

1 KATHY BAZOIAN PHELPS (State Bar No. 155564)  
2 *kphelps@diamondmccarthy.com*  
3 DIAMOND MCCARTHY LLP  
4 1999 Avenue of the Stars, Suite 1100  
5 Los Angeles, California 90067-4402  
6 Telephone: (310) 651-2997

7 *Successor Receiver*

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 JOHN V. BIVONA; SADDLE RIVER  
16 ADVISORS, LLC; SRA  
17 MANAGEMENT ASSOCIATES,  
18 LLC; FRANK GREGORY  
19 MAZZOLA,

20 Defendants, and

21 SRA I LLC; SRA II LLC; SRA III  
22 LLC; FELIX INVESTMENTS, LLC;  
23 MICHELE J. MAZZOLA; ANNE  
24 BIVONA; CLEAR SAILING GROUP  
25 IV LLC; CLEAR SAILING GROUP V  
26 LLC,

27 Relief Defendants.  
28

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

**DECLARATION OF RECEIVER KATHY  
BAZOIAN PHELPS IN SUPPORT OF  
MOTION TO:**

- (1) EMPLOY MILLER KAPLAN AS TAX  
ADVISOR**
- (2) EMPLOY SCHINNER & SHAIN LLP  
AS SECURITIES COUNSEL; AND**
- (3) FOR INSTRUCTIONS**

Hearing Date: September 12, 2019

Time: 10:30 a.m.

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

1 I, Kathy Bazoian Phelps, declare as follows:

2 1. I am the Court-appointed permanent receiver for SRA Management Associates  
3 LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, Clear Sailing Group IV, LLC, Clear Sailing Group  
4 V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix  
5 Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, and NYPA Management  
6 Associates, LLC (collectively, the "Receivership Entities").

7 2. This Declaration is given in support of my Motion to (1) Employ Miller Kaplan as  
8 Tax Advisors; (2) Employ Schinner & Shain as Securities Counsel; and (3) for Instructions (the  
9 "Motion"). I have discussed this Motion with counsel for the SEC and the SRA Investor Group and  
10 do not believe that they oppose the relief requested in the Motion.

11 3. I have personal knowledge of the facts set forth in this Declaration, and, if called to  
12 testify, could testify competently thereto.

13 4. I have conferred with John Yun, counsel for the Securities and Exchange  
14 Commission, who advised that the SEC does not oppose the Motion. I have also conferred with  
15 Elizabeth Pritzker, counsel for the SRA Investor Group, who advised that the Investor Group  
16 wished to consider the matter further before responding as to their position.

17 5. I have proposed a Plan of Distribution (the "Plan"), which was considered by the  
18 Court on June 27, 2019. The Plan contemplates that all of the securities that will be sold or  
19 liquidated pursuant to the terms of the proposed Plan are part of a qualified settlement fund  
20 ("QSF") that was established when the receivership was formed on October 11, 2016. Some of  
21 the securities are currently publicly traded (the "IPO Shares") and other securities are pre-IPO  
22 with the estate owed the right to securities pursuant to forward contracts or holding stock  
23 certificates in private companies ("Pre-IPO Shares"). Both the IPO Shares and the Pre-IPO Shares  
24 (collectively, the "Shares") were obtained by the Receivership Entities on a pre-IPO basis  
25 pursuant to forward contracts and purchases from insiders or employees holding an interest in  
26 pre-IPO shares. The IPO Shares are held in the estate's brokerage account at Wells Fargo  
27 Advisors.

28



1           8.       Through discussion with Julia Damasco at Miller Kaplan, I have learned that there  
2 may be alternative approaches to address the tax issues. Given the costs, delays and other issues  
3 discussed in the Motion, I feel it is appropriate that the Court and interested parties have an  
4 opportunity to review the matter before a final decision is made.

5           9.       The Motion addresses two principal approaches to handling the tax issues:

6               (a)       Scenario 1 is to treat both IPO Shares and Pre-IPO Shares as part of the  
7 QSF, which is the lower cost option contemplated in the Plan, but could result in  
8 potentially higher taxes; or

9               (b)       Scenario 2 is to try to obtain an IRS ruling that the Pre-IPO Shares are not  
10 part of the QSF, which will be higher cost, could result in delays and logistical transfer  
11 issues, but could potentially result in lower taxes.

12          10.       The Plan provides the following explanation of the tax consequences:

- 13           a.       The Receivership Estate is treated as a Qualified Settlement Fund (“QSF”) effective  
14 as of the date of the commencement of the Receivership Estate, October 11, 2016.
- 15           b.       The assets of the Receivership Entities became property of the QSF as of October  
16 11, 2016.
- 17           c.       In order to establish the tax basis in the assets of the QSF, the Receiver will need to  
18 obtain a valuation of the assets of the Receivership Entities as of October 11, 2016.
- 19           d.       The sale of securities and the distribution of securities are taxable events.
- 20           e.       The QSF will be taxed on the difference between the value of the securities as of the  
21 commencement of the receivership and the value on the date of sale or distribution  
22 as ordinary income, which is estimated to be 40% of the gain.
- 23           f.       There may be deductions available to offset some or all of the gain, but such  
24 amounts or the ultimate impact on tax liability is presently unknown.
- 25           g.       Any tax liability of the estate will have to be paid through the sale of securities to  
26 generate sufficient cash to pay such tax liability.
- 27
- 28

1 h. The Receiver will be unable to make distributions to creditors or investors until such  
2 time as the Receiver determines that sufficient funds are available to pay all taxes in  
3 full. Otherwise, the Receiver could be personally liable for any unpaid tax claims.

4 *See* 31 U.S.C. § 3713.

5 11. In evaluating the potential tax consequences of the Plan, I am advised that the  
6 principal issues to be addressed are: (a) whether and how the sale and distribution of the IPO  
7 Shares are to be taxed if deemed to be part of the QSF (Scenario 1); and (b) whether it is  
8 appropriate to try to exclude the Pre-IPO Shares from the QSF in an attempt to mitigate tax  
9 liability (Scenario 2).

