

1 Theodore A. Griffinger, Jr. (SBN 66028)
Ellen A. Cirangle (SBN 164188)
2 LUBIN OLSON & NIEWIADOMSKI LLP
The Transamerica Pyramid
3 600 Montgomery Street, 14th Floor
San Francisco, CA 94111
4 Telephone: (415) 981-0550
Facsimile: (415) 981-4343
5 tgriffinger@lubinolson.com
ecirangle@lubinolson.com

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7 Attorneys for Interested Parties
GLOBAL GENERATION GROUP, LLC
8 and BENCHMARK CAPITAL, LLC

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12
13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

17 JOHN B. BIVONA; SADDLE RIVER
ADVISERS, LLC; SRA MANAGEMENT
18 ASSOCIATES, LLC; FRANK GREGORY
MAZZOLA,

19 Defendants,

20 SRA I LLC; SRA II LC, SRA III LLC;
21 FELIX INVESTMENTS, LLC;
MICHELLE J. MAZZOLA; ANNE
22 BIVONA; CLEAR SAILING GROUP IV
LLC; CLEAR SAILING GROUP V LLC,

23 Relief Defendants.
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Case No. 3:16-cv-01386-EMC

**REPLY OF INTERESTED PARTY
GLOBAL GENERATION GROUP, LLC
TO THE SRA FUNDS INVESTOR
GROUP'S CONSOLIDATED RESPONSE**

Date: July 16, 2018
Time: 1:30 p.m.
Courtroom: 5, 17th Floor
Judge: Hon. Edward M. Chen

1 The Consolidated Response of the SRA Funds Investor Group (“Investor Group”)
2 states the following in its section labeled “Background” with respect to “The Global Generation
3 Claim” (CD 362, 4:16-5:15) – that Global Generation Group, LLC (“Global Generation”) was “a
4 Palantir investor” having “paid \$2.8 million ... for the purpose of purchasing 933,333 shares of
5 Palantir.” (Court Docket No. (“CD”) 362, 7:29-8:1; 4:17-19); that Global Generation had a “put
6 option” allowing it to redeem its stock to Defendants in exchange for a return of its original
7 investment (CD 362, 4:19-22); that, in October 2012, Global Generation exercised the put option
8 with respect to its 933,333 Palantir shares (CD 362, 4:22-5:1); that Defendants partially redeemed
9 Global Generation’s Palantir stock, making a total of three payments totaling \$923,000 between
10 October and November 2013 (CD 362, 5:2-4)¹; that in December 2013, Global Generation filed
11 suit in federal district court in Michigan; that the action was sent to arbitration; that an arbitration
12 award was made in Global Generation’s favor which was entered as a federal district court
13 judgment in December 2015 (“Judgment”); and that in January 2018, Global Generation filed its
14 proof of claim with the Receiver (CD 359-2) (“Global’s Claim”). Global Generation agrees with
15 the Investor Group’s Response to this point.

16 However, the Investor Group’s Response then goes on to repeatedly
17 mischaracterize Global’s Claim as one which seeks both to recover on the Judgment and to
18 recover 625,666 shares of Palantir. (CD 362, 5:16-6:8) This demonstrably false statement leads
19 to incorrect factual arguments. (“Global Generation is seeking a windfall by double-counting the
20 same funds.” (CD 362, 6:9-11)) And is the lynchpin for the Response’s legal defenses. (*See e.g.*
21 the election of remedies defense: Allowing Global Generation to assert claims “based on ...
22 [its]...purported ownership of Palantir shares...would result in a windfall and a double recovery.”

23 _____
24 ¹ The Investor Group’s Response does not address the legal effect of the partial redemption, but the Securities and
25 Exchange Commission (the “Commission”) did in the Commission’s Motion for Order Establishing Shortfalls
26 (“Commission’s Motion”). The Commission’s Motion states that “[t]he purchase or redemption of shares is not
27 completed, or ‘settled,’ until payment is made.” (CD 353, 2:1-3 and footnote 1) As such, a portion of Global
28 Generation’s Palantir position was redeemed. The remaining portion was not. Global Generation and the
Commission differ on the number of Global Generation’s unredeemed Palantir shares. In its Brief Regarding Its
Claim, Global Generation details how it invested \$2.8 million for 933,333 shares of Palantir, a price of roughly \$3 a
share. Global Generation received three payments totaling \$923,000 in response to its put. As such, 307,667 of its
Palantir shares were redeemed ($\$923,000 \div \$3 = 307,667$). As of November 2013, total of 625,666 shares of Global
Generation’s Palantir shares remained unredeemed. (CD 359, 4:7-5:2)

1 (CD 362, 9:11-13)).

