

1 KATHY BAZOIAN PHELPS (State Bar No. 155564)
2 *kphelps@diamondmccarthy.com*
3 DIAMOND MCCARTHY LLP
4 1999 Avenue of the Stars, Suite 1100
5 Los Angeles, California 90067-4402
6 Telephone: (310) 651-2997

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 JULIA DAMASCO IN
SUPPORT OF FOURTH INTERIM
ADMINISTRATIVE MOTION FOR AN
ORDER PURSUANT TO LOCAL RULE 7-11
FOR THE APPROVAL OF FEES AND
EXPENSES FOR THE SUCCEOR
RECEIVER AND COUNSEL FROM
OCTOBER 1, 2019 THROUGH DECEMBER
31, 2019; FOR THE APPROVAL OF FEES
FOR MILLER KAPLAN ARASE LLP FROM
AUGUST 2019 THROUGH DECEMBER 31,
2019; AND FOR THE APPROVAL OF FEES
FOR SCHINNER & SHAIN LLP THROUGH
DECEMBER 31, 2019**

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

1 I, Julia Damasco, declare:

2 1. I am a partner at Miller Kaplan Arase LLP, tax advisor for Kathy Bazoian Phelps, the
3 Court appointed Receiver (the “Receiver”) in the case of Securities and Exchange Commission v.
4 Bivona et. al. (the “Action”) before the United States District Court for the Northern District of
5 California (the “Court”). I am an attorney at law licensed to practice in all of the courts of the states
6 of California and Washington, the United States District Court for the Northern District of
7 California and the United States Tax Court. I have personal knowledge of the matters set forth
8 below and if called as a witness, I would and could testify competently to the matters stated herein.

9 2. This declaration is made in support of the Fourth Interim Administrative Motion for an
10 Order Pursuant to Local Rule 7-11 for the Approval of Fees and Expenses for the Successor
11 Receiver and Counsel from October 1, 2019 through December 31, 2019; Approval of Fees for
12 Miller Kaplan Arase LLC from August 2019 through December 31, 2019; and Approval of Fees
13 for Schinner & Shain, LLP through December 31, 2019 (“Motion”).

14 3. The following is a summary of the legal and public accounting services Miller Kaplan
15 has provided to date to the Receiver. In August 2019, we began providing services to the Receiver
16 on the tax issues raised in connection with a distribution plan under consideration by the Court. The
17 firm’s initial conversations with the Receiver have not been charged.

18 4. The services performed by the firm from August 2019 through December 31, 2019 are
19 described generally as follows. We reviewed the tax status of the Receivership Entities and
20 researched the tax filings by the Receivership Entities. We reviewed prior tax returns of the
21 defendants and the returns filed by the former receiver to ascertain the status.

22 5. We also reviewed the current factual status of the receivership case, including
23 documentation and information relating to the securities and interests in securities owned by the
24 estate. A review of this information as well as of some key pleadings in the receivership case was
25 necessary to evaluate the tax status of the receivership estate and to evaluate potential alternatives
26 for addressing tax consequences of a distribution plan.

27 6. We reviewed papers filed by the SRA Investor Group, including a report prepared by
28 Scott Burack, which related to possible alternative strategies to address tax liability in the

1 receivership case. The Investor Group had raised issues and questions relating to the tax
2 consequences of various tax compliance and distribution plan scenarios which we were asked to
3 address.

4 7. We had numerous discussions with the Receiver regarding the tax advisory services we
5 were to provide, the facts of the receivership, the interests of various Receivership stakeholders
6 (including the Investor Group), and the alternative possibilities for distribution plans in the case.
7 We also communicated with the Receiver's general and securities counsel to ensure that our tax
8 advice would be consistent with the Receiver's obligations, the facts and needs of the case and
9 applicable securities regulations.

10 8. We created and analyzed the pros and cons of different tax compliance and distribution
11 plan scenarios that were available to the Receiver, including analysis and consideration of tax
12 compliance and distribution plan scenarios that the Investor Group had asked the Receiver to
13 consider.

14 9. We provided advice to the Receiver on the tax procedure issues raised by the various
15 scenarios. We analyzed the tax, interest and penalty exposure for the Receiver, the Receivership
16 stakeholders (including the Investor Group) and the Receivership Estate of the various scenarios.

17 10. We communicated our findings to the Receiver which she utilized in preparing a
18 supplemental report to the Court addressing the tax and securities issues in the case.

