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5 *Successor Receiver*

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

**AMENDED ADMINISTRATIVE MOTION  
BY RECEIVER KATHY BAZOIAN PHELPS  
PURSUANT TO LOCAL CIVIL RULE 7-11  
FOR ORDER APPROVING SETTLEMENT  
WITH PRADEEP SINDHU**

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

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23  
24 Kathy Bazoian Phelps, the successor receiver herein, hereby files her Amended  
25 Administrative Motion Pursuant to Local Civil Rule 7-11 for Order Approving Settlement with  
26 Pradeep Sindhu.

27 **I. Introduction and Basis for the Motion**

28 The Receiver has negotiated a settlement of the claim asserted by Pradeep Sindhu against

1 the estate. Sindhu filed a proof of claim asserting that he is entitled to an unsecured claim in the  
2 amount of \$3,937,689.35, based upon a Confession of Judgment signed by some of the  
3 receivership entities. The settlement provides that Sindhu's claim will be allowed in the amount  
4 of \$300,000 only and that all other claims against the estate shall be waived. This administrative  
5 motion is supported by the Declaration of Kathy Bazoian Phelps.

6 The Receiver has conferred with counsel for the Securities and Exchange Commission,  
7 Progresso Ventures LLC, and for the SRA Investor Group and is advised that they do not oppose  
8 the Motion. A stipulation with all parties was deemed impractical given, among other things, the  
9 entry of judgment against the defendants and pending bankruptcy of defendant John Bivona.  
10 (L.R. 7-11 1(a)).

## 11 **II. Statement of Facts**

12 1. On October 11, 2016, the District Court for the Northern District of California  
13 ("Court") entered an Temporary Restraining Order and Order to Show Cause why Preliminary  
14 Injunction Should Not Be Granted (the "TRO").

15 2. Pursuant to the TRO, Sherwood Partners was appointed as the temporary receiver  
16 over the assets of SRA Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC,  
17 SRA Management Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix  
18 Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management  
19 Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, and NYPA Management Associates,  
20 LLC (the "Receivership Entities").

21 3. Pursuant to the Revised Order Appointing Receiver entered on February 28, 2019  
22 (the "Receiver Order"), Kathy Bazoian Phelps was appointed as the successor receiver over the  
23 Receivership Entities. The Receiver Order authorizes the Receiver to enter into settlements  
24 regarding claim amounts, subject to approval of the Court.

25 4. Sindhu obtained a Judgment by Confession against Felix Multi-Opportunity Fund  
26 Management Associates LLC, NYPA Management Associates, LLC, and SRA Management  
27 Associates, LLC, entered on or about July 26, 2016 in the matter of *Pradeep Sindu v. FB*  
28 *Management Associates LLC, et. al* in the Supreme Court of the State of New York, County of

1 New York, Index No. 156186/2016 (the “Judgment”), in the amount of \$3,535,271.30 plus  
2 interest from December 31, 2015 in the amount of \$302,193.05, plus costs of \$225, for a total of  
3 \$3,837,689.35.

4 5. Sindhu filed a claim against the estate in the principal amount of \$3,937,689.35  
5 plus interest of \$73,809.81, for a total claim of \$3,911,499.16 (the “Claim”).

6 6. The SEC and the Receiver contend that little to no consideration was paid to the  
7 Receivership Entities in exchange for the Judgment. Sindhu contends that fair consideration was  
8 paid for the Claim and that the Judgment recites that fair consideration was paid. Sindhu further  
9 contends that the Receiver would not be entitled to avoid or reduce the Judgment.

10 **III. Terms of Settlement Agreement**

11 Without modifying the terms of the Settlement Agreement, which are set forth in full in  
12 Exhibit “1” attached hereto, the Settlement Agreement provides as follows:

13 1. **Allowance of Unsecured Claim:** Sindhu shall be allowed a general unsecured  
14 claim against the Receivership estate in the amount of \$300,000 (the “Allowed Claim”). All of  
15 other portions of Sindhu’s Claim shall be disallowed. The Allowed Claim shall receive  
16 distributions on a *pro rata* basis with other allowed general unsecured claims. Sindhu has been  
17 advised that other general unsecured claimants may include Global Generation, Progresso  
18 Ventures LLC, the previously undisbursed amounts to Square and Flurry investors, and any other  
19 claimants who may be allowed a general unsecured claim. The Receiver makes no representation  
20 or warranty as to the amount that will ultimately be paid on account of the Allowed Claim or the  
21 nature of a distribution plan that may ultimately be approved by the Court. No payment will be  
22 made on the disallowed portion of the Claim. The Receiver has also advised Sindhu that she  
23 intends to seek approval from the Court of a distribution plan which may seek different priority  
24 levels for different categories of investors and other general unsecured creditors.

