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Sherwood Partners Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. JOHN B. BIVONA; SADDLE RIVER ADVISORS, LLC; SRA MANAGEMENT ASSOCIATES, LLC; FRANK GREGORY MAZZOLA Defendants. SRA I LLC; SRA II LLC, SRA III LLC, FELIX INVESTMENTS, LLC; MICHELE J. MAZZOLA; ANNE BIVONA; CLEAR SAILING GFOUP IV LLC; CLEAR SAILING GROUP V LLC, Relief Defendants.	Case No. 3:16-cv-1386 **RECEIVER'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF A CONSOLIDATED DISTRIBUTION PLAN, RETENTION OF PROFESSIONALS, DISSOLUTION OF CERTAIN DEFENDANTS AND RELIEF DEFENDANTS AND CONSENT BY THE RECEIVER TO PERMANENT INJUNCTION** Date: August 31, 2017 Time: 1:30 PM Court: 5 Judge: Edward M. Chen

PLEASE TAKE NOTICE that on August 31, 2017 in Courtroom 5 at 1:30 PM, the Receiver in the above captioned matter, Sherwood Partners Inc. ("Sherwood"), will move this Honorable Court for (i) the approval of its recommended, joint distribution plan; (ii) the retention of certain investment banking professionals to assist it in valuing and liquidating certain illiquid assets of the Receivership Estate; (iii) permission to dissolve of certain of the

corporate defendants; (iv) and for approval of the consent of the Receiver to the imposition of a permanent injunction over the affairs of the Relief Defendants, in this matter.

The Receiver's Motion will be supported by the accompanying Receiver's Memorandum In Support of the Approval of the Motion; the Declarations of Peter Hartheimer and Georgiana Nertea of Sherwood, and any exhibits attached thereto; the previous Reports of the Independent Monitor, DE No's 54, 60, 74, and 120; the previous quarterly reports of the Receiver, DE No's 168 and 183; the pleadings on file including the Plaintiff SEC's Complaint and Application for a Temporary Restraining Order and accompanying declarations and exhibits (DE 1 - 20); the Plaintiff SEC's Joint Motion with the Receiver for the Approval of the Plan and any accompanying declarations and affidavits; and oral argument and such other evidence as the Court chooses to entertain.

Dated: June 29, 2017

GARTENBERG GELFAND HAYTON LLP

By: */s/ John W. Cotton*
John W. Cotton
Special Counsel to the Receiver

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PRELIMINARY STATEMENT

On October 11, 2016, the Court issued a Stipulated Order of Appointment ("the Order') appointing Sherwood Partners Inc. ("Sherwood" or the "Receiver") as the Receiver in this matter. Sec. XIII of the Order required Sherwood to file a "Liquidation Plan" ("the Plan") within 90 days of appointment. [1] By this Motion ("Motion"), Sherwood requests that, pursuant to Sec.'s II and XIII of the Order, this Court permit the Receiver to (i) consolidate and then sell the assets of the Receivership Defendants; (ii) engage investment banking professionals in furtherance of consolidating and selling the assets of the Receivership Defendants; (iii) dissolve certain of the Receivership Defendants as appropriate upon the sale and consolidation of such Receivership Defendants' assets; and (iv) approve the Plan after notice to, and an opportunity to be heard by, the parties, creditors and investors.[2] The Receiver is informed that the Plaintiff U.S. Securities & Exchange Commission ("SEC") will file a separate "Joint Motion" in support of the Plan proposed herein.

As described below, the granting of this Motion will allow the Receiver to begin the orderly process of consolidating the Receivership Assets in anticipation of distributions to investors and creditors of the Receivership Defendants, in the event the Court approves the Plan. This Motion's proposed Plan is a material departure from the distribution framework inherent in the Order. The Order implicitly contemplated the Receiver's separate and distinct

[1] By subsequent, Court-approved stipulation the date for the lodging of the Plan was extended to June 12, 2017. By further stipulation, a briefing schedule was entered on May 31, 2017, providing for the filing of this Motion by June 29, opposition to it by July 27, and any reply and/or proposed amendment by August 17, 2017. A hearing on the Motion is scheduled for August 31, 2017.

[2] This Motion will refer at various times to the "Defendant(s)", the "Relief Defendants", the "Receivership Defendants" and/or the "Receivership Assets" as those terms are specifically set forth in the Order at pages 2 and 3.

treatment of the various investments in pre-IPO company shares made by the SRA Funds' investors, each of which was to be denominated and administered separately and independently until it underwent a "liquidity event", such as a buyout by the issuer, another company, or an initial public offering (IPO). At that time, each investor would presumably receive his/her share of the proceeds (less certain administrative fees referred to in the Order, Sec. XIV, as a 4% "set aside fund") from a distinct pre-IPO liquidity event, and/or the shares themselves.

However, Sherwood has since determined and believes, as set forth in this Motion, and the accompanying declaration of Peter Hartheimer ("Hartheimer"), that such a separate and distinct method of administration and concomitant distribution of investment company shares is unworkable. Due to the infinite temporal nature of the investments' maturity dates, the commingling of the investors' and lender's funds, the unreliable state of record-keeping by the Receivership Defendants, the lack of an easy and timely method of converting certain "forward contracts" in pre-IPO company stock to securities, the highly restrictive nature of the investments, the unavoidable commercial tarnish of the SEC Complaint, and shortfalls in shares of several of the pre-IPO companies, which renders impossible, matching investors to Receivership Estate obligations, such separate and distinct administration and distribution is unachievable. The Receiver, relying as well on the allegations of the SEC regarding commingling, has concluded that to continue with a distribution of funds to a select group of investors, based solely on ownership of an individual interest in a single pre-IPO company, would perpetuate the improper business conduct that led to this proceeding. The Plan recognizes these insurmountable obstacles and seeks to achieve an equitable way to overcome them.

The proposed Plan is based on a modified version of the traditional, *pro rata* "cash in-cash out" method of distributing recovered assets (i.e. chiefly the shares and "forward contracts" of the shares of pre-IPO companies which have not yet achieved a liquidity event) of the Receivership Estate to investors in and through the "Receivership Defendants", as those entities are described in the Order at page 1, lines 2 through 8. The Plan, if approved by the Court, would result in the substantive consolidation of all the assets and liabilities of the Receivership Defendants, their liquidation and subsequent *pro rata* distributions in cash to all of their investors and creditors, without regard to any separateness among them for the specific "series" of a pre-IPO company in which they originally invested.

The Plan provides for the determination of investor and creditor claims to assets in the Receivership Estate (including assets that may be collected hereafter) and for the *pro rata* distribution of assets as set forth herein and in the Plan. The Plan also provides for the orderly sale of the shares and financial interests held by the entities in the Receivership Estate and the *pro rata* distribution of the proceeds to investors and creditors based on their net out-of-pocket investments. Notably, as a potential upside, if there are sufficient sales proceeds, investors will receive interest on the principal amount of their investments to compensate them for the time value of their money. In the event that the sale of shares or economic interests in a particular company generates an excess recovery and all other creditors and investors have received the principal amount of their investments plus interest, then the Receiver will be authorized to propose a supplemental distribution to those investors, and only those investors who subscribed and/or invested in the shares of the particular company, or contracts for shares of the particular company, generating the recovery.

Thus, the Receiver recommends the proposed Plan for the reasons stated above on page 3, lines 9 to 25. Additionally, due to numerous factors beyond the Receiver's control, it may be advisable, if not necessary, to sell wholesale all of the pre-IPO private stock to one buyer for one price.[3] Such would result in the inability to establish clear and reliable, separate valuations for each of the series of pre-IPO stocks, or forward contracts, held by the Receivership Estate, thus making it impossible separately to apportion and thereby account for those assets, or their liquidation value, to only the owners of each separate series of them, as well as to render impossible any method of attributing any resulting management and "carried interest" (i.e. success) fees to those assets, even if actually achieved.

