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7 *Successor Receiver*

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 JOHN V. BIVONA; SADDLE RIVER
16 ADVISORS, LLC; SRA
17 MANAGEMENT ASSOCIATES,
18 LLC; FRANK GREGORY
19 MAZZOLA,

20 Defendants, and

21 SRA I LLC; SRA II LLC; SRA III
22 LLC; FELIX INVESTMENTS, LLC;
23 MICHELE J. MAZZOLA; ANNE
24 BIVONA; CLEAR SAILING GROUP
25 IV LLC; CLEAR SAILING GROUP V
26 LLC,

27 Relief Defendants.
28

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

**COMMENTS OF RECEIVER KATHY
BAZOIAN PHELPS RE DISTRIBUTION
PLAN**

Date: June 27, 2019

Time: 1:30 p.m.

Place: Courtroom: 5

450 Golden Gate Ave

San Francisco, CA

Judge: Edward M. Chen

29 Kathy Bazoian Phelps, the Court-appointed successor receiver (the "Receiver"), hereby files
30 her comments regarding the pending Distribution Plan considered by the Court on February 28,
31 2019 (the "Pending Plan") as well as her own proposed Distribution Plan that has been filed
32 concurrently herewith (the "Receiver's Plan").

I.

INTRODUCTION

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3 The Receiver has met and conferred with the SEC, the SRA Investor Group, Progresso
4 Ventures, LLC (“Progresso”), Global Generation Group LLC (“Global”), and Pradeep Sindhu
5 (“Sindhu”) regarding the Pending Plan and the Receiver’s Plan. Telesoft Capital LLC was also
6 invited to participate in the discussion regarding the distribution plans.

7 The Receiver, while mindful of some fundamental rulings that the Court has made in this
8 proceeding, has concluded that the Pending Plan is not feasible as currently drafted. In summary,
9 (a) the Pending Plan does not provide for payment of potential tax liability that may arise from the
10 sale of securities and distribution of shares; (b) the management fees and carried interest proposed
11 to be used to fund administrative claims and payment to unsecured creditors appear to be
12 insufficient; (c) the parties interpret the Pending Plan and the Court’s comments differently as to
13 whether the Pending Plan requires 100% payment to unsecured creditors before any distribution is
14 made to investors of shares; (d) there are potential additional unsecured creditors not previously
15 contemplated which increases the amount of cash needed; and (e) new claims for shares have been
16 filed which changes the stock-to-claim surplus ratio assumed by the Court in prior rulings.

17 After taking input from the various interested parties regarding their thoughts and issues for
18 a plan of distribution, the Receiver has proposed her own Plan to address the issues of feasibility
19 while trying to stay true to the Court’s prior rulings in the case. The Receiver’s Plan has been filed
20 concurrently herewith and contains lists of the allowed claims in the various Classes set forth in the
21 Receiver’s Plan. The within Comments are intended to advise the Court of the issues which the
22 Receiver believes make the Pending Plan not feasible, as well as to highlight the areas of
23 agreement and possible disagreement among the parties in the Receiver’s Plan.

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II.

INTRODUCTION AND RELEVANT FACTUAL BACKGROUND

A. PROCEDURAL HISTORY

The Securities and Exchange Commission (“Commission” or “SEC”) filed a complaint commencing this action on October 11, 2016. Pursuant to the Stipulated Order Appointing Receiver dated October 11, 2016 (ECF 142), the Court appointed Sherwood Partners, Inc. (the “Former Receiver”) as the Receiver to take possession and control of the assets of the following entities: SRA Management Associates, LLC (“SRA Management”), SRA I LLC (“SRA I”), SRA II LLC (“SRA II”), SRA III LLC (“SRA III”) (together, “SRA Funds”), Clear Sailing Group IV LLC and Clear Sailing Group V LLC (together, “Clear Sailing”), and 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”) (collectively, the “Receivership Estate”).

2. The SEC and the Former Receiver, on the one hand, and Interested Party SRA Investor Group (“Investor Group”), on the other hand, filed competing proposed Distribution Plans, which have been amended.