25 2. **Tolling of All Applicable Statutes of Limitations.** The running of any applicable  
26 statute of limitations under sections 108 and 546(a) of the Bankruptcy Code, and all other time  
27 limitations, statutes of repose, estoppel, laches, waiver, or any other time-based defenses  
28 concerning any claim or cause of action against Sindhu which might be asserted by the Receiver

1 under or through applicable state or federal law are tolled through September 30, 2019 to enable  
2 the parties to obtain Court approval of the agreement.

3       3.       **Releases.** The parties shall exchange mutual general releases as to all claims  
4 arising out of or related to the Sindhu Claim or the Judgment.

#### 5           **IV.     The Agreement is in the Best Interest of the Estate**

6           The Receiver believes in her business judgment that the Agreement is fair, reasonable, and  
7 is in the best interest of the receivership estate. The Agreement provides for a substantial  
8 reduction in the claim amount of Sindhu from over \$3.9 million to \$300,000. Although a  
9 distribution plan has not yet been approved, it appears that shares will have to be liquidated to pay  
10 unsecured creditors and that, accordingly, both investors and other unsecured creditors will  
11 benefit from the substantial reduction in the claim amount.

12           There are “no federal rules [that] prescribe a particular standard for approving settlements  
13 in the context of an equity receivership; instead a district court has wide discretion to determine  
14 what relief is appropriate.” *Gordon v. Dadante*, 336 F. App’x 540, 549 (6th Cir. 2009).  
15 Nevertheless, courts in this district often look to the following factors, which pertain to  
16 compromises reached in bankruptcy actions, when examining a proposed settlement: the  
17 probability of success in the litigation; the difficulties, if any, to be encountered in collection; the  
18 complexity of the litigation and the expense, inconvenience, and delay associated therewith; and  
19 the paramount interest of creditors. *See Secs. & Exch. Comm’n v. Ruderman*, No. CV 09-02974,  
20 2011 WL 5857452, at \*3 (C.D. Calif. Nov. 21, 2011) (considering these factors in approving  
21 receivership settlement); *see also* L.R. 66-8 (instructing courts should look to bankruptcy  
22 procedures for guidance in receivership actions). Because compromises are favored in bankruptcy  
23 actions, courts generally give deference to a trustee’s business judgment and approve settlements  
24 that are negotiated in good faith and are “reasonable, fair, and equitable.” *Ruderman*, 2011 WL  
25 5857452, at \*3; *see* L.R. 66-8.

26           The settlement is in the best interest of the receivership estate because the Receiver’s  
27 ability to avoid the lien released in this Agreement is subject to uncertainty. *See Ruderman*, 2011  
28 WL 5857452, at \*4 (explaining uncertainty of outcome of litigation “weigh[ed] heavily” in favor  
of approval of settlement reached by receiver). While the Receiver believes that she would be  
able to avoid the Judgment and disallow the claim in its entirety, the Receiver recognizes that the

1 result is subject to some uncertainty.

2 The Agreement provides for the allowance of a significantly reduced unsecured claim in  
3 favor of Sindhu, but avoids the uncertainty of litigation over the avoidability of the claim.  
4 Moreover, litigation regarding these interests will be time consuming and costly, draining the  
5 assets of the estate. For all of these reasons, the Receiver requests that the Court approve the  
6 Agreement.

6 **IV. Conclusion**

7 For these reasons, the Receiver respectfully requests that the Court approve the Settlement  
8 Agreement with Pradeep Sindhu. The Receiver requests all other appropriate relief.

