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GLOBAL GENERATION GROUP, LLC
and BENCHMARK CAPITAL, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA; SADDLE RIVER ADVISERS, 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

GLOBAL GENERATION GROUP, LLC AND BENCHMARK CAPITAL, LLC'S REPLY TO THE SRA FUNDS INVESTOR GROUP'S OBJECTIONS TO JOINT DISTRIBUTION PLAN OF THE RECEIVER AND THE SEC AND PROPOSED ALTERNATIVE PLAN OF DISTRIBUTION

Date: September 28, 2017
Time: 1:30 p.m.
Dept.: Courtroom 5
Judge: Hon. Edward M. Chen

Non-parties Global Generation Group, LLC and Benchmark Capital, LLC ("Global" and "Benchmark") reply to the SRA Funds Investor Group's ("SRA Investors") Objections ("SRA Objections") to the Joint Distribution Plan of the Receiver and the SEC and

Proposed Alternative Plan of Distribution ("SRA Proposed Plan") as follows:

1. The SEC Properly Proposes the Determination as to Whether Global is Part of the Investor Group or a Creditor be Deferred Until the Claims Stage.

The SRA Objections and SRA Proposed Plan improperly and prematurely characterize Global as being outside of the investor group in their SRA Proposed Plan. Specifically, the SRA Investors argue that the Joint Distribution Plan of the Receiver and the SEC ("SEC Plan") "incorrectly propos[es] to treat Global Generation Group as a Palantir shareholder, rather than simply as the money judgment creditor that it is" and that Global has no "legal entitlement to any shares held by any of the SRA Funds."

As set forth in Global and Benchmark's August 24, 2017 Comments to the SEC Plan (ECF 227), the SEC/Receiver's Plan declines to characterize Global's status at this stage of the receivership. In doing so, the SEC/Receiver have properly recognized that pending the claims processing stage, it is appropriate to reserve the issue of whether, in this equitable receivership, Global is a creditor or an investor or some combination. The reason is that unlike other the SRA Investors, Global and Benchmark prosecuted and obtained a fraud judgment but have not received anything on account of that judgment and although Global invested side-by-side with the other SRA investors, Global has not received redemption payments for 625,666 shares of Palantir stock to which it was entitled.

As set forth in the Declaration of John Syron in Support of this Reply ("Syron Dec."), Global purchased 933,333 shares of pre-IPO Palantir shares at $3.00 per share, a total investment of $2.8 million, in 2011 through certain of the Defendants and Relief Defendants ("Defendants"). In connection with Global's investment, Global negotiated a Letter Agreement with Defendants. The Letter Agreement contained specific provisions that allowed Global to redeem its investment in Palantir for the original $3 purchase price ("Redemption Price"). (Syron Dec., ¶¶ 2, 3).

In early October 2012, Global gave the written notice, required by the Letter Agreement, to redeem its Palantir shares. Nevertheless, Global did not receive the Redemption Price required by the Letter Agreement. Instead, it received a series of unfulfilled promises and

missed deadlines. Given Defendants' ongoing failure to pay the Redemption Price, Global made a written demand of Defendants to deliver its Palantir shares. Defendants failed to do so. (Syron Dec., ¶¶ 4, 5). Global did receive its Redemption Price for a fraction of its Palantir shares. Global has never received the Redemption Price for 625,666 shares of Palantir stock. (Syron Dec., ¶ 6).

On December 9, 2013, Global and Benchmark filed a complaint in the United States District Court for the Eastern District of Michigan alleging federal securities fraud, breach of contract and state law tort claims. The District Court ordered the case to arbitration, and that arbitration concluded on June 16, 2015. (Syron Dec., ¶ 6). On July 9, 2015, the arbitration panel issued its Final Award in favor of Global and Benchmark. The Final Award specifically found that Global and Benchmark had been defrauded. On September 16, 2015, the Final Award became a Judgment of the United States District Court for the Eastern District of Michigan ("Judgment"). The Judgment is in the amount of $2,227,570.96, exclusive of post-judgment interest. (Syron Dec., ¶¶ 7, 8).

To this date, no part of the Judgment has been paid to Global or Benchmark. Additionally, no Palantir shares have been delivered to Global. (Syron Dec., ¶ 9).

Thus, the SEC's Plan has reserved the issue of how to equitably treat Global and Benchmark, included Global's shares in its Palantir shortfall analysis and also properly identified Global and Benchmark as potential creditors. That is reasonable and equitable at this point.

Obviously, Global and Benchmark do not expect to collect twice for their losses. However, they should not be penalized or treated less favorably than other SRA investors. Global invested side by side with the SRA Investor Group. Indeed, Global was one of the earliest and largest investors. Global tried to redeem its shares but did not receive the Redemption Price. Global then demanded its Palantir shares be delivered, but Defendants failed to do so. Global proceeded to incur the time, energy and expense of obtaining a finding of fraud against Defendant Mazzola and the managers of certain of the Relief Defendants. Global has incurred significant expense attempting to collect its Judgment, but has not collected a single dime.

