JOHN W. COTTON (SBN 54912)
Email: JCotton@gghslaw.com
GARTENBERG GELFAND & HAYTON LLP
15260 Ventura Blvd., Suite 1920
Sherman Oaks, CA 91403
(213) 542-2100
(818) 292-0898

Counsel to the Receiver
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.

Case No. 3:16-cv-1386

RECEIVER'S REPLY BRIEF TO THE SRA INVESTOR GROUP'S OBJECTIONS TO THE JOINT DISTRIBUTION PLAN OF THE RECEIVER AND THE SEC

Date: September 28, 2017
Time: 1:30 PM
Courtroom: 5
Judge: Edward M. Chen

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

Table of Contents

PRELIMINARY STATEMENT 1

I. Sherwood did not "Misallocate" SRA's Square Distribution Obligation 2

II. Neither the Receiver nor the SEC has Advocated that the Pre-IPO Companies' Shares should be Immediately Liquidated 6

III. Sherwood has Properly Disptached Its Duties as Receiver in All Material Respects 7

IV. The SRA Investors Group Fails to Challenge the Defendants' Extensive Commingling, and Poor Record Keeping 9

A. The Defendants' Records Present a Challenge to the Alternate Plan of the SRA IG that it Fails to Address 9

B. The Defendants' Commingling Presents a Challenge to the Alternate Plan of the SRA IG that it also Fails to Address 11

V. Investor Harivel Does Not Address the Commingling and Share Shortfall 12

VI. The SRA IG's Alternate Plan is Deficient in Several Material Respects and Will Not Fairly Treat All Investors 12

CONCLUSION 15

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

PRELIMINARY STATEMENT

The Receiver, Sherwood Partners, Inc. ("Sherwood") wishes to state at the outset, that it seeks only to achieve those results best suited to dispatching its obligation to the Court to ensure the Receivership Estate is administered in the most equitable and efficient manner. If best achieving this important goal means that Sherwood's Receivership is replaced by a plan the Court believes more capable of success, it has no quarrel with that decision. Sherwood does not view its role as Receiver in purely business terms, but as an impartial, Court-appointed fiduciary seeking the most equitable treatment for the SRA investors, regardless of the possible impact on Sherwood's business.

Nonetheless, since a significant portion of the SRA Investor Group's ("SRA IG") written "Objections to Joint Distribution Plan" ("Objection") is devoted to criticizing Sherwood for alleged failures in its ongoing role as Receiver, it must and will vigorously defend its work.

I. SHERWOOD DID NOT "MISALLOCATE" SRA's SQUARE DISTRIBUTION OBLIGATION

One of the main underpinnings to the Objection is the suggestion that Sherwood's lack of competence merits its replacement as Receiver. As support for that position, it chiefly relies upon the incorrect and unsupported allegation that while acting as Independent Monitor ("IM"), it over-allocated the available shares of Square, Inc. ("Square") that were to be delivered to SRA Fund investors. The only "evidence" offered is the self-serving declaration of the SRA IG's counsel, Jonathan Levine ("Levine"), who, in his ¶ 7, states without any support that it simply happened. No *facts* were provided by Levine; indeed, *how* such alleged error occurred, *when* it occurred, *by whom* it occurred, and *how* it was observed, are not described.

The actual facts are these: the SRA Defendants' books and records were in disarray such that they had no reliable method for determining and/or allocating the correct amount of Square shares. This became clear only after Sherwood became Receiver. Moreover, the role of the IM as set forth in the Order appointing it, was to "review and monitor all transfers of… assets" and "object to any not in the best interests… of the SRA Funds and its investors." See: Docket Entry ("DE") No. 91, p. 1, l. 27 to p. 2, l. 3. The IM Order did not contemplate, nor require that it would undertake the day-to-day operation of the SRA Defendants, including share distributions; to the contrary, the SRA Defendants were to continue to operate the SRA Funds under the watch of the IM to ensure investor interests were protected.[1]

In July of 2016, Defendant John V. Bivona, as Manager ("Bivona" or the "Manager") of the SRA Defendants, provided the IM with complete and

[1] The SRA Defendants include John V. Bivona, Frank Gregory Mazzola, Saddle River Advisors, LLC, and SRA Management Associates, LLC.