2 Nowhere in Global's Claim is there a claim for 625,666 shares of Palantir stock,
3 much less a claim for 625,666 shares of Palantir stock and the Judgment's money damages. (CD
4 359-2). In fact, what Global's Claim proposes is that it be approved for the amount of the
5 Judgment along with the amount, if any, generated by a Palantir liquidating event which results in
6 generating a larger dollar amount for a hypothetical 625,666 Palantir shares than that which
7 Global Generation receives for the Judgment. (CD 359-2) Global's Claim explains the reasoning
8 behind its request. (*Id.*) Were it considered solely as an investor, the affirmative steps Global
9 Generation took to mitigate or satisfy its damages would not be acknowledged. On the other
10 hand, were it considered solely as a creditor, Global Generation would potentially be penalized
11 for acting to mitigate its damages by not receiving the upside, if any, realized from a Palantir
12 liquidating event. (*Id.*) Global Generation submits the Global Claim proposes a fair and
13 reasonable solution and a reasonable compromise which accounts for the various equities
14 presented by its position.

15 It is well-established case law that a District Court's power to supervise an equity
16 receivership and to determine the appropriate action given the individual receivership's facts and
17 circumstances is extremely broad. *Securities and Exchange Commission v. Hardy*, 803 F.2d
18 1034, 1037 (9th Cir. 1986). "It is a recognized principle of law that the district court has broad
19 powers and wide discretion to determine the appropriate relief in an equity receivership." *S.E.C.*
20 *v. Lincoln Thrift Assn.*, 577 F.2d 600, 606 (9th Cir. 1978). The Investor Group's Response
21 agrees, adding that this Court may treat different types of claimants in different ways and provide
22 for reimbursement to certain claimants, while excluding others. (CD 362, 11:11-19) The
23 ultimate goal is to classify claims sensibly and to treat claimants reasonably and fairly in adopting
24 a plan. *S.E.C. v. Enter. Trust Co.*, 559 F.3d 649, 652 (7th Cir. 2009).

25 In considering claims, "the fundamental principle which emerges from case law is
26 that any distribution should be done equitably and fairly, with similarly situated investors or
27 customers treated alike." *S.E.C. v. Homeland Commc'ns Corp.*, No. 07-80802 CIV, 210 WL
28 2035326, at *2 (S.D. Fla. May 24, 2010) (citation omitted). Therefore, to "implement an

1 effective pro rata distribution, district courts supervising receiverships have the power to classify
2 claims sensibly.” *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 333 (7th Cir. 2010) (citation
3 omitted). That Court went on to state “...all investors should be treated equally, without regard to
4 whether an investor had attempted to redeem his equity investment” and, as a result, convert the
5 equity interest into corporate debt. *Id.* at 333 & n.6. Global Generation was defrauded along with
6 members of the Investor Group. Beyond that, as the Commission’s various analyses reveal,
7 Global Generation was the very first investor in Palantir. Its investment of \$2.8 million can be
8 easily traced. Unlike the members of the Investor Group, Global Generation, along with
9 Progresso, attempted to mitigate its losses by pursuing its legal remedies. Finally, Global
10 Generation worked with the Commission to bring an end to Defendants’ fraud as evidenced by
11 the Declaration of Global Generation’s John Syron executed at the outset and in support of this
12 receivership. (CD 198) Global Generation submits Global’s Claim should be approved.

13 Significantly, the Investor Group’s Response cites no authority, and Global
14 Generation is not aware of any authority, in which an investor claim was barred or the discretion
15 of a district court was successfully limited by state or common law. There are cases to the
16 contrary. For example, in *S.E.C. v. TLC Investments and Trade Co.*, 147 F. Supp. 2d 1031 (C.D.
17 Cal. 2001), a group of investors requested an order that the receiver administer the receivership
18 estate as a trustee would administer a bankruptcy estate, including notice to all parties before a
19 receivership’s assets were sold and the appointment of a creditors committee. Acknowledging
20 the investors had “some due process rights” in the receivership proceeding, the Court denied the
21 investor’s motion noting “the focus of the Receivership is on returning as much of [investors’]
22 money to them as possible.” *S.E.C. v. TLC Investments and Trade Co.*, *supra*, 147 F. Supp. 2d at
23 1033.