In sum, it is simply not feasible, in the Receiver's opinion, to separately source and account for each "series" of the SRA investors' funds, as denominated by the Receivership Defendants, to allocate any future distribution, without regard to other investors and other series of pre-IPO shares. Therefore, in order to equitably treat all the investors who remain with open, unsatisfied capital accounts with all the Receivership Defendants, and all other creditors, the Receiver has concluded this Plan is the most efficacious and equitable. The Receiver has discussed the Plan with the Plaintiff SEC, and it has approved its terms and therefore joins in this Motion by a separate "Joint Motion."

[3] These factors include, among others, the long, remaining corporate life of the SRA Funds (extending in most cases to 2023) and the concomitant cost of continuing the administration of the Receivership Estate; the uncertainty of when, if ever, the remaining pre-IPO shares will go public; and the risk of future loss on any current investment value due to market disruptions or the passage of time.

FACTS

I. The History of the Commission's Action

As the Court is aware, plaintiff SEC filed this action on March 22, 2016, against individual Defendants John Bivona, and his son-in-law Frank Mazzola; corporate Defendants Saddle River Advisors, LLC; and SRA Management Associates LLC; and Relief Defendants SRA I LLC; SRA II LLC; SRA III LLC, Felix Investments LLC, Michelle J. Mazzola, Anne I. Bivona, Clear Sailing Group IV LLC, and Clear Sailing Group V LLC. Shortly thereafter, Sherwood's Michael Maidy was appointed as Independent Monitor ("Monitor"), which position he held until the date of the Order. As Monitor, Maidy filed four (4) separate reports with the Court. (See: Docket Entry ("DE") No's 54, 60, 74, and 120). These reports detailed numerous and significant inconsistencies and/or irregularities in the recordkeeping of the Defendants and Relief Defendants and are specifically incorporated herein by reference.

The Commission's Complaint ("Complaint") alleges that the Defendants raised approximately $53 million from investors. These investor funds were placed into bank accounts under the control of defendant John Bivona, who commingled and diverted the investor proceeds contrary to the promises made to investors. According to the Complaint, Bivona and his affiliated companies, Saddle River Advisors, LLC ("SRA Advisors") and SRA Management Associates, LLC ("SRA Management"), promised the SRA Funds' investors that their money would be used only to buy shares in the specific pre-IPO companies in which they were interested, and to pay specified fees for their acquisition. From the outset, however, Bivona (i) misled investors and used their money to cover share purchase obligations to earlier investors in other, unrelated funds, (ii) disguised his misconduct by continually transferring

money in and out of multiple bank accounts associated with more than a dozen different funds and entities; (iii) used $5.7 million of the SRA Funds' bank accounts to pay for a myriad of personal expenses for himself, his family and affiliated entities that he controlled; and (iv) failed to provide investors with the promised financial statements that should have revealed his fraud. By December 2013, the SRA Funds were already short several million dollars. DE 1, ¶¶ 3 and 4.

In light of the allegations and the Plaintiff's supporting affidavit and evidence, the Court appointed Maidy as Monitor in March 2016. Subsequently, in October 2016, the Court, upon the stipulation of the parties, including the Defendants and Relief Defendants, appointed Sherwood as Receiver. Since its appointment, Sherwood has submitted two reports to the Court largely confirming what is set forth below.

II. The Receivership Estate

A. The Plaintiff SEC and Receiver's Investigation of the Assets of the Corporate Defendants and Relief Defendants

Sherwood has taken steps necessary to preserve the status quo of the corporate Defendants and Relief Defendants, to secure their records and to allow it to investigate the nature, location, and rightful allocation of those assets. These efforts are set forth in the Receiver's reports filed on February 1, and May 16, 2017 (DE 168 and183). Sherwood has also identified each investor in the Relief Defendants funds ("SRA Investors") the amount of capital each SRA Investor asserts was invested in each series of each SRA fund, the amount actually invested, and the documentary support for such investment amounts. (Hartheimer Decl. at ¶ 4) To date, Sherwood has not discovered any secured creditors of the corporate Defendants or Relief Defendants; however the Receiver has discovered several lawsuits brought

against the Defendants and Relief Defendants in which claims have been made against the assets of the Receivership Estate (Hartheimer Decl. at ¶ 16), one of which has already been reduced to a judgment. (Hartheimer Decl. at ¶ 17)

In the process of determining the identities and investments of the SRA Investors and marshaling the assets of the Relief Defendants, the Receiver and the plaintiff SEC's staff accountant reviewed the corporate records and bank records of Defendants and Relief Defendants. (Hartheimer Decl. at ¶¶ 4 and 19) The Plaintiff SEC determined that the Defendants extensively commingled and transferred funds among the Relief Defendants, including funding various Relief Defendants' investments with funds from other Relief Defendants. (DE 7; Chen Decl. at ¶¶ 87-124) In addition, the Defendants paid the expenses of various Relief Defendants with funds from other Relief Defendants. (DE 7; Chen Decl. at ¶¶ 87-124). The Defendants also expended amounts in excess of the management fees permitted under the Relief Defendants' respective limited partnership and limited liability company agreements in the amount of $2,307.076. (DE 7; Chen Decl. at ¶26)

Accordingly, the Receiver based on the Complaint issued by the SEC and the Chen Declaration which supports it, assumes that Defendants may have misappropriated for personal expenses, up to $5.7 million for which there is inadequate documentation. (Id.) This amount does not include amounts used for Ponzi-like payments to other investors or to fund the investments of other Relief Defendants. The Receiver therefore relies on the SEC's evidence of commingling as partial support for its recommendation of the Plan contained herein.

B. Assets Secured by the Receiver

To date the Receiver has marshaled and now holds both cash in the amount of $1,665,219.77 from the sale of 97,505 shares of Square and the shares and/or futures contracts on the shares of 22 pre IPO companies as set

forth in the Hartheimer Declaration accompanying this Motion. (Hartheimer Decl. ¶¶ 5 and 23) Some of these companies have already folded and have no value. (Hartheimer Decl. ¶ 24) Others, such as Palantir Inc. ("Palantir"), have continued their business operations and are well known to investors in private company shares. (Hartheimer Decl. ¶¶10 and 18) And others present different, but equally challenging obstacles to their sale and monetization. (Hartheimer Decl. ¶ ¶14 and 15)

Some of the pre-IPO securities have certain features that make their valuation, and their salability extremely difficult. One such difficult feature is the fact that for a number of the pre-IPO companies such as Badgeville and Dropbox, the Receivership Estate does not hold, or have title to the actual securities; instead it holds intangible "forward contracts", or contracts for future delivery of the underlying pre-IPO company stock. As the Hartheimer Declaration sets forth in ¶14, these "forward contracts" represent $6.58 million of the $53 million, or 12% of the funds invested by SRA Investors. In these, the Receivership Defendants and Relief Defendants have already "purchased" for cash the underlying securities from a seller, whose obligation is to deliver the actual securities sometime in the future, or if unable, to return the purchase funds.