1 appropriate documentation for the Square share distribution, which he wished to
2 undertake at that time. See: Hernandez Decl. at ¶¶ 4 and 5. Bivona proposed a
3 distribution of 379,666 shares of Square to the entitled investors; he also
4 calculated a "holdback" of 6,174 shares of Square to cover the "management
5 fee" of 2% to which he claimed Defendant SRA Management Associates, LLC
6 was entitled. As part of the documentation, Bivona also presented a statement
7 from American Stock Transfer & Trust Co., LLC ("AST") showing a total
8 amount of Square shares available for distribution in the amount of 391,255
9 shares, all held at AST under the name of Relief Defendant Clear Sailing. See:
10 Hernandez Decl. at ¶ 6. The total amount of shares held at AST in the name of
11 Clear Sailing exceeded the amount proposed for distribution. See: Hernandez
12 Decl. at ¶ 7.

13 Sherwood thereupon performed its IM duties exactly as the Order required;
14 it reviewed the Manager's calculations against investor subscription agreements
15 and welcome letters, and a separate spreadsheet ("the Purchase Spread Sheet")
16 prepared by the Manager which purported to list all the purchases by Clear
17 Sailing of privately-held, pre-IPO companies' stock in the SRA Funds. This
18 review by the IM indicated that there were sufficient shares of Square to make
19 the proposed distribution and upon its completion, leaving 11,589 shares from
20 which the 2% "management fee" could be offset and still leave a remaining
21 balance of 5,415 Square shares. See: Hernandez Decl. at ¶¶ 7-9.

22 To ensure the reliability of the Manager's calculations, the IM obtained
23 a signed declaration from the Manager, indicating the propriety of the
24 requested distribution and an assurance that the proposed distribution
25 encompassed *all* of the SRA Funds investors entitled to, and *all* of the shares
26 of Square required for, this distribution. The Manager, Defendant Bivona, on
27
28

August 8, 2016, provided the requested, signed declaration. See: Hernandez Decl. at ¶ 5; and Exhibit A attached thereto.

After October 11, 2016, when Sherwood became responsible for completing the Square distribution which the Manager had not fully completed, it conducted a forensic examination of the distribution of Square shares to determine whether it had been undertaken properly and completely, as well as to determine how many investors had yet to receive their proper allotment of Square shares from the Receiver. See: Hernandez Decl. at ¶¶ 10-11.

This later examination utilized a Square distribution worksheet prepared by Susan Diamond ("Diamond"), an employee and Chief Compliance Officer of the SRA Funds, and records obtained directly from AST and indirectly from Plaintiff's, Securities and Exchange Commission ("SEC"), communications with AST. See: Hernandez Decl. at ¶ 11. The result of this forensic examination was that there was a shortfall of Square shares available for the remaining commitments to the SRA Funds investors who subscribed to Square. See: Hernandez Decl. at ¶¶ 11-13.

One example of the cause for the shortfall is represented by a distribution made to "Investor A", who according to the Manager's and Diamond's calculations, was entitled to receive 10,333 shares of Square, but according to the AST records received 17,323 shares, resulting in an over-allocation of 6,990 shares. In another example, another Square investor ("Investor B") was entitled to receive 1,664 shares of Square per the Manager's and Diamond's calculations, but instead, Investor B received a total of 9,500 shares of Square, resulting in an over-allocation of 7,836 shares. See: Hernandez Decl. at ¶ 14.

1 It is important to note that the calculations and number of Square
2 shares that the Monitor received from the Manager in August 2016 are the
3 same calculations and number of Square shares that the Receiver received
4 from Diamond in January 2017.[2] See: Hernandez Decl. at ¶ 13. In other
5 words, the calculations and number of shares to be distributed to both
6 Investor A and Investor B were the same as provided by the Manager and
7 Diamond. However, when the Receiver later obtained the actual number of
8 Square shares that were distributed by AST to Investor A and Investor B, the
9 amounts of Square shares inexplicably differed from the calculations
10 received from the Manager and Diamond.

