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

10 SECURITIES AND EXCHANGE
COMMISSION,

11 Plaintiff,

12 v.

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

16 Defendants, and

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

21 Relief Defendants.

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

**ADMINISTRATIVE MOTION BY
RECEIVER KATHY BAZOIAN PHELPS
FOR ORDER APPROVING SALE AND
DISTRIBUTION OF AIRBNB SHARES
PURSUANT TO DISTRIBUTION PLAN
AND CREATION OF AN AIRBNB
ADMINSTRATIVE CASH RESERVE**

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

23 Kathy Bazoian Phelps, the successor receiver herein (the “Receiver”) of SRA
24 Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, SRA Management
25 Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity
26 Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA
27 Fund I, LLC, NYPA Fund II, LLC, NYPA Management Associates, LLC and Solis Associates
28

1 Fund LLC (collectively, the “Receivership Entities” and their estates the “Receivership Estate”),
 2 hereby files this Administrative Motion for Order Approving Sale and Distribution of Airbnb
 3 Shares Pursuant to Distribution Plan and Creation of an Airbnb Administrative Cash Reserve.¹

4 **I. INTRODUCTION**

5 The Receiver seeks authority by this Motion to: (1) make a distribution of shares of
 6 Airbnb, Inc. (“Airbnb”) held by the Receivership to claimants; (2) sell additional Airbnb shares to
 7 fund the Plan Fund, to pay the taxes associated with the distribution, and to pay reasonable
 8 commissions; (3) set aside up to 10% of the Airbnb shares to be liquidated by the Receiver as an
 9 administrative reserve for potential unknown tax liability in connection with the Airbnb
 10 distribution; and (4) pay all taxes arising from the sale and distribution as may be required by the
 11 federal or state taxing authorities.

12 On December 10, 2020, Airbnb announced it would go public, a liquidity event for the
 13 estate’s Airbnb investment pursuant to the terms of the Distribution Plan approved by the Court in
 14 this case by Order entered on May 25, 2020 [Dkt. No. 613] (the “Plan”). But because the forward
 15 contract pursuant to which the estate acquired the Airbnb shares² required that all transfer
 16 restrictions expire, and because the counterparty to that forward contract was a former employee,
 17 the estate did not physically possess the shares into its brokerage account until May 24, 2021. As
 18 such, the Receiver can now sell those 22,250 Airbnb shares on the open market or transfer them
 19 to claimants in accordance with the Plan.

20 Pursuant to the Plan, and as set forth in detail below, the Receiver intends to make a

21 _____
 22 ¹ The Notice of Motion, the Motion, and supporting documents will be served on all interested
 23 parties pursuant to Civil Local Rule 66-6 and will be posted the papers on the Receivership website
 24 at <https://www.raineslaw.com/saddle-river-receiver/>. The Receiver has conferred with counsel for
 25 the Securities and Exchange Commission and the Investor Advisory Committee, who each do not
 26 oppose the Motion, and with counsel for Progresso Ventures LLC who does 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)). Counsel for the Receiver has also emailed each of the
 12 Airbnb claimants separately to inform them that this Motion will be filed as an administrative
 motion, and to assist those claimants with informing the Court if they wish to file a response.

27 ² The original contract called for the acquisition of 12,500 shares by Equity Acquisition
 Corporation (EAC). As part of the estate’s settlement with EAC, the estate was entitled to 11,125
 28 of those shares. A subsequent 2:1 split of Airbnb resulted in 22,250 shares owing to the estate from
 the forward counterparty.

1 distribution of the Airbnb shares remaining after sales for taxes and commissions and a retention
2 of a reserve to Class 4 Airbnb claimants, sell shares sufficient to fund the Plan Fund and to fund
3 the Tax Holding Account on account of that distribution (for known tax liabilities), and – in lieu
4 of holding an administrative stock reserve – sell the reserved shares to create an administrative
5 cash reserve until the final tax liabilities of the Receivership may be ascertained (i.e., for potential
6 tax liabilities). The Receiver proposes that such administrative cash reserve, which is intended
7 for potential tax liabilities that may not be assessed for years from now, be held in a segregated
8 account. If there are remaining funds after any additional, but not yet assessed, tax liabilities with
9 respect to Airbnb are satisfied, and the tax liability of the Receivership has become final, then the
10 Receiver proposes to distribute that account *pro rata* to Airbnb Class 4 Claimants, subject to any
11 Equitable Adjustment as may be appropriate under the Plan. This administrative reserve is
12 identical in kind to the Palantir Administrative Reserve approved by this Court on February 26,
13 2021 [Dkt. No. 642], and will allow the Receiver to distribute substantially more Airbnb shares to
14 claimants now, rather than holding them in reserve.³

