far less detrimental to SRA investors,
 6 while still achieving the overall goal of the Receivership. *See* Burack Comments, attached hereto
 7 as Exhibit A. While Mr. Burack's comments are not definitive or conclusive, they nevertheless
 8 raise significant concerns among the Investor Group that the Receiver has unduly limited herself,
 9 and her tax professional, in a way that prevents consideration of other potentially viable options.

10 For this reason, the Investor Group believes that the Receiver and her tax professional should
 11 be ordered by the Court to explore and report back on all possible options for proceeding, not just
 12 the two scenarios the Receiver has put before the Court. If there are in fact other options available,
 13 but this Receiver will not implement them for personal reasons, then she should consider stepping
 14 down as Receiver.

15 CONCLUSION

16 For all of the foregoing reasons, the Investor Group respectfully requests any tax
 17 professionals retained by the Receiver be instructed to research and opine on all possible
 18 alternatives, not just the two limited scenarios the Receiver has come up with. Similarly, the
 19 Receiver should be instructed by the Court to explore other alternatives that may be available and
 20 that more closely adhere to the distribution plan envisioned by the Court.

21 Respectfully submitted,

22 DATED: September 20, 2019

PRITZKER LEVINE LLP

23 By: /s/ Jonathan K. Levine

24 Jonathan K. Levine
 25 Elizabeth C. Pritzker
 Bethany Caracuzzo

26 Attorneys for the SRA Funds Investor Group