3. By Order entered on February 28, 2019, the Court appointed Kathy Bazoian Phelps as the successor Receiver.

4. At a hearing on February 28, 2019, the Court heard additional arguments on the competing distribution plans, set a continued hearing for June 27, 2019, and requested that the Receiver file comments relating to the Pending Plan.

B. ASSETS OF RECEIVERSHIP ESTATE

The assets of the estate consist of cash and securities as follows:

Unencumbered cash: Approx. \$432,000

Securities: The estate holds an interest in securities, some of which are publicly held shares and others of which are pre-IPO and are held in the form of book entries or are owed

1 in connection with forward contracts. The securities are set forth in detail in the chart in the
 2 following section.

3 4 **C. CLAIMS OF RECEIVERSHIP ESTATE**

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6 The Receiver has categorized the claims which she believes to be valid into the following
 7 classes of claimants:

- 8 Class 1: Administrative Claims
 9 Class 2: Priority Claims
 10 Class 3: Unsecured Creditor Claims
 11 Class 4: Investor Claims
 12 Class 5: Subordinated Claims

13 These classes of claims and the proposed treatment of each class are discussed in the
 14 Receiver's Plan filed concurrently herewith. With respect to the Investor Claims, the claims made
 15 against each category of investment are identified in the following exhibits attached to the
 16 Receiver's Plan:

- 17 Class 4A: Addepar Exhibit "2"
 18 Class 4B: Airbnb Exhibit "3"
 19 Class 4C: Bloom Energy Exhibit "4"
 20 Class 4D: Cloudera Exhibit "5"
 21 Class 4E: Dropbox Exhibit "6"
 22 Class 4F: Evernote Exhibit "7"
 23 Class 4G: Lookout Exhibit "8"
 24 Class 4H: Lyft Exhibit "9"
 25 Class 4I: MongoDB Exhibit "10"
 26 Class 4J: Palantir Exhibit "11"
 27 Class 4K: Pinterest Exhibit "12"
 28 Class 4M: Snap, Inc. Exhibit "13"
 Class 4N: Uber Exhibit "14"
 Class 4O: ZocDoc Exhibit "15"

The shares that have been principally confirmed by the Receiver as owned by the estate are set forth below. There are possible variances in the number of shares the estate may own based on cross-issues with EAC or slight discrepancies in figures. The following chart reflects the shares owned, the possible variance, the total shares possible for distribution based on variances, and the

1 total shares claimed.

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3 Company	Securities Owned by Estate	Possible Variance	Total if Variance Realized	Shares Claimed by Investors
5 Addepar, Inc.	1,029,298	(35,000)	994,298	995,509
Airbnb	0	11,286		11,125
6 Bloom Energy Inc.	90,667	(3,524)	87,143	117,017
Bloom Energy Inc. (Solis Funds)	59,111		59,111	22,566
7 Cloudera, Inc.	45,038	(7,400)	37,638	37,639
8 Dropbox, Inc.	46,000		46,000	46,000
9 Evernote Corp.	100,000	(3,892)	96,108	88,287
Lookout, Inc.	212,476	(37,676)	174,800	171,797
10	<i>unconfirmed</i>			
Lyft, Inc.	0	11,000	11,000	9,479
11 MongoDB Inc.	20,000	6,250	26,250	22,171
Palantir Inc.	5,422,600	317,649	5,740,249	5,895,853
12 Pinterest, Inc.	0	32,519	32,519	23,206
13 Snap, Inc.	31,172		31,172	31,173
Uber Inc.	0	500	500	500
14 ZocDoc, Inc.	20,104	1,494	21,598	21,598
15	<i>unconfirmed</i>			

16 The Receiver filed a Motion to Disallow Certain Claims which is set for hearing
17 concurrently herewith. In summary, the Motion to Disallow Certain Claims seeks disallowance of
18 the following categories of claims:

- 19
- Claims which have received prior distribution
 - 20 • Claims made for funds paid to non-receivership entities
 - 21 • Duplicate claims
 - 22 • Claims for Failed Investments

23 The Receiver may, in her discretion, file subsequent objections to claims, and shall provide notice
24 and an opportunity to object and be heard pursuant to the Court's Local Rules to any claimant
25 whose claim is affected.