9  
10 DATED: July 24, 2019

By: /s/ Kathy Bazoian Phelps  
Kathy Bazoian Phelps  
Receiver

**DECLARATION OF KATHY BAZOIAN PHELPS**

I, Kathy Bazoian Phelps, declare:

1. I am the Receiver appointed by this Court for SRA Management Associates, LLC, SRA I LLC, SRA II LLC, SRA III, LLC, Clear Sailing Group IV LLC, Clear Sailing Group V LLC, NYPA Fund I LLC, NYPA II Fund II LLC, NYPA Management Associates LLC, Felix Multi-Opportunity Funds I and II, LLC, and FMOF Management Associates, LLC (collectively, “Receivership Entities”), pursuant to the Revised Order Appointing Receiver entered on February 28, 2019 (“Receiver Order”). I have personal knowledge of the facts set forth in this Declaration, and, if called to testify, could testify competently thereto.

2. I submit this Declaration in support of the Motion of Receiver, Kathy Bazoian Phelps, for Approval of Settlement with Pradeep Sindhu.

3. In accordance with Local Rule 7-11, prior to filing this Administrative Motion, I conferred with counsel for the Securities and Exchange Commission, John Yun, who advised that the Commission does not object to the settlement. I have also notified counsel for the SRA Investor Group, counsel for Progresso Ventures LLC and Global Generation of the terms of the settlement, and they have not advised me of any objection to the Motion.

4. A true and correct copy of the Settlement Agreement with Pradeep Sindhu (“Sindhu”) is attached hereto as Exhibit “1.”

5. I believe in my business judgment that the Agreement is fair, reasonable and is in the best interest of the receivership estate. The Agreement provides for a substantial reduction in the claim amount of Pradeep Sindhu from \$3,937,689.35 to \$300,000. Although a distribution plan has not yet been approved, it appears that shares will have to be liquidated to pay unsecured creditors and that, accordingly, both investors and other unsecured creditors will benefit from the substantial reduction in the claim amount.

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1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed on July 24, 2019, at Los Angeles, California.

3  
4 /s/ Kathy Bazoian Phelps  
5 Kathy Bazoian Phelps, Receiver  
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# Exhibit 1



## AGREEMENT

This Agreement (the "Agreement") dated July 19, 2019, is entered into by and between Kathy Bazoian Phelps, solely in her capacity as the court appointed receiver ("Receiver") in the case of *Securities and Exchange Commission v. John v. Bivona, Saddle River Advisors, LLC, SRA Management Associates, LLC; Frank Gregory Mazzola*, Case No. 3:16-cv-01386-EMC (the "Receivership Case"), and Pradeep Sindhu ("Sindhu"). The Receiver and Sindhu are collectively referred to herein as the "Parties."

## RECITALS

A. On October 11, 2016, the District Court for the Northern District of California ("Court") entered an Temporary Restraining Order and Order to Show Cause why Preliminary Injunction Should Not Be Granted (the "TRO").

B. Pursuant to the TRO, Sherwood Partners was appointed as the temporary receiver over the assets of SRA Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, SRA Management Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, and NYPA Management Associates, LLC (the "Receivership Entities").

C. Pursuant to the Revised Order Appointing Receiver entered on February 28, 2019, Kathy Bazoian Phelps was appointed as the successor receiver over the Receivership Entities.

D. Sindhu obtained a Judgment by Confession against Felix Multi-Opportunity Fund Management Associates LLC, NYPA Management Associates, LLC, and SRA Management Associates, LLC, entered on or about July 26, 2016 in the matter of *Pradeep Sindhu v. FB Management Associates LLC, et. al* in the Supreme Court of the State of New York, County of New York, Index No. 156186/2016 (the "Judgment"), in the amount of \$3,535,271.30 plus interest from December 31, 2015 in the amount of \$302,193.05, plus costs of \$225, for a total of \$3,837,689.35.

E. Sindhu filed a claim against the estate in the principal amount of \$3,837,689.35 plus interest of \$73,809.81, for a total claim of \$3,911,499.16 (the "Claim").

F. The SEC and the Receiver contend that little to no consideration was paid to the Receivership Entities in exchange for the Judgment.

G. The Parties wish to fix the amount of Sindhu's Claim against the receivership estate.

H. The Receiver makes no representation to Sindhu regarding the nature of the distribution plan that will ultimately be approved by the Court or the ultimate amount that Sindhu may be paid on account of its claim against the Receivership estate.