10 12. With respect to the IPO Shares, I am advised that the IRS will most likely take the  
11 position that the assets of the receivership estate are deemed to be transferred to a QSF as of the  
12 date of the commencement of the receivership and, therefore, the IPO Shares that are in the  
13 estate's brokerage account will likely be deemed to be part of the QSF. I am further advised that  
14 the sale or distribution of those securities will be taxable events at the QSF level. The QSF would  
15 pay tax on any "gain" realized at the time of sale or distribution. The QSF is not entitled to capital  
16 gain treatment. At a minimum, the IPO Shares are deemed part of the QSF, and Miller Kaplan  
17 does not recommend taking any position with respect to the IPO Shares. The tax opinion  
18 contemplated under Scenario 1 would set forth the tax consequences of treating all of the Shares  
19 as part of the QSF, but the question is whether there is a basis to seek a different disposition as to  
20 the Pre-IPO Shares.

21 13. The subject of the request for Instructions, therefore, relates to the question of how  
22 to treat the Pre-IPO Shares and is set forth in Scenario 2. A simple tax opinion that the Pre-IPO  
23 Shares are not part of the QSF will not protect me from potential liability if the IRS disagrees.  
24 Because I am subject to personal liability if such a tax opinion is not accepted by the IRS and  
25 taxes are not deemed paid in full, I cannot proceed on the basis of a tax opinion alone and would  
26 need an IRS ruling that Scenario 2 was an appropriate approach before I distributed or sold any of  
27 the Shares.



1 pursuant to the Plan through my broker-dealer at Wells Fargo Advisors may be sold without  
2 registration under the Securities Act of 1933 (the “Act”). The second opinion is whether other  
3 shares may be distributed to claimants under the Plan without registration under the Securities Act  
4 and, if so, whether those shares will need to bear a restrictive legend.

5 17. Schinner & Shain has advised that it will prepare a group of letters to be provided  
6 to the broker-dealers who will be selling the shares and a second group of letters will be given to  
7 the transferees, the companies that issued the shares, or both. These types of letters are not  
8 typically provided to the Securities and Exchange Commission, but copies can be provided to the  
9 SEC or a separate opinion letter can be issued to the SEC if requested or necessary.

10 18. The services to be performed by Schinner & Shain will entail a review of the  
11 circumstances relating to the shares to be sold or distributed and a review the forward purchase  
12 contracts pursuant to which the defendants in this case acquired the shares, as the general terms of  
13 these agreements will be important in establishing whether the safe harbor to registration in SEC  
14 Rule 144 is available for these sales and transfers.

15 19. In evaluating the different options regarding tax treatment of the securities, I note  
16 the following issues in connection with Scenario 2. First, I believe that the outcome of a request to  
17 the IRS is, at best, uncertain, and that the IRS may likely either decline to rule or may determine  
18 that an effort to keep the Pre-IPO shares out of the QSF is not permissible. The fees from the tax  
19 advisor would be higher and the IRS will charge a \$30,000 for a request for a ruling. Although I  
20 could withdraw the request for a ruling if the outcome does not seem promising following a  
21 preliminary determination, I would have already spent the increased fees in seeking the ruling.  
22 The delays in obtaining a full IRS ruling could be 12 to 18 months. Although an expedited request  
23 can be made, it is not guaranteed, and I am advised that an expedited request would like still take  
24 at least 6 months. Approval of a Plan in this case is now contingent upon getting a tax opinion.  
25 While a tax opinion confirming the structure set forth in the Plan can be obtained relatively  
26 quickly, the delay from seeking a tax ruling would significantly delay approval of the Plan and  
27 distribution to the creditors and investors.





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# Exhibit 1



August 15, 2019

Kathy Bazoian Phelps | Senior Counsel  
Diamond McCarthy LLP  
1999 Avenue of the Stars, 11th Floor  
Los Angeles, CA 90067

via AdobeSign –[kphelps@diamonddmccarthy.com](mailto:kphelps@diamonddmccarthy.com)

**Re: SRA Receivership**

Dear Ms. Phelps,

Thank you for choosing Miller Kaplan to be the accountants, advisors and tax preparers for you solely in your capacity as Successor Receiver for SRA Management Associates, LLC (“SRA Management”), SRA I LLC (“SRA I”), SRA II LLC (“SRA II”), SRA III LLC (“SRA III”) (together, “SRA Funds”), Clear Sailing Group IV LLC and Clear Sailing Group V LLC (together, “Clear Sailing”), and third-party affiliated entities NYPA Fund I LLC (“NYPA I”), NYPA II Fund LLC (“NYPA II”) (together, “NYPA Funds”) and NYPA Management Associates LLC (collectively, “NYPA Entities”) and Felix Multi-Opportunity Funds I and II, LLC (“FMOF I and II”) (together, “FMOF Funds”) and FMOF Management Associates, LLC (collectively, “FMOF Entities”) (collectively, the “Receivership Entities”) in the case of Securities and Exchange Commission v. SRA I LLC, et al., U.S.D.C., Northern District of California Case No. 3:16-cv-01386-EMC. This letter is to confirm our understanding of the nature and limitations of the tax opinion services we are to render regarding the assets of the Receivership Entities and impact of the Qualified Settlement Fund on the sale and distribution of those assets in the above referenced matter. You have requested that we provide advice regarding the tax consequences of the sale and distribution of securities pursuant to the terms of the proposed Distribution Plan as part of the assets of the Qualified Settlement Fund. We will also address the Related California tax issues. As

SRA Receivership

August 15, 2019  
Page 2

We will report to you in the above-referenced matter. We consider communications with you and counsel necessary to our tax advice in this matter.