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III.

COMMENTS RE DISTRIBUTION PLAN ISSUES

A. COURT'S EQUITABLE AUTHORITY

The Receiver notes that, as a preliminary matter, “[t]he power of a district court to impose a receivership or grant other forms of ancillary relief ... derives from the inherent power of a court of equity to fashion effective relief.” *SEC v. Wenke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The “primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors.” *SEC v. Hardy*, 803 F.2d 1034, 12 1038 (9th Cir. 1986). To that end, district courts have broad powers to determine what is necessary for the administration and supervision of an equity receivership. *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). As the Ninth Circuit explained:

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. The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.

Id. (emphasis added; citations omitted); *see also CFTC v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) (“This court affords ‘broad deference’ to the [district] court’s supervisory role and ‘we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose’ of orderly and efficient administration of the receivership for the benefit of creditors.”). Accordingly, this Court has broad powers and wide discretion to fashion a distribution plan that the Court deems most equitable to the various classes of claimants.

The difficulty experienced to date in fashioning a Plan of Distribution may be attributable to the difficulty in balancing the equities between the claims of unsecured creditors who will receive cash distributions, and the interests of investors who seek to receive distributions in the form of shares. A tension arises because the greater the creditor claims or the greater the amount to be distributed to unsecured creditors (i.e., if a certain amount is to be guaranteed paid to unsecured creditors), the more shares that will need to be liquidated to fund those cash payments and therefore the fewer shares that can be distributed to investors. In addition, the more shares that must be liquidated to fund the plan, the greater the potential tax liabilities that need to be

1 addressed based on the liquidation of those assets.

2 The Pending Plan was proposed at a time before complete information was known about
3 the claims and, therefore, about the availability of shares to satisfy investor claims. The claims bar
4 date is now past and all claims are known at this time, although some claims may remain subject
5 to objection.

6 **B. COURT'S PRIOR RULINGS**

7 The Receiver understands that there are a few fundamental rulings in connection with the
8 Plan Distribution process which the Court does not wish to reconsider. These rulings, which are
9 summarized below, form the basis of the Receiver's Plan filed concurrently herewith. Without
10 these prior rulings in place, the Receiver might have proposed a different plan but has attempted
11 to work within the parameters already established by the Court in this case.

12 1. **Unsecured Creditor Claims:** The claims of Global and Progresso shall be treated
13 as general unsecured claims ("Unsecured Creditors") and not as investor claims ("Investors").

14 a. Order re Global Generation's Status as Creditor or Investor entered on October
15 23, 2018 [Doc. 409]: "In holding that Global [Generation] must recover as a creditor, the
16 Court retains the discretion to adjust the priority of Global's claim relative to those of the
17 other claimants as appropriate." p. 4.

18 b. Order re SEC's Motion for Order Establishing Shortfalls and Request for
19 Recognition of Claim by Progresso Ventures, LLC and Global Generation Group LLC,
20 dated July 30, 2018 [Doc. 385]: "Progresso is limited to recovery on its money judgment
21 as a creditor."

22 c. In addition to the claims of Global and Progresso, the Receiver notes that there
23 are substantial other Unsecured Creditor claims asserted against the estate which remain
24 subject to possible objection or disallowance at this time. *See* Exhibit "1" attached to the
25 Receiver's Plan. These additional claims could increase the unsecured creditor pool by
26 over \$6 million.

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1 2. **Liquidation of Securities to Fund Payments to Creditors:** The Unsecured
2 Creditor claims will be paid from cash generated from the sale of securities upon liquidity events
3 for the different investments.

4 a. Beyond that general proposition, the parties appear to disagree on whether the
5 Court intends that the Unsecured Creditors are to be paid *in full* on a priority basis.

6 b. The Pending Plan contemplates that the funds to be used to pay the Unsecured
7 Creditors would be obtained by selling securities in an amount equal to management fees
8 and carried interest, plus surplus shares for given investments and that the Unsecured
9 Creditors would be paid when the investors are distributed shares from a particular
10 investment.