15 Based on the current price levels of Airbnb, the Receiver believes it will be necessary to
16 sell between 9% and 15% of the shares to fund the Plan Fund and pay any associated taxes with
17 the sale of those shares. The Receiver further believes that it will be necessary to sell between
18 16% and 26% of the shares to pay the associated taxes with the distribution of the shares to
19 claimants, which is a taxable event. The Receiver has consulted with her outside financial
20 advisers who advise that, as a matter of precaution, the number of shares to be set aside for the
21 administrative reserve will likely range between 4% and 6% of the shares (but certainly no greater
22 than 10%). The foregoing will still allow for a distribution of approximately 60% to 65% of the
23 total Airbnb shares held by the estate. An accounting of the amount to be distributed and
24 hypothetical distribution schedules using three hypothetical stock prices are attached to the
25 Receiver’s Declaration as Exhibits “1” – “3.” These schedules are estimates only, and the actual
26

27 ³ The need for holding an administrative reserve in cash and the importance of protecting the estate
28 from unforeseen tax liabilities was discussed in the Receiver’s motion for the creation of the
Palantir Administrative Reserve (Dkt. No. 638, at 3), and is incorporated by reference here.

1 number of shares to be distributed will vary from these schedules as the actual distributions will
2 be tied to the actual sale price of the shares at the time of the sale and distribution.

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

4 **A. Distribution and Sale of Airbnb Pursuant to the Plan**

5 Pursuant to the Plan, the Receiver is to liquidate a portion of the publicly traded securities
6 to fund the Plan Fund and the Tax Holding Account and to sell surplus shares. The Plan also
7 provides that the Receiver may make a distribution, in her discretion, of a portion of the Plan
8 Fund and the remaining securities to the creditors and investors with allowed claims, respectively.
9 The Plan provides that the Receiver may hold an Administrative Cash Reserve and an
10 Administrative Stock Reserve to protect the estate and ensure that sufficient assets remain to
11 satisfy all administrative and tax claims.

12 The original aggregate gross investment was \$842,654. As such, the Receiver is required
13 to sell sufficient shares to provide the Plan Fund with \$252,796 after the taxes on that sale are
14 reserved and any commissions are paid. The number of shares that will be necessary to sell in
15 order fulfill that requirement varies with the price:

16 Price	Number of Shares to Sell	Gross Proceeds from Sale	Taxes and Commissions	Net Proceeds for Plan Fund
17 \$100	3,179 (14.1%)	\$317,900	\$65,075	\$252,825
18 \$140	2,469 (11.0%)	\$345,660	\$92,830	\$252,830
\$180	2,018 (9.0%)	\$363,240	\$110,437	\$252,803

19 The exact number of shares necessary to sell for the Plan Fund will depend on the market
20 price of Airbnb at the time of the sale, but the Receiver does not expect there to be any liquidity
21 issue given then modest number of shares in the sale and the fact that millions of Airbnb shares
22 are traded on the open market every day. Airbnb closed at \$143.17 on the day of the filing of this
23 Motion. Barring any extreme movement in the price of Airbnb stock between the filing of this
24 Motion and the sale, the Receiver expects that only 9-15% of the 22,250 shares in the estate will
25 be required to be sold to fund the Plan Fund.

26 After the sale for the Plan Fund is complete, the Receiver may begin distributing Airbnb
27 shares to Class 4 Airbnb Claimants pursuant to the Plan. Although the process of making these
28

1 distributions is not instantaneous, the Receiver has already collected account information from
2 each of the 12 Airbnb Claimants. The Receiver is optimistic that, barring any unforeseen
3 difficulties, she will be able to largely distribute the portion of the Airbnb shares for this
4 distribution within the month or so following approval of this Motion, if not sooner.