Our initial estimate of the fees required to complete a tax opinion in this matter is between \$25,000 and \$45,000. We have discussed the possibility of seeking a ruling from the Chief Counsel's office of the Internal Revenue Service. If you choose to pursue a ruling, we will provide you with a separate engagement letter for that purpose. My estimate of the professional fees related to a ruling request would range up to \$65,000 depending on a number of factors. There is a user fee of \$30,000 required by the IRS related to the ruling.

Our services will be provided based on our standard hourly rates, which have been discounted by 20%. A schedule of our regular and discounted hourly rates is attached. Though our invoices will be sent to you monthly and may state that they are due and payable upon presentation and are delinquent if not paid within 30 days of the invoice date, we understand that payment for our firm's services can only be made upon motion to the Court in the receivership proceeding and after entry of an order of the Court approving and authorizing payment of our fees and expenses. We understand that fee motions are generally made by the Receiver on a quarterly basis in accordance with the SEC Billing Guidelines, and that the SEC may request a holdback of 20% of the fees subject to each fee motion, to be reviewed and paid at the conclusion of our engagement in connection with our firm's final fee motion.

We reserve the right to suspend our services or to withdraw from this engagement in the event that any of our invoices are deemed delinquent, if payment is not made after Court approval of our fees and expenses. In the event that any collection action is required to collect unpaid balances due us, you agree to reimburse us for our costs of collection, including attorneys' fees. If we elect to terminate our services for nonpayment, or for any other reason provided for in this letter, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our services. You will be obligated to compensate us for all time expended, and to reimburse us for all of our out-of-pocket costs, through the date of termination.

In connection with this engagement, we may communicate with you or others via email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered

SRA Receivership

August 15, 2019  
Page 3

Any and all disputes regarding the meaning, performance or enforcement of this engagement shall remain subject to the jurisdiction of the United States District Court for the Northern District of California. If any dispute arises between you and the Firm regarding the meaning, performance or enforcement of this engagement or any prior engagement that we have performed for you, you and the Firm agree to try first in good faith to settle the dispute by mediation administered by the American Arbitration Association (AAA) under its Rules for Professional Accounting and Related Services Disputes. The parties may then jointly elect to decide all unresolved disputes by final and binding arbitration in accordance with the Rules for Professional Accounting and Related Services of the AAA, but the parties are not required to do so. The parties participating in the mediation shall bear their own costs, except fees charged by any mediators, arbitrators or the AAA shall be shared equally by all parties. IN THE EVENT THE PARTIES AGREE TO ARBITRATION, WE BOTH ACKNOWLEDGE THAT IN THE EVENT OF A DISPUTE, EACH OF US IS GIVING UP THE RIGHT TO HAVE THE DISPUTE DECIDED IN A COURT OF LAW BEFORE A JUDGE OR JURY AND INSTEAD WE ARE ACCEPTING THE USE OF ARBITRATION FOR RESOLUTION. Any mediation or arbitration under this Engagement Letter shall be administered within the County of Los Angeles and State of California, unless we agree to a different venue for our mutual convenience.

Please execute this letter on the line below designated for your signature. You should keep a copy of this fully executed letter for your records. If you have any questions concerning our engagement, please call me at (415) 694-7014.

We very much appreciate the opportunity to serve you and trust that our client relationship will be a long and pleasant one.

This Agreement is subject to Court approval. As set forth herein, the Firm understands that, following Court approval of this Agreement, all fees and expenses will be subject to Court approval.

Sincerely,

MILLER KAPLAN ARASE LLP



Julia Mandeville Damasco, J.D., LL.M

Partner

SRA Receivership

August 15, 2019  
Page 4**MILLER KAPLAN ARASE LLP  
SCHEDULE OF CURRENT FEES**

<b>STAFF LEVEL</b>	<b>CURRENT RATES PER HOUR</b>	<b>DISCOUNTED RATES</b>
Administrative Staff, SMEs & Project Managers	\$70 – \$180	\$56 – \$144
Accounting Staff	\$100 – \$200	\$80 – \$160
Senior Accounting Staff	\$225 – \$275	\$180 – \$220
Attorney	\$250 – \$350	\$200 – \$280
Partner	\$400 – \$550	\$320 – \$440

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# Exhibit 2

**JULIA MANDEVILLE DAMASCO****PARTNER/TAX ATTORNEY**

Miller Kaplan Arase LLP  
 Two Embarcadero Center, Suite 2280  
 San Francisco, CA 94111  
 415-694-7014

**EDUCATION**

LL.M., Taxation	2005
<i>Golden Gate University</i>	<i>San Francisco, CA</i>
Juris Doctor	1982
<i>Santa Clara University School of Law</i>	<i>Santa Clara, CA</i>
B. S. Modern European History	1979
<i>Scripps College</i>	<i>Claremont, CA</i>

**EMPLOYMENT**

<i>Miller Kaplan Arase LLP</i>	October 2016 to Present
Partner and member of Managing Partner Committee	<i>San Francisco, CA</i>

**Julia Mandeville Damasco** is an attorney admitted to practice in all the courts of the State of California and Washington, the United States Tax Court and the 9th Circuit Court of Appeals. Ms. Damasco holds an LL.M. in taxation. The author of continuing legal education programs on the taxation of funds of money established to resolve claims, information return reporting, law practice management and the elimination of bias, Ms. Damasco also has extensive experience in systems for large and complex case management, including the Coordinated Asbestos Insurance Litigation, and criminal tax litigation. She provides opinions to litigants, counsel and settlement funds on tax issues and obtains rulings from the IRS on issues related to settlement funds and other litigation. She supervises tax procedure engagements and practice before the IRS with an emphasis on issues raised in the administration of funds of money established to resolve claims, information return reporting, employment taxation, technical database issues, QSFs, Receiverships and Bankruptcy estates.

She has extensive experience in settlement fund taxation and has become established as expert in this field. Currently, she provides tax advice, compliance, and controversy services to more than 700 active settlement funds, fiduciaries, public agencies and to the U.S. Securities & Exchange Commission fair funds. She has served as a member of multidisciplinary teams addressing voluntary and mandated remediation in securities and other matters.