24 In a case even more analogous to this one, *S.E.C. v. Capital Consultants*, 397 F.3d
25 733 (9th Cir. 2005), a group of investors challenged the District Court providing for an offset to
26 their distributions in a percentage of any moneys received by those investors from their third
27 party insurers. The investors argued this offset violated the collateral source rule under state and
28 common law. 397 F.3d at 743. In approving the District Court’s decision to use the offset, the

1 Ninth Circuit emphasized the broad power of the District Court, acting as it did in equity, to
2 balance what are often competing goals in a federal securities receivership. The Ninth Circuit felt
3 the competing goals in that case were, on the one hand, encouraging investors to mitigate their
4 losses and rewarding them for their efforts versus distributing the assets of the receivership in a
5 roughly equal manner, on the other hand. 397 F.3d at 738. The Ninth Circuit summarily
6 dismissed the investors' argument that the offset was barred because it violated state or common
7 law, specifically the collateral source rule. The Ninth Circuit held the collateral source rule had
8 no place in federal securities receivership noting in doing so that the investors "cite no authority
9 why Oregon law or any state's common law should govern" and that the case did not involve any
10 question of the collateral source rule, only a question of "how the assets recovered by the receiver
11 are distributed among innocent claimants." 397 F.3d at 743.

12 Like the investors in the *Capital Consultants* case, the Investor Group's Response
13 argues Global's Claim should be barred based on two common law legal defenses, election of
14 remedies and res judicata. (CD 362, 8:13-11:19) Global Generation submits that neither has any
15 application here. Preliminarily, there is no dispute that this Court sits in equity. Independent of
16 the broad equitable powers this Court has to fashion relief by virtue of this being a federal
17 receivership, the Supreme Court has made clear that "a suit in equity may lie though a
18 comparable cause of action at law would be barred." *Holmberg v. Ambrecht*, 327 U.S. 392, 396
19 (1946). Applying this principle to this case, Global's Claim is valid even if it would be barred at
20 law. Global Generation submits Global's Claim is just and fair as a matter of equity. Contrary to
21 the Response's incorrect claim that Global Generation is seeking a double recovery and/or a
22 windfall, nowhere does Global Claim request both the amount of money to satisfy the Judgment
23 and 655,666 shares of Palantir stock. Further, the issues in this federal securities receivership are
24 different from those decided by the Judgment – ultimately, the issue here relates to how the
25 receivership's assets are to be distributed among claimants. Not only are the issues different but
26 so are the parties. Finally, the underlying facts in this proceeding are different as they include not
27 only the Judgment but Global Generation submits the events occurring after the Judgment, those
28 involving Global Generation's efforts to collect the Judgment, are relevant to Global's Claim.

1 Finally, specifically with regard to the Response’s *res judicata* defense, Global’s Claim, as a
2 matter of law, is not the equivalent of Global “bringing a separate suit,” a predicate for the use of
3 the defense. *Commodity Futures Trading Comm’n. v Chilcott Portfolio Management*, 725 F.2d
4 584, 586 (10th Cir. 1984). The doctrines of *res judicata* and/or election of remedies are not a bar
5 to Global’s Claim.

6 For these reasons, Global Generation requests the Court determine that Global
7 Generation is a Creditor up to the amount of the Judgment and an Investor to the extent a Palantir
8 liquidating event generates an amount that, based on the Palantir shares allocated to Global
9 Generation, exceeds the amount distributed to Global Generation on account of its Judgment.

10 Dated: July 10, 2017

LUBIN OLSON & NIEWIADOMSKI LLP

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12 By: /s/ Theodore A. Griffinger, Jr.
13 Theodore A. Griffinger, Jr.
14 Attorneys for Interested Parties
GLOBAL GENERATION GROUP, LLC
and BENCHMARK CAPITAL, LLC

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Facsimile: (415) 981-4343
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ecirangle@lubinolson.com

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17 ADVISERS, LLC; SRA MANAGEMENT
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18 MAZZOLA,

19 Defendants.

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Gloria Beasley, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is The Transamerica Pyramid, 600 Montgomery Street, 14th Floor, San Francisco, California 94111. On July 10, 2018, I served a copy of the following document(s):

REPLY OF INTERESTED PARTY GLOBAL GENERATION GROUP, LLC TO THE SRA FUNDS INVESTOR GROUP'S CONSOLIDATED RESPONSE

(BY MAIL) by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

Frank Gregory Mazzola
27 Dogwood Hill Drive
Upper Saddle River, NJ 07458

Michele J. Mazzola
27 Dogwood Hill Drive
Upper Saddle River, NJ 07458

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 10, 2018, at San Francisco, California.



Gloria Beasley