11 c. The Investor Group has advised the Receiver that it did not contemplate that the
12 Unsecured Creditors would necessarily be paid *in full* before any shares were distributed
13 to Investors but that the Unsecured Creditors would be paid on a rolling basis as liquidity
14 events occurred from the management fees and carried interest for a particular investment.

15 d. The Receiver notes that the amount to be paid to the Unsecured Creditors upon
16 each liquidity event is unclear under the terms of the Pending Plan because it is unclear
17 whether the management fees and carried interest would be sufficient to pay
18 administrative costs and tax claims, which would have to be paid before payment to
19 Unsecured Creditors could be made.

20 e. The Unsecured Creditors have advised the Receiver that they understood that
21 they would be paid in full prior to distributions being made to Investors. This position
22 cannot be reconciled with the Investor Group's position under the terms of the Pending
23 Plan.

24 f. The Receiver observes the following statements from the record regarding the
25 priority and amount of payments to unsecured creditors:

26 (1) The Court's December 20, 2018 Order, noting that it favored the
27 Investor Group's distribution structure, stated "it gives priority to creditor claims
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1 in full, thereby resolving Global's and Progresso's objections against the Joint
2 Plan." Order at 7.

3 (2) The Court further stated that "creditors will be paid before investors
4 under the Investor Plan. Once a liquidity event occurs for a portfolio company in
5 the SRA Funds, share surpluses will be liquidated to the extent necessary to pay
6 the creditor claims. Investor Plan at 6–7. Only then will investors receive their
7 shares. *Id.*" December 20, 2018 Order at 8.

8 g. Given the uncertainty and disagreement among the parties about the priority
9 and amount of distributions to Unsecured Creditors, this is a fundamental issue on which
10 the Receiver seeks guidance. The Receiver's Plan leaves open the possibility that
11 Unsecured Creditors will not be paid in full and will require modification if the Court
12 determines that Unsecured Creditors must be paid in full before Investors receive any
13 distribution of shares.

14 3. **Return of Shares to Investors:** The Court has agreed to adopt a plan that
15 provides that Investors will be returned shares.

16 a. In its December 20, 2018 Order re Proposed Distribution Plan, the Court
17 expressed its intent to approve the component of the Investor Group plan that will return
18 shares to Investors. The Court's order reflected the following basis for that ruling:

19 "First, the Investor Group notified the Court that it had "resolved" the share
20 exchange issue with EAC. Docket No. 432 at 1. "[A]s a result of [the Investor
21 Group's] counsel's direct discussions with EAC, . . . EAC is prepared to exchange
22 its shares as agreed upon without any resolution of any of the other issues"
23 regarding EAC's claim against the receivership. *Id.* At the December 13, 2018
24 hearing, the SEC acknowledged that EAC had put such an offer on the table, and
25 stated that the SEC was preparing a stipulation that would allow the Receiver and
26 EAC to consummate a share exchange. Second, and as a consequence of the first
development, all parties are now in agreement that there will be no material shortfall
in shares held by the SRA Funds once EAC delivers its shares. In fact, the parties
estimate that there will be a surplus of approximately 148,000 shares in Palantir,
which make up much of the value of the receivership assets." December 20, 2018
Order, Doc. 443 at 3.

27 b. Additionally, the Court based its determination that shares should be returned to
28 Investors on the understanding that "the claimants (other than Rescission Claimants) can

1 still potentially be made largely whole because there is no material share shortfall.”

2 December 20, 2018 Order, Doc. 443 at 7.

3 c. The Receiver notes that the parties may have been estimating “shortfalls” and
4 “surpluses” on differing bases. The total amount of shares owned, and the total amount
5 claimed (without deduction for management fees or carried interest) are set forth in
6 Section II.C above so that the Court can evaluate the shares-to-claim ratios.

7 d. If shares are to be returned to Investors, and Unsecured Creditors are to be paid
8 in full, any plan of distribution will have to balance those two criteria so that sufficient
9 securities are liquidated to pay administrative, tax and Unsecured Creditors in full.