Her firm has provided tax services on the following matters – all a matter of public record – and her firm has served as the Tax Administrator for the SEC Fair Funds since 2005. She is one of two lead partners on this engagement.

**The National Mortgage Settlement** – tax compliance and obtained a Revenue Ruling on information return reporting to benefit the borrowers receiving funds from the settlement.

**Independent Foreclosure Review** – OCC/FRB.

**Microsoft Temporary Workers Settlement** – Class Action.

**NCAA Coaches Settlement** – Class Action.

*Damasco & Associates LLP*

May 1999 to October 2016

*San Francisco and Half Moon Bay, CA*

Partner in a public accounting and consulting firm. Tax opinions, taxpayer representation, systems and procedures consulting, fiduciary activities, monitor of claims and administration procedures for qualified settlement fund administrators.

*The Law Office of Julia Mandeville Damasco*

June 1997 to Present

*San Francisco, CA*

Specializing in Taxation; Tax Policy and Procedure; Administrative Law; Settlements and Judgments; Receiverships; Sports and Entertainment Law; and resolution of Controversies and Risk Events.

*ASSISTANT CITY ATTORNEY*

January 1993 to May 1997

*City of Santa Clara*

*Santa Clara, CA*

Assistant City Attorney for Charter City with in excess of 900 full time employees and approximately 95,000 residents. Responsibilities included: real property, economic development, land use, information technology contracts and telecommunications.

EMPLOYMENT WITH SAN FRANCISCO BAY AREA FIRMS

1985 to 1993

*Aaron, Riechert, Carpol, Riffle & Mandeville, Redwood City, CA.* Shareholder in A-V rated general civil practice firm. Areas of specialty included real property, construction and business transactions and litigation. Provided litigation support for estates, trusts, and capacity proceedings practice of other shareholders.

REFERENCE: Peter G. Riechert, Esq.

*Jorgenson, Cosgrove, Siegel, McClure & Flegel, Menlo Park, CA.* Associate attorney with full case load in general civil practice, including real property, public law, land use and business. Practice included transactions and litigation. Experience in all phases of litigation, administrative proceedings and capacity proceedings. Provided litigation support for estate planning practice.

REFERENCE: William L. McClure, Esq

*Julia A. Mandeville, Attorney at Law, Saratoga, CA.* Represented individuals and corporations in tax and banking litigation in U.S. District Court, U.S. Tax Court and in Ninth Circuit of Appeals.

*Associate Counsel in U.S. v. Margolis, No. CR85-2086-RPA, Result: Judgment of Acquittal, July 1986.* Associate Counsel in six-month criminal tax fraud trial.

*Heller, Ehrman, White & McAuliffe, San Francisco, CA.* As a law clerk, supported trial team in judicially coordinated litigation. Negotiated contract for document indexing system and for full-text transcript computer system. Contract was executed by more than 20 law firms on behalf of more than 40 parties and the Court.

REFERENCE: Wondie Russell, Esq

## OTHER EMPLOYMENT

*McGuire, Barnes and Andrascik, San Francisco, CA.* Assisted Walter McGuire, Esq., in the planning of the Olympic Torch Relay Route for the 1984 Los Angeles Olympic Games. Supervised the "advance" team of 12 individuals located throughout the United States. Served as liaison between AT&T, the Olympic Committee and McGuire, Barnes and Andrascik. Worked closely with IBM in designing and using the computer programs which documented the Torch Relay Route.

## **CIVIC, VOLUNTEER AND PROFESSIONAL ACTIVITIES**

### California Lawyers

Beginning October 2019

Executive Committee of the Taxation Section

### National Association of Federal Equity Receivers

Member

Chair – IRS Liaison Committee

### San Francisco General Hospital Foundation.

Member of the Board

Audit and Governance Committees

### Queen's Bench Bar Association of the San Francisco Bay Area

Officer and Member, Board of Directors (former)

Delegate, California State Bar Conference of Delegates (former)

Recipient, Award of Merit, 1993

### San Mateo County Bar Association

Chair, Real Estate Section (former)

### Sequoia Audubon Society

Member, Board of Directors and President (former)

### Audubon Canyon Ranch

Member, Board of Directors and Secretary (former)

Member, Advisory Board and Chair of the Legal Committee (former)

### Other Affiliations:

- State Bar of California, Taxation section.
- Washington State Bar Association
- American Bar Association, Taxation section.

**NICHOLAS A. SANCHEZ**

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**PARTNER/TAX ATTORNEY**

Miller Kaplan Arase LLP  
Two Embarcadero Center, Suite 2280  
San Francisco, CA 94111  
415-694-7008

**EDUCATION**

Master of Laws in Taxation, LL.M. Golden Gate University School of Law, San Francisco, CA	August 2006
Juris Doctor, J.D. University of San Francisco School of Law, San Francisco, CA	May 2005
Bachelors of Arts, History and Psychology University of California, Los Angeles, CA	June 2002

**EMPLOYMENT**

Miller Kaplan Arase LLP, San Francisco, CA <i>Partner</i>	March 2018 – Present
Miller Kaplan Arase LLP, San Francisco, CA <i>Tax Attorney</i>	October 2016 – February 2018
Damasco & Associates LLP, San Francisco, CA <i>Tax Attorney</i>	December 2005 – September 2016
Damasco & Associates LLP, San Francisco, CA <i>Law Clerk</i>	July 2004 – December 2005

**HONORS & AWARDS**

“Rising Star” in the accounting industry, San Fernando Valley Business Journal, May 29, 2017

**COURSES**

*Taxation of Qualified Settlement Funds*, co-authored and co-instructed with Jude P. Damasco and Julia Mandeville Damasco, approved for Continuing Legal Education Credit by state bars in several states, including California and New York

## PUBLICATIONS

*The Verdict*, Spring 2005, Alameda-Contra Costa Trial Lawyers' Association, "Taxes, recovery and the first quarter of 2005"