Such a commercial securities sale framework is fraught with obstacles, including the cost and burden of forcing the seller to deliver on his/her contractual obligation, or if he/she is unwilling, and/or unable to do so, to bring suit in multiple and distant forums for the recovery of the cash paid. (Hartheimer Decl. at ¶ 15) Indeed, the terms of the forward contracts as they relate to the obligation to deliver the securities are vague, and the enforcement mechanism (foreclosure on a promissory note) may place an extraordinary burden on an already near insolvent Receivership Estate. (Hartheimer Decl. at ¶ 15)

Another difficult feature present in some of the pre-IPO securities, including Palantir where $20.7 million, or 38% of the SRA Fund investors' funds are invested, have restrictions on private resales, such as the requirement of voting approval of a majority of preferred shareholders for any sale to a third party, and/or a right of first refusal to the issuer. In the former case, the issuer may only allow infrequent approval voting on a proposed sale, and may require a significant level of approval from existing preferred shareholders, who may or may not grant such approval. In the latter case the issuer itself may utilize the right of first refusal to delay any sale transaction, or worse, attempt to obtain its shares for an unreasonably low price. These unique commercial contractual obligations agreed to by the Receivership Defendants present the Receiver with significant obstacles to any valuation of the Receivership Assets, much less any sale of them. (Hartheimer Decl. at ¶¶11 and 18)

III. Evidence of Incomplete Records and Commingling

A. Incomplete and Unreliable Records

Due to the extensive commingling of funds among the Relief Defendants, and misappropriation of investor money by Bivona and the Receivership Defendants in excess of the management fees, discussed in Sec. III B below, any attempt to determine the source of the funds used by each Relief Defendant to make purported investments into the various pre-IPO companies set forth directly above, is not feasible. (Hartheimer Decl. ¶ 19) Moreover, the unreliable state of the Receivership Defendants and Relief Defendants' records is such that it is impossible to conduct a cost effective and useful audit of the source and use of funds, sufficient to be able to trace any, much less all of the funds received by the Receivership Defendants in order to attempt to match the obligation to return specific shares of each pre-IPO

company to each SRA Investor in the series of issues he or she has selected. (Hartheimer Decl.at ¶ 19)

A good example of the poor and unreliable state of the Relief Defendants' records can be found in those relating to the SRA Investors involvement with Square Inc., and the testimony of Gary Gettenberg of ACI who was the accountant for the Defendant Entities. During an interview with the SEC, with the Receiver present, he attested to the "willy nilly" operations between defendant entities and to the "unqualified bookkeeper" whose records he "did not trust". Mr. Gettenberg went so far as to create an excel spreadsheet to illustrate intercompany loans which he attested was "not confirmable" by company principals. (Hartheimer Decl. at ¶ 20)

Since being appointed receiver, Sherwood has been attempting to reconcile the outstanding, as yet to be fully distributed shares of Square that it had transferred from the Receivership Defendants stock transfer agent, American Stock Transfer and Trust Company ("AST"), to an account at Wells Fargo Securities, which it opened after approval by the Court. DE 153; See: Declaration of Georgiana Nertea ("Nertea Decl." at ¶ 2)[4] As the Nertea Declaration attests, there is an apparent shortfall of Square shares from what is yet to be distributed to the Receivership Defendants' investors, whose ownership of Square appears to entitle them to more shares than are available for distribution. The net shortfall appears to amount to 9,799.72 shares of Square that at the current market price of $24.11 a share, comes to $236,271. (Nertea Decl. at ¶ 3). As well, the net shortfall also results in the over-distribution of shares to some SRA Fund investors who received their Square shares prior to October 11, 2016, in the amount of 16,808 shares to which they were not entitled.

[4] The Defendants were in the process of distributing the shares of Square subsequent to its going public in November 2015.

If the Square shortfall cannot be reconciled, then the earlier distribution to investors in Square, which was not completed by the date of the Order, may have resulted in those earlier investors receiving a larger *pro rata* share of their Square entitlement (the 16,808 shares) raising the issue of whether collectively they need to return funds to the Receivership Estate by means of "claw back" actions undertaken by the Receiver. Such "claw back" actions might be expensive and time-consuming, without any assurance of a net economic gain to the Receivership Estate when undertaken. Moreover, the investors in Square who have not yet received their allotment/cash redemption will not receive all to which they believed they were entitled (the 9799.72 shares).

The Square shortfall appears from a comparison of the Defendants' internal worksheet, titled the "Square Distribution Sheet" to the records of the American Stock Transfer and Trust Company ("AST"), Square's transfer agent and from correspondence with the SEC and records received by the SEC directly from AST (Nertea Decl. at ¶ 2) The Receiver has attempted to reconcile this disparity by conversations with Defendant John Bivona; however he has been unable to explain it as he claims he did not become directly involved in the recordkeeping. (Nertea Decl. at ¶ 4) The Receiver therefore has not been able to reconcile the difference which, if left un-reconciled, will result in a shortfall in the amount of Square shares necessary to treat equally, all similarly situated investors in Square.

A similar disparity has been detected in the pre-IPO shares of Palantir, the Receivership Estate's largest holding, representing approximately 38% of the $53 million raised by the Receivership Defendants. As noted above, Sherwood's Maidy acting as Monitor in his Third Report to the Court, was unable to reconcile the amount of Palantir shares allegedly purchased by SRA investors, with the amount of Palantir shares which were reflected in the Receivership Defendants "Purchased Spreadsheet". See: DE 120, pages 5 and

6. This lack of basic recordkeeping and investor information resulted in changing estimates by both former management and Independent Monitor of the size of the Palantir shortfall. The shortfall of Palantir shares appeared to be at least 56,992 as of mid 2016, with the caveat that the prior Manager's books and records were unreliable. In light of these record-keeping issues, a more extensive analysis of the Palantir shortfall was called for. Based on more recent investigative work by the Plaintiff SEC for a longer period of time and involving "off-the-books" Palantir transactions, the total shortfall number for Palantir appears much larger, over 300,000 shares according to the Plaintiff SEC.

The manner in which the Palantir share discrepancy came to light is further evidence as to the unreliable state of the Receivership Defendants' records. When Maidy was acting as Monitor, at the time of his First Report on May 10, 2016, he was given the "Purchased Spreadsheet" by Defendant SRA Management, which showed that Relief Defendants Clear Sailing and EAC held a total of 6,734,297 shares of Palantir, and that they only had allocated 6,564,289 of those shares to the beneficial interests in the SRA Funds, Felix Investments, NYPA Funds (I and II), Silver Back Funds (I and II), the Fortuna Fund I and Capital Truth Holdings, leaving an *excess* of 170,008 shares of Palantir. See: DE 74, page 11.

However, subsequent to submitting that report, the Monitor came to learn of the claim made by an entity known as "TeleSoft" which held allegedly valid documentation entitling it to 227,000 shares of Palantir. The TeleSoft ownership was not recorded in the "Purchased Spreadsheet", and when added to that document, as the Monitor notes in the Third Report, brought the amount of Palantir shares owed to investors to 6,791,289, which is 56,992 shares more than reflected on the "Purchased Spreadsheet" as allocated to investor owners. (DE 120, pages 5-6), thus creating a shortfall. (Hartheimer Decl. at ¶ 13)

As the Monitor noted in his Third Report, "The discovery of the TeleSoft beneficial interest and over allocation of shares is another event that highlights the unreliability and irregularity of the books and records maintained by the Manager." See: DE 120, pages 5-6. Since becoming Receiver, Sherwood has not changed its view; indeed as the Hartheimer Declaration attests, it continues to find the Receivership Defendants' records to be unreliable, and its work as Receiver is severely hampered by the lax, and/or incomplete recordkeeping, and the commingling of investor funds through the Bivona attorney escrow accounts.

Additional evidence of the likely shortfall in Palantir shares has arisen from the review of recent analysis provided by the SEC and certain transactions undertaken by certain of the Defendants with third parties who have filed (and in one case brought to judgment) claims against the Defendants, which are now liabilities of the Receivership Estate. One such transaction is known as the Global Generation lawsuit in which the Plaintiff Global Generation Group LLC ("Global") claimed that defendant Mazzola, through one of the Receivership Assets ("FMOF II") induced it to invest $6.3 million in a "sham transaction" whereby the funds were to be used to purchase several pre-IPO company shares, including a large amount of Palantir shares, which were never distributed to Global. (Hartheimer Decl. ¶¶ 16 and 17)

According to Global's complaint, $2.8 million of its $6.3 million investment was for the purchase of a "put" on 933,000 shares of Palantir, which have never been delivered in kind, or in cash value. Global obtained, and later confirmed by Court decree, an arbitration award of $1.7 million, plus specific interest of $59,012 on the unpaid Palantir obligation. (Hartheimer Decl. at ¶ 17) As the confirmed award against Defendant Mazzola, and Receivership Asset FMOF II relate to an obligation either to tender the Palantir shares, or cash, the liability to Global adds to both the claim of inaccurate

recordkeeping (as the Global Palantir shares were not recorded as liabilities of the Defendants) as well as the share shortfall in Palantir. (Hartheimer Decl. at ¶¶16 and 17)

B. The Declaration of Chen Concerning Commingling

In support of its Complaint against the Defendants, the SEC lodged a comprehensive Declaration from its staff accountant Ellen Chen. (DE 7, filed March 22, 2016) Ms. Chen notes in numerous paragraphs of her Declaration, that she found evidence of later-solicited, SRA Investor funds being used to pay for earlier fund obligations of the Defendants in other, similar funds, as well as being used to purchase shares of pre-IPO companies for earlier-formed funds of the Receivership Defendants (i.e. funds from SRA I being used to purchase Palantir Shares obligated to earlier investors in the NYPA II Fund). (DE 7; Chen Decl. at ¶ 44) As the Chen Declaration shows, there was more than one occurrence of Defendant SRA Management's investor funds from one fund being utilized to cover share purchase commitments of pre-IPO companies obligated by earlier funds. Such happened on more than one occasion for Palantir Shares; it also happened with shares in the company known as Glam. (DE 7; Chen Decl. at ¶¶ 36 to 43).