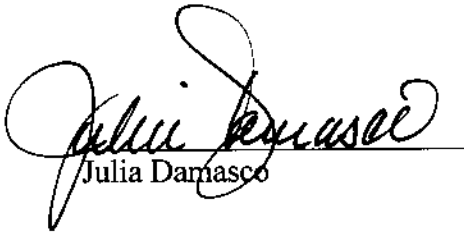
19 11. At the request of the Receiver, we also reviewed a draft of a settlement agreement with
20 Equity Acquisition Company Ltd. to advise the Receiver on possible tax consequence of the
21 settlement.

22 12. A true and correct copy of my firm's invoice reflecting the detailed time entries for the
23 services we provided is attached hereto as Exhibit "5." The last page of the invoice contains the
24 discounted rates quoted in the engagement letter in this matter (discounted by 20%) and the current
25 discounted rates (as of December 1, 2019) for those staff members and partners whose work is
26 billed in the attached invoice. The attached invoice reflects charges for the work of each staff
27 member and partner at a rate less than the engagement letter discounted rates and less than the
28 December 1, 2019 discounted rates because I wrote off \$2400 of fees that I thought duplicative.

1 This resulted in the dollar charge for each entry being adjusted down.

2 13. I understand that the SEC has requested that the receiver holdback payment of 20% of
3 the allowed fees, subject to future court authorization for payment. Accordingly, I understand and
4 agree that the Receiver would pay the amount of \$33,972.48 at this time and that payment of the
5 remaining \$8,493.12 would be subject to further Court approval.

6 I declare under penalty of perjury that the foregoing is true and correct. Executed on this 7th
7 day of February 2020 at Hailey, Idaho.

8
9
10 
11 Julia Damasco

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 5



4123 Lankershim Boulevard
North Hollywood, CA 91602

Kathy Bazoian Phelps
SRA Receivership
Diamond McCarthy LLP
1999 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067

Invoice: 525185

Client ID: 3012290

Date: 01/09/2020

Due Date: 02/08/2020

For professional services rendered as follows:

<u>DATE</u>	<u>SERVICE</u>	<u>STAFF</u>	<u>HOURS</u>	<u>AMOUNT</u>
General Consulting Services				
08/14/2019	Prepare/Draft/Edit/Finalize Review and edit motion for instructions.	JMD	1.20	509.48
08/15/2019	Discussions/Meetings Discuss opinion/planning with JMD.	NAS	0.50	155.42
08/17/2019	Research	JMD	2.50	1,061.41
08/23/2019	Review Preliminary research for characterization and reporting issues.	NAS	1.00	310.84
10/01/2019	Prepare/Draft/Edit/Finalize Work on Argument analysis.	JMD	2.50	1,061.41
10/02/2019	Review Provide redline to Kathy Phelps.	JMD	0.50	212.28
10/03/2019	Review 9/23/2019. Review document from Kathy Phelps.	JMD	2.20	934.04
10/10/2019	Review Review emails, documents and minute order.	JMD	1.20	509.48
10/17/2019	Review Begin review of documents received via email from Erika Clarke.	JMD	2.50	1,061.41
10/25/2019	Review Read and review the SRA Management Associates Receivership memorandum Kathy Phelps provided regarding the factual background.	QAD	0.50	113.72
10/27/2019	Research Continue research and email JMD re: memo.	NAS	2.00	621.68
11/12/2019	Research	JMD	5.00	2,122.83

O. 818.769.2010 / F. 818.769.3100 / FED EIN 95-2036255

MILLERKAPLAN.COM

11/13/2019	Discussions/Meetings Review docuemtns and prepare for and attend conference call with receiver and securities counsel.	JMD	2.50	1,061.41
11/13/2019	Discussions/Meetings Call with receiver and receiver's securities law counsel. Pre- and post-cal discussions with JMD. Research.	NAS	3.50	1,087.95
11/20/2019	Research Research and drafting re report to the court.	JMD	4.50	1,910.54
11/20/2019	Review Review memo, email and discuss with QD.	NAS	2.00	621.69
11/21/2019	Prepare/Draft/Edit/Finalize Prepare outline for the report to the court and tax opinion related to the tax treatment of receivership assets in a Qualified Settlement Fund and the tax consequences of the sale and distribution of the assets. Discuss with JMD and NAS.	QAD	6.00	1,364.67
11/21/2019	Review	JMD	4.50	1,910.54
11/22/2019	Prepare/Draft/Edit/Finalize Call with JMD and NAS to discuss SRA memo outline. Clear review comments and make updates to the SRA memo outline.	QAD	3.60	818.80
11/22/2019	Discussions/Meetings Review and revise outline. Call with JMD and QD. Follow-up research and email to JMD and QD.	NAS	2.50	777.11
11/25/2019	Discussions/Meetings Review memo and client's comments.	ER	0.20	28.81
11/25/2019	Review Review memo. Review email from K. Phelps.	NAS	1.00	310.84
11/26/2019	Prepare/Draft/Edit/Finalize Internal discussions re: memo. Research and drafting. Review F. Koenen memo and email JMD and QD re: same.	NAS	2.50	777.11
11/26/2019	Prepare/Draft/Edit/Finalize Work on updating the tax opinion draft based on Kathy Phelps's comments on draft outline. Discuss with JMD. Review securities counsel's memorandum.	QAD	5.50	1,250.95
11/27/2019	Research Research legislative history and comments/preamble to the regulations for Sec. 468B(g) related to the SRA draft report.	QAD	1.40	318.42
11/27/2019	Research Review documents; prep for conference	JD	3.00	1,273.70