*Developments In Administrative and Regulatory Law 2004-2005*, American Bar Association, "Developments in the Taxation of Attorney's Fees"

*Spreading Justice*, American Bar Association, Section of Litigation, Pro Bono and Public Interest Practice Committee, Fall 2005, "Cy Pres Awards in Class Action Litigation: Tax Lesson for Litigators"

*Consumer Class Actions* (9th ed. 2016), National Consumer Law Center, acknowledged contributor

*Daily Journal*, "Attorneys: Get up to speed on Tax Cuts and Jobs Act," December 22, 2017

"Tax Changes for Qualified Settlement Funds Under the Tax Cuts and Jobs Act," self-published on LinkedIn, January 26, 2018

American Bar Association, Section of Litigation, Class Actions and Derivative Suits Committee, "The Business of Class Actions and Recent Developments," October 31, 2018

"California Employer No Longer Subject to FUTA Credit Reduction," self-published on LinkedIn, November 16, 2018

"IRS Implements Information Reporting Due Date Extension Procedural Changes," self-published on LinkedIn, November 16, 2018

## ASSOCIATIONS & MEMBERSHIP

California State Bar (238088), Admitted in 2005, Member of the Section of Taxation

United States Tax Court, Admitted in 2006

American Bar Association, Member of the Section of Taxation

National Association of Federal Equity Receivers (NAFER), Industry Member, IRS Liaison Committee

Santa Barbara County Bar Association, Member

California Lawyers Association, Member of the Taxation Section

**QIVA A. DINURI**

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**SENIOR MANAGER/TAX ATTORNEY**

Miller Kaplan Arase LLP  
Two Embarcadero Center, Suite 2280  
San Francisco, CA 94111  
415-434-5510

**EDUCATION**

**University of San Diego School of Law, San Diego, CA**

LL.M. in Taxation, *summa cum laude*, Dec. 2014

J.D., *cum laude*, Order of the Coif, May 2014

Honors: Master of Laws: Dean's Tax Scholar; CALI Award (Highest Grade),  
International Taxation, Fall 2013; Phi Delta Phi Legal Honor Society

Activities: *San Diego Law Review*, Comments Editor

**University of California, San Diego, La Jolla, CA**

B.S. in Management Science and B.A. in Psychology, June 2006

Undergraduate Business Certificate, June 2006

Honors: Provost Honors, Fall 2002, Winter 2002, Fall 2005

Activities: University of Sussex, Brighton, United Kingdom, Summer 2005

**EMPLOYMENT**

**Miller Kaplan Arase, LLP, San Francisco, CA**  
Senior Manager / Tax Attorney

Feb. 2018—Present

*Perform legal research on a multitude of tax issues to develop tax planning strategies, including an expertise and focus on tax research for issues related to Qualified Settlement Funds. Prepare and perform detailed, technical review of individual, trust, estate, and gift tax returns and review all related workpapers. Compose comments, tax opinions, memoranda, and letters for clients and government agencies related to a variety of tax topics, including comments on proposed treasury regulations, opinions on the taxability of certain distributions from a Qualified Settlement Fund, and memoranda on the tax consequences of expatriation. Draft, review, and analyze responses, protests, and appeals to tax notices and audit inquiries. Research tax legislation to assist in understanding the impact on compliance and consulting. Support partners generally in providing tax services.*

**GW & Wade, LLC, Palo Alto, CA**  
Staff Attorney

Sept. 2016—Feb. 2018

*Provided comprehensive tax planning for high net worth individuals, which included preparing individual, trust, estate, gift, and business tax returns and resolving tax disputes. Assisted Counselors with a multitude of tasks that included managing and constructing investment portfolios, preparing retirement and other forward-looking plans such as stock purchase plans, and architecting estate plans and gifting strategies including charitable giving.*

**Ernst & Young, LLP, San Francisco, CA**  
Tax Senior Associate

Jan. 2015–Aug. 2016

*Composed opinions, memoranda, and letters for clients and government agencies related to a range of tax topics, including treaty application, changing tax domicile, determining subpart F income and effectively connected income, and transactional issues. Coordinated domestic and international team staffing, work product, and client communications. Prepared and reviewed domestic and international tax returns, computations, filings, and statements. Drafted statement of work, performed engagement economics analysis, and ensured timely billing and collection. Mentored, trained, and assisted new staff and interns.*

**U.S. District Court, Southern District of California, San Diego, CA** Sept. 2013–Nov. 2013  
Judicial Extern for the Honorable Ruben B. Brooks, Magistrate Judge

*Analyzed case files, conducted legal research, and drafted orders and reports and recommendations. Met regularly with Judge and law clerks regarding department cases. Observed court proceedings.*

**Ernst & Young, LLP, San Francisco, CA**  
Tax Summer Intern

June 2013–Aug. 2013

*Prepared federal and state tax returns for ultra-high net worth individuals, single member LLCs, and partnerships. Prepared foreign reporting disclosure forms. Researched tax credit and tax equity financing issues. Assisted with analyzing expatriation tax issues.*

**Ryan, Carvalho & White, LLP, San Diego, CA**  
Law Clerk

May 2012–March 2013

*Prepared case reports, intra-office memoranda, letters to clients, objections, and motions. Researched procedural and legal issues. Assisted attorneys with discovery and depositions.*

## **CIVIC AND VOLUNTEER ACTIVITIES**

Save The Bay  
Volunteer, June 2017–Present

Burlingame Beautification Commission  
Beautification Commissioner, Appointed June 2017

## **PROFESSIONAL MEMBERSHIPS**

State Bar of California, Admitted Dec. 2014

California Lawyers Association

American Bar Association

National Association of Federal Equity Receivers

EMILY W. RANSOM

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**PROJECT MANAGER**

Miller Kaplan Arase LLP  
Two Embarcadero Center, Suite 2280  
San Francisco, CA 94111  
415-694-7011

**EDUCATION**

Bachelor of Arts, Theater Arts June 1999  
University of California, Santa Cruz, CA

Income Tax coursework, H&R Block

Financial Accounting coursework, UC Berkeley Extension

Project Management coursework, UC Berkeley Extension

**EMPLOYMENT**

Miller Kaplan Arase LLP, San Francisco, CA October 2016 –Present  
*Project Manager*

Damasco & Associates LLP, San Francisco, CA December 1999 – September 2016  
*Office Manager / Administrative Assistant*

**Emily Ransom** is the firm's information return reporting subject matter expert. Emily has extensive knowledge of information return reporting on a federal and state level. She works closely with Julia Damasco and Nicholas Sanchez on complex information reporting engagements. Emily has participated in the creation of teaching materials on the Taxation of Qualified Settlement Funds and the Foreign Account Tax Compliance Act.