The Chen declaration also showed that on numerous occasions, money sourced from SRA funds was used to pay for law firms and attorneys for legal work unrelated to the SRA funds. (DE 7; Chen Decl. at ¶¶ 27 to 30) The engagement letters of the law firms to which these SRA sourced funds were paid did not have engagement letters showing any attorney-client relationship with the SRA funds, strongly suggesting that funds raised from SRA Investors were used to pay for legal expenses of the individual Defendants and not the Relief Defendants. (*Id.)*

The Chen Declaration also revealed that the common accounting funnel through which many of the above transactions examined by her flowed, were the various attorney escrow accounts of Defendant John Bivona. The role that Defendant Bivona's attorney escrow accounts played in moving $1,975,499 of SRA funds is graphically depicted in the Chen Declaration in Figure 3 on page 15 of her declaration. (DE 7; Chen Decl. at ¶ 30).

The Receiver believes that consolidation of the assets of the Relief Defendants is appropriate because there is no equitable means of allocating ownership among the Relief Defendants. The Defendants' commingling of funds and misappropriation was pervasive throughout the Relief Defendants, but was not proportionate among the Relief Defendants. As such, segregating the assets of the Relief Defendants would result in similarly situated investors receiving unequal distributions.

C. Testimony of John Bivona before the SEC Staff and Creditors in His Bankruptcy ¶ 341 Meeting of Creditors

During his investigative testimony before the SEC, Defendant John Bivona told the staff that sometime in 2012, after the SEC began its investigation into the Felix Multi Opportunity Funds ("FMOF", one of the Receivership Assets under the Order, page 2, lines 7 to 11), he moved all the 13 funds to one account, in his name, at the First Republic Bank of New York. Defendant Bivona also made a similar statement during his recent bankruptcy case at his ¶ 341 meeting of creditors. This also effectively resulted in the commingling of all funds related to the operation of the Relief Defendants.

IV. The Need to Retain an Investment Bank Adviser

The Estate currently has little liquidity and consists mostly of the illiquid shares of the pre-IPO companies which may not together, or even individually have "liquidity events" sufficient to provide the Estate with enough cash with

which to operate.[5] In order to provide liquidity, the only course open to the Receiver will be to sell all, or some of these shares, either in bulk, or individually, in the secondary, non-public markets. The Receiver believes that the best way to approach the secondary market to obtain liquidity will require the involvement of experienced investment bankers who can (i) advise on the merits, or lack thereof in attempting to sell all, or some of the illiquid shares; (ii) advise on how best to achieve a maximum value for such sales; (iii) advise on the best way to deal with the "forward contracts" and (iv) have the market awareness of, and contacts with, the likely buyers of such illiquid investments to make the process efficient and less costly.

Moreover, and as mentioned above, the prohibitive sale restrictions on many of these shares, such as Palantir, and the use of "forward contracts" in their acquisition, present complexities and major challenges to any attempt at sale, requiring the experience and knowledge of skilled investment bankers to ensure the process is efficient and equitable. The Receiver has conducted interviews with three (3) separate investment-banking firms and with the agreement of the SEC will shortly be prepared to select, and recommend to the Court for appointment, one of those firms. The Plaintiff SEC has been involved in the interview and selection process, and will be asked to state views on the selected firm.

Upon approval of the Plan by the Court, the Receiver will propose the retention of one of the three investment banking firms that have been interviewed to assist the Receiver in liquidating the non-cash assets. The Receiver intends to liquidate the non-cash assets in a prudent and orderly manner designed to preserve the value of the initial investment and maximize

[5] The Receivership Estate does currently hold $1,665,219, although that resulted from the sale of the Square shares mentioned above in Section II B. Under the Order as it currently stands, only 4% or $66,608 could be used to defray the costs of the Receivership, which currently is far in excess of that amount in accrued, but unpaid fees and costs.

the proceeds from any sale. (Hartheimer Decl. at ¶30) As such, the Receiver does not know the timetable under which the assets may be sold. (*Id*.) In light of the risks involved in holding the investments to a potential liquidity event and the fact that investors are exposed to investments for which they never bargained or expected to indirectly hold, an orderly liquidation and distribution mitigates the risk of future loss in investment value and cost of administering the Receivership Estate and Relief Defendants. And a qualified investment banking firm can greatly assist in that effort.

V. Dissolution of Certain Defendants and Relief Defendants, and Termination of All Management Agreements

As an integral component of the Plan, the Receiver also seeks this Courts' approval of the dissolution of certain corporate Defendants (i.e. SRA Advisors) and Relief Defendants (i.e. SRA Funds I, II and III), as well as the termination of all management agreements with SRA Management, NYPA Management, and FMOF Management, and the advisory agreement with SRA Advisors so that no further management or advisory fees will be paid or owed to them. Following the proposed consolidation of assets for distribution, the continuing existence of the Relief Defendants will serve no purpose and will result in continuing expenses in the form of filing fees and expenses involved in preparing tax returns. Therefore, subject to any potential claims asserted by the Receiver on behalf of a Relief Defendant requiring its continued existence, the Receiver proposes to file any final tax returns and documents required to dissolve any Relief Defendants that have no remaining assets. Doing so will lower the cost of administering the Receivership Estate and increase the return to investors and creditors.

The Plaintiff SEC's counsel is attempting to conclude settlement discussions with the individual Defendants and Relief Defendants. With

respect to the Receivership Entities, the tentative settlement with the Commission requires the Court's approval of a distribution plan acceptable to the Commission. The Plaintiff SEC has informed the Receiver that the current proposed Plan meets that requirement.

VI. Proposed Distributions Pursuant to the Proposed Joint Plan

1. Description of the Proposed Plan

A copy of the proposed Plan is attached hereto as Exhibit A. It seeks to achieve the prompt, fair, and efficient distribution of the "Distributable Funds" to those victims who suffered a loss, or remain at risk of loss of their investment, as a result of the violations alleged in the Commission's Complaint, as well as to creditors of the Relief Defendants.[6] The Plan also provides a distribution to investors and claimants against the FMOF Funds, the NYPA Funds and Clear Sailing, as being Receivership Entities, in light of the commingling of funds and other misconduct by the former managers of those Receivership Entities.

The proposed Plan also provides for the determination of investor and creditor claims to assets in the Receivership Estate (including assets that may be collected hereafter) and for the *pro rata* distribution of assets as set forth therein. This Plan also provides for the orderly sale of the shares and financial interests held by the entities in the Receivership Estate and the *pro rata* distribution of the sales proceeds to investors and creditors based upon their net out-of pocket investments.

If there are sufficient sales proceeds, investors will receive interest on the principal amount of their investments to compensate investors for the time value of their money. In the event that the sale of shares or economic interests

[6] "Distributable Funds" is described in the proposed Plan as "assets determined by the Receiver, as approved by the Court, available for distribution in accordance with the Plan".

in a particular company generates an excess recovery and the other investors have received the principal amount of their investments plus interest, then the Receiver will be authorized to propose a supplemental distribution to those investors, and only those investors from that excess recovery, after all other investors and creditors have been paid their initial investment, and accrued interest, as described above.

