

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RAINES FELDMAN LLP
David Castleman (State Bar No. 326812)
dcastleman@raineslaw.com
1800 Avenue of the Stars, 12th Floor
Los Angeles, California 90067
Telephone: (310) 440-4100
Facsimile: (310) 691-1367

Counsel to Receiver Kathy Bazoian Phelps

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiffs,

v.

JOHN V. BIVONA; SADDLE RIVER
ADVISORS, LLC; SRA MANAGEMENT
ASSOCIATES, 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

**TENTH INTERIM
ADMINISTRATIVE MOTION FOR
AN ORDER PURSUANT TO LOCAL
RULE 7-11 FOR THE APPROVAL
OF FEES AND EXPENSES FOR THE
SUCCESSION RECEIVER, RAINES
FELDMAN LLP, AND MILLER
KAPLAN ARASE LLP FROM APRIL
1, 2021 THROUGH JUNE 30, 2021**

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

1 **I. Relief Requested**

2 Pursuant to Local Rule 7-11, through this Motion, the Receiver seeks approval of
 3 compensation and reimbursement of expenses for herself and her professionals for the period
 4 of April 1, 2021 through June 30, 2021 (“Motion Period”) in the following amounts:

5 Receiver: Fees \$19,596.00;¹ Costs \$55.50.

6 Diamond McCarthy LLP (“Diamond McCarthy”): Fees \$4149.60; Costs \$178.39.

7 Raines Feldman LLP (“Raines Feldman”): Fees \$12,090.00.

8 Miller Kaplan Arase LLP (“Miller Kaplan”): Fees \$6,227.40.

9 This Motion is supported by the Declarations of the Receiver, David Castleman of
 10 Raines Feldman, and Julia Damasco of Miller Kaplan.

11 The Receiver has conferred with counsel for the Securities and Exchange Commission
 12 (“SEC”), and counsel for Progresso Ventures, and the Receiver is advised that they do not
 13 oppose the Motion. A stipulation with all parties was deemed impractical given, among other
 14 things, the entry of judgment against defendants and pending bankruptcy of John Bivona.
 15 (L.R. 7-11(a)).

16 **II. Previous Fee Motions**

17 Fees and expenses have previously been granted as set forth in the addendum to the
 18 Receiver’s Declaration, filed concurrently herewith.

19 As of June 30, 2021, there are outstanding fee holdbacks from the prior fee
 20 applications in the following amounts:

21 Sherwood Partners, Former Receiver	\$144,627.50
22 Kathy Bazoian Phelps, Receiver	\$108,070.07
Total	\$252,697.57

23 As of June 30, 2021, the Receiver was currently holding cash in the following amounts
 24 in the following accounts:

25 Checking	\$6,174.82
26 Brokerage cash sweep	\$1,275,857.70

27 ¹ The Receiver has agreed to a holdback of 20% of this amount (\$3,919.20) and therefore
 28 requests authority to pay \$15,676.80.

1	Anna Bivona Funds	\$502,458.27
2	Plan Fund checking	\$250,000.00
	Tax Holding checking	\$250,000.00
3	Palantir Reserve checking	\$250,000.00
	Mongo Reserve checking	\$249,925.00
4	Plan Fund ICS	\$4,127,447.08
5	Tax Holding ICS	\$4,262,686.51
	Palantir Reserve ICS	\$12,878,630.20

7
8 **III. Case Status**

9 The Court approved the Receiver’s Plan of Distribution (“Plan”) on May 25, 2020
10 (Dkt. No. 613). Upon the Plan’s approval, the Receiver began taking the steps necessary to
11 implement the Plan, including preparing distribution schedules and communicating with
12 investors regarding their account information. The Receiver worked with Miller Kaplan to
13 address the proper manner of calculating the sale and distributions of the publicly traded
14 securities. The Receiver filed a motion seeking Court authority to sell securities to fund the
15 Plan Fund and the Tax Holding Account and to make interim distributions to investors holding
16 allowed claims. The motion was approved on July 20, 2020 (Dkt. No. 619), and the Receiver
17 has largely completed the first interim distributions of publicly traded securities, with just one
18 more investor to receive shares when the investor provides necessary account information.

19 The Receiver also sought authority to sell the necessary Palantir shares upon
20 notification of Palantir’s direct listing, and the sales process was completed in early October
21 2020, resulting in net proceeds to the Estate of \$9,854,109.90. In November 2020, the
22 Receiver transferred the remaining \$94,419.56 in the money market account into the checking
23 account. The Receiver sought authority to make an interim distribution to Class 3 Claimants
24 in the amount of \$7,721,752.95, which was completed in January 2021.

25 The Receiver also sold or distributed the estate’s remaining position in Palantir after
26 the lockup restrictions were lifted, resulting in net proceeds of \$44,042,943.99 for the estate
27 (largely to pay and reserve for taxes), and the distribution or equivalent of nearly 3,000,000
28 shares of Palantir to 240 claimants. In June 2021, the Receiver also sold or distributed the

1 estate's remaining position in Airbnb, selling 8,626 shares resulting in net proceeds of
2 \$1,275,805.29 for the estate and the distribution of the remaining 13,624 shares to claimants.

