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4 *Successor Receiver*

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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 ADVISORS, LLC; SRA  
15 MANAGEMENT ASSOCIATES,  
LLC; FRANK GREGORY  
16 MAZZOLA,

17 Defendants, and

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

21 Relief Defendants.  
22

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

**FIFTH INTERIM ADMINISTRATIVE  
MOTION FOR AN ORDER PURSUANT TO  
LOCAL RULE 7-11 FOR THE APPROVAL  
OF FEES AND EXPENSES FOR THE  
SUCCESOR RECEIVER, DIAMOND  
MCCARTHY LLP, AND SCHINNER &  
SHAIN LLP FROM JANUARY 1, 2020  
THROUGH MARCH 30, 2020.**

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

23  
24 **I. Relief Requested**

25 Pursuant to Local Rule 7-11, the Receiver seeks approval of compensation in the amount of  
26 \$75,058.00<sup>1</sup> for services rendered from January 1, 2020 through March 30, 2020 (“Motion Period”),

27 \_\_\_\_\_  
28 <sup>1</sup> The Receiver has agreed to a holdback of 20% of this amount, and thus seeks payment of  
\$60,046.80 at this time.

1 and reimbursement of expenses in the amount of \$145.00. Diamond McCarthy, LLP, general counsel  
 2 to the Receiver, seeks compensation in the amount of \$32,454.00<sup>2</sup> for services rendered during the  
 3 Motion Period, and reimbursement of expenses in the amount of \$169.43. Schinner and Shain LLP  
 4 (“Schinner”), securities counsel to the Receiver, seeks \$2,450.00 in compensation for the Motion  
 5 Period and reimbursement of expenses in the amount of \$622.06. This Motion is supported by the  
 6 Declaration of the Receiver, the Declaration of Christopher D. Sullivan of Diamond McCarthy, and  
 7 the Declaration of Fred Koenen of Schinner.

8 The Receiver has conferred with counsel for the Securities and Exchange Commission and is  
 9 advised that they do not oppose the Motion. A stipulation with all parties was deemed impractical  
 10 given, among other things, the entry of judgment against defendants and pending bankruptcy of  
 11 defendant John Bivona. (L.R. 7-11(a)).

## 12 **II. Previous Fee Motions**

13 This is the fifth interim fee motion by the Receiver and her counsel. Fees and expenses have  
 14 previously been granted as follows:

15 Order on First Interim Motion (Dkt. 485): Receiver fees of \$46,287.00 and costs of \$3,033.33;  
 16 Diamond McCarthy fees of \$16,802.80 and costs of \$524.67 (fees were subject to 20% hold back).

17 Order on Second Interim Motion (Dkt. No. 515): Receiver fees of \$85,735.50 and costs of  
 18 \$185.93; Diamond McCarthy fees of \$30,625.00 and costs of \$1,924.16 (fees were subject to 20%  
 19 hold back).

20 Order on Third Interim Motion (Dkt. No. 537): Receiver fees in the amount of \$40,349.40 and  
 21 costs of \$542.73; Diamond McCarthy fees of \$4,450.90 and costs of \$131.35 (fees were subject to  
 22 20% hold back).

23 Order on Fourth Interim Motion (Dkt. No. 567): Receiver’s fees in the amount of \$50,187.30  
 24 (subject to 30% hold back) and costs of \$27.00; Diamond McCarthy’s fees of \$12,550.00 (subject to  
 25 30% holdback); Miller Kaplan fees of \$42,465.60 (subject to 20% holdback); Schinner & Shain fees  
 26

27 \_\_\_\_\_  
 28 <sup>2</sup> Diamond McCarthy has agreed to a holdback of 20% of this amount, and thus seeks payment of  
 \$25,963.20 at this time.

1 of \$5,044.96 (subject to 20% holdback). The Receiver has paid the amounts authorized for payment,  
2 net of the holdbacks.

3 The Receiver is currently holding free and clear cash of \$412,602.18 (\$300,843.62 of which  
4 was received during the second quarter pursuant to a settlement with the Bivona bankruptcy trustee).<sup>3</sup>

5 **III. Case Status**

6 The Receiver has continued to move forward the process of finalizing a distribution plan.  
7 During the Motion Period, the Receiver revised the distribution plan and prepared the Motion for  
8 Final Approval of Receiver’s Plan of Distribution and for Order Approving Form and Manner of  
9 Notice; and Opportunity to Serve on Investment Advisory Committee (Dkt. No. 570), which is  
10 scheduled to be heard on May 13, 2020.