11 The IM had no objection to Investor A receiving 10,333 shares,
12 or Investor B receiving 1,664 shares, of Square, as both appeared
13 supportable under the documentation of the SRA Defendants. However, the
14 number of Square shares distributed by AST was different from the
15 calculations and supporting evidence provided to the IM by the
16 Manager. This over allocation was only discovered after the Receiver
17 received a distribution confirmation from AST. See: Hernandez Decl. at ¶
18 14.

19 The role of the IM was *not* to generate independent calculations, nor
20 was it to "approve" distributions; it was, as the IM Order stated : to *review*
21 any proposed transfer of assets, and to *object* only when it believed a
22 proposed management action was not in the best interests of the SRA Funds
23
24
25 [2] There are two minor differences reflected in the distribution worksheets prepared by the Manager and Diamond. The two differences relate to the Manager's and Diamond's calculation of the final share distributions. The difference between the two worksheets
26 amounts to a net 583 shares.
27
28

and their investors. In July of 2016, the IM had no objections to the proposed Square distribution after they were reviewed as described.[3]

II. NEITHER THE RECEIVER NOR THE SEC HAS ADVOCATED THAT THE PRE-IPO COMPANIES' SHARES SHOULD BE IMMEDIATELY LIQUIDATED

Another recurring, but baseless charge throughout the SRA IG's Objection, is that Sherwood, as Receiver, has changed course from its earlier position as IM, when it cautioned against "immediately attempting to liquidate" in bulk the pre-IPO companies' shares, to now allegedly advocating an immediate and complete sale of those same securities in the Joint Plan. See: Objection at p.5, lines 14-19; and again at p. 8 lines 13-16. Among other reasons, this charge is baseless because the Plan itself says nothing about an immediate and complete sale; to the contrary it sensibly recommends the retention of a consultant, an investment banker, sufficiently skilled and experienced in the sale of non-public company shares to guide the Receiver, and in turn the Court, on the most opportune time and manner in which to liquidate the Estate holdings, and maximize investor value. See: DE No. 196-3, page 15, lines 22 and 23.

---

[3] The attendant claim by the SRA IG that Sherwood should be monetarily penalized in the amount of $428,267 for the baseless charge it was responsible for the Square misallocation is not only factually unsupported and ridiculous, but flies in the face of this Court's Order appointing Sherwood as IM, which clearly indemnified Sherwood from any and all actions taken, unless the result of "gross negligence or willful misconduct". See: [4]Order, DE No. 91 at p. 4. Since no admissible evidence was offered by the SRA IG to support a charge for either gross negligence or willful misconduct, no factual or legal support for its outlandish request can lie. Sherwood has succinctly set forth its appropriate conduct with regard to the Square share distribution and that should end all discussion of it being responsible for the Manager's over allocation of shares. See: Hernandez Decl. at ¶16.

Notwithstanding the forgoing, when acting as the IM, Sherwood was not at that time charged by the Court with "develop[ing] a plan for the fair, reasonable and efficient recovery and liquidation" of all Receivership property, as it was subsequently required to do by the Court's October 11, 2016 Order Appointing Sherwood as Receiver, Sec. XIII, lines 12 to 14. See: DE No. 142. This change in roles presented Sherwood with a substantially different framework from which to dispatch its duties than was present when it was only an IM reviewing transactions. Indeed, at the time of appointment as Receiver, which occurred four months after its earlier May 2016 IM report, Sherwood was becoming more concerned about the poor state of the SRA Defendants' records, the growing disparity between what pre-IPO companies' shares it held and what it might owe investors and the rampant commingling of funds that pervaded the operation of the SRA Defendants from the time they operated NYPA and FMOF.

Had Sherwood, while acting as IM, been fully appraised of these developing facts as subsequently they became, a *pro rata* method of distribution would have been strongly considered, and likely recommended by it before it assumed the duties of a Receiver. See: Declaration of Peter Hartheimer in Support of the Receiver's Reply ("Hartheimer Decl.") at ¶13. Among other factors, Sherwood became aware of the SEC's developing evidence of the commingling of funds by the SRA Defendants, the extent of which had been unknown to it at the time it acted as IM. Additionally, after being appointed as Receiver, Sherwood undertook the administration of the affected NYPA and FMOF Funds, in which additional commingling was discovered by the SEC, which added a further dimension to the difficulty of

maintaining the separateness of the SRA Defendant entities. Hartheimer Decl. at ¶¶ 10-13.

