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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA, et al.,

Defendants and Relief Defendants.

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

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S REPLY IN SUPPORT OF ITS OBJECTIONS TO CLAIMS BY MICHELE MAZZOLA AND JOSHUA CILANO FOR MANAGEMENT FEES

Date: May 13, 2020
Time: 10:00 a.m.
Courtroom: 5
Judge: Edward M. Chen

I. Introduction

The responses of Michele Mazzola and Joshua Cilano reinforce that their claims should be denied. Ms. Mazzola did not file an opposition; the SEC's objection is thus unrebutted, and the Court should deny her claim. Cilano fails to address the most salient fact: The Court already ruled against him on this very issue. Almost a year ago, the Court held that the "claim for backend fees asserted by Joshua Cilano is DISALLOWED as it would be inequitable for Cilano to receive additional compensation for his role in Defendants' scheme." Minute Order for Proceedings on June 27, 2019, Order (3) (ECF 503 at 1-2). As Cilano acknowledges in his Opposition Brief, that decision came after his history and conduct were fully vetted before this Court. Cilano Opposition at 2 (ECF 590 at 6). The law of this case therefore precludes Cilano's backend fees, which cannot be saved by his efforts to create a third party beneficiary claim where none exists. Equitable factors also support denying Cilano's fee claim.

II. Legal Argument

A. The Court's Prior Rulings Preclude Cilano's Claim For Backend Fees.

Cilano is not writing on a clean slate when he argues that the Court may allow his backend fee claims on general equitable principles. Cilano Opposition at 3-4 (ECF 590 at 8-9). Most pertinent here, the Court has already ruled that claims involving profits from the misconduct are inequitable, even if active wrongdoing has not be shown. Order Regarding Plaintiff SEC and Receiver's Request for Preliminary Findings Related to Proposed Joint Distribution Plan ("Order Regarding Preliminary Findings"), dated September 13, 2017, at 24 (ECF 246 at 24) (citing *SEC v. Pension Fund Of America*, 377 Fed. Appx 957) (11th Cir. 2010)).[1] Consistent with its rulings and the record, the Court entered an Order addressing Cilano: The "claim for backend fees asserted by Joshua Cilano is DISALLOWED as it would be inequitable for Cilano to receive additional compensation for his role in Defendants' scheme at the expense of the investors, even if Mr. Cilano was not personally

[1] Precluding recovery by insiders who were involved with, or benefitted from, a fraudulent scheme "is eminently reasonable and is supported by case law." *SEC v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009) (approving distribution plan that excludes insider participation in recovery). The "cases support, at the very least, complete exclusion of active wrongdoers as well as the exclusion of claims that involve a profit from the fraud." Order Regarding Preliminary Findings at 24.

culpable." Minute Order for Proceedings on June 27, 2019, Order (3) (ECF 503 at 1-2).

During the most recent January 2020 hearing, the Court instructed the receiver to have the distribution plan exclude fee claims by persons who have profited from defendants' conduct. *See* Transcript of Proceedings on January 30, 2020 at page 49, lines 3-5, and page 50, lines 5-13 (excerpts attached as Appendix 1). Although Cilano may challenge the distribution plan's exclusion of his backend fee claim, the burden is on him to justify his receipt of more compensation. [2] *See id.* Cilano cannot meet that burden.

As previously demonstrated, Cilano sold investments for defendants Felix Investments and Saddle River Advisors while employed by Alexander Capital. Supplemental Declaration of John S. Yun ("Yun Supp. Decl."), Ex. 2 [Susan Diamond Testimony, p. 111:11-14] (ECF 240 at 26). For the seven month period of August 2014 through April 2015, Cilano received a total of $674,634 in fees and commissions. Yun Supp. Decl., Ex. 3 [Bivona Testimony, pp. 88:23-89:2]; Declaration of Monica Ip, CPA ("Ip Supp. Decl.") ¶¶ 1-6 and Exhibit 1 (ECF 240 at 35-36; ECF 239 at 2-3, 5). Besides defendant John Bivona, Cilano raised the largest amounts of investor money in the SRA, FMOF and NYPA Funds. Yun Supp. Decl., Ex. 3 [Bivona Testimony, pp.90:2-91:12] (ECF 240 at 37-38). There is no justification for revisiting the Court's prior determination that Cilano should not receive even more fees after richly profiting from his sale of pre-IPO interests to numerous receivership investors.[3]