10 4. **Failed Investment Claims:** The Court has ruled that claims relating to the Failed
11 Investments shall be disallowed in their entirety and shall not receive any disbursement from the
12 estate.

13 a. *See* Order re Proposed Distribution Plans entered December 20, 2018 [Doc. No.
14 443] at 9 (“Rescission Claimants here might well have a rescission claim directly against
15 Defendants. But allocating a portion of the receivership assets to Rescission Claimants
16 would have no effect on Defendants, and would instead only serve to diminish the
17 recovery of the other fraud victims. There is no equitable basis to benefit Rescission
18 Claimants at the expense of other innocent claimants.”).

19 b. The Receiver has accordingly included these Failed Investment Claims in the
20 Motion to Disallow Certain Claims, set for hearing concurrently herewith.

21 c. Failed Investment Claims have been excluded from the Receiver’s Plan.

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23 **C. ISSUES REQUIRING CONSIDERATION AND DETERMINATION**

24 The Receiver has evaluated the Pending Plan and observes some procedural and factual
25 issues that she believes make that Pending Plan unfeasible in its present state. The issues that are
26 either not addressed in the Pending Plan or that require clarification, are summarized as follows:

27 (1) the Pending Plan does not provide for payment of potential tax liability that may arise
28 from the sale of securities and distribution of shares;

1 (2) the management fees and carried interest proposed to be used to fund administrative
2 claims, tax claims, and payment to unsecured creditors appear to be insufficient;

3 (3) the parties interpret the Pending Plan and the Court's comments differently as to
4 whether the Pending Plan requires 100% payment to unsecured creditors before any distribution is
5 made to investors of shares;

6 (4) there are additional unsecured creditors which increases the amount of cash needed,
7 and new claims for shares have been filed which change the stock-to-claim ratio assumed by the
8 Court, so the surpluses assumed to fund payments to unsecured creditors may not exist;

9 (5) A class of subordinated claims has been discussed but not fully defined. The parties
10 had not agreed in the Pending Plan as to whether deficiency claims for unsecured creditors or
11 investors would be allowed in a subordinated class, and whether guarantee claims and claims for
12 backend fees should be subordinated or disallowed remain open issues as well.

13 Each of these issues is discussed more fully below.

14 **1. Priority Tax Claims:** The Pending Plan has no current provision assuring
15 payment of priority claims prior to payment of Class 3 Creditor Claims and distribution of shares
16 to Class 4 Investor Claims. A plan is not feasible if it does not make provision for payment of tax
17 liability that may be generated as a result of the plan itself. The Receiver is advised that the sale
18 of securities to fund the Plan is a taxable event. Additionally, the Receiver is advised that the
19 distribution of securities to the investors is also a taxable event. Funds must be made available
20 under the plan to pay this tax liability if incurred and payable.

21 The Receiver has sought the advice of a tax advisor who advises that the following tax
22 consequences could flow from a distribution plan involving the sale and distribution of securities:

- 23 a. The Receivership Estate is treated as a Qualified Settlement Fund ("QSF") effective as
24 of the date of the commencement of the Receivership Estate, October 11, 2016.
- 25 b. The assets of the Receivership Entities became property of the QSF as of October 11,
26 2016.
- 27 c. In order to establish the tax basis in the assets of the QSF, the Receiver will need to
28 obtain a valuation of the assets of the Receivership Entities as of October 11, 2016.

- 1 d. The sale of securities and the distribution of securities are taxable events.
- 2 e. The QSF will be taxed on the difference between the value as of the commencement of
- 3 the receivership and the date of sale or distribution as ordinary income, which is
- 4 estimated to be 40% of the gain.
- 5 f. There may be deductions available to offset some or all of the gain, but such amounts or
- 6 the ultimate impact on tax liability is presently unknown.
- 7 g. Any tax liability of the estate will have to be paid through the sale of securities to
- 8 generate sufficient cash to pay such tax liability.
- 9 h. The Receiver will be unable to make distributions to creditors or investors until such
- 10 time as the Receiver determines that sufficient funds are available to pay all taxes in
- 11 full. Otherwise, the Receiver could be personally liable for any unpaid tax claims. *See*
- 12 31 U.S.C. § 3713.¹

13 **The Receiver's Plan:** The Receiver's Plan addresses the potential tax liability by providing
14 for the sale of securities to fund any tax liability that may be generated as a result of the sale
15 or distribution of shares. The Receiver is advised that all of the interested parties
16 acknowledge and understand this issue and the need for the receivership estate to be able to
17 pay taxes. The Receiver has asked the parties to seek their own tax advice to understand the
18 tax consequences for their individual circumstances.