She has extensive experience in the validation of Forms W-9 and W-8, and utilization of the Internal Revenue Service TIN matching service. She supervises the calculation of withholding taxes and facilitates multi-jurisdictional withholding tax deposits and their associated reconciliation filings.

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# Exhibit 3

**SCHINNER & SHAIN, LLP  
RETAINER AND FEE AGREEMENT**

THIS RETAINER AND FEE AGREEMENT is entered into as of August 14, 2019 between **SCHINNER & SHAIN, LLP** (the “Firm”) and **KATHY BAZOIAN PHELPS, solely in her capacity as Successor Receiver for SRA Management Associates, LLC (“SRA Management”), SRA I LLC (“SRA I”), SRA II LLC (“SRA II”), SRA III LLC (“SRA III”) (together, “SRA Funds”), Clear Sailing Group IV LLC and Clear Sailing Group V LLC (together, “Clear Sailing”), and third-party affiliated entities NYPA Fund I LLC (“NYPA I”), NYPA II Fund LLC (“NYPA II”) (together, “NYPA Funds”) and NYPA Management Associates LLC (collectively, “NYPA Entities”) and Felix Multi-Opportunity Funds I and II, LLC (“FMOF I and II”) (together, “FMOF Funds”) and FMOF Management Associates, LLC (collectively, “FMOF Entities”) (collectively, the “Receivership Entities”) in the case of Securities and Exchange Commission v. SRA I LLC, et al., U.S.D.C., Northern District of California Case No. 3:16-cv-01386-EMC** (the “Client”).

**RECITALS**

- A. This Retainer and Fee Agreement (“Agreement”) is executed pursuant to Section 6148 of the Business and Professions Code of the State of California and is intended to fulfill all requirements of that Section. In addition, the Client and the Firm wish to have a written agreement setting forth the terms of the Firm’s representation in order to avoid any misunderstanding.
- B. The general nature of the legal services to be provided by the Firm for and on behalf of the Client is set forth in Section “II” below.
- C. All parties wish to proceed with the legal representation by the Firm, subject to the terms and provisions contained herein.

**AGREEMENT**

In consideration of the Firm’s agreement to perform legal services on behalf of the Client and the Client’s willingness to pay for these legal services, the parties agree as follows:

- I. Recitals.** The above Recitals are incorporated herein by this reference.
- II. Legal Services to be Provided.** The Client is the court-appointed receiver of the assets of the Receivership Entities. The Firm will advise the Client on whether she may sell or otherwise transfer shares of stock she holds as receiver of the Receivership Entities’ assets without registration of those shares under the Securities Act of 1933, as amended (the “Act”) and to prepare opinions of counsel to the Client, the proposed transferees of the shares and to broker-dealers effecting the transfer of the shares as to whether those shares may be sold without registration under the Act. The Firm will provide the Client with such other legal services with respect to such other matters as the Firm and Client agree. This Agreement will apply to all legal services the Firm provides to the Client unless the parties agree in writing to a different arrangement for any specific legal services.
- III. Respective Responsibilities of the Firm and the Client**
- a) **The Firm:** The Firm will perform the legal services called for by this Agreement, keep the Client informed of progress and developments, and respond promptly to the Client’s inquiries and communications.

b) The Client: The Client will be truthful and cooperate with the Firm, keep the Firm reasonably informed of developments and will make timely payments of fees and costs as required by this Agreement.

**IV. Fees.** The Firm's fees for services it performs for the Client will be billed at a 10% discount off the respective regular hourly rates of the individuals with the Firm who provide the services. The regular rates fall within the following ranges:

\$175.00 to \$565.00 per hour for Attorneys

\$ 75.00 to \$150.00 per hour for Law Clerks, Paralegals and Legal Assistants.

Frederick Koenen will be the Client's primary contact with the Firm and will be in charge of assigning attorneys with the Firm, who include associates and "of-counsel" attorneys, as well as paralegals and support staff to work on the Client's matters as needed. **The regular billing rate for Mr. Koenen is currently \$525.00 per hour, but he has agreed to charge \$472.50 per hour for this engagement.** Further information pertaining to Mr. Koenen and other attorneys the Firm presently contemplates will provide services in this matter and the standard and adjusted billing rates of these attorneys and other staff whom may provide these services for this engagement is attached as Exhibit A. The monthly statement will indicate in detail the attorney and paralegal who performed the work, their respective rate and the time spent on each project. Of-counsel attorneys, such as Mr. Koenen, receive payment for services equal to a stated percentage of revenues collected for work performed for the Firm's clients and a percentage of collections from matters those of-counsel attorneys refer to the Firm. The Firm will make further information available regarding the allocation of fees to the Client at the Client's request.

The Firm will charge in increments of one-tenth of one hour, rounded off for each particular activity to the nearest one-tenth of one hour. The minimum time charged for any particular activity will be one-tenth of one hour.

The Firm will charge for all activities undertaken in providing legal services to the Client under this Agreement, including, but not limited to, the following: conferences, including preparation and participation; correspondence and legal documents (review and preparation); legal research; necessary hearings or other formal or informal proceedings; telephone conversations and in certain instances, travel time. When two or more of the Firm's personnel are engaged in working on the matter at the same time, such as in conferences between them, the time of each will be charged.