B. Cilano Lacks A Direct Or Third Party Beneficiary Claim For Backend Fees.

Cilano's Amended Claim made a conclusory request for "50% of Backend Fees from Transactions I introduced or initiated." Cilano failed then, as now, to identify an express contractual

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[2] Cilano accuses the SEC of being inconsistent in not objecting to his investor claim, but objecting to his creditor claim for backend fees. Cilano Opposition at 3 n. 5 (ECF 590 at 7). There is no inconsistency. His investor claim is based upon $9,200 of his own money that he paid to a receivership entity to purchase Palantir Technology shares. His creditor claim seeks additional compensation for activities for which he has already received large commission payments.

[3] Because this Court has already determined that Cilano should not receive any backend fees even if Cilano did not engage in improper conduct, the SEC need not address Cilano's self-serving assertions that he did not engage in any wrongful conduct. In the event that the Court wishes to resolve the issue of misconduct by Cilano, the SEC requests the opportunity for a possible evidentiary hearing.

promise by the receivership investors to pay him a single dollar in backend fees.[4]

1. The Master Sales Agreement Defeats Cilano's Amended Claim.

The Private Placement Memoranda ("PPM") authorized the management entities – i.e., SRA Management, LLC, FMOF Management Associates, LLC ("FMOF Management") and NYPA Management Associates, LLC ("NYPA Management") – to collect "carried interest" of up to 20% of the net profits from investors. *E.g.*, SRA Fund I Private Placement Memorandum at 10, 11 (ECF 8-3 at 23, 24). To broker-dealers who served as placement agents, the PPMs authorized the management entities to collect and pay a 5% ***upfront*** "placement fee." *Id.* at 9-10 (ECF 8-3 at 22-24).

Cilano does not dispute that SRA Management, FMOF Management, or NYPA Management abandoned their management and carried interest claims. *See* Cilano Opposition at pg. 10 (ECF 590 at 14). Two and half years ago, this Court rejected any claim by defendant SRA Management, the other defendants, relief defendants and insiders, with the exception of Anne Bivona. Order Regarding Preliminary Findings at 22 (ECF 246 at 22). Additionally, the Court wrote that "Defendants' counsel confirmed that Defendants would not file a claim to recover any management or advisory fees." *Id.* at 27-28 (ECF 246 at 27-28). As a result, the receivership will not pay any management fees to the management entities. ECF 570 at pg. 11 (defining "Disallowed Claims" to include claims by the management entities).

Cilano's Amended Claim therefore fails because the backend fees he seeks no longer exist. Significantly, the Master Sales Agreement attached as Exhibit 1 to Cilano's Supporting Declaration only confirms the lack of any contractual claim to backend fees. Corrected ECF 591-1. In the Master Sales Agreement, Alexander Capital agreed to sell securities to investors at the request of former relief defendant Felix Investments. In Schedule A of the Master Sales Agreement, Felix Investments specifies Alexander Capital's compensation for selling interests on behalf of SRA Management. Corrected ECF 591-1 at 14. Alexander Capital will receive 50% of Felix Investment's brokerage commissions within five days after Felix Investment's receives its compensation from the

[4] Cilano's extended discussion regarding the impropriety of rejecting or subordinating creditor claims is completely inapt. Cilano Opposition at 5-8 (ECF 590 9-12). Because Cilano cannot establish a direct or third party beneficiary contractual claim to backend fees, he lacks any type of creditor claim.

issuer. *Id.* This provision specifies Alexander Capital's share of the upfront "placement fee" ***after*** Felix Investments collects that fee from investors.