III. SHERWOOD HAS PROPERLY DISPTACHED ITS DUTIES AS RECEIVER IN ALL MATERIAL RESPECTS

The SRA IG has also claimed that Sherwood, in performing its job as Receiver (i) failed to keep the SRA investors appraised of the status of the litigation and the Receivership; (ii) failed to complete the SRA Funds various state and federal partnership tax returns; and (iii) failed to respond to SRA investor inquiries for "information or assistance". See: Objection at page 17, lines 6-12. As with all the other sweeping criticisms of the Receiver's conduct in the Objection, these too are unsupported by any credible facts. Hartheimer Decl. at ¶ 14.

First, as the Supplemental Declaration of Hartheimer accompanying this Reply states, Sherwood, as Receiver put in place a dedicated SRA Funds litigation website, www.shrwood.com/saddleriver, on which it has consistently posted all filings in the litigation for the sole purpose of keeping SRA investors aware of the activities in the litigation at low cost. Hartheimer Decl. at ¶ 15. Second, as the Hartheimer Declaration also notes, every investor who asked for a meeting, or requested information, was given the courtesy of a response and the requested information. Hartheimer Decl. at ¶ 16. Several investors who were represented by counsel, such as Telesoft and Global Generation, were afforded personal meetings, conference calls and responsive documents in a timely fashion. To the best of Sherwood's knowledge, no SRA investor's request for information was disregarded, much less refused.

Additionally, in order to reach smaller investors who were not represented by counsel, Sherwood held an investor conference call on July

20, 2017, during which Sherwood answered investors' questions that were provided in advance. During the conference call, there were 43 investors who signed up to attend the call, which lasted for an hour. Prior to holding the conference call, Sherwood sent out a "blast" email to all the SRA Funds investors for which it had a record of a current email address, informing them of the time and manner of participating in the conference call. Hartheimer Decl. at ¶ 17.

Lastly, as to the SRA Funds state and federal tax returns, Sherwood is well aware of the need to prepare them and get them filed. However, as with many other facets of its role as Receiver, Sherwood is severely hampered in this effort by unreliable and missing records, and the lack of funds. The SRA Funds' former management, Defendant SRA Management, was in control of them and had the responsibility to file the tax returns for all tax years up to and including 2015. The fact that the 2015 tax returns were not filed in time was not the fault or responsibility of Sherwood, but the fault and responsibility of SRA Management. In attempting to prepare the 2016 tax returns, Sherwood has been hampered by both the poor state of records and the unavailability of cash to hire a CPA firm to assist in preparing those returns. Hartheimer Decl. at ¶¶ 18 - 21.

As should be apparent from the foregoing, the blunderbuss charge that Sherwood was wholly inattentive to the need of investors for updates and information, or that it was derelict in failing to file tax returns, is like much of the Objection's other complaints about Sherwood, not based on facts. Had the SRA IG, or its counsel, taken the time to raise most of these concerns with the Receiver before filing the Objection, a significant amount of time of the Receiver, its counsel, and in the end the Court, would have been spared. Hartheimer Decl. at ¶ 22.

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

IV. THE SRA INVESTORS GROUP FAILS TO CHALLENGE THE DEFENDANTS' EXTENSIVE COMMINGLING, AND POOR RECORD KEEPING

A. THE DEFENDANTS' RECORDS PRESENT A CHALLENGE TO THE ALTERNATE PLAN OF THE SRA IG THAT IT FAILS TO ADDRESS

The Objection also makes several sweeping charges to undermine the credibility of the Receiver, such as that it does not know "the total amount raised from investors in the seven SRA Funds; or "the total amount still invested by such investors in the SRA Funds". Objection, at p.3, lines 4-7. Conveniently, while making such charges, the Objection at the same time fails to discuss, much less suggest a "fix" to the severe disarray of the SRA Defendants' records, upon which neither the Receiver nor the Plaintiff SEC (much less the SRA IG) can definitively rely, in order to answer such important questions. The records from the stipulating affiliated entities NYPA and FMOF Funds (which make up some of the seven funds referenced in the Objection) that pre-date the activities of the SRA Defendants and the SRA Funds, make any answer to these questions guesswork at best. By conveniently lumping in the stipulating affiliated Receivership entities into their questions, the Objection attempts the cheap trick of asking the unanswerable, solely in order to play the game of "gotcha". The Receiver has only had access to the jumbled records of the SRA Defendants, and until it has complete access to the records of the affiliated stipulating entities the NYPA and FMOF Funds it will not have reliable answers to these and similar questions.