11 During the Motion Period, the Receiver obtained Court approval of a number of settlement  
12 agreements. The Court approved the Receiver’s settlement with Equity Acquisition Company Ltd.  
13 (“EAC”) regarding the resolution of all outstanding issues between EAC and the Receivership  
14 estate. The Receiver also obtained Court approval of her settlement with the trustee of the John  
15 Bivona bankruptcy estate and the Eliv Group regarding competing claims to bank accounts.

16 The claims administration has largely been completed. However, during the Motion Period,  
17 the Receiver objected to the guaranty claims of Hsu and O’Leary and joined with the SEC in  
18 objecting to the claims filed by Michele Mazzola and Joshua Cilano for management fees. The  
19 Receiver has also prepared and filed a complaint against Ben Sabrin.

20 As of March 31, 2020, the receivership estate has \$412,602.18 in cash on hand in a  
21 checking account, \$94,290.67 in money market account and \$502,395.56 in the segregated Anna  
22 Bivona funds. There are known accrued expenses and unpaid expenses of \$120,738.49 and  
23 holdbacks of \$219,553.18. Attached to the Declaration of the Receiver as Exhibit “6” is a financial  
24 summary showing the cash status of the estate as of March 30, 2020. Funds in the amount of  
25 \$92,960.55 representing the fourth quarter 2019 fees and expenses have been disbursed during this  
26  
27

28 <sup>3</sup> This amount is exclusive of the segregated Anne Bivona disgorgement funds.

1 period. The Standardized Fund Accounting Report required by the SEC for the first quarter 2020 is  
2 attached as Exhibit “7” to the Receiver’s declaration.

#### 3 **IV. The Receiver’s Fee Request**

4 As detailed in the Declaration of the Receiver, pursuant to the Receiver’s proposal for her  
5 appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver has  
6 established separate billing categories for services provided to address legal issues (2598-11- Case  
7 Administration; 2598-13 – Claims Administration/Objection; 2598-14 - Asset Analysis and  
8 Recovery; 2598-16- Plan Implementation) and a separate category for administrative services  
9 provided (2598-12- Receiver Administrative Services). For billing category 2598-12, the Receiver  
10 has agreed to charge \$130.00 per hour for herself and for administrative assistance. For the rest of  
11 the billing categories, the Receiver has discounted her hourly rate of \$675.00 to \$425.00, thereby  
12 generating significant savings to the estate. The billing statements itemizing the services provided  
13 and expenses incurred are contained in Exhibits “1-5” attached to the Declaration of the Receiver.

14 The amounts for each category are as follows:

15 <b>Matter</b>	<b>Hours</b>	<b>Fees</b>	<b>Expenses</b>
16 Case Administration	23.90	\$10,157.50	\$145.00
17 Administrative Services	26.60	\$3,573.50	n/a
18 Claims Administration/Objection	20.50	\$8,712.50	n/a
19 Asset Analysis and Recovery	37.80	\$16,065.00	n/a
20 Plan Implementation	89.50	\$36,550.00	n/a
<b>TOTAL</b>		<b>\$75,058.50</b>	<b>\$145.00</b>

#### 21 **V. Diamond McCarthy’s Fee Request**

22 As detailed in the Declaration of Christopher D. Sullivan, Diamond McCarthy has  
23 established the following billing categories for tasks performed during the Motion Period (2622-11-  
24 Case Administration; 2622-13- Plan Implementation; 2622-15 Asset Analysis and Recovery).  
25 Services were primarily performed by partner Christopher D. Sullivan and senior counsel Stacey  
26 Pratt at discounted hourly rates with paralegal assistance. The billing statements itemizing the  
27 services provided and expenses incurred are attached as Exhibits “8-10” to the Declaration of Mr.  
28 Sullivan. The amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	28.70	12,181.50	\$34.66
Plan Implementation	17.40	7,395.00	n/a
Asset Analysis and Recovery	30.30	12,877.50	\$134.77
<b>TOTAL</b>		<b>\$32,454.00</b>	<b>\$169.43</b>

**VI. Schinner Fee Request**

Attached to the Declaration of Frederick Koenen as Exhibit "11" are the billing statements itemizing the amounts owed and the services performed by Schinner during the Motion Period. As is shown from the billing statements, Schinner performed 4.90 hours of services for a total of \$2,450.00 and incurred costs in the amount of \$622.06. The services performed by Schinner included advising the Receiver on securities law matters.

**WHEREFORE**, the Receiver requests entry of an order granting this Motion in all respects.

Dated: June 17, 2020

By: /s/Kathy Bazoian Phelps  
Receiver