

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

**RECEIVER'S INTERIM STATUS REPORT
FOR FOURTH QUARTER 2019**

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

1 Kathy Bazoian Phelps, the successor receiver herein, hereby files her Interim Status Report
2 for the Fourth Quarter 2019.

3 **I. PROCEDURAL HISTORY**

4 1. On October 11, 2016, the District Court for the Northern District of California
5 (“Court”) entered a Temporary Restraining Order and Order to Show Cause why Preliminary
6 Injunction Should Not Be Granted (the “TRO”).

7 2. Pursuant to the TRO, Sherwood Partners was appointed as the temporary receiver
8 over the assets of SRA Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC,
9 SRA Management Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix
10 Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management
11 Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, and NYPA Management Associates,
12 LLC (the “Receivership Entities”).

13 3. Pursuant to the Revised Order Appointing Receiver entered on February 28, 2019
14 (the “Receiver Order”), Kathy Bazoian Phelps was appointed as the successor receiver over the
15 Receivership Entities. Pursuant to Minute Order entered on June 27, 2019, Solis Associates Fund
16 was substantively consolidated with the Receivership Entities.

17 4. The Receiver was present at the hearing on February 28, 2019, at which time the
18 Court was considering competing plans of distribution filed by the SEC and the SRA Investor
19 Group. A number of issues were raised, but not resolved, at the hearing, and the Court asked the
20 Receiver to file comments relating to the competing plans and, if appropriate, to file her own plan
21 of distribution.

22 5. The Receiver engaged Diamond McCarthy LLP as her counsel and Grobstein
23 Teeple Financial Advisory Services LLP as her accountants to assist her in the administration of
24 the estate, in proposing a plan of distribution, and in addressing complex tax issues arising from
25 the proposed distribution plan. The Court has continued the hearings regarding approval of a
26 distribution plan on several occasions to address issues relating to tax consequences of a
27 distribution plan and to address the request of the SRA Funds Investor Group for a report
28 regarding the tax provisions set forth in the Receiver’s proposed plan.

1 6. The Receiver sought to engage a tax advisor to address specific questions asked by
2 the Investor Group, and to engage securities counsel to address the complexities of a distribution
3 plan that would both liquidate securities to generate funds to pay administrative, priority and
4 unsecured creditors, and to also return some shares to investors.

5 7. A hearing was held on October 8, 2019 on the Receiver’s Motion to: (1) Employ
6 Miller Kaplan as Tax Advisors; (2) Employ Schinner & Shain as Securities Counsel; and (3) for
7 Instructions (the “Tax Motion”). The Court granted the Receiver’s request to employ Miller
8 Kaplan as Tax Advisors and Schinner & Shain as Securities Counsel (Doc 532) and continued the
9 portion of the Tax Motion requesting instructions regarding the tax report that was requested to
10 December 19, 2019. Due to the complexities of the issues, the Receiver’s professionals required
11 additional time to complete their analysis, and the parties agreed to continue the December 19,
12 2019 hearing to January 16, 2020.

13 8. On December 16, 2019, the Receiver filed her Supplement to the Tax Motion
14 (Doc. 538) (the “Supplement”), which contained the report requested by the Investor Group
15 relating to the tax issues, and the Receiver also provided a full report on the securities issues that
16 might arise under a distribution plan or pursuant to any other viable alternatives that the
17 Receiver’s professionals could visualize.

18 9. On December 18, 2019, the Investor Group filed an Administrative Motion re the
19 Tax Motion, seeking the turnover of written materials from the Receiver relating to the legal
20 advice provided by her professionals (Doc 539). The Receiver and the SEC each filed oppositions
21 to the Investor Group’s Administrative Motion on the basis that the Receiver’s Supplement
22 already contained the materials that the Investor Group sought, among other reasons. The Court
23 denied the Investor Group’s Administrative Motion (Doc 543).

24 10. The continued hearing on the Tax Motion and the plan issues is scheduled for
25 January 30, 2019 at 1:30 p.m. The Investor Group filed a Response to the Receiver’s Supplement,
26 asking the Court, among other things, to decline to authorize the Receiver to file qualified
27 settlement fund tax returns or to obtain valuations of securities for tax purposes. Both the
28 Receiver and the SEC filed Replies to the Investor Group’s Response.