O. 818.769.2010 / F. 818.769.3100 / FED EIN 95-2036255

MILLERKAPLAN.COM

	call			
11/28/2019	Prepare/Draft/Edit/Finalize Review letter report to court. Edit and further research.	JMD	5.50	2,335.11
11/29/2019	Discussions/Meetings Prepare for and attend conference call. Review drafts, memo from receiver and research re same. Edit report.	JMD	4.50	1,910.54
11/30/2019	Discussions/Meetings Conference call w/K.Phelps	JD	1.00	424.57
11/30/2019	Research Review documents and correspondence; prep for conf call	JD	1.00	424.57
11/30/2019	Research Review previously filed documents.	JMD	3.50	1,485.98
12/01/2019	Prepare/Draft/Edit/Finalize Edit draft report.	JMD	2.30	976.50
12/02/2019	Prepare/Draft/Edit/Finalize Edit draft report.	JMD	0.70	297.20
12/04/2019	Prepare/Draft/Edit/Finalize Review and revise tax report. Discussions with JMD.	NAS	3.50	1,087.95
12/05/2019	Discussions/Meetings Discuss report with JMD. Call re: edits.	NAS	1.50	466.26
12/05/2019	Review Prepare for and attend conference call.	JMD	2.00	849.13
12/10/2019	Prepare/Draft/Edit/Finalize Edit and redline working draft re tax issues for receivership estate.	JMD	2.50	1,061.41
12/11/2019	Research Review report; discuss tax issues pertaining to investor distribution at tax and QSF level	JD	1.00	424.57
12/11/2019	Prepare/Draft/Edit/Finalize Drafting. TCW Receiver.	JMD	6.50	2,759.67
12/12/2019	Review Review and edit draft re tax issues for receivership estate.	JMD	2.50	1,061.41
12/13/2019	Review Edit working draft re tax issues for receivership estate and send to Receiver and counsel. Emails re same. Review and edit settlement agreement.	JMD	4.80	2,037.91
12/13/2019	Research Review & discuss EAC settlement agreement	JD	1.00	424.57
12/16/2019	Project Management Tax opinion draft reports.	ER	0.20	30.33
		Subtotal		<u>42,465.60</u>

O. 818.769.2010 / F. 818.769.3100 / FED EIN 95-2036255

MILLERKAPLAN.COM

Total for Services	42,465.60
Invoice Total	<u>42,465.60</u>

<u>01/09/2020</u>	<u>12/31/2019</u>	<u>11/30/2019</u>	<u>10/31/2019</u>	<u>09/30/2019+</u>	Total
42,465.60	0.00	0.00	0.00	0.00	\$42,465.60

O. 818.769.2010 / F. 818.769.3100 / FED EIN 95-2036255

MILLERKAPLAN.COM

Miller Kaplan Arase LLP

Schedule of Rates Per Engagement Letter dated August 15, 2019

Staff Level	Current Rates per Hour	Discounted Rates
Administrative Staff, SME's& Project Managers	\$ 70 - \$ 180	\$ 56 - \$ 144
Accounting Staff	\$ 100 - \$ 200	\$ 80 - \$ 160
Senior Accounting Staff	\$ 225 - \$ 275	\$180 - \$ 220
Attorney	\$ 250 - \$ 350	\$ 200 - \$ 280
Partner	\$ 400 - \$ 550	\$ 320 - \$ 440

Miller Kaplan Arase LLP

Schedule of Rates Starting December 01, 2019

Staff Level	Current Rates per Hour	Discounted Rates
Ransom, Emily	\$ 200	\$ 160
Damasco, Jude	\$ 570	\$ 456
Damasco, Julia	\$ 570	\$ 456
Sanchez, Nicholas	\$ 420	\$ 336
Dinuri, Qiva A.	\$ 315	\$ 252