At this point in the proceedings, it is unclear whether it would be more equitable

for Global to receive satisfaction of the Judgment or compensation for its unredeemed 625,666 shares. This is particularly uncertain given that both the SEC and the SRA Investors Group have proposed plans that include compensation for potential market return of stocks, above and beyond amounts invested. The Palantir stock appears to have a significant upside. It would be inequitable to deprive Global of that upside because it pursued its legal remedies. The SEC Plan properly defers the decision as to whether Global and Benchmark should be treated as investors or creditors at this junction of the proceedings. That decision should be made after the plan is approved, during the claims processing stage.

Obviously, the SRA Investors Group's position on the status of Global and Benchmark is not that of an independent, objective voice for the entire group of defrauded investors. Rather, it is a self-serving argument for the benefit of a specific group of SRA investors. More specifically, the fundamental premise of the SRA Objections and SRA Proposed Plan is that there is no shortfall of Palantir shares. If Global's shares are included in the analysis, there is indeed, a significant shortfall. If Global's shares are excluded, SRA Investors Group argues there is little or no shortfall.[1] SRA Objections at 14:13-15:2.

It is also significant to note that, at a time when it was in their interest to do so, the SRA Investors Group treated Global as a "SRA Fund Investor" in all communications with the SRA Investor Group. (Syron Dec., ¶ 12). It was only after Global refused to join the SRA Investors Group and after that group determined it was in their own interest to exclude Global as an investor, that the group has attempted to do so.

Finally, this issue was first raised by the SRA Investors Group in the SRA Objections and SRA Proposed Plan. In the event the Court disagrees with the SEC Plan and finds that resolution of this issue is required in advance of the claims process, Global and Benchmark request a right to be fully heard on this issue.

[1] Even under the SRA Proposed Plan, there still may be a significant shortfall even without the Global Palantir share claim. The SRA Proposed Plan fails to adequately explain how non-Palantir shareholders whose funds may have been used to purchase Palantir stock and other non-Palantir investors who lost capital will be compensated under its proposal. Likewise, the SRA Proposed Plan appears to grossly under-estimate the amount of cash needed to pay off cash claims, as such claims appear to be significantly higher than the $5,000,000 they propose to raise.

2. The SEC's Calculation of Global's $3 Per Share Investment in Palantir is Correct.

The SRA Objections also argue that the Receiver and the SEC, in addition to incorrectly reserving a determination of Global and Benchmark's status, compound their error by miscalculating how many Palantir shares will need to be sold to satisfy the Judgment by using a $3 per share value for Palantir shares. SRA Objections, 13:23-14:4. The SRA Objections claim that Global would receive a "windfall" if its shares were valued at $3 per share, arguing that Palantir now trades for more than double that amount. SRA Objections, 14:5-12.

The SRA Objections are again based upon faulty reasoning. Global has either a claim to 625,666 shares of Palantir stock or to the full value of the Judgment. As to Global's unredeemed Palantir shares, the SEC Plan allocates Palantir shares to Global in the same manner as it does to all other investors. *See* August 31, 2017 Declaration of M. Monica Ip, CPA, ECF 200. Global paid $2,800,000 to purchase Palantir shares at a time they were selling for $3 per share. Thus, Global is allocated 933,333 shares. *Id*. at ¶ 12.[2] All investors' claims to Palantir shares were calculated in the same manner. *Id*. at ¶¶ 5-11.

The SRA Objections confuse the use of the $3 purchase price in the SEC's calculation of outstanding claims to shares (for which the purchase price was relevant to all shareholders' calculation of shares) with the alternative of treating Global as a creditor that receives the value of the Judgment in lieu of the shares. Again, this confusion appears to have been created to falsely bolster the SRA Investors Group's self-serving fundamental premise that there is no shortage of Palantir shares.

3. The SRA Plan Improperly Fails to Recognize the Full Value of Global and Benchmark's Judgment.

The SRA Plan proposes raising capital to pay "**some portion** of the Global Generation Group money judgment." (Emphasis added.) (SRA Proposed Plan and Objections

[2] This total is reduced to 625,666 shares due to the partial payment of the $3 Redemption Price. (Syron Dec., ¶ 6).

(ECF 229), 21: 20-22:2.) No rationale or argument is provided why, should it be ultimately determined that Global be treated as a creditor, Global would not be entitled to receive the full value of its Judgment.

4. Global and Benchmark Strongly Object to Joshua Cilano Playing Any Role in the Management of the SRA Funds As He Is an Insider Who Benefitted from Defendants' Fraud.

The SRA Objections and Proposed Plan list Joshua Cilano as manager of an entity called Investor Rights LLC which the SRA Proposed Plan appoints to take over the SRA funds. Indeed, it appears Mr. Cilano is funding the SRA Investor Group's push to have him take over as manager.

