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**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

**ADMINISTRATIVE MOTION BY
RECEIVER KATHY BAZOIAN
PHELPS FOR ORDER:**

**(1) APPROVING SALE AND
DISTRIBUTION OF
PUBLICLY TRADED
SECURITIES PURSUANT
TO DISTRIBUTION PLAN;
AND**

**(2) FOR MODIFICATION OF
THE DISTRIBUTION PLAN**

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

1 Kathy Bazoian Phelps, the successor receiver herein (the “Receiver”) of SRA
 2 Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, SRA Management
 3 Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-
 4 Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management
 5 Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, NYPA Management Associates,
 6 LLC and Solis Associates Fund LLC (collectively, the “Receivership Entities” and their estates
 7 the “Receivership Estate”), hereby files this Administrative Motion under Local Civil Rule
 8 7-11 for Order (1) Approving Sale and Distribution of Publicly Traded Securities Pursuant to
 9 Distribution Plan; and (2) for Modification of the Distribution Plan (the “Motion”).¹

10 I. INTRODUCTION

11 The Receiver seeks authority by this Motion to: (1) modify the Distribution Plan (the
 12 “Plan”) so that she may convert a portion or all of the administrative stock reserve held for
 13 each of Bloom Energy Corp.; Cloudera, Inc.; DropBox, Inc.; Lyft, Inc.; MongoDB, Inc.;
 14 Pinterest, Inc.; and Snap, Inc. (collectively, the “Publicly Traded Securities”) into an
 15 administrative cash reserve for each security (collectively, the “Publicly Traded Security
 16 Reserves”); (2) sell a portion of the administrative stock reserve for the Publicly Traded
 17 Securities as may be necessary to pay taxes associated with the sale and distribution and to pay
 18 reasonable commissions; (3) distribute the remaining shares of the Publicly Traded Securities
 19 and Uber², Inc. to claimants; (4) pay all taxes arising from the sale and distribution as may be
 20 required by the federal or state taxing authorities; and (5) to sell any shares of a Publicly Traded
 21 Security that would otherwise be distributable to a claimant and distribute cash in lieu of stock

22 _____
 23 ¹ The Notice of Motion, the Motion, and supporting documents will be served on all interested
 24 parties pursuant to Civil Local Rule 66-6 and will be posted the papers on the Receivership
 25 website at <https://www.raineslaw.com/saddle-river-receiver/>. The Receiver has conferred with
 26 counsel for the Securities and Exchange Commission and the Investor Advisory Committee,
 27 who each do not oppose the Motion, and with counsel for Progresso Ventures LLC who does
 28 not express any comment or opposition in response. A stipulation with all parties was deemed
 impractical given, among other things, the entry of judgment against the defendants and
 pending bankruptcy of defendant John Bivona. L.R. 7-11(1)(a).

² While Uber is also a publicly traded security, it has been excluded from the defined term
 herein because all of the remaining shares of Uber are proposed to be distributed and no sale
 will be required as with the other Publicly Traded Securities.

1 if such claimant does not provide the Receiver with sufficient information necessary for the
2 Receiver to distribute securities to such claimant.

3 The Receiver moved this Court for authority to make a First Interim Distribution of the
4 Publicly Traded Securities to claimants, and to sell securities to fund the Tax Holding Account
5 [Doc. 617], which was granted on July 20, 2020 [Doc. 619]. The Receiver retained a number
6 of shares in each of the Publicly Traded Securities as an Administrative Stock Reserve, to
7 protect the Estate until its final tax liabilities may be ascertained. Later in 2020, both Palantir
8 and Airbnb had liquidity events, and the Receiver requested that a portion of the Administrative
9 Stock Reserve be converted to a cash reserve, following a stock sale to pay associated taxes,
10 and distribution of the balance to the those investors [Docs. 638, 657]. Holding the reserves
11 in cash allows the Receiver to hold a substantially smaller reserve, because the Receiver can
12 sell just those shares necessary for that reserve at a known price without incurring the risk that
13 the price of those shares may later drop. This Court approved those motions [Docs. 642, 659],
14 which allowed the Receiver to dispose of the estate's entire position in those two securities.