3 In June 2021, the Receiver made estimated tax payments of \$21,900,000 to the United
4 States Treasury and \$5,900,000 to the California Franchise Tax Board. Moreover, the
5 Receiver, with the assistance of Diamond McCarthy, settled the lawsuit against Ben Sabrin for
6 the return of 6,250 shares of MongoDB, in exchange for cash payments totaling \$402,000.

7 As of June 30, 2021, the receivership estate has \$6,174.82 in cash on hand in a
8 checking account, \$1,275,857.70 in the cash sweep of its brokerage account (which has since
9 been paid into the Plan Fund, Tax Holding Account, and Airbnb Reserve pursuant to prior
10 orders), \$502,458.27 in the segregated Anna Bivona funds, \$4,377,447.08 in the Plan Fund,
11 \$4,512,686.51 in the Tax Holding Account, \$13,128,630.20 in the Palantir Administrative
12 Reserve, and \$249,925.00 in the MongoDB Administrative Reserve. There are known accrued
13 expenses and unpaid expenses of \$42,296.89 through June 30, 2021 for fourth quarter fees and
14 expenses, and holdbacks of \$252,697.57. Attached to the Declaration of the Receiver as
15 Exhibit "1" is a financial summary showing the cash status of the estate as of June 30, 2021.
16 Funds in the amount of \$138,698.57 representing first quarter 2021 fees and expenses were
17 disbursed during this period. The Standardized Fund Accounting Report required by the SEC
18 for the first quarter 2021 is attached to the Receiver's Declaration as Exhibit "2."

19 **IV. The Receiver's Fee Request**

20 As detailed in the Declaration of the Receiver, pursuant to the Receiver's proposal for
21 her appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver
22 has established separate billing categories for services provided. For services provided with
23 respect to legal issues, the Receiver has discounted her hourly rate of \$675.00 to \$465.00
24 (\$425.00 for services up until April 23, 2021, which was increased pursuant to Court approval
25 as of that date), thereby generating significant savings to the estate. The Receiver has agreed
26 to charge \$160.00 per hour for herself and her assistants for administrative services. The
27 billing statements itemizing the services provided and expenses incurred are contained in
28

1 Exhibits “3A” and “3B” attached to the Declaration of the Receiver. The Receiver incurred
2 costs of \$55.50 and performed services for each category as follows:

3 Category / Matter ²	Hours	Fees
4 Case Administration (B110 / 2598-00011)	19.90	\$8,947.00
5 Administrative Services (E124 / 2598-00012)	1.50	\$210.00
6 Plan Implementation (B320 / 2598-00016)	21.20	\$9,718.00
7 Fee and Employment Applications (B160)	2.60	\$721.00
TOTAL	45.20	\$19,596.00

8 The Receiver’s fees are divided as \$4,550.00 incurred while she was at Diamond
9 McCarthy as set forth in Exhibit “3A” and \$15,046.00 while at Raines Feldman as set forth in
10 Exhibit “3B.”

11 V. Diamond McCarthy’s Fee Request

12 As detailed in the Declaration of David Castleman, Diamond McCarthy established
13 billing categories for tasks performed and has significantly discounted its billing rates with
14 senior attorneys capping their hourly rate at \$425.00. Diamond McCarthy was terminated as
15 counsel as of April 22, 2021. The billing statements itemizing the services provided and
16 expenses incurred are attached as Exhibit “4A” to the Castleman Declaration. Diamond
17 McCarthy incurred costs of \$178.39 and performed services for each category are as follows:

18 Matter	Hours	Fees
19 Case Administration (2622-00011)	3.60	\$1,344.60
20 Plan Implementation (2622-00013)	6.60	\$2,805.00
TOTAL	10.20	\$4,149.60

21 VI. Raines Feldman’s Fee Request

22 As detailed in the Declaration of David Castleman, Raines Feldman has established
23 billing categories for tasks performed and has significantly discounted its billing rates with
24 senior attorneys capping their hourly rate at \$465.00. Raines Feldman was appointed as
25 counsel as of April 23, 2021 pursuant to Court order (Doc No. 651). The billing statements
26

27 ² Includes time during the Motion Period when the Receiver was employed by Diamond
28 McCarthy (April 1-22) and by Raines Feldman (April 23-June 30), as set forth in more detail
in the Receiver’s declaration.

1 itemizing the services provided and expenses incurred are attached as Exhibit “4B” to the
 2 Castleman Declaration. Raines Feldman performed services for each category are as follows:

3 Category	Hours	Fees
4 Case Administration (B110)	6.00	\$2,790.00
5 Plan Implementation (B320)	20.00	\$9,300.00
TOTAL	26.00	\$12,090.00

6 **VII. Miller Kaplan’s Fee Request**

7 As detailed in the Declaration of Julia Damasco and the billing statements attached as
 8 Exhibit “5” to her Declaration, Miller Kaplan has incurred \$6,227.40 in fees in connection
 9 with providing tax services to the Receiver. The services performed by Miller Kaplan were
 10 necessary in implementing the Plan and in finalizing 2020 tax return and making the required
 11 estimated tax payments for 2021.

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

14
 15
 16 Dated: July 26, 2021

RAINES FELDMAN LLP

17
 18 By: /s/ David Castleman
 David Castleman

19 *Counsel for Receiver Kathy Bazoian Phelps*
 20
 21
 22
 23
 24
 25
 26
 27
 28