1 11. The Receiver continues to update her website at
2 www.diamondmccarthy.com/saddleriverreceiver regarding the filings in the case and the status of
3 upcoming matters.
4

5 **II. ASSET ADMINISTRATION**

6 **A. Settlement with EAC**

7 During the fourth quarter, the Receiver's activities related primarily to finalizing the
8 figures relating to the estate's interest in certain publicly traded securities and other interests in
9 pre-IPO securities pursuant to forward contracts, book entries or stock certificates. The Receiver
10 engaged in active and ongoing settlement discussions with Equity Acquisition Group ("EAC").
11 Prior to her appointment, the Former Receiver and the SEC had negotiated a tentative resolution
12 over a portion of the disputed issues with EAC but the parties were unable to finalize or document
13 their agreement. Since the Receiver's appointment, she has worked closely with EAC to try to
14 resolve all of the global issues between the parties, including allocations of shares and allowance
15 of claims. The negotiations have been lengthy and difficult but the parties were ultimately able to
16 reach a settlement that provides, in summary, as follows:

17 1. Transfer of Shares

- 18 a. EAC shall transfer the right title and beneficial interest in the following securities, or
19 contractual rights to shares, to the Receiver as set forth in the Settlement Agreement:

20 11,125 shares of *Airbnb, Inc.*;
21 9,479 shares of *Lyft, Inc.*;
22 23,206 shares of *Pinterest, Inc.*;
23 500 shares of *Uber Technologies, Inc.*;
24 317,649 shares of *Palantir Technologies, Inc.*; and
25 1,495 shares of *ZocDoc, Inc.*

- 26 b. The Receiver shall transfer the right, title and beneficial interest in the following
27 shares, or contractual rights to shares, to EAC as set forth in the Settlement
28 Agreement:

33,789 shares of *Addepar, Inc.*;
2,349 shares of *Bloom Energy, Inc.*;
7,399 shares of *Cloudera, Inc.*;
3,892 shares of *Evernote, Corp.*; and

1 37,676 shares of *Lookout, Inc.*

2 c. EAC shall transfer the right title and beneficial interest in 835,000 shares of ***Practice***
3 ***Fusion, Inc.*** to the Receiver or any payments attributable to such 835,000 Practice
4 Fusion shares.

5 2. Allowance of Claims: The following claims shall be allowed as subordinated claims,
6 presently contemplated to be included in Class 5 of the Plan and to only receive
7 distribution following payment in full to all Allowed Claims for administrative fees and
8 expenses, federal and state taxes, unsecured creditor claims and investor claims. Those
9 Allowed Claims are currently described in Classes 1, 2, 3 and 4 of the proposed Plan,
10 while the subordinated claims are currently in Class 5 of the proposed Plan.

- 11 a. Kenneth Lacey for \$500,000 as a subordinated claim;
12 b. Alexander Pisemskiy for \$500,000 as a subordinated claim;
13 c. Klein for \$100,000 as a subordinated claim

14 **B. Ben Sabrin and the MongoDB Shares**

15 The Receiver has made demand on Ben Sabrin to return the 6,250 shares of MongoDB, or
16 the value thereof, that he owes to the estate. Mr. Sabrin has thus far failed and refused to deliver
17 what he owes to the estate. The Receiver intends to commence litigation to seek recovery of these
18 shares or the value thereof and is in the process of drafting a complaint to sue Mr. Sabrin in
19 connection with this transaction.

20 **C. Summary of Securities Holdings**

21 The following chart identifies the status of all known securities and includes the
22 modifications in light of the EAC settlement:

23 Company	24 Pre- Agreement Securities	25 Reallocation from Agreement	26 New Total	27 Shares Claimed by Investors
28 Addepar, Inc.	1,029,298	(33,789)	995,509	995,509
Airbnb	0	11,125	11,125	11,125
Bloom Energy Inc.	90,667	(2,349)	147,429	139,583
Cloudera, Inc.	45,038	(7,399)	37,639	37,639
Dropbox, Inc.	46,000		46,000	46,000
Evernote Corp.	100,000	(3,892)	96,108	88,287
Lookout, Inc.	212,476	(37,676)	174,800	171,797
Lyft, Inc.	0	9,479	9,479	9,479