The Plan aims in general terms to compensate qualified, approved claimants for the principal amounts they invested and lost in the Relief Defendants due to the conduct alleged in the Complaint, or related to investing or advancing funds with the Receivership Entities where the investment or advance was still outstanding as of October 11, 2016 and to allocate any further proceeds from the liquidation and marshaling of the Relief Defendants' assets according to the remaining total capital invested by each SRA Investor.

2. The Proposed Plan Treats Investors and Creditors Alike By Setting Forth A Schedule of Distributions

Because the amount of Distributable Funds is unknown and may be less than the total capital invested by the SRA investors and total claims of creditors, the proposed Plan prioritizes differently, distributions to several categories of investors and creditors, and the Receivership Defendants. The goal of the Plan is to return to investors the amount of their invested capital, and subsequently interest on that invested capital, if sufficient recovered funds permit; and to return to creditors their loaned funds and interest, both getting paid *pro rata* amounts based on their pro rata share of invested or loaned funds, up to the total of their entitlement.

To accomplish this goal, the proposed Plan sets out three sequential, but separate distributions, starting with a "First Distribution", which will consist of (i) payment for all then accrued, but unpaid administrative charges; (ii) *pro*

rata investor claims for principal amount outstanding; and (iii) all unsecured claims for loans or business debt up to principal amount owed plus contractual rate of interest for business debt or loans. Thereafter would come a "Second Distribution" which will consist of (i) a further payment for all then accrued, but unpaid administrative charges; (ii) the satisfaction of any unpaid amounts from the First Distribution; and (iii) *pro rata* interest to the investors that purported to purchase securities or a series of securities from the FMOF Funds, NYPA Funds, SRA Funds and/or Clear Sailing, and those securities have been sold by the Receiver or have been determined to be of limited value by the retained financial professionals. (These are investors who are not eligible for the Third Distribution described below and their claims are deemed satisfied to the extent they are paid in full on their principal and interest claim in this distribution.)

Assuming there are any securities assets remaining, there will be a "Third Distribution" which will only be made if there are any remaining securities to be sold after the Second Distribution. In the event such remaining securities are sold and there is enough to fund a third distribution, claims will be paid as follows: (i) first, pay all accrued but unpaid administrative claims and expenses; (ii) second, satisfy unpaid amounts from the Second Distribution; and (iii) third, pay remaining investors as follows: Investors will submit documentation to the Receiver to support their purported investment in securities or a series of securities that have been or may he sold for a profit by the Receiver. The Receiver will determine who is eligible to participate in the Third Distribution based on the documentation provided. Those eligible will be paid a *pro rata* distribution based on the amount of securities they purported to have purchased less the principal repayment they already received in the First and Second Distributions.

If it occurs, there will be subsequent distributions in the event any additional monies are received by the Receivership (from, for example, any successful claims against third parties by the Receiver, or any disgorgement payments to the Estate) which will pay for any accrued but unpaid administrative expenses, and taxes, and then to satisfy any unpaid amounts from prior distributions. If, however, all the illiquid shares are sold at one time to one buyer (assuming such is recommended by the investment banker and approved by the Court) and there are no claims against third parties, or disgorgement payments to the Receivership Estate, then it is likely that all three contemplated sequential distributions will be collapsed into one, with the distribution to be calculated in the same manner and order as the Plan's three separate distributions contemplate, but in one calculation and resulting payment.

ARGUMENT

Section 22(a) of the Securities Act of 1933 (15 U.S.C.§ 77v(a)) and Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) confer general equity powers upon the district courts. These equity powers include the authority to order all equitable relief necessary under the circumstances. "….a district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad". *SEC v. Hardy, 803 F.2d 1034, 1037 (9th Cir. 1986); in accord, SEC v. Capital Consultants LLC, 397 F.3d 733,750 (9th Cir. 2005)*

Under the Court's October 11, 2016 Order, the Receiver has full authority over the Relief Defendants. The Receiver's powers include the "exercise of all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and members of the entity Receivership

Entities under applicable state and federal law by the governing charters, by-laws, articles, and/or agreements in addition to all powers and authority of a receiver at equity and all powers conferred upon a receiver the provisions of 28 U.S.C. 754, 959, and 1692 and Fed. R. Civ, P. 66" and the power "to pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates; " subject to the Court's approval. (Docket no. 142 Para. II, and II (J) and (K)

In exercising the above powers, the Receiver after consultation with the Plaintiff SEC, has determined that, due to the varying degrees and manner in which defendants allegedly misappropriated funds from the Relief Defendants for their own use, shortfalls incurred by investments to investors, and the difficulty in enforcing the "forward contracts" there is no other fair and equitable means to apportion the remaining assets among the Relief Defendants and the investors and creditors of them, unless a substantive consolidation of all the Estate assets (i.e. all the pre-IPO companies shares) is undertaken for the benefit of all the various SRA series investors. (Hartheimer Decl. at ¶¶ 27 and 28)

Any contrary plan that attempts to match specific investors with the specific shares they desired, results in similarly situated investors facing unequal losses merely as a result of how the defendants misappropriated or diverted investor funds, and/or maintained records of ownership, and whether the forward contracts will be honored. The Receiver, having had extensive discussions with the SEC, and after considering various alternatives, including the costs of a detailed and expensive asset-tracing analysis, has determined that the consolidation of all assets of the Receivership Defendants for *pro rata* distribution is in the best interests of investors as a group. (Hartheimer Decl. at

¶¶ 27 and 28) The Commission staff in joining in the Motion, apparently agrees with this recommendation.

The Ninth Circuit in a similar case involving an SEC enforcement action where the district court approved the receiver's recommendation for administering the assets of the receivership broadly supported the power of the district court to fashion appropriate relief.

> "A district judge supervising an equity receivership faces a myriad of complicated problems in dealing with the various parties and issues involved in administering the receivership. Reasonable administrative procedures, crafted to deal with the complex circumstances of each case, will be upheld. A district judge simply cannot effectively and successfully supervise a receivership and protect the beneficiaries absent broad discretionary power." *Hardy*, *supra*, at 1038.

The holding in *Hardy* clearly supports this court's power to approve the Receiver's recommended plan of distribution, so long as it is reasonable under the unique and complex facts before the Court, provides an opportunity for opponents to be heard and best protects the interests of all beneficiaries of the Estate. And as the 9th Circuit in *SEC v. Capital Consultants*, *supra*, held, so long as the district court considers and weighs the views of opposing creditors and investors, and comes to a rational and well-supported, equitable upholding of the receiver's recommendations, such a plan will be upheld on review.

In a case with similar complexity and competing investor and creditor interests, the court in *SEC v. Sunwest Management, Inc*., 2009 U.S. Dist. Lexis 931181 (D. Or. Oct. 2. 2009), held that:

> "..typically tracing of invested funds does not yield the most equitable result, because the ability to trace funds is the result of the merely fortuitous fact that certain investor funds were spent before the funds of others, where the funds of investors have been shown to be substantially commingled." *Sunwest Management, Inc*., at p. 10

And in the present case, as the Declaration of Hartheimer states, to even attempt a tracing of assets and funds would be expensive, and most likely unsuccessful due to the poor state of record keeping by the defendants. (Hartheimer Decl. at ¶27)

The *Sunwest* Court also addressed the extent to which commingling need be shown in order to justify an alternative to the tracing of investor funds. Citing to *SEC v. Byers, 637 F. Supp. 2nd* 166 *(S.D.N.Y. 2009)*, and *CFTC v. Eustace, 2008 U.S. Dist. LEXIS 11810, 2008 WL 471574, at *7 (E.D. Pa. 2008)*, *Sunwest* Court held:

> "The extent of commingling necessary to justify abandoning a tracing approach is not settled in the applicable case law. Due to the fungibility of money, however, courts have held that any commingling is enough to warrant treating all the funds as tainted. Commingling need not necessarily be systematic to justify alternatives to tracing investor funds."
> Sunwest at p.p. 10-11

The Chen Declaration more than meets the standard set out in *Sunwest, supra,* and is sufficient to support a finding of commingling.