15 This Motion seeks to replicate that process for each of the Publicly Traded Securities,
16 creating a separate cash Publicly Traded Security Reserve for each security and distributing
17 the remaining securities following sales to fund tax payments. For the same reasons as stated
18 in the Palantir motion [Doc. 638], the Receiver believes this to be a prudent court of action.
19 The Receiver will hold the reserves in the Tax Holding Account, the Plan Fund and the Publicly
20 Traded Security Reserves for the three-year audit period to expire for the Internal Revenue
21 Service ("IRS") from the filing of the 2021 tax return to ensure that no additional tax liability
22 is assessed before making a final distribution.

23 **II. THE RECEIVER'S PROPOSED COURSE OF ACTION**

24 **A. Sale and Distribution of Securities**

25 For each of the Publicly Traded Securities, the Receiver has worked with her advisers
26 to analyze the estate's current holdings and determine the amount of administrative reserves
27 prudent to hold. The Receiver proposes to sell the securities as set forth in Exhibits "1" to "6"
28

1 attached to her declaration, filed concurrently with this Motion, to fund the additional amount
 2 required for the reserve, and to pay any associated taxes. For all shares remaining, the Receiver
 3 proposes to distribute them to Claimants as set forth in the schedules. The schedules currently
 4 contain hypothetical values, as exact number of shares necessary to sell depends on the market
 5 price of the security when the distribution begins. The Receiver will update the distribution
 6 schedules and post them on the website once the final figures are determined. Based on the
 7 current prices, the Receiver would propose the following sales:

Hypothetical Proposed Sale and Distribution (Final Numbers May Vary)				
Security	Remaining Shares in Estate	Price as of 8/6	Shares to Sell for Reserve and Taxes (hypothetical) ³	Shares to Distribute (hypothetical)
Bloom Energy ⁴	12,859	21.68	12,859	0
Cloudera	2,088	15.85	313	1,775
Dropbox	10,913	30.57	4,244	6,669
Lyft	1,065	52.44	138	927
MongoDB ⁵	3,465	373.45	724	2,741
Pinterest	2,606	58.78	859	1,747
Snapchat	9,619	75.98	5,085	4,534
Uber ⁶	32	44.28	0	32

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 16 As with the Palantir and Airbnb reserves, if any amount remains in the Publicly Traded
 17 Security Reserves after the final tax liabilities of the Receivership are determined, the Receiver
 18 intends to distribute those amounts to Class 4 Publicly Traded Security Claimants as cash, *pro*

19 ³ See Exhibits “1” through “6” for more detail on the distributions and sales of Cloudera,
 20 Dropbox, Lyft, MongoDB, Pinterest, and Snapchat. As there is no distribution of Bloom
 21 Energy, *see infra* note 4, there is no exhibit for Bloom. And as all 32 remaining shares of
 22 Uber are being distributed to its sole claimant, there is no exhibit attached, *see infra* note 6.

23 ⁴ The Receiver distributed most of Bloom Energy in 2020, and therefore needs to liquidate the
 24 estate’s remaining holdings in Bloom Energy to fund the Bloom Energy Administrative
 25 Reserve. If additional funds later become necessary, the Receiver will propose to supplement
 26 that reserve with funds from the Tax Holding Account or the Plan Fund, subject to any
 27 necessary equitable adjustment. Any such proposal would be the subject of a future motion
 28 seeking court approval for such action.

⁵ For MongoDB, the Receiver has already created a separate reserve as a result of the Sabrin
 settlement previously approved by this Court (Dkt. 646), in which Sabrin is paying cash to the
 estate in lieu of MongoDB shares. As such that reserve currently contains over \$275,000. The
 Receiver proposes to use the bulk of that to pay taxes associated with the distribution of
 MongoDB shares, so that she may distribute more shares to Claimants.

⁶ As Uber has only one claimant and the amount is de minimis, the Receiver proposes to
 distribute the Uber remaining shares, and not to maintain a separate Uber cash reserve.