The SRA Proposed Plan provides that Mr. Cilano (through Investor Rights LLC) will be the potential beneficiary of a significant amount of money should the Court approve his appointment as manager. Specifically, the SRA Proposed Plan provides "[t]o the extent that any liquidity event of a portfolio of a company in an SRA Fund generates back-end fees under the original operating agreements for the SRA Funds and any individual agreements originally negotiated between former SRA management and individual SRA Funds investors, those back-end fees will be paid to Investors Rights in its capacity as the new manager of the SRA Funds." SRA Proposed Plan (ECF 229), 22:18-22. Thus, the SRA Objections and Proposed Plan ask the Court to approve Joshua Cilano benefiting from whatever upside there is in the fraudulently-induced SRA Funds agreements.

Global and Benchmark strongly object to Mr. Cilano's management of any funds of the receivership estate. Global has received a number of solicitation letters on the letterhead of Investor Rights, LLC, 1 U.S. Highway 46, Elwood, New Jersey, each signed by Joshua Cilano. These letters identify Investor Rights, LLC as having been formed "to retain and oversee counsel to represent" the SRA Funds investors in this litigation. After receipt of these letters, Global contacted Mr. Cilano who advised Global that he had previously brokered and/or represented other investors in connection with their investments in the SRA funds. Specifically, Mr. Cilano stated that he had been involved in over $16 million of the approximately $53 million raised by Defendants and Relief Defendants for the SRA funds. (Syron Dec., ¶¶ 12, 13).

The solicitation letters state Mr. Cilano has 17 years' experience in the securities industry. Global researched Mr. Cilano's experience in the securities industry by reviewing electronic records publicly available on the Financial Industry Regulatory Authority ("FINRA") website ("BrokerCheck").

The BrokerCheck report on Mr. Cilano states he is not currently registered with FINRA but that, during the 16 years between 2000 and 2015, Mr. Cilano was registered at 15 different securities brokerage firms. (Syron Dec., Ex. A).

Of the fifteen securities firms where Mr. Cilano worked, four of them, Halcyon Cabot Partners ("Halcyon"), Legend Securities, Salomon Grey Financial ("Salomon Grey"), and Barron Chase Securities have had their registrations revoked and been expelled by FINRA. None are still in business. (Syron Dec., Ex. A).

Mr. Cilano was associated with Halcyon in 2015. An October 7, 2015 FINRA News Release states that Halcyon was expelled from FINRA based on a finding that it "engaged in a scheme to conceal a kickback of private placement fees" and that it had concealed "the discount the issuer provided to a venture capital firm when it purchased a private placement in a cancer drug development company. " (Syron Dec., Ex. B). The October 6, 2015 FINRA Order expelling Halcyon was based on that firm being involved in a number of fraudulent stock schemes, including one in which defendant Frank Gregory Mazzola was directly involved. The Order in FINRA Disciplinary Proceeding No. 2012033877802 is attached to the Syron Dec. as Exhibit C. Defendant Mazzola's role is described in paragraphs 35-52 of that Exhibit C.

Similarly, a June 1, 2006 SEC Release (No. 53928) ordered the expulsion of Salomon Grey based on findings that the firm "had deeply discounted blocks of shares …for retail sales to the public at manipulated prices." (Syron Dec., Ex. D).

The Judgment included a finding that Global and Benchmark were defrauded in connection with their purchase of securities. Mr. Cilano raised substantial amounts of money to advance and facilitate that fraud. As such, Global and Benchmark consider Mr. Cilano to have materially benefitted from and to have been an insider in the scheme. For that reason and because of his current and past questionable employment history, Global and Benchmark strongly object

to Mr. Cilano and any group associated with him or any group that would consider Mr. Cilano remotely acceptable in any financial transaction, having any part in handling assets in the receivership estate.

5. The SRA Investors Unfairly Attack the SEC and the Receiver as Non-Responsive.

The SRA Funds Investor Group's Objections state: "[t]he Receiver … has routinely failed to respond to investors' requests for information or assistance…" (SRA Objections, 17:6-9) and "the Receiver studiously avoided communicating with … investors about either the litigation or the receivership." (SRA Objections, 1:24-25). That is simply not true in Global and Benchmark's case.

Since this action was filed in 2016, Global and Benchmark have contacted the Receiver, the SEC and certain of their attorneys on numerous occasions. Specifically, they have spoken with one of the SEC's attorneys, John Yun, the Receiver's counsel, John Cotton, and the Receiver Peter Hartheimer. When Global and Benchmark initiated that contact, they spoke directly with the individual they sought or received a call back promptly. Each time, the individual contacted was not only responsive to questions but went well beyond answering questions by explaining where things stood. In fact, people Global and Benchmark contacted often spent more time than they needed to make sure they fully understood the status of the case and the receivership. (Syron Dec., ¶¶ 10-11).

Dated: September 13, 2017

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