1	MongoDB Inc.	20,000		20,000 ¹	22,171
	Palantir Inc.	5,422,600	317,649	5,740,249	5,895,853
2	Pinterest, Inc.	0	23,206	23,206	23,206
3	Snap, Inc.	31,172		31,172	31,173
	Uber Inc.	0	500	500	500
4	ZocDoc, Inc.	20,104	1,495	21,599	21,598
5		<i>unconfirmed</i>			

6 **D. JOHN BIVONA BANKRUPTCY**

7 The former receiver had filed a proof of claim in the bankruptcy case of John Bivona and
8 had entered into a stipulation with Bivona to extend the deadline to object to Bivona's discharge.
9 The Receiver has amended the proof of claim to reflect that she is the successor receiver, and she
10 has also stipulated to further extend the denial of discharge deadline, which is currently extended
11 through February 25, 2020. The Trustee in the Bivona bankruptcy case filed a complaint objecting
12 to Bivona's discharge under section 727 of the Bankruptcy Code.

13 The Receiver has been in discussions with the Bivona Trustee and the representative of The
14 Eliv Group regarding competing claims to funds currently frozen at TD Bank, as well as claims to
15 funds held in an attorney account owned by John Bivona. The Receiver and the Eliv Group assert
16 claims to the funds in the attorney account and are in discussions with the Bivona Trustee to try to
17 resolve these issues.

19 **III. CLAIMS ADMINISTRATION**

20 **A. Claims Bar Date and Late Claims**

21 1. Prior to the Receiver's appointment, the Former Receiver had served a Notice of Bar
22 Date, establishing January 31, 2018 as the claims bar date (the "Original Bar Date").

23 2. Following the Receiver's appointment on February 28, 2019, a Supplemental Bar
24 Date was set for May 14, 2019, and the Receiver received 23 new claims. The Receiver
25 subsequently filed a Motion to Disallow Certain Claim, which was granted by the Court on June
26 27, 2019. As a result claims in the following categories were disallowed:

27 _____
28 ¹ The estate is owed 6,250 shares from Ben Sabrin which have not yet been received.

- 1 • Claims which have received prior distribution
- 2 • Claims made for funds paid to non-receivership entities
- 3 • Duplicate claims
- 4 • Claims for Failed Investments

5 One investor sought to withdraw its claim from the receivership, which the Receiver
6 approved.

7 Separately, the Receiver engaged in negotiations with two unsecured creditors, Progresso
8 Ventures LLC and Pradeep Sindu, relating to disputes issues over their claims. Stipulations were
9 reached and approved with both parties to fix the amount of the claims and the type of priority for
10 those claims as follows:

11 Progresso: The Stipulation provides that the claim shall be allowed in the amount of
12 \$4,976,427.83 as an Unsecured Creditor Claim and \$552,936.43 as a Subordinated Claim.

13 Sindhu: The Stipulation results in a substantial reduction in the unsecured claim amount of
14 Mr. Sindhu from over \$3.97 million to \$300,000 as an Unsecured Creditor Claim.

15 The Receiver may, in her discretion, file subsequent objections to claims, and shall provide
16 notice and an opportunity to object and be heard pursuant to the Court's Local Rules to any
17 claimant whose claim is affected.

18 **B. Classes of Claimants**

19 The Receiver has categorized the remaining claims which she believes to be valid into the
20 following classes of claimants:

- 21 Class 1: Administrative Claims
- 22 Class 2: Priority Claims
- 23 Class 3: Unsecured Creditor Claims
- 24 Class 4: Investor Claims
- 25 Class 5: Subordinated Claims

26 The Receiver created separate classes for the unsecured creditors and the investors based on the
27 proceedings in this case to date which have contemplated that these classes would receive separate
28 treatment under a distribution plan such that unsecured creditors would receive cash and investors

1 would receive securities. As is well known to the Court and parties, there are not sufficient funds to
2 pay cash to the unsecured creditors, so securities will need to be liquidated to fund payments to
3 administrative, priority and unsecured creditors. Since a distribution plan has not yet been approved
4 by the Court, the Receiver leaves open the possibility that the classes of claims and proposed
5 distributions may be revised in the future. At the present time, as set forth in the Receiver's
6 Proposed Plan, these classes of claims and the proposed treatment of each class are discussed
7 below.