1 *rata*, based on their Allowed Claims, most likely using the cash in a particular reserve to pay
2 the claimants in that subclass. Any such distribution schedule would be submitted to the Court
3 for approval at that time.

4 **B. Sale in Lieu of Distribution in Limited Circumstances**

5 Further, if a claimant has not provided the Receiver with sufficient information to make
6 the distribution of securities within four weeks of the entry of the order approving this Motion,
7 the Receiver proposes that she be given discretion to sell the securities associated with that
8 claimant's distribution and to distribute the cash proceeds (less any commission and fees
9 incurred as a result of such sale) to the claimant in lieu of securities. The Receiver has already
10 obtained approval for such course of action with respect to ELIV, which cannot accept
11 securities as distributions on that claim are made to a federal restitution account (Dkt. 627).

12 **C. Issues Relating to the Reported Tax Basis**

13 The Receiver has been advised that the tax basis reported to investors by Wells Fargo
14 to the investors' brokerage accounts, as part of the ordinary course of transferring shares via
15 the Depository Trust Company ("DTC") system, is not necessarily the investors' tax basis nor
16 is it necessarily the Qualified Settlement Fund tax basis. Because the tax basis for the estate
17 and the tax basis for the investors are different, each investor will be responsible for
18 coordinating with their own financial institution and advisers to determine their own tax basis
19 for their shares. As such, the Receiver requests that the Court instruct each claimant to
20 determine their own tax basis for the shares distributed, regardless of any information provided
21 via the DTC transfer by Wells Fargo.

22 **III. THE RECEIVER'S PROPOSED COURSE OF ACTION IS APPROPRIATE**
23 **AND IN THE BEST INTERESTS OF THE RECEIVERSHIP**

24 Under the current Plan, the Receiver is permitted to retain an Administrative Stock
25 Reserve. The conversion of the Administrative Stock Reserve to Publicly Traded Security
26 Reserve is in the best interests of the Receivership because it allows the Receiver to be fully
27 protected against any tax liabilities not yet assessed, without the risk of any future decline in
28 the stock prices of the Publicly Traded Securities. It is also in the best interests of Class 4

1 Claimants, because it allows the Receiver to distribute the remaining shares to Claimants in
2 this distribution. And because the reserves will be tracked separately for each Publicly Traded
3 Security, the Receiver will still be able to deliver any remaining value of each Publicly Traded
4 Security Reserve to the claimants that invested in that Publicly Traded Security.

5 This distribution will also allow the estate to eliminate holding any more of the eight
6 Publicly Traded Securities. Converting the estate's assets to cash is a crucial and necessary
7 step for the Receiver to be able to eventually obtain tax clearance with respect to all of the
8 securities transactions for each Successful Investment, and most importantly to distribute any
9 unused portion of the Publicly Traded Security Reserves (for Palantir and Airbnb as well) to
10 claimants.

11 Although the Receiver is confident in the accuracy of the QSF tax returns she has and
12 will file, the Receiver believes that it is critical the estate be properly reserved during the audit
13 period so that the Receiver can adequately protect the estate.⁷

14 **IV. CONCLUSION**

15 The Receiver respectfully requests that the Court grant the Motion and authorize the
16 Receiver to (1) make a distribution of shares of the Publicly Traded Securities and Uber held
17 by the Receivership to claimants, pursuant to the Plan; (2) sell additional Publicly Traded
18 Securities to pay the taxes associated with the distribution and to pay associated commissions,
19 pursuant to the Plan; (3) create a cash Publicly Traded Security Reserve for each of the seven
20 stocks as set forth in this Motion, as a minor modification to the Plan; and (4) pay estimated
21 taxes as may be required by the federal or state taxing authorities. The Receiver requests all
22 other appropriate relief.

23 Dated: August 6, 2021

RAINES FELDMAN LLP

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By: /s/ David Castleman

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David Castleman

Attorney for Receiver Kathy Bazoian Phelps

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⁷ Additionally, a Receiver can be personally liable for any unpaid taxes of the estate, *see* 31 U.S.C. § 3713(b), so it is appropriate to permit a reserve so that the estate assets are sufficient to pay any additional liability that might be incurred.