Schedule A also provides that Alexander Capital will receive 50% of SRA Management's carried interest "within five (5) days of payment or distribution of the carried interest to the manager of the funds." *Id.* Alexander Capital therefore had a contractual claim to half of the carried interest only ***after*** the precondition of payment to SRA Management had been satisfied. Under the Master Sales Agreement, if SRA Management is not paid carried interest, then Alexander Capital is not paid carried interest. The Master Sales Agreement therefore defeats Cilano's Amended Claim following the Court's prior determination that SRA Management will not, in reality, obtain any backend fees from the receivership.[5]

2. Cilano Is Not A Third Party Beneficiary Under The PPMs.

Because the Master Sales Agreement cannot support his Amended Claim for fees, Cilano must contrive a purported third party beneficiary claim for management fees under the PPM and offering documents. Cilano Opposition at 10-12 (ECF 590 at 14-16). Cilano appears to contend that Alexander Capital has a third party claim to carried interest payments under the PPM and that Cilano may claim whatever Alexander Capital may claim. In essence, Cilano asserts a dubious quasi-fourth party beneficiary claim to backend fees.[6]

Neither Alexander Capital nor Cilano have a third party beneficiary claim to backend fees. To be a third party beneficiary, Alexander Capital and Cilano must establish the express or implied intention of the parties to the contract to benefit them. *E.g.*, *Kremen v. Cohen*, 99 F. Supp. 2d 1168, 1172 (N.D. Cal. 2000) (citing *Klamath Water users Protective Ass'n v. Patterson*, 204 F.3d 1206,

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[5] The John Bivona statement attached as Exhibit 2 to the Cilano Declaration lacks any relevance or value. It is undated and unsworn. It does constitute a modification of the Master Sales Agreement, PPM, or offering documents because it is not signed by all of the parties. Similarly, Cilano's self-serving and conclusory assertions in his Declaration that investors do not object to his fee claim and have known about his fee arrangement are not entitled to any weight.

[6] Cilano's suggestion that the SEC concedes that he had a third party beneficiary claim is false on its face. Cilano Opposition at 10, lines 8-10. Similarly false are his unsupported assertions that he negotiated a deal with the receiver for payment of his backend fees. Cilano Opposition at 2-3 and n. 4.

1211 (9th Cir. 1999)). Merely incidental beneficiaries cannot enforce any rights under the contract. *Id.* The intent to benefit the third party must also be "a material part of the parties' purpose in entering into the contract." *A.W. Financial Services, S.A. v. Empire Resources, Inc.*, 2010 U.S. Dist. LEXIS 103576 at * 24 (S.D.N.Y. Sept. 30, 2010) (applying Delaware law to rule on summary judgment that stock owner did not have a third party beneficiary claim under agreement between stock issuer and transfer agent).[7]

Determining a party's purported third party beneficiary status involves an analysis of the contractual language. *Kremen v. Cohen*, 99 F. Supp. 2d at 1172 (rejecting third party beneficiary claim on summary judgment because contractual terms did not reflect any intent to provide a direct benefit), *aff'd* 337 F.3d 1024, 1029 (9th Cir. 2003) (agreeing with district court's analysis of contractual language). Express language in the contract identifying the third party beneficiary is the best evidence; "[w]ithout an express declaration, in short, ambiguous language in a contract will not suffice to make someone a third party beneficiary." *Quinn v. McGraw-Hill Companies, Inc.*, 168 F.3d 331, 334 (7th Cir. 1999) (ruling under Illinois law that customer of rating agency report was not a third party beneficiary of the agreement between the ratings agency and the issuer).

The PPM and offering documents do not support any third party claim by Alexander Capital or Cilano to the investors' backend fee payments. The PPMs provide that the backend accrued management fees are owed to the management entity, which can pay a portion of those fees to the advisor, Saddle River Advisors. *E.g.*, SRA Fund I Private Placement Memorandum at 9, (ECF 8-3 at 22). Similarly, the PPMs provide that the backend carried interest deductions are collected by the management entities. *Id.* at 10-11 (ECF 8-3 at 23-24). These backend fee provisions do not identify Cilano or any other broker including Alexander Capital as a recipient of backend fees.