I. In consideration of the facts and circumstances of these matters, the Parties have determined to resolve all claims and defenses and potential claims and defenses arising out of or related in any way to Sindhu's Claim pursuant to the terms set forth herein.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

### AGREEMENT

1. **Court Approval:** This Agreement is contingent upon approval by the United States District Court presiding over the Receivership Case. If the court does not approve this Agreement, this Agreement shall be null and void *ab initio* and the Parties shall be restored to their positions, rights and interests the same as they had maintained immediately prior to the execution date hereof.

2. **Allowance of Unsecured Claim:** Sindhu shall be allowed a general unsecured claim against the Receivership estate in the amount of \$300,000 (the "Allowed Claim"). All of other portions of Sindhu's Claim shall be disallowed. The Allowed Claim shall receive distributions on a *pro rata* basis with other allowed general unsecured claims. Sindhu is advised that other general unsecured claimants may include Global Generation, Progresso Ventures LLC, the previously undisbursed amounts to Square and Flurry investors, and any other claimants who may be allowed a general unsecured claim. The Receiver makes no representation or warranty as to the amount that will ultimately be paid on account of the Allowed Claim or the nature of a distribution plan that may ultimately be approved by the Court. No payment will be made on the disallowed portion of the Claim. The Receiver intends to seek approval from the Court of a distribution plan which may seek different priority levels for different categories of investors and other general unsecured creditors.

3. **Tolling of All Applicable Statutes of Limitations.** The running of any applicable statute of limitations under sections 108 and 546(a) of the Bankruptcy Code, and all other time limitations, statutes of repose, estoppel, laches, waiver, or any other time-based defenses concerning any claim or cause of action against Sindhu which might be asserted by the Receiver under or through applicable state or federal law are hereby tolled as of the date of this Agreement through September 30, 2019. The Parties understand that this Agreement is intended to toll the running of any time limit imposed by applicable statutes of limitation, statutes of repose, or otherwise for any claim or cause of action which the Receiver may have against Sindhu.



4. **Releases**

- a. Except as set forth in paragraphs 2 and 3 hereof and any other obligations under this Agreement, Sindhu and each of his predecessors, successors, employees, attorneys, insurers, agents, representatives and assigns, past, present, or future, release and forever discharge the Receiver and her predecessors, successors, parents, subsidiaries, affiliates, officers, directors, employees, attorneys, insurers, agents, representatives and assigns, past, present or future, and the Receivership Entities, their predecessors, successor, parents, subsidiaries, affiliates, officers, directors, employees, attorneys, insurers, agents, representatives and assigns from any and all claims, losses, liabilities, obligations, suits, debts, liens, contracts, agreements, promises, demands and damages, of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, that Sindhu ever had, now has, or hereafter may have against the Receiver and her predecessors, successors, attorneys, agents, representatives and assigns, and against the Receivership Entities, their predecessors, successor, parents, subsidiaries, affiliates, officers, directors, employees, attorneys, insurers, agents, representatives and assigns arising out of or related to the Claim and the Judgment.
- b. Except as otherwise set forth in this Agreement and any obligations under this Agreement, the Receiver on behalf of the Receivership Entities and their receivership estate releases and forever discharges Sindhu, his predecessors, successors, attorneys, agents, representatives and assigns, past, present, or future, from any and all claims, losses, liabilities, obligations, suits, debts, liens, contracts, agreements, promises, demands and damages, of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, that the Receiver ever had, now has, or hereafter may have against Sindhu arising out of or related to the Claim and the Judgment, and any claim asserted by Sindhu against the Receivership estate.
- c. With respect to the releases by the Parties set forth in this Agreement, the Parties, and each of them, expressly waive and release any rights or benefits that they may have under Section 1542 of the Civil Code of the State of California which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, must have materially affected his or her settlement with the debtor or released party.

- d. The Parties expressly waive and release the rights or benefits of Section 1542 of the Civil Code of the State of California, and any similar statute, code, law or regulation of any state, territory, commonwealth or possession of the United States, or the United States, to the full extent that they may waive all such rights and benefits pertaining to the claims released herein. The Parties, and each of

them, acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true pertaining to the claims released herein. Nevertheless, it is the intention of the Parties, and each of them, through this Agreement to fully, finally and forever release all of the claims each of them respectively release herein. The releases herein given shall be and remain in effect as a full and complete release of the claims released herein notwithstanding the discovery or existence of any such additional or different claims or facts relative thereto.