5 The number of shares the Receiver will distribute to each claimant depends on the price of
6 Airbnb stock at the time of the sale for the Tax Holding Account in connection with the
7 distribution to be made. Therefore, the Receiver will not know the precise number of shares that
8 will be distributed to each claimant until that sale is made on the open market. Exhibits “1,” “2,”
9 and “3” to the Receiver’s Declaration contains three detailed hypothetical schedules of the
10 investors asserting a claim for Airbnb shares at three different prices: \$100, \$140, and \$180
11 (Airbnb closed at \$143.17 on the day this Motion was filed). Those schedules reflect the total
12 number of shares that would be distributed to each claimant under each of those scenarios, as well
13 as the total value of the distribution in each scenario, and assume an administrative reserve of 4%
14 to 6%, depending on the price.

15 **B. Creation of the Airbnb Administrative Reserve**

16 The Plan currently allows for the Receiver to set aside a percentage of the stock into an
17 administrative stock reserve in order to pay any tax liabilities that might be assessed at a later
18 time, but are not expected at present. If such liabilities never arise (and the Receiver has every
19 reason to believe that her estimates of the Receivership’s tax liabilities are correct), the Plan
20 allows the Receiver to make a subsequent distribution of that stock to claimants. But, because
21 such reserve would be held as stock and the final tax liability of the receivership could take *years*
22 to determine, the value of the administrative stock reserve would be exposed to any price
23 fluctuations in the underlying stock. Under such conditions, the Receiver would propose an
24 administrative reserve of between 20% and 25%, leaving fewer shares to distribute. But, so long
25 as the Receiver may liquidate that reserve and therefore not be exposed to price fluctuations in
26 Airbnb over the upcoming years, the Receiver can propose a far smaller administrative reserve of
27 4% to 6% (around 800 to 1200 shares), to be liquidated and held as cash.

28 In order to generate the cash for the new Airbnb Administrative Reserve, the Receiver

1 must sell the shares set aside for it, the proceeds of which shall be used to (1) fund the
 2 administrative reserve; (2) pay any known tax liabilities as a result of the sale of stock for the
 3 administrative reserve; and (3) pay any associated commissions. The Receiver will work with her
 4 advisers to set the exact percentage at the time of distribution, but in no event higher than 10%.
 5 Once the known tax liabilities and commissions are paid, the Receiver proposes to set the net
 6 amount aside in a new segregated Airbnb Administrative Reserve account.

7 Once the Receivership's final tax liabilities are determined, the Receiver proposes that she
 8 be authorized to use the funds in the Airbnb Administrative Reserve to satisfy additional tax
 9 liabilities with respect to Airbnb, if any. The Receiver does not expect there to be any such
 10 liabilities but believes it necessary to be sufficiently reserved out of an abundance of caution. If
 11 any amount remains in the Airbnb Administrative Reserve after the final tax liabilities of the
 12 Receivership are determined, the Receiver proposes to distribute those amounts to Class 4 Airbnb
 13 Claimants as cash, *pro rata*, based on their Allowed Claims. Any such distribution schedule
 14 would be submitted to the Court for approval at that time.

15 **III. CONCLUSION**

16 The Receiver respectfully requests that the Court grant the Motion and authorize the
 17 Receiver to (1) make a distribution of shares of Airbnb held by the Receivership to claimants,
 18 pursuant to the Plan; (2) sell additional Airbnb shares to fund the Plan Fund and to pay the taxes
 19 associated with the distribution and to pay associated commissions, pursuant to the Plan; (3) create
 20 an Airbnb Administrative Reserve using no more than 10% of the Airbnb holdings and to liquidate
 21 that reserve, pay associated taxes and commissions, and place the balance in a segregated account;
 22 and (4) pay estimated taxes as may be required by the federal or state taxing authorities. The
 23 Receiver requests all other appropriate relief.

24 Dated: May 27, 2021

RAINES FELDMAN LLP

25
 26 By: /s/ David A. Castleman
 David A. Castleman
 Counsel to Successor Receiver