Significantly, the PPMs contain other provisions that allow the management entities to collect an up-front 5% placement fee to compensate "marketing agents" and "placement agents" who help raise capital for the Funds. *Id.* at 9-10 (ECF 8-3 at 22-23). This provision presumably allowed

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[7] The SRA I Operating Agreement provides in Article 14.7 that it is governed by Delaware law. ECF 9-1 at 45. However, for purposes of this motion, general third party beneficiary legal principles from any jurisdiction will defeat Cilano's fee claim.

payment of up to 5% commissions to registered broker-dealers such as Alexander Capital. The existence of a specific PPM provision to pay upfront commissions to brokers combined with the absence of any mention of brokers in the backend fee provisions demonstrates that Alexander Capital and Cilano cannot be intended third party beneficiaries of the PPMs' backend fee provisions. *See Kremen v. Cohen*, *supra*, 99 F. Supp. 2d at 1172 (rejecting third party beneficiary claim in light of contract language). *See also Premium Mortgage Corp. v. Equifax, Inc.*, 583 F.3d 103, 108 (2d Cir. 2009) (ruling under New York law that a non-party cannot enforce a contract unless the contract "clearly evidences an intent to permit enforcement by the third party").

C. Equitable Considerations Bar Cilano's Backend Fee Claim.

Cilano's Opposition distorts the record in this case. First, Cilano fails to discuss his receipt of nearly $675,000 in commission payments for selling pre-IPO interest to receivership investors. Ip Supp. Decl. ¶¶ 1-6 and Exhibit 1 (ECF 239 at 2-3, 5). Cilano's huge commission payments support the Court's earlier determination that "it would be inequitable for Cilano to receive additional compensation . . . even if Mr. Cilano was not personally culpable." Minute Order for Proceedings on June 27, 2019, Order (3) (ECF 503 at 1-2). Cilano's commission payments more than compensated him for supposedly placing investors in "profitable investments" and therefore defeat his *quantum meruit* claim. Cilano Opposition at 12 (ECF 590 at 16).

Cilano also mischaracterizes the record when he claims that he has been working for the benefit of investors to defeat the Receiver's and SEC's proposed Joint Distribution Plan and that his proposed alternative plan prevailed in this proceeding. Cilano Opposition at 2, 9-10 (ECF 6, 13-14). At the outset, the SRA Investor Group's Alternative Plan sought to dissolve the receivership and to have Mr. Cilano assume management of the receivership entities. As compensation for managing the entities, Cilano would receive management fees and carried interest payments. In the Investor Group's Alternative Plan, Cilano would become the "Operational Manager" and receive 50% of the remaining backend fees, including carried interest, after payment of specified expenses and priority claims. ECF 407-1 at 3-4, 8-9. The Court rejected those Investor Group proposals, and instead kept the receivership in place. Order re Proposed Distribution Plans at 10-11 (ECF 443 at 10-11).

Additionally, Cilano's quest for a share of the backend fees through dissolution of the

receivership belies his assertions that he has spent time and money for the altruistic benefit of investors. The Court should treat with great skepticism Cilano's claim that he was only trying to protect investors when he, in reality, has a huge financial incentive to collect backend fees from investors. Contrary to the interests of investors, any carried interest payments that Cilano receives will, directly or indirectly, come from money or shares that could otherwise go to investors. As the Court has previously ruled, additional backend fee payments to Cilano would be inequitable in light of the nearly $675,000 in commission payments that he has already received for selling pre-IPO interest to investors.

III. Conclusion

For the reasons set forth above, the Court should deny Michele Mazzola's Claim and Cilano's Amended Claim for fees from the receivership.

DATED: April 2, 2020

Respectfully submitted,

/s/ John S. Yun
John S. Yun
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

Appendix 1

Excerpts from January 30, 2020 Hearing

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

SECURITIES AND EXCHANGE COMMISSION,)
Plaintiff)
VS.) NO. C 16-01386 EMC
JOHN V. BIVONA, et al.,) San Francisco, California
Defendants.)

Thursday, January 30, 2020

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:
U.S. SECURITIES AND EXCHANGE COMMISSION
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BY: JOHN S. YUN, ESQ.

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BY: JONATHAN K. LEVINE, ESQ.
ELIZABETH PRITZKER, ESQ.
PATRICIA SCHRAGE (Telephonic)

Also Present: **KATHY PHELPS**, Receiver

Reported By: **BELLE BALL, CSR 8785, CRR, RDR**
Official Reporter, U.S. District Court

Thursday - January 30, 2020 **2:13 p.m.**

P R O C E E D I N G S

THE CLERK: Calling Civil Action 16-1386, Securities and Exchange Commission versus Bivona, et al.