5. **No Assignment of the Released Claims.** The Parties, and each of them, represent and warrant to the other that each Party is the sole and lawful owner of all right, title and interest in and to each of the claims released herein and has not heretofore assigned or transferred, or purported to assign or transfer, to any individual, partnership, corporation, firm, estate or entity, any of the claims released herein. The Parties, and each of them, hereby agree to indemnify, defend and hold harmless the other party released herein from and against all claims based upon or arising out of or in connection with any assignment or transfer or purported assignment or transfer of any of the claims released.

6. The Parties acknowledge that the Receiver is acting solely in her capacity as the receiver for SRA Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, SRA Management Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, and NYPA Management Associates, LLC and their subsidiaries and affiliates, and that she has no personal liability whatsoever with respect to this Agreement or the transactions described herein.

7. Except as otherwise specifically provided for herein, nothing contained in this Agreement shall create any rights, remedies or defenses in favor of any party in interest that is not a party to this Agreement.

8. Each Party submits to the jurisdiction of the Court for any action, suit or proceeding to enforce this Agreement, and agrees that any such action, suit or proceeding shall be brought solely in the Court. Each Party irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to venue of any such action, suit or proceeding brought in the Court. The Parties agree that the Court shall retain exclusive jurisdiction to enforce the terms of this Agreement.

9. The Parties mutually warrant and represent that, prior to the execution of this Agreement: (a) each of them has thoroughly read this Agreement and conducted an independent and thorough investigation of all pertinent facts; (b) each of them has thoroughly informed themselves of the terms, covenants, conditions and effects of this Agreement; (c) each of them has obtained the advice and benefit of counsel of their own choosing; (d) no representations of any kind have been made by or on behalf of any of the Parties other than as expressly set forth in this Agreement; and (e) each of them thereafter elected knowingly and voluntarily to execute and enter into this Agreement.



10. Each of the Parties stipulates, agrees and warrants that: (a) the terms of this Agreement are reasonable; (b) they will not challenge or contest in any way the capacity or the authority of any Party hereto to make the agreements, covenants, waivers, stipulations, and representations set forth herein; (c) the person executing this Agreement on behalf of each Party has the necessary and appropriate authority and capacity to execute this Agreement and to make this Agreement binding upon and enforceable against that Party; and (d) the consideration for this Agreement is mutual and adequate.

11. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements, stipulations, understandings, promises or negotiations relating to such subject matter. No Party to this Agreement has made or is relying on (and each Party disclaims the existence or materiality of) any representations, warranties, or promises not expressly set forth in this Agreement. This Agreement can be modified only by a writing executed by each of the Parties hereto.

12. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective current, former, and future partners, members, lawyers, predecessors, affiliates, parents, subsidiaries, shareholders, officers, directors, employees, agents, trustees, managers, representatives, successors and assigns.

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13. Each Party hereto agrees to bear its/her own legal and other costs and expenses incurred in connection with the negotiation and preparation of this Agreement.


14. Nothing in this Agreement shall be deemed to be an admission of liability by any Party. Neither this Agreement nor any action taken to comply with this Agreement shall be construed as, or used as, an admission of any fault, wrongdoing, responsibility or liability whatsoever in this or any other matter.

15. This Agreement shall be governed and construed in accordance with the laws of California without regard to conflicts of law principles.

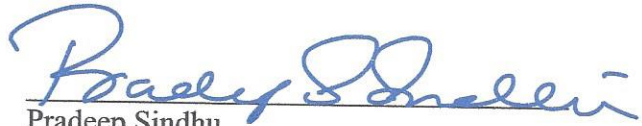
16. This Agreement may be executed in counterparts, in which case all such counterparts shall constitute one and the same Agreement. Furthermore, the executed signature pages may be transmitted by facsimile or .pdf, and such signatures shall be deemed original and sufficient to bind the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered as of the date reflected below.

Dated: July 19, 2019

  
\_\_\_\_\_  
Kathy Bazolan Phelps, solely in her capacity  
as Receiver

Dated: July 19, 2019

  
\_\_\_\_\_  
Pradeep Sindhu