

RAINES FELDMAN LLP
KATHY BAZOIAN PHELPS (SBN 155564)
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1800 Avenue of the Stars, 12th Floor
Los Angeles, California 90067
Telephone: (310) 440-4100

Successor Receiver

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

**DECLARATION OF DAVID CASTLEMAN
IN SUPPORT OF ADMINISTRATIVE
MOTION BY RECEIVER KATHY
BAZOIAN PHELPS PURSUANT TO
LOCAL CIVIL RULE 7-11 FOR ORDER
APPROVING SUBSTITUTION OF
COUNSEL AND EMPLOYMENT OF
RAINES FELDMAN AS GENERAL
COUNSEL**

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

1 I, David Castleman, declare as follows:

2 1. I am a partner of Raines Feldman, LLP (“Raines Feldman” or the “Firm”), proposed
3 general counsel for Kathy Bazoian Phelps, the Successor Receiver (“Receiver”) in the matter of
4 *Securities and Exchange Commission v. Bivona, et al.* I am duly admitted to practice in the States
5 of California and New York and before the above-entitled Court. I have personal knowledge of all
6 of the facts in this declaration and, if called as a witness, could competently testify to these facts.

7 2. Raines Feldman has significant experience in the representation of receivers and
8 trustees - including federal equity receivers and is competent to perform the requisite legal services
9 in this case. I have been serving as counsel for the Receiver in this case while the Receiver and I
10 were employed by our previous firm and am well qualified to handle this representation. I am very
11 familiar with the facts of this case and have been serving as her primary counsel for the majority of
12 this receiver case. Additionally, other lawyers at the Firm are also experienced in the representation
13 of trustees and receivers, and I believe that the firm is well qualified to serve as the Receiver’s
14 general counsel.

15 3. Attached as Exhibit “2” are the regular hourly rates and rates of reimbursement for
16 expenses for the Firm. Raines Feldman has agreed to discount its regularly hourly rates for the
17 professionals it anticipates will be performing the primary services for the Receiver. My rate will
18 be capped at \$460 per hour, and administrative services will be capped at \$145 per hour. Raines
19 Feldman anticipates from time to time it may be appropriate for other professionals at the firm to
20 perform services on this matter. If other professionals work on the case, their rates will be
21 discounted by 20% from their regular hourly rates, with the highest rate charged for any
22 professional being \$460 per hour. A summary of Raines Feldman’s experience in fiduciary
23 representation and my Biography are attached hereto as Exhibit “3.”

24 4. To the best of my knowledge, Raines Feldman and all of its partners, associates and
25 employees are disinterested persons, and neither Raines Feldman nor any partners, associates or
26 employees of Raines Feldman are connected with the Defendants, Relief Defendants, investors, or
27 creditors.

28 5. Raines Feldman agrees to accept compensation in such sum as the Court may

1 deem reasonable. Raines Feldman has not received nor is it seeking any retainer or advance
2 payment of fees.

3 I declare under penalty of perjury that the foregoing is true and correct. Executed at New
4 York City, New York, on April 27, 2021.