If, while this Agreement is in effect, the Firm increases the hourly rates being charged to clients generally for attorneys' fees, that increase may be applied to fees incurred under this Agreement, but only with respect to services provided after written notice of the increase is mailed to the Client. Notice of such increases will be given with the monthly statement next succeeding the effective date of the increase. If the Client chooses not to consent to the increased rates, the Client may terminate the Firm's services under this Agreement by written notice effective when received by the Firm. Notwithstanding any provision contained in this paragraph, the Firm may increase its hourly rates by up to \$25.00 per hour effective as of January 1 of each calendar year without prior notice.

The Firm will endeavor to keep the Client's legal expenses down by utilizing paralegals and law clerks to handle tasks appropriate to their skills. The Firm also reserves complete discretion to select the attorneys within the Firm to whom the Client's work will be assigned.

**V. Costs and Expenses.** The Client authorizes the Firm to incur on the Client's behalf costs and

expenses as are reasonably required in connection with the services to be rendered by the Firm under this Agreement. The following are some typical examples:

- messenger, mail and overnight express delivery charges
- parking, tolls and other local travel expenses
- overnight transportation, meals and lodging expenses
- long distance telephone charges
- photocopying charges
- facsimile charges
- computerized legal research charges

The Firm is not required to advance individual costs or expenses but may instead direct all corresponding invoices to the Client for full and timely payment thereof.

**VI. Deposit.** The Firm requests, and the Client agrees, to pay the Firm a deposit of \$10,000.00 promptly after execution of this Agreement and before the Firm begins to provide legal services to the Client. This deposit will initially be placed in a client trust account and any interest earned will be paid to the State Bar of California. The Client authorizes the Firm to apply the funds deposited toward payment of the attorneys' fees as incurred by the Client. The deposit is not an agreement by the Firm that the Firm's charges will be limited to the amount of the deposit. If the Firm deems it necessary or prudent in view of the scope, time and commitment required of the Firm to provide the legal services requested, the Firm may in its discretion require the Client to pay an additional deposit as a condition to continue providing legal services. If, at the termination of services under this Agreement, the total fees incurred by the Client for attorneys' fees is less than the amount of the deposit, the difference will be refunded promptly to the Client.

**VII. Court Approval.** This Agreement is subject to Court approval. As set forth below, the Firm understands that, following Court approval of this Agreement, all fees and expenses will be subject to Court approval.

**VIII. Statements and Payments.** The Firm will send Monthly Statements indicating attorneys' fees and costs incurred and their basis, any amounts applied from deposits, and any current balance owed. If no attorneys' fees or costs are incurred for a particular month, or if they are less than \$100.00, the Statement may be held and combined with that for the following month. Though Monthly Statements will be sent monthly and may state that they are due and payable when the statement is rendered, the Firm understands that payment for our firm's services can only be made upon motion to the Court in the receivership proceeding and after entry of an order of the Court approving and authorizing payment of our fees and expenses. The Firm understands that fee motions are generally made by the Receiver on a quarterly basis in accordance with the SEC Billing Guidelines, and that the SEC may request a holdback of 20% of the fees subject to each fee motion, to be reviewed and paid at the conclusion of our engagement in connection with our firm's final fee motion.. If payment is not timely received following Court approval of the Firm's fees and expenses, the Firm may require each or any of the following:

- a) All amounts past due 30 days or more shall bear interest from the date of Court approval of the Firm's fees and expenses at the rate of one and one half percent per month (18% per year) until paid;
- b) Where balances remain unpaid for over 45 days following the date of Court approval of the Firm's fees and expenses, immediately suspend further services until the account is paid in full;
- c) Require the Client to deposit an additional sum in such amount to be determined by the

Firm, before the Firm provides any further services; and/or

d) For accounts having unpaid balances for over 60 days following the date of the Court approval of the fees and expenses, withdraw completely from representation of all matters covered in this Agreement.

In the event of a dispute of any of the Firm's billings, the Client's obligation is to timely pay the undisputed amount following Court approval. The disputed amount and the attendant finance charge, will be suspended for a period not to exceed an additional 15 days, during which the Firm and the Client agree to utilize their respective best efforts to resolve the disputed amount by conferring within said 15-day period after the disputed billing is received. If no resolution is reached, all unpaid obligations will be revived and will be immediately due and the Firm reserves the right to pursue collection.

In the event the Firm is required to institute legal proceedings to collect legal fees and costs, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs of collection.

**IX. Dispute Resolution.** Any dispute regarding fees or disbursements in any legal matter covered by this Agreement shall be subject to the jurisdiction of the United States District Court for the Northern District of California.

**X. Client's Duties – Cooperation.** The Client agrees to cooperate and keep the Firm informed of developments relevant to the subject matter hereof. The Firm will provide the Client with copies of all of the Firm's output relative to the Client's matters.

**XI. Files.** The Client's files will be maintained in an orderly fashion by the Firm, shall be the property of the Client, shall be treated as confidential, and, if requested by the Client, shall be turned over to the Client promptly after termination of this Agreement, together with any funds or property of the Client in the Firm's possession.

**XII. Cloud and Email Services.** In order to provide the Client with efficient and convenient legal services, the Firm, its attorneys and other employees will frequently communicate and transmit documents using e-mail. Because e-mail continues to evolve, there may be risks communicating in this manner, including risks related to confidentiality and security. By entering into this Agreement, the Client is consenting to such e-mail transmissions with the Firm, the Client and the Client's representatives and agents. In addition, the Firm uses a cloud computing service with servers located in a facility other than the Firm's office. Most of the Firm's electronic data, including emails and documents, are stored in this manner. By entering into this Agreement, the Client understands and consents to having communications, documents and information pertinent to the Client's matter stored through such a cloud-based service.