Counsel, please approach the podium and state your appearances for the record.

MR. YUN: Good afternoon, Your Honor. John Yun appearing on behalf of plaintiff United States Securities and Exchange Commission.

THE COURT: All right. Good afternoon, Mr. Yun.

MS. PHELPS: Good afternoon, Your Honor. Kathy Phelps, the Court-appointed successor receiver in this matter.

THE COURT: Good afternoon, Ms. Phelps.

MS. PRITZKER: Good day, Your Honor. Elizabeth Pritzker, Pritzker Levine, on behalf of the SRA investors group.

THE COURT: Good afternoon, Ms. Pritzker.

MR. LEVINE: Good afternoon, Your Honor. Jonathan Levine, also for the investor group.

THE COURT: Thank you, Mr. Levine.

It seems to me there are -- there are arguments, if we get into the weeds about whether or not there was a QSF formed upon entry of this Court's order, and what it extends to. I mean, I could see some argument, depending on how you read these things. But the problem is there are risks attendant to taking

the more aggressive position.

That is, yes, there may be an argument. But in order to pursue the argument and pursue the alternative -- which, I do want to find out more about what the alternative is so I make sure I understand it -- I want to point out that means -- that may mean I don't know if we get a ruling or we wait until the IRS makes its move and then we have to hold a certain amount of funds in -- you know, it -- it's certainly not a clear path to sort of ignore the QSF route. There may be a way out, but it seems a little iffy to me.

And then we do also have the opinions of the consultants that the receiver have retained indicating that -- I don't know if you want to call it the more conservative or the more cautious route to go is one that makes the most sense, at least from a tax perspective.

I guess I would like to know more from both sides, that if we were to go the route of the investor group, what does that look like? And what would that require, and what does it take? Why don't you map that out for me.

MR. LEVINE: If I -- thank you, Your Honor. Let me just address sort of the QSF issue first, if I may. I actually think it's not complicated. And it doesn't need an SEC advisory, an IRS advisory opinion.

As I understand, sort of big-picture, the argument of the receiver, as I understand that, is that the act of creating the

order that the Court signs that creates the receivership simultaneously creates a QSF over all the assets of that receivership. That's the fundamental premise, I think, of the receivership.

THE COURT: Does it effectively -- segregated, in a sense, segregated the funds or put them under the jurisdiction or the control of the -- the receiver?

MR. LEVINE: Well, so -- well, before we get to segregation, let's just take the broad principle that I think is being espoused, that when Your Honor signed the order creating the receivership, that automatically, as a matter of law, created a qualified settlement fund over all of the assets that are part of that receivership.

And we think that premise is fundamentally flawed. It's without basis in the law or fact. All receiverships are not QSFs. If that is the case, why do you need language in a receivership order specifically creating a QSF over only pieces of the receivership? I mean, why do you need that? It's surplusage.

We know that there are other receiverships, including SEC receiverships, in this district in which there is no QSF. It is not part of the order, and no QSF has been established.

So the act -- and there is no authority that says: Receivership equals -- if we turn it into a math equation -- receivership equals QSF. That is -- that proposition I just

investment advisory group. And I want that changed to make sure that group is still there.

With respect to disallowance of claims by Joshua Solano, in the June order I'd permitted him to recover on his personal investor claim. And I think that should be clarified.

I don't know if there are other points in the --

MR. LEVINE: Well, yes, Your Honor. As a procedural matter, we don't represent Mr. Solano individually, but his claim -- the receiver filed a motion to disallow certain claims. Mr. Solano's claim was not included in that motion. He was not provided notice that his claim was going to be disallowed. He's had no opportunity to hire a lawyer yet, or to be heard on it.

As just a matter of fairness, if the Court is going to disallow it based upon the SEC getting up in the middle of a hearing, Mr. Solano should have an opportunity to be heard, and to hire a lawyer to argue --

THE COURT: Well, if he gets the notice that we're talking about, he'll get -- he'll certainly have an opportunity, and I will listen to him if he objects to that part of the plan -- the proposed plan.