19 ¹ **31 U.S.C. § 3713**

20 (a)

(1) A claim of the United States Government shall be paid first when—

21 (A) a person indebted to the Government is insolvent and—

22 (i) the debtor without enough property to pay all debts makes a voluntary assignment
of property;

23 (ii) property of the debtor, if absent, is attached; or

(iii) an act of bankruptcy is committed; or

24 (B) the estate of a deceased debtor, in the custody of the executor or administrator, is not
enough to pay all debts of the debtor.

25 (2) This subsection does not apply to a case under title 11.

26 (b) A representative of a person or an estate (except a trustee acting under title 11) paying any part
27 of a debt of the person or estate before paying a claim of the Government is liable to the extent of
the payment for unpaid claims of the Government.

1 **2. Management Fees:** The Pending Plan contemplates that management fees and
2 carried interest will fund the Class 1 Administrative Claims, Class 2 Priority Claims and Class 3
3 Unsecured Claims. For hypothetical and estimation purposes only, the Receiver has run the
4 management fee figure through June 30, 2019 based on the claims information obtained from the
5 Former Receiver to ascertain an approximation of the amount of the management fees as agreed
6 in investor contracts, many of which waived management fees altogether. The total management
7 fees that would be available as of June 30, 2019 to fund the plan are \$1,644,035. The Receiver
8 does not believe that those fees will be sufficient to fund the Pending Plan and to guarantee
9 payment of even administrative and priority tax claims. The Receiver has also calculated the
10 Carried Interest figure for those investments that have gone public, which total \$762,447 as of
11 June 30, 2019.

12 The Receiver has been advised that the management fees, on a contract by contract basis,
13 may actually vary from the calculated management fees that have not been waived, and in some
14 instances, may jump higher in years 5 and 6, depending on the then market value of the shares. In
15 order to calculate additional management fees on that basis, the Receiver would need to obtain
16 valuations of the securities at various points in time tied to the individual contracts, the cost of
17 which could exceed any benefit. The only way to ascertain a potential upside on management fees
18 is to review of each investor contract and to obtain a valuation of the nonpublic shares in each
19 year beginning in the year that the fees may jump higher. If calculations of the management fees
20 are required to be made based on a review of each contract, the Pending Plan also fails to take
21 into account the significant administrative costs of performing those calculations

22 Accordingly, whether the management fees are simply too low to fund Classes 1, 2 and 3,
23 or whether they might be higher if significant costs are incurred to try to calculate that higher
24 figure, the Pending Plan comes with uncertainty in what cash can be generated to fund Classes 1,
25 2 and 3. Additionally, the carried interest figure is presently unknown and cannot be relied upon
26 to fund the plan. As such, the sufficiency of the management fees to cover the cash requirements
27 of Classes 1, 2 and 3 is speculative and appears to be insufficient based on the information
28 available.

1 **The Receiver’s Plan:** The Receiver’s Plan proposes that securities be sold, on an
2 investment by investment basis, in an amount equal to a fixed figure of 30% of the amount
3 of the investors’ gross investments. That sale will generate \$13,889,696² for a Plan Fund
4 which would be used to pay Class 1, 2, 3 and 5 claims. Therefore, this amount is
5 determined at the outset, with a reserve maintained in the event of larger than expected tax
6 or administrative liability. The Receiver is advised that all of the interested parties are in
7 agreement with this methodology for calculation of an amount to fund the Plan, in lieu of
8 the management fee/carried interest approach in the Pending Plan.