Nonetheless, the Investor Group asks the Court to turn over to it, the management and distribution of the Estate assets. However, other than presenting a panel of individuals said to be qualified to administer the Estate,

and a low ball estimate of cash needed to pay off creditors, no explanation is given on how such administration would be handled equitably and reliably, considering the unopposed evidence regarding the total disarray of the SRA Defendants' books and records. Among other things, the cost and time of any forensic accounting to trace the source and use of investor funds is prohibitive. As Hartheimer previously noted, the SRA Defendants' former accountant described their record keeping to him as "willy-nilly" and "untrustworthy". See: DE No. 196-2, Declaration of Hartheimer In Support of Motion for Joint Distribution Plan, ¶¶ 19 and 20.

While the SRA IG asks to be given the fiduciary authority to continue the operation of the various seven defendant funds, it offers no assurance (nor can it) that such can be done equitably considering the lack of reliability of their records. No explanation is given as to how, if consolidation of the assets and liabilities is not permitted, a fair and reliable operation of the seven defendant funds can occur without recourse to a "cash in, cash out" consolidation and distribution of assets. Absent some form of forensic audit, there can be no assurance that the Investor Group's "alternate" plan of operation, which contemplates the continued operation of the SRA Funds, can be done in a manner fair to all investors, not just those focused on the shares of Palantir, like the SRA IG.

B. THE DEFENDANTS' COMMINGLING PRESENTS A CHALLENGE TO THE ALTERNATE PLAN OF THE SRA IG THAT IT ALSO FAILS TO ADDRESS

Similar to its failure to address the disarray of the SRA Defendants' records, the SRA IG fails entirely to challenge the SEC's extensive evidence of commingling of funds by the Defendants. Like the Defendants' unreliable books and records, their provable use of funds raised for one pre-IPO company to pay for the shares of earlier obligations, makes the "alternate

1 plan" of the SRA IG defective and unworkable, as it relies on "keeping the
2 business going" just the way the SRA Defendants did before this Court
3 intervened and shut down their operations. At its heart, the "alternate plan" of
4 the SRA IG is nothing more than keeping alive the ongoing fraud of the SRA
5 Defendants, by assuming that no commingling occurred and that the records
6 upon which future investor results will be based are reliable.

7 Moreover, and most critically, the SRA Investor Group's alternate plan
8 rests upon the belief that holding the remaining pre-IPO companies' shares
9 indefinitely will result in a greater recovery to it, and other non-member SRA
10 investors. But, no objective support for this belief can or will be offered, as
11 predicting the future is no more successful in stocks than it is in sporting
12 events.

13 V. **INVESTOR HARIVEL DOES NOT ADDRESS THE**
14 **COMMINGLING AND SHARE SHORTFALL**

15 Investor Donald R. Harivel's ("Harivel") objection can be fairly
16 characterized as a personal belief that more time will make his investment
17 more valuable. He offers no evidence to challenge the two central
18 underpinnings of the Joint Plan, that is, extensive commingling and insufficient
19 pre-IPO companies' shares to meet investor obligations. And he offers no
20 solution for the other investors who have been harmed by unlawful actions
21 with regard to stocks other than Palantir, or for those investors whose
22 shareholdings have been diluted by the shortfall in share inventory.[4]

23 Apparently characterizing the Motion's statement that defendant Bivona
24 misappropriated $5 million as one of the "misleading statements", Harivel goes

25

26 [4]And, while he charges the Receiver and the SEC with "misleading statements" in their Joint Motion, he sets forth no facts to support that charge.

27

on *not* to prove the statement false, but to essentially argue that it pales in comparison to the expected loss he believes would be incurred by liquidating the Estate's Palantir holdings now. This argument, again, shows that his chief and only objection is that he wants to wait for a liquidity event.

