

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

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

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

**[PROPOSED] ORDER GRANTING
MOTION BY RECEIVER KATHY
BAZOIAN PHELPS TO MODIFY THE
DISTRIBUTION PLAN**

Date: August 31, 2023
Time: 1:30 pm
Judge: Edward M. Chen

1 The *Motion for an Order Authorizing Modification of the Distribution Plan* filed by Kathy
2 Bazoian Phelps, the successor receiver (the “Receiver”), came on for hearing on August 31, 2023 at
3 1:30 p.m. The Court having reviewed and considered the Motion, the Declaration of the Receiver,
4 and the files and records in this matter, and,

5 FOR GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that:

- 6 1. The Motion is granted in its entirety, and the Receiver’s Distribution Plan (the “Plan”) approved by this Court on May 25, 2020 (Dkt. No. 613) is modified as set forth herein.
- 7 2. Notice of the Motion was appropriate.
- 8 3. All funds currently in the estate may be used to satisfy any future assessment of taxes,
9 which are Class 2 Claims under the Plan to which all Class 3, 4, and 5 Claims are
10 subordinated. In the event of a reassessment after any audit by a taxing authority, the
11 Receiver may by motion to this Court seek a determination as to which funds in the
12 estate it is most appropriate to use to satisfy any such reassessment.
- 13 4. The Receiver is authorized to create separate Class 4 Reserves for each of Airbnb,
14 Inc.; Bloom Energy Corp.; Cloudera, Inc.; Dropbox, Inc.; Lyft, Inc.; MongoDB, Inc.;
15 Palantir, Inc.; Pinterest, Inc.; Snap, Inc.; Uber, Inc.; and for Evernote Corporation
16 (“Evernote”) as set forth in the Motion, and to open or use any existing segregated
17 accounts or subaccounts to hold such Class 4 Reserves.
- 18 5. For each Publicly Traded Security, the applicable Class 4 Reserve will contain the
19 proceeds of any sale of that security, less any amount contributed to the Plan Fund,
20 less any actual tax burden arising from the disposition of such security, plus any actual
21 tax benefit arising from the disposition of such security.
- 22 6. The Receiver is authorized and instructed to make the transfers among the estate’s
23 accounts and subaccounts as set forth in Exhibit “2” to the Receiver’s Declaration.
- 24 7. The Receiver is authorized to hold each Class 4 Reserve until the three-year audit
25 period for the estate’s 2021 tax return has lapsed. Any unused portion of each Class 4
26 Reserve may be distributed to such subclass, *pro rata* based on Allowed Shares,
27 subject to any equitable adjustment. The Receiver shall make a motion at the
28

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

appropriate time to effect such distribution.

8. The Evernote account already created by the Receiver shall be the Class 4F Evernote Reserve, and the Receiver is further authorized to make the transfer to Evernote Class 4F Reserve as set forth in Exhibit “2” to the Receiver’s Declaration.
9. The Plan is hereby modified to create a Class 6A for claimants who invested in Practice Fusion and a Class 6B for claimants who invested in Candi Controls. The Receiver is authorized to create a Class 6A Practice Fusion Reserve and a Class 6B Candi Controls Reserve, and the Receiver is further authorized to make the transfers set forth in Exhibit “2” to the Receiver’s Declaration concerning those reserves. Any claimants who invested in Practice Fusion or Candi Controls are instructed to provide written notice to the Receiver within 90 days following the date of this Order if such claimant believes that his or her investment details are different from those stated in, or omitted from, the schedules set forth in Exhibits “4” and “5” to the Receiver’s Declaration.
10. Class 5 Deficiency Claims shall be calculated on a per-investor basis for each investor in Class 4. For each investor, the Receiver shall calculate the total deficiency or gain based on the total value distributed to the investor with respect to their Successful Investments (including any distribution of cash from the Class 4 Reserve), less the total gross investment by that investor in those Success Investments. The Receiver will aggregate the gains and losses for each such investment for a total net gain or net loss. Any investor with a total net loss shall have a Class 5 Deficiency Claim for such net loss amount. Distributions associated with Evernote, Practice Fusion, Candi Controls, or any of the Failed Investments, shall not be used in any such calculation of the Class 5 Deficiency Claim.
11. The Court authorizes the prosecution of the Cilano Claim and sets the following briefing schedule for that proceeding.
 - a. Written discovery, including Requests for Production of Documents and

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

- Interrogatories shall be propounded withing 30 days of entry of this Order;
- b. The parties shall have 30 days to respond to the written discovery requests;
 - c. An in-person deposition of Mr. Cilano in San Francisco shall be scheduled to take place on a date that is within 60 days after the production of documents and discovery responses are completed; and
 - d. Within five days of conclusion of the deposition of Mr. Cilano, the parties shall jointly propose dates between 45 and 90 days later for an evidentiary hearing before this Court during which the SEC and the Court may ask Mr. Cilano questions under oath;
 - e. Within 14 days of the evidentiary hearing, Mr. Cilano will file a brief not longer than 10 pages setting forth his position on the claim, and the SEC will have 14 days to respond.

Dated: _____

Honorable Edward M. Chen
United States District Court