**XIII. Mobile Devices.** In order to provide the Client with efficient and convenient legal services, the Firm, its attorneys and other employees may employ the use of mobile devices to communicate with the Client and the Client's representatives and agents and to transmit documents. Due to the rising thefts and incidents involving mobile devices, there may be risks in communicating in this manner, including risks related to confidentiality and security. By entering into this agreement, the Client is consenting to the use of mobile devices to communicate with the Client and the Client's representatives and agents.

**XIV. Termination.** The Client may terminate the Firm as its attorneys at any time, and the Firm may resign as the Client's attorneys at any time, upon giving written notice to the other party for any reason in its discretion, subject to any ethical rules that may limit the right of the Firm to resign as the Client's attorneys without leave of court. Upon termination or resignation, the Client will promptly pay any

amounts due to the Firm. After the Firm's services conclude, the Firm will, upon the Client's request, deliver the Client's files to the Client, along with any funds or property of the Client.

**XV. Miscellaneous.** This Agreement will be binding on the successors and assigns of the parties; it shall be governed and interpreted under and pursuant to the laws of the State of California and, if any portion is held to be illegal or unenforceable, the remainder will continue in full force and effect.

**XVI. Conflicts of Interest.** From data supplied by the Client, the Firm has determined it can represent the Client, having ascertained that, as of the date of review, no conflicts of interest exist between the Firm's representation of the Client and the Firm's representation of any of its other clients that would prevent the Firm from representing the Client.

**XVII. Condition Precedent - Effective Date.** The Firm's duty to commence work on the Client's matters shall not arise until this Retainer and Fee Agreement is executed. The effective date of this Agreement will be retroactive to the date the Firm first performed services for the Client. The date at the beginning of this Agreement is for reference only.

**XVIII. Entire Agreement.** The conditions set forth in the paragraphs above constitute the entire Agreement under which the Firm will provide legal representation and may not be modified or amended except by a writing signed by the Firm and the Client. No other promises, conditions or warranties have been made. It is the Firm's hope that this Agreement will avoid misunderstandings.

**[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.  
SIGNATURES APPEAR ON FOLLOWING PAGE.]**

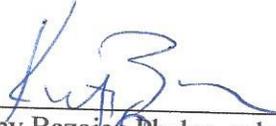
IN WITNESS WHEREOF, the parties hereto have signed this Retainer and Fee Agreement as of the date first above written.

**FIRM**

**SCHINNER & SHAIN, LLP**

By:   
Frederick Koenen, Of Counsel

**CLIENT**

By:   
Kathy Bazoian Phelps, solely in her capacity as  
Successor Receiver

**Address to which notices and invoices are to be sent:**

Kathy Bazoian Phelps, Esq.  
c/o Diamond & McCarthy, LLP  
1999 Avenue of the Stars, 11th Floor  
Los Angeles, CA 90067-4402

Client prefers to receive invoices via (mark one):

Paper       Email (provide e-mail address): \_\_\_\_\_

**EXHIBIT A TO RETAINER AND FEE AGREEMENT**

**SCHINNER & SHAIN, LLP  
PROJECT ATTORNEY PROFILES**

**Frederick K. Koenen** is of counsel to Schinner & Shain, LLP in San Francisco, California, where his practice includes securities regulatory compliance, venture capital and private placement financing for start-up and emerging growth companies, and mergers and acquisitions. A substantial part of Mr. Koenen's practice during his 33 year career as an attorney has been advising issuers, sellers and purchasers of restricted securities and control securities on compliance with applicable federal and state securities laws related to secondary trading of those securities, including SEC Rule 144. Prior to joining Schinner & Shain, LLP in 2004, Mr. Koenen was a partner with the firm of Foley & Lardner, LLP in its San Francisco office and with the San Francisco-based firm of Evers & Hendrickson, LLP.

Mr. Koenen has been a frequent speaker and lecturer on securities law issues as they related to the needs of smaller private and public companies, and he has been interviewed on these topics for national and regional publications. Mr. Koenen is a member of the Business Law and Intellectual Property Sections of the State Bar of California and the American Bar Association. Mr. Koenen is admitted to practice in the State of California and the U.S. District Court for the Northern District of California. Mr. Koenen received his B.A. from Whitman College in 1983 and his J.D. in 1986 from Willamette University.

**Michael J. Schinner** is a founding partner of Schinner & Shain, LLP, which is the successor to The Schinner Law Group, a firm Mr. Schinner formed in 1999. Mr. Schinner's practice over the past 25 years has included advising businesses and their owners in connection with mergers and acquisitions, private placements of securities and private resales of securities there were initially issued without registration under the Securities Act of 1933, as amended.

Mr. Schinner is recognized as an authority in limited liability companies, particularly with respect to their use for real estate syndicates, venture capital and investment funds. He has published numerous articles in leading law treatises and journals such as Advising California Limited Liability Companies (CEB), California Business Law Practitioner (CEB), Journal of Taxation, Journal of S Corporation Taxation, American Journal of Tax Policy, California Tax Lawyer, Commercial Law Journal, and Trademark World. Mr. Schinner received his B.A. in 1986 from the College of Mount St. Joseph, his J.D. from University of Cincinnati in 1989, and his LL.M in Taxation from Golden Gate University School of Law in 1993.

**Christopher Carin** is an associate attorney with Schinner & Shain, LLP, where he has practiced since 2015 in its corporate law and real property practice groups. Prior to joining Schinner & Shain, Mr. Carin served as a judicial extern for the California Supreme Court under Chief Justice Tani Cantil-Sakauye. Mr. Carin received his B.A. from the University of California San Diego in 2012 and his B.A. from the University of California, Hastings College of Law in 2015.

**ATTORNEYS, STAFF AND BILLING RATES FOR PROJECT**

<b>Name</b>	<b>Title</b>	<b>Standard Hourly Rate</b>	<b>Adjusted Hourly Rate</b>
Frederick Koenen	Of Counsel	\$525.00	\$472.50
Michael Schinner	Partner	\$565.00	\$508.50
Christopher Carin	Associate	\$410.00	\$369.00
Simona Stodulkova	Paralegal	\$110.00	\$99.00