But, the clear evidence of commingling, combined with the shortfall in Palantir shares, mandates an equitable method of administering the Estate for all investors that could necessitate earlier liquidation of Estate holdings.

VI. THE SRA IG'S ALTERNATE PLAN IS DEFICIENT IN SEVERAL MATERIAL RESPECTS AND WILL NOT FAIRLY TREAT ALL INVESTORS

The SRA IG's Proposed Alternative Plan of Distribution ("Alternative Plan") is deficient in several material respects. First, it disregards the interest of the 21% of SRA Fund investment capital that is admittedly *not* part of the SRA IG. The Alternate Plan operates as if those in the SRA IG constitute all of the affected SRA Fund investors, when in fact they do not. The Alternate Plan makes no provision for SRA Funds investors whose capital, which was to be dedicated to purchasing selected pre-IPO securities, was used instead to cover the SRA Defendants' prior commitments in other pre-IPO companies' shares. See: Chen Declaration, DE No.7, ¶¶ 32-35; and Ip Declaration, DE No. 200, ¶¶ 35-36. This is a serious oversight.

The Alternate Plan of the SRA IG not only disregards those investors' rights, it is dismissive of some of those investors' rights. In Footnote 7, on page 9, it flatly rejects the entitlement of some SRA Funds investors to any recovery by stating such would constitute an "inequitable windfall" if that investor made an "ill-advised investment choice in a poorly performing pre-IPO company". In other words, for those investors in the 21% minority whose funds were originally destined for investment in a pre-IPO company that ultimately failed, the fact that they were lied to about the use of their

funds, makes no difference in the distribution of the proceeds arising under the Alternate Plan; those investors are simply disregarded. By comparison, the Joint Plan of the SEC and Receiver, which is based on a consolidation of assets and liabilities, and which makes a *pro rata* distribution based on a "cash-in, cash-out" basis, takes into account those whose funds were misused after solicitation, regardless of whether their selection of a pre-IPO company succeeded or not.

The Alternate Plan is also purported to be supported in "written commitments to provide up to $5 million in new capital" to fund its operation. A written commitment is worth no more than the piece of paper upon which it is written. It is likely unenforceable, and in any event it is not described as being secured in any fashion that would make it enforceable. If the SRA IG were serious about the Alternate Plan, it would have escrowed the funds being proposed, or at least provided a security bond or some other form of enforceable guarantee of performance.

Equally problematic is the manner in which the amount of the $5 million in "new capital" is selected. Based on the Alternate Plan's optimistic assumptions about the value of the remaining pre-IPO company inventory, at a minimum it should provide for at least the $11 million it would take to match the capital investment of the disregarded 21% minority (i.e. if the SRA IG represents 79% of the $54 million of SRA Fund capital investment, then the 21% remaining would be worth $11 million), plus the costs of administration of the Estate going forward. Only with that amount of secured new capital, the Alternate Plan could be considered as providing for the possible fair treatment of the minority.

Lastly, while the Alternate Plan makes the promise of retaining an "independent" CPA firm to ensure that investors are "receiving proper

distributions", it conveniently overlooks the fact that the books and records of the SRA Defendants are in such disarray, that the oversight of a CPA firm, no matter how qualified, will be no better than the records on which it depends. It is undisputed that the books and records of the SRA entities were untrustworthy, and cannot be relied upon. See: Hartheimer Decl., DE No. 196-2 at ¶ 20.

CONCLUSION

For the foregoing reasons, the SRA IG's "Alternative Plan" falls short of assuring the Court, and *all* the affected investors that their interests will be sufficiently represented and equitably protected. A plan that represents even 79% of the affected investors is not a plan that ensures fairness for *all* investors. A plan that is based on continuing the operation of a series of hopelessly commingled funds, and without adequate records to do so, is not a viable plan. An inadequately funded plan without *secured* capital in an amount likely to cover its costs and obligations to creditors, is insufficient to handle the fiduciary responsibility needed. And, finally, a plan that is based on the optimistic view of the future worth or one or more of the pre-IPO companies, if and when they go public, is nothing more than gambling.

The Alternate Plan falls short of providing the most equitable treatment for all SRA Fund investors, favoring only a group of investors and should be rejected by the Court.

Dated: September 12, 2017

GARTENBERG GELFAND HAYTON LLP

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