VII. Conclusion

For the foregoing reasons, as well as those set forth in the accompanying declarations and exhibits thereto, and the Plaintiff SEC's Joint Motion, declarations and exhibits thereto, the Receiver respectfully requests that the Court grant the Receiver's motion for an Order allowing (i) the liquidation and consolidation of assets of the Receivership Defendants, (ii) the engagement of professionals to assist the Receiver, (iii) the approval of the Proposed Joint Plan of Distribution; and (iv) the dissolution the corporate Receivership Defendant entities.

Dated: June 29, 2017

GARTENBERG GELFAND HAYTON LLP

By: */s/ John W. Cotton*
John W. Cotton
Counsel to the Receiver

Exhibit A

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 Joint Plan of Distribution**

A. Summary of Distribution Plan

The Securities and Exchange Commission ("Commission" or "SEC") and Sherwood Partners, Inc., the court-appointed receiver ("Receiver"), respectfully submit this proposed Joint Plan of Distribution (the "Plan" or "Distribution Plan") to distribute funds to investors and creditors harmed as a result of the violations alleged in the Commission's complaint (DE 1). Pursuant to the October 11, 2016 Order (DE 142, Stipulated Order Appointing Receiver), the Court appointed the Receiver to

take possession and control of the assets of certain Defendants[1] and Relief Defendants[2] and third party affiliated entities[3] (the "Receivership Estate") and to develop a plan for the administration of the Receivership Estate.

This Plan provides for the determination of investor and creditor claims to assets in the Receivership Estate (including assets that may be collected hereafter) and for the *pro rata* distribution of assets as set forth herein. This Plan also provides for the orderly sale of the shares and financial interests held by the entities in the Receivership Estate and the pro rata distribution of the proceeds to investors and creditors based upon their net out-of-pocket investments. If there are sufficient proceeds, investors will receive interest on the principal amount of their investments to compensate investors for the time value of their money. In the event that the sale of shares or economic interests in a particular company, generates an excess recovery and the other investors have received the principal amount of their investments plus interest, then the Receiver will be authorized to propose a supplemental distribution to those investors who subscribed and/or invested in the shares of the particular company or contracts for shares of the particular company generating the recovery.

B. Background

The Commission filed its complaint against John V. Bivona ("Bivona"), Frank Mazzola, the Corporate Defendants, and Relief Defendants in this action on March 22, 2016. It brought this action

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[1] Saddle River Advisors LLC ("Saddle River") and SRA Management, LLC ("SRA Management"), Saddle River and SRA Management (collectively, the "Corporate Defendants").

[2] SRA I LLC ("SRA I"), SRA II LLC ("SRA II"), SRA III LLC ("SRA III") (together, "SRA Funds") and Clear Sailing Group IV LLC and Clear Sailing Group V LLC (together, "Clear Sailing") (collectively the "Relief Defendant Entities").

[3] By stipulation, Sherwood Partners also became the Receiver for 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").

in order to stop Bivona, Frank Mazzola and the companies they currently control or previously controlled from continuing to defraud investors, from which Bivona, Frank Mazzola and their companies raised over $53 million in the SRA Funds. Bivona, Frank Mazzola, Saddle River Advisors ("Saddle River") and SRA Management Associates, LLC ("SRA Management"), marketed investments in early-to-late stage, pre-IPO technology companies, however Bivona, Saddle River and SRA Management lied to investors and used their money to purchase shares promised to earlier investors in other unrelated funds. Bivona, Saddle River and SRA Management also used the SRA Funds' bank accounts to pay for personal expenses for John Bivona and his family. (DE 1, Complaint at ¶¶ 2, 3)

Among other things, the Commission alleged that Bivona, Saddle River and SRA Management disguised their misconduct by continually transferring money in and out of multiple bank accounts associated with more than a dozen different funds and entities. Millions of dollars have been funneled to pay for the expenses of earlier funds that Bivona and Saddle River also manage, while at least $5.7 million has been diverted to family members to pay, among other things, credit card bills, income taxes, a car loan, unrelated defense attorney fees, and the mortgage on a Jersey Shore vacation home. Bivona, Saddle River and SRA Management failed to provide investors with the promised financial statements that should have revealed their fraud. Bivona steered the lion's share of the misappropriated money to benefit Bivona's nephew, Frank Mazzola, who faced SEC fraud charges for an earlier investment scheme, which resulted in the March 2014 entry of permanent injunctions by this Court and the institution of an administrative SEC order barring Mazzola from the securities industry for at least three years. (DE 1, Complaint at ¶¶ 4, 5)

On March 25, 2016, on the basis of the allegations in the Complaint, the SEC's Motion for a Temporary Restraining Order (DE 4) and the documentation filed by the SEC in support of the SEC's Motion (DE 5-20), the Court entered an Order Granting Temporary Restraining Order, Appointment

of Independent Monitor, and other Preliminary Relief (DE 36). On October 11, 2016, on consent, Judge Chen appointed the Independent Monitor, Sherwood Partners, Inc., as the Receiver for defendant SRA Management and relief defendants SRA Funds and Clear Sailing. By stipulation, Sherwood Partners, Inc. also became the Receiver for third-party affiliated entities NYPA Fund I LLC ("NYPA I"), NYPA II Fund LLC ("NYPA II") and NYPA Management Associates LLC (collectively, "NYPA Entities") and Felix Multi-Opportunity Funds I and II, LLC ("FMOF I and II") and FMOF Management Associates, LLC (collectively, "FMOF Entities"). Like the SRA Funds, those third-party affiliates held their pre-IPO shares and interests through Clear Sailing. (DE 142)

The Receivership Defendants[4] do not currently have any permanent employees, and have ceased operations. The shares of private companies beneficially owned by the SRA Funds and other investment funds, such as the NYPA Funds and Felix Multi-Opportunity Funds, are held centrally at Clear Sailing, through ownership interests in the Clear Sailing entities. Because these private company shares are not held within the SRA Funds, or other investment funds, claiming an ownership interest over the shares, it is appropriate to have these entities in the Receivership Estate to be administered pursuant to this Distribution Plan. (DE 142)

Through mandatory settlement conferences, the SEC Staff reached tentative settlements in principle with defendants John Bivona and Frank Mazzola and relief defendants Anne Bivona and Michele Mazzola. These settlements are subject to completion of the necessary documentation and the Commission's approval.

1. Current Financial Status of Receivership Estate

Initially, the Independent Monitor filed reports on April 11, 2016 (DE 54), April 25, 2016 (DE 60), May 10, 2016 (DE 74), and July 5, 2016 (DE 120), when the case converted to a Receivership,

[4] SRA Management, SRA Funds and Clear Sailing.

the Receiver filed the first quarterly report on February 1, 2017 (DE 168), and May 16, 2017 (DE 183).

The Receiver has taken steps necessary to preserve the status quo as to the Corporate Defendants and Relief Defendant Entities and to allow the investigation of the nature, location and rightful allocation of their assets. To date, the Receiver, on behalf of the Corporate Defendants and Relief Defendant Entities, and related entities in the Receivership Estate has marshalled and now holds the following assets (the "Current Assets") in the Receivership Estate:

a. $1,665,219.77 in proceeds from the sale of shares of Square, Inc. after the start of the receivership.

b. securities (or forward contracts on securities) including, but not limited to, Addepar, Airbnb, Badgeville, Bloom Energy, Candi Controls, Cloudera, Dropbox, Evernote, Glam, Jawbone, Lookout, Lyft, Mongo DB, Palantir, Pinterest, Practice Fusion, Snapchat, Uber, Twitter, Box, oDesk, Check, Flurry, and Virtual Instruments. The Receiver will provide a report to the Court with the number of shares held by the Receivership Estate.

c. any and all intangibles, including but not limited to, funds received or reasonably expected to be received from potential claims from Avoidance Actions and other Causes of Action in favor of the Receivership Estate.