9 A side by side comparison of the different methodologies to generate cash to fund a distribution
10 plan is set forth in Exhibit “A” attached hereto.

11 **3. Payment to Unsecured Creditors**

12 Progresso, Global, and Sindhu have each advised the Receiver that they understood that
13 the Pending Plan guaranteed them 100% on account of their claims, assuming that enough
14 companies went public and at a high enough price to fund those payments. The Investor Group
15 has advised the Receiver that it contemplated that Unsecured Creditors would be paid on a
16 “priority” basis after each liquidity event, meaning that the Unsecured Creditors would be paid
17 before shares would be distributed on a rolling basis and that, hopefully, at the end of the day,
18 they would receive 100% on account of their claims. The amount to be distributed to the
19 Unsecured Creditors on a rolling basis is not clear under the Pending Plan. The Receiver’s
20 analysis of the Court’s rulings and the Pending Plan does not lead to a clear conclusion on how
21 the Pending Plan is to be implemented and on whether the Unsecured Creditors are to be paid *in*
22 *full* before shares are returned to Investors.

23 The Receiver identifies the following issues with respect to Unsecured Creditors:

- 24 a. Does the Court intend that Unsecured Creditors will be paid in full before any shares
25 are returned to Investors?
- 26 b. The amount of the Unsecured Creditor claims is still unknown so the ultimate payout

27 ² This figure excludes a 30% fee charged to the Solis Fund investors, which will need to be
28 evaluated separately if the Solis Fund is consolidated into the estate.

1 to unsecured creditors is necessarily uncertain under both the Pending Plan and the
2 Receiver's Plan. The Unsecured Creditor claims are identified in Exhibit "1" to the
3 Receiver's Plan. There are \$9,411,285.37 Unsecured Claims that do not appear to be
4 in dispute, and an additional \$6,018,368.17 of Unsecured Claims that are subject to
5 possible objection.

- 6 c. The Court's ruling regarding the Pending Plan and payment to Unsecured Creditors
7 appeared to rely on "share surpluses," which may not exist in the amounts previously
8 understood. The Court's December 20, 2019 Order contemplates that "liquidity event
9 distributions" will take place as follows: "Once a liquidity event occurs for a portfolio
10 company in the SRA Funds, *share surpluses* will be liquidated to the extent necessary
11 to pay the creditor claims. Investor Plan at 6-7. Only then will investors receive their
12 shares. *Id.*"
- 13 d. New claims for shares have been filed which changes the stock-to-claim ratio assumed
14 by the Court. The Receiver's understanding of the shares owned and the shares claimed
15 is set forth in Section II.C. above.
- 16 e. Because of the uncertainty of how much to pay the Unsecured Creditors upon each
17 liquidity event, and the uncertainty of whether payment must be 100%, the logistics of
18 implementation of the Pending Plan could lead to either an inequitable result among
19 different groups of investors or a shortfall of cash for the estate to pay administrative
20 and priority tax claims. The timing of the IPOs for the different investments may take
21 place over years. While some investments are already public, others are not. As set
22 forth above, it is believed that the management fees will be insufficient to pay the
23 administrative, priority, and unsecured claims in full, so it is unclear how Unsecured
24 Creditors will be paid under the Pending Plan.
- 25 f. If the Court contemplates that Unsecured Creditor claims will be paid in full prior to
26 any distribution to Investors, there will need to be sufficient funds to pay the
27 administration, priority and Unsecured Creditors in full before shares are returned to
28 Investors. There will be no way to know how many shares must be sold to accomplish

1 this on a rolling basis, so no distributions can be made until all investments have gone
2 public and lockup periods have expired.

3 g. If the Court does not require Unsecured Creditors to be paid in full before Investors
4 receive any shares, then the Pending Plan is unclear as to how much is to be paid to
5 Unsecured Creditors after liquidity events and what money is to be used to pay
6 administrative and priority claims.