8 1. Class 1

9 Class 1 consists of the Administrative Claims. It is contemplated these Administrative
10 Claims will consist primarily of the Receiver's fees and costs and the fees and costs of professional
11 retained by the Receiver.

12 2. Class 2

13 Class 2 consists of the Priority Claims. The priority claims will likely consist substantially,
14 if not entirely, of tax claims. At the present time, two tax claims have been submitted by the New
15 York Department of Tax and Finance in the amount of \$20,940.

16 Other anticipated tax claims that would constitute Priority Claims are tax liability at both
17 the federal and state levels attributable to the sale and disbursement of securities. The amount of
18 the tax liability that will be realized from the sale and distribution of securities is presently
19 unknown. No distribution will be made to Classes 3, 4 or 5 until such time as Class 1 and 2 claims
20 have been paid in full or sufficient reserves are held to ensure payment in full to Classes 1 and 2.

21 3. Class 3

22 Class 3 consists of the Unsecured Creditor Claims. The Receiver's Plan contemplates that
23 the Unsecured Claims will be paid from the Plan Fund, which shall be funded by cash generated
24 from the sale of securities. The Plan Fund will be used to pay Classes 1, 2 and 3. To the extent
25 there is a surplus of cash following payment of those classes, the surplus will be used to pay Class
26 5 claims on a pro rata basis. To the extent there is a deficiency, Classes 1 and 2 will be paid in full,
27 and Class 3 will receive a pro rata distribution on account their claims from the remaining funds in
28 the Plan Fund following payment in full to Classes 1 and 2 claimants.

1 4. Class 4

2 Class 4 consists of the Investor Claims, which have been divided by the company in which
3 the claimants invested. In order to protect the privacy of investors, the Receiver assigned an
4 Investor I.D. number to each unique investor and she emailed each investor their number. The
5 Class 4 claims are identified by Investor I.D. number and by intended investment. A detailed listing
6 of the claimants by type of investment can be found at the Receiver's website at
7 www.diamondmccarthy.com/saddleriverreceiver so that all investors may check the status of their
8 claims.

9 Class 4 claims are broken out as follows:

10 Class 4A: Addepar
11 Class 4B: Airbnb
12 Class 4C: Bloom Energy
13 Class 4D: Cloudera
14 Class 4E: Dropbox
15 Class 4F: Evernote
16 Class 4G: Lookout
17 Class 4H: Lyft
18 Class 4I: MongoDB
19 Class 4J: Palantir
20 Class 4K: Pinterest
21 Class 4M: Snap, Inc.
22 Class 4N: Uber
23 Class 4O: ZocDoc

24 5. Class 5

25 Class 5 consists of the Subordinated Claims. It is presently unknown whether any
26 distribution will be made to Class 5 creditors. The source of any distribution to Class 5 creditors
27 will be any surplus monies in the Plan Fund after Classes 1, 2, and 3 have been paid in full. To the
28 extent that any surplus funds remain following payment in full of Class 5 claims, those funds shall
be distributed to the Investors on a pro rata basis using their gross investment amount.

At the present time, the known subordinated claims consist of the following:

- a. Progresso Ventures for \$552,936.43
- b. Kenneth Lacey for \$500,000
- c. Alexander Pisemskiy for \$500,000

1 d. Klein for \$100,000

2 **IV. PLAN OF DISTRIBUTION APPROVAL PROCESS**

3 The Receiver's primary task in this case and to assist the Court in putting a distribution
4 plan in place and then ultimately in implementing that plan. Upon her appointment on February
5 27, 2019, the Court asked the Receiver to provide her Comments to the versions of plans
6 previously submitted by the SEC and the SRA Funds Investor Group. The Receiver did so and
7 also proposed her own Plan based upon the history in the case prior to her appointment and the
8 Court's comments based on its understanding of the facts in the case. The Receiver met and
9 conferred extensively with the SEC, the Investor Group and counsel for Progresso Ventures in
10 advance of filing her Plan and, with some relatively minor exceptions, all parties were in general
11 agreement with the structure of the Plan.