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7 David Castleman

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EXHIBIT 2

RF Standard Rates

Effective Date: 1/1/2021

Initials	Professional	Prof Type	Rate
AB	Ayal Bainvoll	Associate	550.00
AHR	Andrew Raines	Partner	725.00
ASW	Allison S. Wallin	Partner	525.00
BAS	Beth A. Schroeder	Partner	645.00
BC	Bambi Clark	Paralegal	345.00
CHC	Carollynn H.G. Callari	Partner	695.00
CYC	Camilla Y. Chan	Partner	625.00
DAC	David A. Castleman	Partner	625.00
DAM	David Ari Marzban	Associate	375.00
DB	Deanna Boll	Associate	595.00
DCK	David C. Klein	Partner	525.00
DEB	Debra E. Best	Partner	525.00
DM	Duccio Mortillaro	Partner	710.00
DMR	D. Matthew Richardson	Partner	795.00
DN	Dana Newman	Partner	450.00
DRS	David Schwartz	Partner	625.00
DS	Daniel Sheerin	Associate	495.00
DW	Deanna Whitestone	Associate	525.00
EBB	Eric B. Blum	Partner	655.00
GBS	Gregg B. Shulklapper	Partner	625.00
HKA	Howard K. Alperin	Partner	615.00
HRR	Hamid R. Rafatjoo	Partner	895.00
JCW	Joshua C. Williams	Associate	425.00
JDL	Jonathan Littrell	Partner	725.00
JGR	Jonathan Richter	Partner	595.00
JLM	Joshua L. Mogin	Partner	750.00
JSC	John S. Cha	Partner	675.00
JTB	Jeremy T. Borden	Associate	495.00
KBP	Kathy B. Phelps	Partner	675.00
LB	Laura Brant	Associate	635.00
LDM	Laith D. Mosely	Partner	650.00
LJK	Lauren J. Katunich	Partner	560.00
LJL	Lawrence J.H. Liu	Associate	425.00
LMK	Leticia M. Kimble	Associate	495.00
MGP	Matthew Garrett-Pate	Associate	425.00
MJF	Miles Feldman	Partner	725.00
MPW	Marshal P. Wilke	Associate	525.00
MS	Madeline Suchard	Associate	395.00
MZ	Mathew Zarzana	Associate	250.00
NCL	Noel C. Lohr	Contract	595.00
NLH	Nicole L. Halle	Associate	525.00
NMC	Nathan M. Carle	Partner	525.00

PRM	Phillip R. Maltin	Partner	695.00
RB	Rachael Berman	Associate	550.00
REA	Ronald E. Altman	Contract	595.00
RM	Russell Morris	Associate	635.00
RMS	Robert M. Shore	Partner	625.00
RR	Ricardo Rozen	Associate	445.00
SB	Sheila Blake	Paralegal	200.00
SGW	Steven G. Wolff	Partner	650.00
SN	Seth Nayowitz	Associate	495.00
SOK	Shaun O. Kwon	Partner	525.00
SRS	Stacie R. Smiley	Counsel	495.00
SXS	Steven Schmulenson	Associate	495.00
TP	Tomas Prada	Paralegal	195.00
TXW	Tammy X. Wu	Associate	350.00
YH	Yael Hartstein	Counsel	525.00

EXHIBIT 3

RAINESFELDMAN

1800 Avenue of the Stars, 12th Floor
Los Angeles, California 90067
Main: 310.440.4100
www.raineslaw.com

Biography of David A. Castleman

David A. Castleman	California:	1800 Avenue of the Stars, 12th Floor
310-424-4082 (direct)		Los Angeles, California 90067
646-853-3783 (cell)	New York:	One Rockefeller Plaza, 10th Floor
dcastleman@raineslaw.com		New York, New York 10020

David Castleman is a Partner in Raines Feldman LLP's Los Angeles and New York offices, working in the Litigation, Bankruptcy, and Fiduciary Representation groups. Dave focuses primarily on representing federal equity receivers in financial matters, as well as complex litigation in state and federal courts. Prior to joining Raines Feldman, Dave was Senior Counsel at a preeminent litigation boutique firm working primarily on receivership matters, including representing the court-appointed receiver in the Saddle River and Denari receiverships in the Northern District of California, and the Direct Lending Investments receivership in the Central District of California.

Dave served as an Assistant Attorney General in the New York Investor Protection Bureau, where he helped achieve a groundbreaking, complex \$714 million global settlement against a major financial institution on behalf of fraud victims, which resulted in equal treatment of the federal and state claims. Dave also worked on pioneering efforts by the Attorney General to use the Martin Act to hold fossil fuel companies responsible for their contribution to climate change.