MR. LEVINE: Yeah. I mean, I think there's also a problem that he's deemed an insider, which this Court has ruled he's not an insider. We've had that fight a dozen times already. So for it to keep reappearing in plans is kind of

frustrating.

But I don't represent Mr. Solano individually, but he should have an opportunity to be heard. And the investor group, you know, should -- should remain.

THE COURT: Well, as I recall, I did address this issue in the June order. And that's what I'm saying. I want what's going to be noticed to reflect that June order, and not a change. If he has an objection to that, he'll have a due-process opportunity to do -- and everybody else who have other objections may do so as well.

But I do want to get this to the next stage, because it's now been pending, and we delayed this for the tax treatment for a long time.

MR. YUN: And yes, on the advisory group, I thought that had been rather thoroughly discussed at a prior hearing.

Ms. Phelps said: I will talk to anyone, anyway. I mean, I don't need to have a formal group to get input. And I thought that was where things were left. So long as she was soliciting input from investors, we were where we needed to be, whether or not a formal committee was ever appointed. That's my recollection.

THE COURT: Well, are you --

MS. PHELPS: Your Honor, I don't mind having a committee. But I do think that there was a bit of an issue as to who was going to be on that committee.

MR. YUN: Right.

MS. PHELPS: Right?

THE COURT: I do have a question about that, because I -- I think I sent out an order asking for an explanation about that. And it appears that the group represents 34, roughly, percent of the investors? Or what?

MR. LEVINE: No, Your Honor. The group -- I mean, the group -- we've never counted by numbers. We've counted by value of initial investment. That was always the baseline which we used. It was about 80 percent of the original money invested. The number has gone up since we first started in the case. Not down. Some of those claims have been disallowed.

But that wasn't the question that was asked. The question was: Who is in the investor group? The answer is: The people for which we have identified in our various notices, our understanding is that represents approximately 80 percent of the original money that was at issue in this case.

And obviously, Telesoft also stands with us in terms of our position in the case.

THE COURT: Well, so, I mean, I don't see what the problem is.

I mean, maybe as a matter of fairness, due process, the proposed order could say that if somebody else wants to be on the advisory committee or whatever it's called, they can submit an application so that if you're not in that group, you're not

necessarily foreclosed.

But I would leave it to the --

MS. PHELPS: I thought there were specific names.

MR. YUN: Yes. That was the other issue, which is that the investor group had put forward five names. And our concern was because this is a committee operating in a receivership created by the Court, it should be an open process, rather than one group of investors designating the representatives.

That was a concern we had, a process question.

THE COURT: All right. Maybe we should phrase it as -- in this order, we should say: Those who -- if you're interested in being on the advisory committee, submit your application.

And chances are, if nobody else submits their application and these five are there, that's who I'm going to go with. And that may very well happen, but you're right, I think there may be somebody else out there that's significant, may have an interest. And I want to be democratic about this.

MS. PHELPS: Yes, Your Honor. And I do think that the 34 percent is bodies who are investors. And they do --

THE COURT: By number of people, as opposed to interests held.

MS. PHELPS: Exactly. And you know, I think every person should have an opportunity to receive notice --

the receiver plans on filing, we'd like to see --

MS. PHELPS: Of course.

THE COURT: Okay.

MR. LEVINE: -- and maybe try to comment beforehand.

THE COURT: Okay.

MR. LEVINE: Otherwise we're going to have to file a response.

MS. PHELPS: It's going to look like the redline there, with the changes to the investor group that we just discussed today. But yes, I'm happy to share that.

THE COURT: All right. So that will be the next step. Do we need to set a -- I mean, you're going to set that hearing date. Do we --

MS. PHELPS: I will set a hearing date when I file the final motion.

THE COURT: So I don't need to set a further status. That will be our next status date, I assume.

MS. PHELPS: Yes, I believe so.

THE COURT: Great. Thank you.

MS. PHELPS: Thank you very much, Your Honor.

MR. LEVINE: Thank you, Your Honor.

THE COURT: Thank you.

(Proceedings concluded)

CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Monday, February 10, 2020