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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JOHN V. BIVONA; SADDLE RIVER ADVISORS, LLC; SRA MANAGEMENT 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

THE SRA FUNDS INVESTOR GROUP'S RESPONSE TO THE SECURITIES AND EXCHANGE COMMISSION'S DECEMBER 10, 2018 FILING (ECF 435)

Date: December 13, 2018
Time: 1:30 PM
Courtroom: 5
Judge: Hon. Edward M. Chen

In its December 10, 2018 filing, entitled "Securities and Exchange Commission's ("SEC") Brief in Response to the SRA Investor Group's Objections to the Amended Joint Distribution Plan and Revised Order Appointing Receiver" (ECF 435), the SEC makes a number of unsupported and spurious assertions to which the SRA Funds Investor Group ("Investor Group"), in order to clear the record, feels compelled to respond. Respectfully, the Investor Group asks that the Court disregard the SEC's filing, for the reasons set forth below.

The critical unsupported distortion in the SEC's filing is its assertion that the Investor Group conducted unauthorized "secret negotiations" with Equity Acquisition Corporation ("EAC") to exchange pre-IPO shares in Palantir and other SRA Fund investments with the Receiver. *See* ECF 435 at p.1, ll. 9-27. To be absolutely clear, the Investor Group and its counsel are not authorized to speak for the Receiver or the SEC or to negotiate anything on the Receiver's or SEC's behalf. Nor, has the Investor Group or its counsel ever claimed to have such authority.

For further clarity, and contrary to the SEC's assertions, it must also be stressed that the Investor Group and its counsel ***did not*** seek to "negotiate" nor did they "negotiate" anything with EAC or its counsel. What the Investor Group and its counsel did was something the Receiver and the SEC and counsel have thus far appeared unwilling to do – which is simply to pick up the phone and discuss with EAC and its counsel the issues surrounding EAC's desire to link its claim to entitlement to certain guarantees issued by Defendant John Bivona with a hold-back of pre-IPO shares to be exchanged with the Receivership.[1] As much as the SEC may be disappointed to hear this, the true facts are that there was no "deal." There was no "quid pro quo." There was no secret "exchange" or "self-dealing" of any kind. Rather, EAC decided, entirely on its own and with the advice of its own counsel, to de-link its claims and make a good-faith offer that if the Receiver acknowledged its awareness of EAC's claims, EAC would exchange the pre-IPO shares with the

[1] Contrast this with the email exchanges attached with the SEC's filing, ECF 435, in which EAC and its counsel repeatedly ask the SEC Receiver for discussion and resolution, and the SEC and Receiver repeatedly appear to decline to provide EAC a substantive response.

receivership. *See* ECF 432-2.

Since EAC has now provided the Receiver and the SEC the very thing that the Receiver and the SEC said they wanted to eliminate any potential material shortfalls[2] -- which is an enormous benefit for SRA Funds investors – why then is the SEC working so hard to distort the record and complain about this development to the Court? What concerns the Investor Group, and what likewise should concern the Court, is that the SEC apparently ***wants*** the shortfalls because it sees the fact of shortfalls as the primary advantage it has in getting the SEC and Receiver's Joint Distribution Plan approved by the Court. This, despite the fact that the Joint Distribution Plan enjoys ***zero*** support from SRA Funds investors and, indeed, is ***opposed*** both by the majority of investors and claimants alike.

The Investor Group understands that the SEC wants to "win" this proceeding, even if that means distorting the factual record and harming the interests of SRA Funds investors in the process. Respectfully, the SEC's apparent desire simply to prevail – in a proceeding in which the SEC, the Receiver, and SRA Funds investors all effectively stand together on the same side of the "v" – is not a factor the Court should consider in determining which proposed distribution plan conforms best to the investment objectives of SRA Funds investors and is most beneficial to investor interests.

Finally, the Investor Group takes offense at the SEC's continued, repeated and unsupported attempts to try to paint Mr. Cilano as a "self-dealing" "insider." Mr. Cilano very plainly is ***not*** a

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[2] *See* Transcript of Proceedings, Oct. 23, 2018, at pp. 4-5:

> "**The Court**: We have the competing plans as well as the objections and comments from the interested parties.
>
> Perhaps the SEC can give me an update on the EAC situation.
>
> **Mr. Yun**: Yes. There had been an exchange of e-mails. I think we'd been telling the Court we've been trying to engage them, see what could be resolved.
>
> ***
>
> …To the extent that we agree on the books that we owe these company shares to you and you owe these company shares to us, can we at least have a stipulation on those agreed-upon shares? We'll get a stipulation to the Court, and leave the other issues for discussion at a later date…."

self-dealing insider. He has not been identified as such in the Joint Distribution Plan that the SEC and Receiver have placed before the Court. He has not been identified as a person whose claim to Receivership assets should be disallowed by reason of any purported insider status, any self-dealing, or any other wrongdoing. The SEC must cease this disparagement. Had it not been for Mr. Cilano's substantial efforts on behalf of SRA Funds investors throughout this proceeding, the SEC and the Receiver very likely would have succeeded in selling off SRA Funds investor pre-IPO securities a long time ago at far less than their value – all at great harm to SRA Funds investors.

What the SEC should do, at this juncture, is join in supporting the Investor Group's proposed alternative distribution plan. It is the right plan for SRA Funds investors. It has the overwhelming support of SRA Funds investors. And, it comes with the appropriate, neutral, and local oversight of Ms. Uecker as an independent court-appointed officer armed with complete control over Receivership assets and full, court-supervised responsibility for winding down the receivership in a manner that is less expensive, promotes SRA Funds investor objections, and is in the best interest of investors.

Respectfully submitted,

DATED: December 11, 2018

PRITZKER LEVINE LLP

By: /s/ Jonathan K. Levine
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