2. **Substantive Consolidation due to Commingling**

Based on the Commission's accounting investigation and the Receiver's investigation into the shortfall of the investments, and his marshalling of assets of the Corporate Defendants and Relief Defendant Entities, it has been determined that:

a. Bivona and the Corporate Defendants commingled and transferred funds among the Relief Defendant Entities and Receivership Entities;

b. Bivona and the Corporate Defendants expended amounts in excess of the management fees permitted under the management agreements;

The Receiver is terminating all management agreements with SRA Management, NYPA Management and FMOF Management and the advisory agreements with defendant Saddle River so that no further management or advisory fees will be paid or owed to SRA Management, NYPA Management, FMOF Management and/or Saddle River.

The Receiver anticipates that the Commission will impose a monetary judgment on the Corporate Defendants consisting of disgorgement. The Receiver also anticipates consenting to a judgment for full injunctive relief, and disgorgement sought by the Commission in its Complaint, subject to the approval of the Commission and this Court. The proposed settlement by the Receiver would provide that the monetary judgment against SRA Management will be deemed satisfied by the payments contemplated to investors and creditors under this Distribution Plan.

Due to the extensive commingling of funds among the Corporate Defendants and Relief Defendant Entities and misappropriation of investor money by Bivona and the Corporate Defendants, the Commission and the Receiver propose to consolidate the assets and liabilities of the Corporate Defendants, Relief Defendants Entities and affiliated third party entities, including the dissolution of all of the Corporate Defendant, Relief Defendant Entities and affiliated third party entities, and to distribute the assets pursuant to the following plan of distribution to investors and creditors on a pro rata basis. In addition, to unwind the transactions supporting the Unsecured Claims and Unsecured Creditor Claims would be unduly burdensome, prohibitively expensive and administratively unfeasible.

C. Definitions

"Administrative Claims" means accrued and unpaid Receiver's fees and expenses and Receiver counsel, accountant and other professional fees and expenses, through distribution including court

ordered fees and expenses owed to the Receiver when acting in the prior capacity of Independent Monitor through date of distribution. Employee salaries for those retained by the Receiver, and Trust Fund Taxes incurred during receivership, i.e. payroll taxes and income taxes for the period covered by the Receivership and possibly the monitorship.

"Administrative Reserve" means the amount of funds, the Receiver upon consultation with the SEC Staff shall calculate an administrative reserve sufficient to complete distributions and wind down the Receivership Estate.

"Avoidance Action" means any cause of action to avoid or recover a transfer of property of the Receivership Estate or interest of the Receivership Entities in property, including actions arising under applicable federal, state or common law.

"Bivona Bankruptcy Case" the Chapter 7 Bankruptcy Proceeding of John Vincent Bivona, Case No. 16-12961-SCC, in the United States Bankruptcy Court for the Southern District of New York.

"Cause of Action" means a claim, right, action, chose in action, suit, cause of action, judgment, belonging to the Receivership Estate and any and all liabilities, obligations, and debts owing to the Receivership Estate, whether arising prior to or after October 11, 2016.

"Claim Objection" means an objection filed with the Court and served on the Commission and the Receiver prior to a claim objection cutoff date by any person who disputes the determinations of the Receiver in accordance with the Plan.

"Corporate Defendants" means Saddle River and SRA Management.

"Disallowed Claims" include claims belonging to or asserted by or on behalf of (i) John V. Bivona; (ii) Frank Mazzola; (iii) Anne Bivona; (iv) Michele Mazzola; (v) David Jurist; (vi) Alice Jurist; (vii) former agents or employees of Saddle River Advisors, Felix Investments, FMOF Management, NYPA Management, SRA Management, Clear Sailing IV and Clear Sailing V and the Fortuna Fund Management; (viii) other insiders (including Emilio DiSanluciano); (ix) Management

fees; (x) Inter-company claims; and (xi) and any claim for the guarantee of a debt or financial obligation for the benefit of insiders, including but not limited to John V. Bivona, Frank Mazzola, Anne Bivona, Michele Mazzola, David Jurist, and Alice Jurist, by FMOF Management, or NYPA Management or any other of the Receivership Entities.

"Distributable Funds" means assets determined by the Receiver, as approved by the Court, available for distribution in accordance with the Plan. This includes the proceeds of any sales of securities after the date of the appointment of the Receiver, on October 11, 2016, including the proceeds from the sale of securities of Square, Inc.

"Distribution" means the disbursement of money from the Distribution Account or a Corporate Defendant account to Eligible Claimants pursuant to the Plan.

"Distribution Account" means a checking account or accounts established by the Receiver to receive the monies from the Corporate Defendants, Relief Defendant Entities and affiliated third party entities that are scheduled to be disbursed in accordance with the Plan. "Distribution Account" shall also mean a checking account established by the Receiver to accept disgorgement or Fair Fund monies from the Commission, subject to any limitations on disbursement required by the Commission. Multiple such accounts may be necessary to ensure that the entire amount deposited is insured by the Federal Deposit Insurance Corporation.

"Distribution Plan" or "Plan" means this proposed joint plan of distribution for the resolution and distribution of funds on claims to investors and creditors harmed as a result of the violations alleged in the Commission's complaint.

"Eligible Claimant" means any investor or creditor with Valid Claims.

"Other Recoveries" means any investor or creditor recovery for capital, profit, claims or damages, other than through the Plan, including but not limited to any funds received or reasonably expected to

be received in the Bivona Bankruptcy Case, other litigation or from third party sources, included but not limited to payment on personal guarantees.

"Receivership Claims" means any legal claims the Corporate Defendants or Relief Defendant Entities or affiliated third party entities have against third parties.

"Receivership Defendants" means SRA Management, SRA Funds and Clear Sailing.

"Receivership Entities" means SRA Management, SRA Funds, Clear Sailing, the NYPA Entities, and FMOF Entities.

"Receivership Estate" means the assets and property, in whatever form, of the Receivership Entities.

"Relief Defendant Entities" means SRA Funds and Clear Sailing.

"Unsecured Claims" means investor claims. Investor claims are the principal amount invested in or through Clear Sailing or related entities in securities for which there has been no distribution including: (i) Clear Sailing holdings began in mid-2011, (ii) investor claims in Fortuna Fund LLC I and Fortuna Fund LLC II (collectively, the "Fortuna Fund") to the extent the Fortuna Fund invested in Clear Sailing, as identified by the SEC Staff, Receiver or Distribution Agent, if any, (iii) all investor claims for principal are calculated by reducing claims by any redemptions paid excluding redemptions or distributions on account of the purchase of any pre-IPO shares; (iv) All investor claims for principal are calculated by offsetting/reducing claims by amounts received or reasonably expected to be received in the Bivona Bankruptcy Case, other litigation or from third party sources, including but not limited to payment on personal guarantees.

"Unsecured Creditor Claims" means principal amount owed on loans and business debt, if any including: (i) vendors; (ii) Progresso Ventures, (iii) Benchmark Capital, (iv) Global Generation; (v) business debts; (v) Other claims of taxing authorities, such as non-trust fund taxes, state income taxes, franchise type taxes. All creditor claims for principal amounts are calculated by reducing

claims by amounts received or reasonably expected to be received in the Bivona Bankruptcy Case or other litigation or from third party sources, including but not limited to payment on personal guarantees. Contractual rate of interest will be used for trade and financial institutional lenders, default rate of interest will be excluded. Otherwise, the treasury rate for unpaid federal funds or such other appropriate rate as determined by the Receiver and the Court will be used.

