

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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. 16-cv-01386-EMC

**ORDER RE MOTION FOR ORDER
AUTHORIZING MODIFICATION OF
THE DISTRIBUTION PLAN**

Docket No. 704

Hearing date: October 25, 2020

Time: 2:00 p.m.

Location: Courtroom 5, 17th Floor
450 Golden Gate Ave.
San Francisco, CA 94102

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 October 25, 2023
3 at 2:00pm. The Court having reviewed and considered the Motion, the Declaration of the
4 Receiver, 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”)
7 approved by this Court on May 25, 2020 (Docket No. 613) is modified as set forth herein.
- 8 2. Notice of the Motion was appropriate.
- 9 3. All funds currently in the estate may be used to satisfy any future assessment of taxes,
10 which are Class 2 Claims under the Plan to which all Class 3, 4, and 5 Claims are
11 subordinated. In the event of a reassessment after any audit by a taxing authority, the
12 Receiver may by motion to this Court seek a determination as to which funds in the estate
13 it is most appropriate to use to satisfy any such reassessment.
- 14 4. The Receiver is authorized to create separate Class 4 Reserves for each of Airbnb Inc.;
15 Bloom Energy Corp.; Cloudera, Inc.; Dropbox, Inc.; Lyft, Inc.; MongoDB, Inc.; Palantir,
16 Inc.; Pinterest, Inc.; Snap, Inc.; Uber, Inc.; and for Evernote Corporation (“Evernote”) as
17 set forth in the Motion, and to open or use any existing segregated accounts or subaccounts
18 to hold such Class 4 Reserves.
- 19 5. For each Publicly Traded Security, the applicable Class 4 Reserve will contain the
20 proceeds of any sale of that security, less any amount contributed to the Plan Fund, less
21 any actual tax burden arising from the disposition of such security, plus any actual tax
22 benefit arising from the disposition of such security.
- 23 6. The Receiver is authorized and instructed to make the transfers among the estate’s
24 accounts and subaccounts as set forth in Exhibit “2” to the Receiver’s Declaration.
- 25 7. The Receiver is authorized to hold each Class 4 Reserve until the three-year audit period

1 for the estate's 2021 tax return has lapsed. Any unused portion of each Class 4 Reserve
2 may be distributed to such subclass, *pro rata* based on Allowed Shares, subject to any
3 equitable adjustment. The Receiver shall make a motion at the appropriate time to affect
4 such distribution.

5 8. The Evernote account already created by the Receiver shall be the Class 4F Evernote
6 Reserve, and the Receiver is further authorized to make the transfer to Evernote Class 4F
7 Reserve as set forth in Exhibit "2" to the Receiver's Declaration.

8 9. The plan is hereby modified to create a Class 6A for claimants who invested in Practice
9 Fusion and a Class 6B for claimants who invested in Candi Controls. The Receiver is
10 authorized to create a Class 6A Practice Fusion Reserve and a Class 6B Candi Controls
11 Reserve, and the Receiver is further authorized to make the transfers set forth in Exhibit
12 "2" to the Receiver's Declaration concerning those reserves. Any claimants who invested
13 in Practice Fusion or Candi Controls are instructed to provide written notice to the
14 Receiver within 90 days following the date of this Order if such claimant believes that his
15 or her investment details are different from those stated in, or omitted from, the schedules
16 set forth in Exhibits "4" and "5" to the Receiver's Declaration.

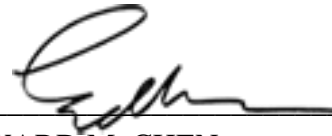
17 10. Class 5 Deficiency Claims shall be calculated on a per-investor basis for each investor in
18 Class 4. For each investor, the Receiver shall calculate the total deficiency or gain based
19 on the total value distributed to the investor with respect to their Successful Investments
20 (including any distribution of cash from the Class 4 Reserve), less the total gross
21 investment by that investor in those Success Investments. The Receiver will aggregate the
22 gains and losses from each such investment for a total net gain or net loss. Any investor
23 with a total net loss shall have a Class 5 Deficiency Claim for such net loss amount.
24 Distributions associated with Evernote, Practice Fusion, Candi Controls, or any of the
25 Failed Investments, shall not be used in any such calculation of the Class 5 Deficiency
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1 Claim.

2 11. Joshua Cilano asserted a claim against the estate and his claim has become ripe. Mr.
3 Cilano shall produce the contracts that he had with his investor clients so the parties may
4 further investigate his claim. If Mr. Cilano is unable to obtain the contracts from his
5 former employer, Alexander Capital, he may ask this Court to issue a subpoena. Mr.
6 Cilano must compile the proposed subpoena and send it to the Court no later than
7 Wednesday, November 1. On Monday December 4th at 9:00 a.m., the Court will hold a
8 status conference to discuss the next steps for pursuing Mr. Cilano's claim.
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11 **IT IS SO ORDERED.**

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13 Dated: October 31, 2023

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16 EDWARD M. CHEN
17 United States District Judge
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