Before serving the public, Dave worked at Sullivan & Cromwell LLP in New York for many years, where he represented a major national bank in the resolution of billions of dollars of residential mortgage backed securities (RMBS) repurchase claims arising out of the 2007-08 financial crisis. In both the Southern District of New York and the New York Supreme Court's commercial division, Dave represented financial institutions defending contract and fraud claims brought by monoline insurance companies and securities claims brought by insurance companies that purchased RMBS bonds, one case resulting in a complete dismissal of all federal claims.

Dave's pro bono practice at Sullivan & Cromwell included winning a new trial for a convicted felon in a published decision by the U.S. Court of Appeals for the Sixth Circuit, and spearheading a clinic in partnership with Immigration Equality to represent asylum seekers. He was awarded the Michael A. Cooper Award for Outstanding Pro Bono Service for his efforts.

Dave received his J.D., *cum laude*, Order of the Coif, from the University of Pennsylvania Law School in 2006, where he served as Executive Editor of the Law Review. Following law school, he clerked for Judge Deborah Cook on the United States Court of Appeals for the Sixth Circuit.

Representative Cases

- Counsel to Bradley D. Sharp, the court-appointed receiver in *SEC v. Direct Lending Investments, LLC* (C.D. Cal.) (litigation ongoing)
- Counsel to Kathy Bazoian Phelps, court-appointed receiver in *SEC v. Bivona et al.* (N.D. Cal.) (litigation ongoing)
- Counsel to Kathy Bazoian Phelps, court-appointed receiver in *CFTC v. Denari Capital LLC* (N.D. Cal.) (litigation ongoing)
- *People v. Bank of New York Mellon* (New York Supreme): Counsel to New York State in FX enforcement action that resulted in a groundbreaking global \$714 million settlement that achieved parity between the United States and New York.
- *John Hancock v. JPMorgan Chase & Co.* (Southern District of New York): represented defendants in \$1 billion RMBS action that resulted in dismissal of federal claims and remand of state claims (938 F. Supp. 2d 440).
- *Ambac v. EMC, Syncora v. JPMSL, Assured v. EMC* (New York Supreme & 1st Department Appellate Division): represented defendants in multi-billion-dollar contract and fraud cases in New York state court.
- Counsel to large financial institution in resolving billions of dollars of repurchase claims arising from securitization of \$60 billion in RMBS.
- *Moore v. Berghuis* (U.S. Court of Appeals for the 6th Circuit): Court-appointed Appellate Counsel resulting in a victory for a habeas petitioner (700 F.3d 882), followed by successful opposition of certiorari in the United States Supreme Court.
- *[Confidential] v. USCIS*: Won asylum for two individuals after a bench trial in New York immigration court.
- *BJ Energy v. PJM Interconnection* (E.D. Pa.): Represented plaintiff and counter-claim defendant in complex energy case that settled favorably during trial.

Bar Admissions

- State Bar New York, 2007
- State Bar California, 2019
- United States Supreme Court
- U.S. Court of Appeals: 2nd Circuit, 6th Circuit, D.C. Circuit

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- U.S. District Courts: S.D.N.Y., E.D.N.Y., C.D. Cal., N.D. Cal., E.D. Cal.

Educational Background

- University of Pennsylvania Law School (J.D. *cum laude* 2006)
- Dartmouth College (B.A. *cum laude* 2001)

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Fiduciary Representation Services

Our firm has extensive experience acting as and representing fiduciaries, including bankruptcy trustees, federal equity receivers, state court receivers, liquidating trustees, foreign liquidators, and creditors' committees. We assist clients who are appointed as fiduciaries in a wide variety of practice areas that arise under these types of cases. Some of our lawyers also serve as bankruptcy trustees and receivers, and we are prepared to jump in on a moment's notice to assist in marshalling assets and in commencing any litigation required to preserve or enhance the recoveries for victims.

Types of Fiduciaries

Federal Equity Receivers

We have significant experience representing receivers appointed at the request of the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Federal Trade Commission (FTC) in large scale fraudulent enterprises and Ponzi schemes. As one of the nation's foremost authorities on the practical and legal ramifications of federal equity receiverships, our attorneys are frequently called upon to act as a federal equity receiver or as lead counsel to a federal equity receiver.