"Valid Claim" means an investor or creditor claim that the Receiver and the SEC Staff have determined is represented by a valid invoice, receivable, or debt against the Corporate Defendants, Relief Defendant Entities and/or Receivership Entities supported by the submissions of the investor or creditor claimant, the books and records of the Corporate Defendants and Relief Defendant Entities, or other sources of information reasonably available to the Receiver. Investor or creditor claimant submissions will include a sworn declaration, affidavit or attestation, and all claims will be subject to the jurisdiction of the District Court for the Northern District of California.

D. Distribution Plan Notice

Upon entry of an appropriate scheduling order to approve a claims process,

a. The Receiver and/or SEC Staff will file by ECF and serve pursuant to ECF those parties that have an account on the District Court's website and mail to known Unsecured Claims and Unsecured Creditor Claimants that do not have an account on the District Court's website a copy of the approved Plan, together with the information the Receiver will have determined is necessary to inform the Unsecured Claims and Unsecured Creditor Claimants of their potential right to receive funds from the Distributable Funds pursuant to the approved Plan.

b. The Receiver shall post a Distribution Plan notice on the Receiver's website at: http://www.shrwood.com/saddleriver to alert Unsecured Claims and Unsecured Creditor

Claimants of their potential rights to receive funds from the Distributable Funds. The Receiver's website shall include a link to a copy of the Distribution Plan.

c. The SEC Staff will also post a link to the Distribution Plan on www.sec.gov

E. Marshalling and Liquidation of the Assets and Liabilities of the Corporate and Relief Defendants

In anticipation of implementing the Distribution Plan upon approval of the Court, the Receiver in consultation with SEC Staff shall:

a. Determine the amounts of any Valid Claims, as set forth below;

b. Consolidate the existing Corporate and Relief Defendant accounts into the Distribution Account;

c. In accordance with a proposed further Order of the Court, liquidate the non-cash assets in the Receivership Estate and deposit cash receipts for the non-cash assets in the Distribution Account;

d. To the extent the non-cash assets in the Receivership Estate are securities, the Receiver shall liquidate or resell the securities in a manner consistent with state and federal corporate and securities laws. The Receiver anticipates that such resale shall be done in accordance with Section 5 of the Securities Act of 1933 ("Securities Act") or in accordance with exemptions from registration provided in the Rules promulgated by the Commission pursuant to the Securities Act; and is authorized to seek the retention of such professionals necessary to assist the Receiver with such transactions;

e. In accordance with a proposed further Order of the Court, expeditiously prosecute and resolve such Receivership Claims, as in his discretion, taking into account the merits of the potential claims, likelihood of success, the cost of pursuing claims (including the

costs of the on-going administration of the Receivership), and the likely recovery, the Receiver concludes should be pursued in the interests of the investors and creditors;

f. To the extent that any purported outstanding agreements have not already been cancelled, such agreements will be reviewed by the Receiver for possible termination, cancellation or amendment.

F. Determination of Eligible Claims

The Receiver and the SEC Staff will determine which Unsecured Claims and Unsecured Creditor Claims are Valid Claims based upon the Corporate Defendants' and Relief Defendants existing records, submissions of the Claimants to the Receiver, and other sources of information reasonably available to the Receiver or the SEC Staff.

To the extent that presently available records do not allow the Receiver to determine whether a Claim is a Valid Claim, the Receiver, in coordination with the SEC Staff, shall undertake reasonable efforts to supplement the records. Such efforts may include requesting records or affirmations from Claimants. Claimants shall provide documentation requested by the Receiver necessary to allow the Receiver to determine the validity of the Claim.

G. Distributions

The distribution methodology in this Plan seeks to achieve the prompt, fair, and efficient distribution of the Distributable Funds to those victims who suffered a loss as a result of the violations alleged in the Complaint, as well as the creditors of the Corporate Defendants, Relief Defendants and affiliated third party entities. The amount of the Distributable Funds is unknown and may be less than the total Valid Claims.

1. First Distribution

First, pay accrued Administrative Claims in full and satisfy or partially satisfy Administrative Reserve; Second, pay pro rata all Unsecured Claims for principal amount outstanding and all

Unsecured Creditor Claims for loans or business debt up to principal amount owed plus contractual rate of interest for business debt or loans, accrued as of October 11, 2016.

(For purposes of distributions on Unsecured Creditor Claims and Unsecured Claims, these claims shall be paid on a par or pari passu).

2. Second Distribution

First, pay in full accrued but unpaid Administrative Claims;

Second, satisfy unpaid amounts from the First Distribution; Third, pay pro rata interest at the treasury rate for unpaid federal funds or such other appropriate rate as determined by the Receiver and the Court, accrued as of October 11, 2016, to investors that purported to purchase securities or a series of securities from the FMOF Funds, NYPA Funds, SRA Funds and/or Clear Sailing, and those securities have been sold by the Receiver or have been determined to be of limited value by the retained financial professionals. These are investors who are not eligible for the Third Distribution described below and their claims are deemed satisfied to the extent they are paid in full on their principal and interest claim in this distribution.

Pay pro rata interest, as defined above, on all other Unsecured Creditor Claims which are not entitled to a contract rate of interest. (Note that all claims for interest shall be paid on a par or pari passu)

3. Third Distribution

A Third Distribution will only be made if securities remain to be sold after the Second Distribution. This can occur if the issuer goes public, or either another liquidity event occurs, or the Receiver and his financial professionals in their business judgment determine to liquidate the remaining positions. In the event securities are sold and there is enough to fund a third distribution, claims will be paid as follows: First, pay all accrued but unpaid Administrative Claims; Second, satisfy unpaid amounts from the Second Distribution; Third, pay remaining investors as follows:

Investors will submit documentation to the Receiver to support their purported investment in securities or a series of securities that have been or may be sold for a profit by the Receiver. The Receiver will determine who is eligible to participate in the Third Distribution based on the documentation provided. Those eligible will be paid a distribution pro rata based on the amount of securities they purported to have purchased less the principal repayment they received in the First and Second Distributions.

Prior to making the Third Distribution, the Receiver will file a motion with the Court seeking approval of the Third Distribution which will include a list of those eligible to receive a distribution based on the documentation reviewed by the Receiver.

4. Subsequent Distributions

From time to time, and in the event additional monies are received by the Receivership, the Receiver shall first pay accrued and unpaid Administrative Claims and taxes if any and then to satisfy unpaid amounts from previous distributions.

H. Reports to the Court and to Claimants

The Receiver shall file a written report with the Court no less than every 120 days regarding the status of efforts to implement this Distribution Plan. The Receiver shall post a copy of its written report, which may be part of the quarterly report, on its website in order to provide notice to claimants.

I. Adjustments and Amendments

To carry out the purposes of the Distribution Plan, the Receiver may make adjustments to the Distribution Plan, consistent with the purposes and intent of the Distribution Plan, as may be agreed upon between the Receiver and the Commission and approved by the Court.

The Commission reserves the right to propose amendments to the Distribution Plan at the request of the Receiver, or on its own initiative. The Court retains jurisdiction over this matter for the

purpose of ruling on any such proposed amendments and for any and all other matters that may arise under or relate to the Distribution Plan.

J. Possible Avoidance Actions and Retained Claims

All Causes of Action, including possible Avoidance Actions, are to be preserved by and for the Receivership Estate and the Receiver for the Receivership Estate expressly preserves such Causes of Action for later adjudication and nothing herein waives the right to bring such Causes of Action unless the Cause of Action has been settled in this Distribution Plan.

K. Completion of Plan

The Receiver will complete the distributions required by the Plan within two years from date the Plan is approved by the Court, unless, an application is filed with and approved by the Court to extend the time to complete the distributions.

If the Receiver or the SEC Staff shall determine that the Receiver has concluded his duties and obligations under the Receivership appointment orders issued by the Court, as may have been amended, either the Receiver or the SEC Staff may apply to the Court for an Order terminating the Receivership.

Any Order terminating the Receivership shall provide for the Receiver to file a final accounting providing schedules identifying: (i) all assets, their source and value; and (ii) all liabilities, the nature and amount of such claims.

The Receiver shall preserve all records and documents obtained during the Receivership until a date that is 1 year following the close of the Receivership.