

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

5 *Counsel to Successor Receiver*

6
7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 JOHN V. BIVONA; SADDLE RIVER
ADVISORS, LLC; SRA
16 MANAGEMENT ASSOCIATES,
LLC; FRANK GREGORY
17 MAZZOLA,

18 Defendants, and

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

22 Relief Defendants.
23
24
25
26
27
28

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

**MOTION BY RECEIVER KATHY
BAZOIAN PHELPS FOR ORDER
DIRECTING ZOCDOD, INC. TO
TRANSFER SHARES**

Date: December 15, 2022

Time: 1:30 pm

Judge: Edward M. Chen

1 Kathy Bazoian Phelps, the successor receiver (the “Receiver”) of SRA Management
 2 Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, Clear Sailing Group IV, LLC, Clear
 3 Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC,
 4 Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC (“NYPA”), NYPA
 5 Management Associates, LLC and Solis Associates Fund LLC (collectively, the “Receivership
 6 Entities” and their estates the “Receivership Estate”), hereby files this Motion for Order Directing
 7 ZocDoc, Inc. (“ZocDoc”) to Transfer Shares (the “Motion”).¹

8 **I. Introduction**

9 In 2013, prior to the appointment of a Receiver, NYPA entered into a contract (the “Forward
 10 Contract”) with a counterparty (the “Counterparty”) to purchase the beneficial interest in 20,104
 11 ZocDoc shares (the “Shares”).² Under the Forward Contract, the Counterparty received the purchase
 12 price and was to remain the record owner of the Shares, which would remain in escrow while ZocDoc
 13 remained a private company and certain transfer restrictions remained in effect, or when the Shares
 14 could otherwise able to be transferred to NYPA. If ZocDoc had an initial public offering (an “IPO”),
 15 the Shares would then be transferrable to NYPA after the expiry of any lockup period.

16 In 2016, NYPA was placed into this receivership, and the Receivership Estate succeeded to
 17 NYPA’s interest in the Forward Contract. While holding the Forward Contract and maintaining the
 18 Shares in escrow was initially consistent with the court-approved Distribution Plan [Dkt. 570-1] (the
 19 “Plan”), circumstances have changed now that the bulk of the Receivership Estate has been
 20

21
 22 ¹ The Receiver has served this Motion on the Securities and Exchange Commission and the Investor
 23 Advisory Committee, neither of whom indicated opposition to the Motion. A stipulation with all
 24 parties was deemed impractical given, among other things, the entry of judgment against the
 25 defendants and pending bankruptcy of defendant John Bivona. (L.R. 7-11 1(a).) The Receiver has
 also served this Motion on ZocDoc, and ZocDoc does not oppose the Motion. The Receiver has also
 served this Motion on the Counterparty and provided time to respond, should the Counterparty
 choose to do so.

26 ² The Agreement is confidential and therefore the Counterparty will not be named in this public
 27 filing. Further, the Agreement is not attached to this Motion to protect the confidentiality of the
 28 transaction. The Receiver is prepared to present a copy for in camera review or to file such a copy
 under seal should the Court so request.

1 distributed and the Receiver is attempting to wind down the receivership, including by considering
2 whether to sell the remaining non-public shares, as the Receiver has explained in prior motions.

3 The Receiver has been advised that in order for the Shares to be saleable on the secondary
4 market as a practical matter, the Shares need to be transferred to her name on the capitalization table
5 and not held via Forward Contract. ZocDoc has agreed to a no-consideration transfer in order to
6 facilitate the orderly administration of the estate. Through an email to counsel, the Receiver received
7 acknowledgement regarding the request to transfer the shares from the Counterparty—which has
8 received full consideration for the Shares. Unfortunately, even though the Counterparty’s initial
9 response did not express opposition, no further confirmation has been received, and the Counterparty
10 has not responded to further repeated requests to execute documentation necessary to effectuate the
11 proposed transfer. The Receiver is therefore making the instant Motion to the Court seeking
12 permission to work directly with ZocDoc to finalize the transfer of the Shares to the Receivership
13 Estate in the name of “Receiver’s Account Estate of Saddle River Management LLC, Kathy B.
14 Phelps Administrator.”

15 **II. Background**

16 In 2013, the Counterparty and NYPA entered into the Forward Contract whereby in exchange
17 for receipt of the purchase price, the Counterparty agreed to assign and transfer to NYPA 100% of
18 its economic interest in the Shares. The Forward Contract also contained an escrow agreement under
19 which the Shares would be deposited with an escrow agent (the “Escrow Agent”) and remain in
20 escrow upon receipt of the purchase price (which did occur), while the Shares were not transferable
21 to the NYPA. Once the restrictions³ imposed on the Shares were removed, including ZocDoc’s right
22 of first refusal to purchase the shares (the “ROFR”), the Counterparty would assign, transfer, and
23 deliver the Shares to NYPA (or its assignee or designee).

24 Before any such transfer could occur, NYPA was placed into receivership in 2016, and the
25

26 ³ The restrictions imposed on the Shares are being waived by ZocDoc solely with respect to the
27 transfer provided by the Forward Contract. Such waiver does not apply to any subsequent transfer
28 from the Receivership Estate to a third party.

1 Receiver was appointed as successor receiver in 2019. [Dkt. 469.] The Receivership Estate thereby
2 succeeded to NYPA's interest in the Forward Contract, including the right to receive the Shares once
3 they became freely tradeable, most commonly after a ZocDoc IPO. As the Plan similarly required
4 the sale of shares for the Plan Fund and distribution of shares to claimants only after the underlying
5 company had a liquidity event such as an IPO (Plan, at 15-16), holding the Forward Contract was
6 consistent with the Plan.