Our firm serves as general counsel for different types of fiduciaries and advise them on issues that arise in these cases such as:

- Taking over a business and preserving available assets and records
- Assisting in the investigation of missing assets and reconstruction of records
- Handling the administrative aspects of cases by implementing protocols for noticing, accounting, and reporting
- Setting up channels of communication, including websites, to aid the fiduciary in efficiently communicating with creditors and investors
- Claims administration
- Formulating and implementing litigation strategy for the receiver

Some cases our attorneys have handled include:

- *SEC v. Bivona et al.*, Case No. 3:16-cv-01386-EMC (N.D. Cal.) – Receiver
- *CFTC v. Denari Capital LLC, et al.*, Case No. 19-cv-07284-EMC (N.D. Cal.) – Receiver
- SEC in *SEC v. Direct Lending Investments, LLC*, Case No. 2:19-cv-02188-DSF-MRW – Counsel for Receiver
- *SEC v. Capital Cove Bancorp, LLC, et al.*, Case No. CV15-00980-JLS(JCx) (C.D. Cal.) – Counsel for Receiver
- *SEC v. Secured Capital Investments et al.*, Case No. CV15-01792-VAP(KKx) (C.D. Cal.) – Counsel for Receiver
- *FTC v. Allied Wallet, Inc., et al.*, Case No. 2:19-CV-4355-SVW-E (C.D. Cal.) – Counsel for Receiver
- *FTC v. First Time Credit Solutions, Corp, et al.* Case No. CV15-01921 (DDP (PJWx) – Counsel for Receiver
- *FTC v. On Point Global, LLC et al*, Case No. 19-25046-Civ-Scola (S.D. Fla.) – Local Counsel for Receiver

Bankruptcy Trustees

We have deep experience representing trustees appointed in Chapter 7 and Chapter 11 cases. We can handle complex cases or any case requiring legal guidance, including administration of the estate, real estate sales, or litigation to preserve or recover assets for the benefit of creditors. The Firm represents:

Chapter 7 Trustees: We assist the trustee in taking possession and control of the assets of the debtor and administering the bankruptcy estate. We provide legal advice on all aspects of a Chapter 7 case, including the claims and asset administration and litigation matters.

Chapter 11 Trustees: We work collaboratively with Chapter 11 trustees from the moment they are appointed, and we assist and advise the trustees regarding the takeover of a business, asset and record preservation, and the operations of a business. We provide legal guidance and assistance in the development of a plan of reorganization.

Plan Trustees: When appointed pursuant to a plan, we assist plan trustees in implementing the plan and ensuring that assets are administered and distributions are made properly pursuant to the plan.

Liquidating Trustees: We assist trustees in liquidating remaining assets, which often includes litigating complex matters.

Some cases our attorneys have handled include:

- Chapter 11 trustee of Sonya D. International, Inc., Hazlaha LLC and Sonya Dakar, where the trustee ran the operations of a skin care clinic, investigated the business operations and inter-company transfers, and facilitated a complex settlement which will result in payment in full to creditors.
- Counsel for Chapter 11 trustee, and thereafter successor Chapter 7 trustee, in the bankruptcy case of Persistence Capital, LLC, involving the unwinding of a Ponzi scheme, where the debtor sold a fictitious investment product related to pools of life insurance policies. We assisted the trustee in establishing the nature of fraud, unwinding a series of complex financial transactions, tracing the funds, and pursuing litigation to recover funds in the case. The principals of this debtor were both ultimately convicted and sentenced.
- Counsel for Chapter 11 trustee and thereafter the successor Chapter 7 trustee, in the bankruptcy case of Eonxchange, LLC, where our attorneys investigated the fraudulent Ponzi-like activity of the debtor related to an emission credit trading program through the SCAQMD where over \$90 million was misappropriated from customers and investors. Substantial funds were recovered for the benefit of the creditors and the principal of the debtor was ultimately convicted.
- Counsel for Chapter 11 and Chapter 7 trustees in a multitude of bankruptcy cases, handling:
 - operating going concern businesses
 - winding down various types of businesses
 - tracing funds
 - selling real estate and operating assets
 - prosecuting fraudulent conveyance and preference litigation
 - addressing countless administrative issues arising in those cases