12 At the hearing on June 27, 2019, the Investor Group requested that the Receiver obtain a
13 tax opinion regarding the proposed tax treatment of the estate as a Qualified Settlement Fund

14 The Receiver thereafter engaged in discussions with both tax and securities advisors and
15 filed a Supplement to her Tax Motion wherein she sought instructions regarding the tax issues.
16 The SEC supports the analysis set forth in the Receiver's Supplement. The Investor Group has
17 opposed the position on the issues covered in the Supplement, and both the Receiver and the SEC
18 have filed replies thereto. A hearing is scheduled for January 30, 2020 on the plan and tax issues.

19 The Receiver has not, in the meantime, filed QSF tax returns and notes that the Former
20 Receiver did not file QSF tax returns. The Former Receiver had filed returns for four of the
21 receivership entities for the years 2016 and 2017, and the IRS had advised both the Former
22 Receiver and the Receiver that filing returns for the other entities was not necessary since the
23 entities had been determined to be uncollectible.

24 As set forth in her Supplement, the Receiver believes it is appropriate that she file QSF
25 returns from the inception of the case but is awaiting further direction from the Court before she
26 files any tax returns.

27
28

1 **V. FINANCIAL REPORTING**

2 The Receiver has engaged in minimal financial activities since her appointment. The only
3 disbursements have been for court approved fees and expenses. The only receipts have been
4 interest and dividends paid in the accounts. A detailed listing of each financial transaction during
5 the fourth quarter of 2019 is attached hereto as Exhibit "1."

6

7 DATED: January 24, 2020

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

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

**Receivership Estate of SRA Management Associates, LLC et al
4th Quarter 2019 - Cash Receipts and Disbursements**

Checking #0063

Date	Notes	Deposits	Withdrawals	Balance
10/1/2019	Opening Balance			\$50,677.14
10/15/2019	Retainer to Schinner & Shain		10,000	\$40,677.14
12/4/2019	transfer	45,000		\$85,677.14
12/6/2019	3d Qtr Fees for Receiver		\$32,279.52	53,397.62
12/6/2019	3d Qtr Expenses for Receiver		\$542.73	52,854.89
12/6/2019	3d Qtr Fees for Diamond Mccarthy		\$3,560.72	49,294.17
12/6/2019	3d Qtr Fees for Diamond McCarthy		\$131.35	49,162.82
12/6/2019	Fees for Grobstein Teeple		\$3,540.50	45,622.32
12/6/2019	2nd Qtr Fees for Sherwood Partners		\$5,280.50	40,341.82
	Ending Balance			40,341.82

Brokerage #2849 (Mutual Fund)

Date	Notes	Deposits	Withdrawals	Balance
10/1/2019	Opening Balance			\$207,761.66
10/1/2019	dividend reinvested	\$347.24		\$208,108.90
11/1/2019	dividend reinvested	\$322.27		\$208,431.17
12/1/2019	dividend reinvested	\$274.63		\$208,705.80
12/2/2019	transaction fee		\$7.00	\$208,698.80
12/4/2019	sell and transfer to checking #0063		45,000.00	\$163,698.80
	Ending Balance			\$163,698.80

Brokerage #7306 (Anna Bivona funds)

Date	Notes	Deposits	Withdrawals	Balance
10/1/2019	Opening Balance			\$502,163.22
10/31/2019	dividend reinvested	\$69.89		\$502,233.11
11/29/2019	dividend reinvested	\$45.82		\$502,278.93
12/31/2019	dividend reinvested	\$34.40		\$502,313.33
	Ending Balance			\$502,313.33

**Cash Position of Receivership Estate of SRA Management Associates, LLC et al
As of December 31, 2019**

Cash

Checking	\$40,341.82
Money Market	\$163,698.80
Anna Bivona Funds	\$502,313.33
Subtotal	\$706,353.95

Known Accrued and Unpaid Expenses

Kathy Bazoian Phelps, Receiver - fees (4th Qtr 2019)	50,187.30
Kathy Bazoian Phelps, Receiver - Expenses (4th Qtr 2019)	\$27.00
Diamond McCarthy LLP - fees (4th Qtr 2019)	12,550.00
Schinner & Shain 4th Qtr fees less \$10,000 retainer already paid	\$10,949.13
Miller Kaplan fees(4th Qtr 2019)	\$42,465.60
Subtotal	\$116,179.03

Holdbacks

Sherwood Partners, Former Receiver	\$144,627.51
Kathy Bazoian Phelps, Receiver	\$34,474.38
Diamond McCarthy	\$10,375.74
Subtotal	\$180,517.57