

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

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA; SADDLE
RIVER ADVISORS, LLC; SRA
MANAGEMENT ASSOCIATES,
LLC; FRANK GREGORY
MAZZOLA,

Defendants, and

SRA I LLC; SRA II LLC; SRA III
LLC; FELIX INVESTMENTS, LLC;
MICHELE J. MAZZOLA; ANNE
BIVONA; CLEAR SAILING
GROUP IV LLC; CLEAR SAILING
GROUP V LLC,

Relief Defendants.

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

**[PROPOSED] AMENDED ORDER RE
MOTIONS:**

- (1) FOR FINAL APPROVAL OF RECEIVER’S PLAN OF DISTRIBUTION AND FOR ORDER APPROVING FORM AND MANNER OF NOTICE [DKT NO 570];**
- (2) TO DISALLOW PURPORTED GUARANTEE CLAIMS [DKT NO 575]; AND**
- (3) FOR INSTRUCTIONS RE INVESTOR ADVISORY COMMITTEE [DKT NO 583]**

Date: May 13, 2020
 Time: 10:00 a.m.
 Place: Zoom webinar
 450 Golden Gate Ave.
 San Francisco, CA
 Judge: Edward M. Chen

1 The following matters came on for hearing at the above-referenced date and time and were
2 conducted by Zoom webinar before the Honorable Edward M. Chen, United States District Judge
3 presiding:

- 4 • Receiver’s Motion for (1) Final Approval of Receiver’s Plan of Distribution; and (2)
5 For Order Approving Form and Manner of Notice, and Notice of Opportunity to
6 Serve on Investment Advisory Committee (Dkt. No. 570) (the “Plan Motion”);
- 7 • Receiver’s Motion to Disallow Purported Guarantee Claims (Dkt. No. 575) (the
8 “Guaranty Claim Motion”);
- 9 • Receiver’s Motion for Instructions Regarding Investors Advisory Committee (Dkt.
10 No. 583) (the “Motion for Instructions”); and
- 11 • Plaintiff Securities and Exchange Commission’s Objection to Receivership Claims
12 by Michelle Mazzola and Joshua Cilano for Management Fees (Dkt. No. 572) (the
13 “SEC Claim Objection”);

14 Appearances were as noted on the record. The Court having reviewed and considered the
15 motions, the supporting declarations and accompanying exhibits, all oppositions or responses to
16 the motions, all the papers and files in this matter, and having heard the comments of counsel and
17 interested parties at the time of hearing, for GOOD CAUSE APPEARING,

18 IT IS HEREBY ORDERED that:

- 19 1. The Plan Motion and all relief sought therein is GRANTED except as modified by
20 this Order.
- 21 2. The Guaranty Claim Motion and all relief sought therein is GRANTED.
- 22 3. The Receiver’s Distribution Plan (the “Plan”) is approved in the form of Exhibit
23 “A”, attached to the Declaration of Kathy Bazoian Phelps in support of the Plan Motion, except as
24 modified in this Order.
- 25 4. The Court defers final resolution on the SEC’s Opposition [Dkt. No. 582] to the
26 Plan Motion, while reiterating the Court’s rejection of the rescission argument and being open to
27 recognizing the benefit of the tax loss generated by the Failed Investments.

1 5. After the Receiver is able to determine the ultimate tax benefit, if any, generated
2 by the Failed Investments, the Receiver may move to update and modify the Plan to allow
3 payment on account of Failed Investment Claims in an amount not to exceed the benefit to the
4 estate derived from tax losses on account of the Failed Investments that serve to reduce the
5 amount of tax liability to the estate. The Court reserves ruling on the amount, if any, and priority
6 of payments to the Failed Investment Claimants, vis-à-vis the Class 5 Claimants, and allowance
7 of any payment to the Failed Investment Claimants shall be subject to further Court approval. All
8 parties reserve their rights with respect to any motion to modify the Plan to allow for any payment
9 from the Tax Holding Account to the Failed Investment Claimants.

10 6. The Court overrules SRPO's objection to the Plan Motion and denies SRPO's
11 claim for back-end fees and interest.

12 7. The Court sustains the SEC Clam Objection as to the claim of Michele Mazzola
13 and disallows that claim.

14 8. The Court defers ruling on the SEC's Claim Objection as to the creditor claim of
15 Joshua Cilano for backend fees (the "Cilano Claim"). The Court will consider later modification
16 of the Plan to include an additional Class, entitled Class 6, that would be subordinated to payment
17 in full to Classes 1 through 5. If the Court determines to allow the Cilano Claim, it would be
18 classified as a Class 6 claim. The Court defers making a determination on the allowance of such a
19 claim for Mr. Cilano until such time as it appears likely that a distribution could be made to Class
20 6. At the appropriate time, if it appears there will be surplus funds after the five classes are
21 compensated, the Court will examine (1) whether Mr. Cilano has legal standing to seek back end
22 fees through the receivership (since he contracted with Alexander Capital, which had a contract
23 with SRA Management wherein payment to Alexander Capital was based upon moneys received
24 by SRA Management); and (2) whether Mr. Cilano is truly non-culpable (including, *inter alia*, the
25 accuracy of his statement that SRA Funds was the only way to invest in Palantir and other Silicon
26 Valley entities). The Court may also make a determination regarding appropriate discovery in
27 connection with the Cilano Claim.

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

9. The form and manner of notice to investors and creditors as provided in the Plan Motion is approved.

10. With respect to the Receiver’s Motion for Instructions, the Court rules that Mr. Cilano shall be a member of the Investor Advisory Committee.

Dated: _____

Honorable Edward M. Chen
United States District Court