State Court Receiverships

We have experience assisting state court receivers in managing, preserving, and liquidating the receivership estate; including preparing receiver certificates to ensure payment of receiver fees and costs and bringing appropriate motions in state court to advance the objectives of the receivership estate in a cost-effective and diligent manner.

Some cases our attorneys have handled include:

- Counsel for state court appointed receiver in *Strand Capital Corp. v. Quigg LA14, LLC*, Case No. BC 649687 (Los Angeles Sup. Ct).
- Counsel for state court appointed receiver in a fraud litigation matter, reconstructing missing records and tracing over \$9 million of funds removed by the defendant prior to the receiver's appointment.

Types of Fiduciary Services

General Counsel and Administration Professional Services

Our firm serves as general counsel for different types of fiduciaries, and we are well-qualified to handle most issues that arise in these cases such as:

- Taking over a business and preserving available assets and records
- Assisting in the investigation of missing assets and reconstruction of records in aid of investigation
- Handling the administrative aspects of small to large cases, involving hundreds of millions of dollars and thousands of creditors
- Setting up channels of communications, including websites, to aid the fiduciary in efficiently communicating with large numbers of creditors and investors
- Providing proper notices and ensuring proper accounting and administrative procedures are put in place
- Reviewing and objecting to claims
- Reviewing and responding to potential adverse motions such as motions for relief from stay or objections to plans of reorganization of distribution
- Analyzing and constructing potential litigation claims for the receiver

Asset Management

The assets in a bankruptcy or receivership case can consist of almost anything: real property, mortgage interests, securities, commodities, cryptocurrency and tangible assets. We have seen almost everything and can assist in all aspects of asset management such as:

- Identifying the assets

- Ensuring that the assets are protected and preserved
- Evaluating potential secured interests against the assets
- Identifying any specialists, brokers or marketing assistance required to maximize the value of the assets
- Preparing documentation required for court approval of asset dispositions, whether abandonment or sales
- Communicating with prospective buyers and interested parties in connection with asset sales

Litigation

When assets are insufficient to cover liabilities, fiduciaries look for other sources of recoveries. Our Firm's litigators are experienced in both identifying, and prosecuting litigation claims. The Firm offers flexible fee arrangements for fiduciaries, which eases the financial burden for the estate. The Firm handles all types of litigation claims in fiduciary cases, the most common of which are:

- Avoidable transactions (formerly known as fraudulent transfers)
- Preference actions
- Officer and director liability claims
- Professional negligence and malpractice claims
- Commercial tort claims for misconduct based on negligence, breach of fiduciary duty, fraud, aiding and abetting claims, conflicts of interest or misappropriation
- Commercial claims, which involve issues such as contract, lease, and insurance disputes
- Collection matters

Real Estate and Transactional Services

Receiverships, restructurings, and liquidations often involve real estate or real estate-related issues. Our firm has deep real estate experience and we are well-equipped to handle the various issues that arise in such transactions.. When fiduciaries hold real property, many issues can arise that require legal assistance, including:

- Documenting purchase and sale agreements
- Managing and preserving property pending disposition
- Providing guidance regarding necessary accounting
- Collecting rents
- Reviewing or drafting agreements with service providers
- Reviewing or preparing leases
- Addressing any licensing or regulatory issues
- Ensuring compliance with health and safety regulations
- Evaluating any environmental issues
- Dealing with abandoned property or abandoning property
- Removing or settling disputed liens
- Obtaining court approval regarding material actions relating to real property, including sales
- Addressing potential tax issues