7 As the Receiver noted in her most recent Status Report [Dkt. 681], circumstances have
8 changed now that the Receiver has sold or distributed the vast majority of the Receivership Estate's
9 stock holdings, with only shares in three pre-IPO companies remaining, including ZocDoc. The
10 Receiver has continued to monitor the possibilities for liquidating the Receivership Estate's position
11 in ZocDoc in order to efficiently wind down the estate and make a final distribution to claimants.
12 The Receiver has been advised that it is impractical to sell the Forward Contract, and that the estate
13 must hold the Shares directly for the Receiver to maximize the value of the Shares on the secondary
14 market. The Forward Contract, however, requires the Shares to be transferred only in certain
15 circumstances, generally upon an IPO and after the lockup period has expired. ZocDoc
16 acknowledged to the Receiver that the estate has paid for the Shares, and ZocDoc has therefore agreed
17 to transfer the Shares to the Receiver's name on the capitalization table without present consideration
18 or exercising the ROFR. ZocDoc has effectively agreed to remove the restrictions imposed on the
19 Shares to allow the Receiver to administer the estate.

20 The Receiver and her team have made repeated attempts to contact the Counterparty over the
21 last year, including contacting the Escrow Agent, in order to effect the transfer of the Shares to the
22 Receivership Estate's name. The Counterparty responded on January 25, 2022, via email, to a letter
23 sent by the Receiver's counsel, in which the Counterparty offered to assist with the transfer of the
24 Shares to the Receivership Estate and stating that the proposed plan with ZocDoc "seems logical"
25 but that he wanted to confer with counsel. Both the Receiver and her counsel have sent repeated
26 communications to the Counterparty to confirm the Counterparty's position on the transfer of the
27 Shares, but all communications have gone unanswered. The Receiver is serving this Motion on the
28

1 Counterparty (and the Escrow Agent), who will have notice and an opportunity to be heard if he so
2 desires.

3 Currently, the Receivership Estate has 1,495 shares of ZocDoc owned directly, already in the
4 Receiver's name on the capitalization table. Equity Acquisition Company Ltd. ("EAC") transferred
5 the right of title and beneficial interest in the 1,495 ZocDoc shares to the Receiver pursuant to the
6 Order approving settlement with EAC entered January 15, 2020. [Dkt. 550]. Once the transfer of the
7 Shares is complete, if the Court so orders, the Receiver will explore whether to sell all 21,599 ZocDoc
8 shares on the secondary market. If any such transaction becomes available and is in the best interest
9 of the Receivership Estate, the Receiver will file a separate motion for approval of that transaction at
10 the appropriate time.

11 **III. Requested Relief**

12 The Receiver respectfully asks that the Court issue an Order directing ZocDoc to transfer the
13 20,104 Shares to the Receiver's name on the capitalization table. Attached to this Motion is the
14 Proposed Order directing ZocDoc⁴ to transfer Shares from the Counterparty's name to the Receiver's
15 name on the capitalization table without present consideration or exercising the ROFR as a matter of
16 equity and in the interest of the effective administration of the estate, given that the NYPA (a
17 receivership entity) has already paid in full for the Shares and that ZocDoc does not object to the
18 transfer. The Proposed Order also authorizes the Receiver to pay fees up to \$10,000, which includes
19 ZocDoc's legal fees, to transfer the Shares to the Receivership Estate.

20 Under 28 U.S.C. § 2004, a receiver has broad discretion to sell the personalty of the
21 receivership estate so long as the court so orders. *See SEC v. Am. Cap. Invs., Inc.*, 98 F.3d 1133, 1144
22 (9th Cir. 1996) (approving receiver's decision to sell receivership estate property). The Ninth Circuit
23 has explained that the Court's power to approve such a sale derives from its broad equitable and
24 supervisory powers, which would also allow the Court to fashion the relief requested in this Motion.
25 *Am. Cap. Invs.*, 98 F.3d at 1144 (quoting 2 Clar on Receivers § 582 (3d ed. 1992); *see also Liberte*

26
27 _____
28 ⁴ *See note 3 supra.*

1 *Capital Group LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006) (district court presiding over an
2 equity receivership exercises the traditional, common law powers of equity and, therefore, has broad
3 powers in fashioning relief).

4 The Receiver respectfully submits that the proposed transfer is in the best interest of the
5 estate, because it allows the Shares to be transferred to the Receivership Estate on the capitalization
6 table, which will give the Receiver the flexibility to sell those Shares without any harm to the
7 Counterparty who has already been paid for those Shares. The only other party with any interest in
8 the Forward Contract, ZocDoc, has agreed to the transfer. The Receiver will continue to explore
9 disposing of the remaining pre-IPO shares in the estate so that the Receivership may be brought to
10 an expeditious and efficient close. Therefore, no party is harmed by the requested relief, which will
11 only serve to allow the Receiver to administer the estate more effectively and to maximize the value
12 of the Shares. Further, to the extent that the Counterparty responds to this Motion and expresses any
13 concerns, the Receiver can address those concerns on reply.

14 **IV. Conclusion**

15 The Receiver respectfully asks that the Court issue the Proposed Order (1) directing ZocDoc
16 to transfer the 20,104 ZocDoc Shares to the Receivership Estate on the capitalization table, from the
17 name of the Counterparty to the name of “Receiver’s Account Estate of Saddle River Management
18 LLC, Kathy B. Phelps Administrator,” without additional consideration or exercising the ROFR, (2)
19 authorizing the Receiver to pay up to \$10,000 in costs associated with the transfer of the Shares, and
20 (3) for all other appropriate relief.

21
22 DATED: October 25, 2022

RAINES FELDMAN LLP

23
24 By: /s/ David Castleman
25 David Castleman
26 *Counsel to Successor Receiver Kathy Bazoian*
27 *Phelps*