7 **The Receiver’s Plan:** The Receiver’s Plan proposes the creation of a Plan Fund from the
8 sale of securities equal to an amount of 30% of the gross investment, from which Classes
9 1, 2, and 3 are to be paid. The Receiver’s Plan also provides for an Administrative Cash
10 Reserve and Administrative Stock Reserve to protect the receivership in the event that the
11 tax liability is greater than anticipated. The Receiver’s Plan does leave open the
12 possibility, however, that the unsecured creditors may not receive 100% payment on their
13 claims if the tax liability uses up a large portion of the Plan Fund.

14

15 **4. Subordinated Class or Objectionable Claims**

16 A class of subordinated claims has been discussed but not fully defined in the Pending
17 Plan.

- 18 a. The parties had not agreed in the Pending Plan as to whether deficiency claims for
- 19 Unsecured Creditors or investors would be allowed in a subordinated class.
- 20 b. The parties had not agreed as to whether guarantee claims and claims for backend fees
- 21 should be subordinated or disallowed.
- 22 c. There are two known guarantee claims in connection with Failed Investments of which
- 23 the Receiver is aware and believes are objectionable, which are identified in Exhibit
- 24 “1” to the Receiver’s Plan as follows:

Investor ID #	Failed Investment	Amount
25 218	PRACTICE FUSION	\$220,373.94
26 135	PRACTICE FUSION	\$150,000.00

27

28 d. There are two known filed claims commissions or backend fees, both filed in unknown

1 amounts:

2 Michelle Mazzola

3 Joshua Cilano³

- 4 e. The Receiver has become aware of a disagreement between the SEC and the Investor
5 Group as to the claim of Mr. Cilano and whether Mr. Cilano is an insider whose claim
6 should be disallowed or whether his claim should be treated as a subordinated claim.
7 The parties have not met minds on the appropriateness of a claim for backend fees
8 asserted by Joshua Cilano.
- 9 f. The SEC has advised that it does not believe any payment to Mr. Cilano is appropriate
10 because it contends that Mr. Cilano is an insider of the Receivership Entities. The
11 Receiver is advised that the SEC considers Mr. Cilano's claim for a share of carried
12 interest fees to be precluded and subject to objection as a 'Disallowed Claim' because
13 it is a claim by an insider, a claim by a former employee or agent, and a claim for
14 disallowed management fees. The SEC has advised, however, that it does not expect
15 to object to Cilano's claim for his investment in Palantir.
- 16 g. The Investor Group has advised that it believes that payment to Mr. Cilano of backend
17 fees is appropriate as a Subordinated Claim. The Investor Group expressed concern
18 regarding the Receiver's Plan that it did not contain guaranteed funding for the
19 Subordinated Class.
- 20 h. Since the Unsecured Creditors, as a higher priority than the Subordinated Creditors,
21 are not provided any guarantee under the Receiver's Plan, or under the Pending Plan,
22 the Receiver does not believe it appropriate to provide a guarantee of payment to
23 Subordinated Creditors
- 24 i. As of this time, the claims identified for the Subordinated Class are the following:
- 25 a. Joshua Cilano claim for backend fees
- 26 b. Progresso's 10% voluntary reduction on its claims pursuant to Stipulation

27 _____
28 ³ Counsel for the Investor Group advises that the Cilano claim could exceed \$3.5 million if Palantir goes public at \$20 or higher.

1 c. Other possible claims for inclusion in the Subordinated Class at a later time
2 may be claims that are the subject of current settlement discussions relating to
3 the claims of Pradeep Sindhu, Klein and the two Silverback Investors who are
4 identified in Exhibit “1” attached to the Receiver’s Plan.

5 **The Receiver’s Plan:** The Receiver’s Plan proposes the creation of Class 5, a class of
6 Subordinated Claims, although the amount available for distribution to Class 5 is contingent and
7 dependent on whether there are surplus fund available after payment of Class 1, 2 and 3 claims
8 from the Plan Fund. At the present time, the only two fixed claims in the Subordinated class are
9 the subordinated claim for backend fees of Mr. Cilano in an unknown amount and the
10 subordinated portion of Progresso’s claim in the amount of \$552,936.43. Other possible claims
11 would be penalties or other properly subordinated claims in connection with outstanding tax
12 liabilities and possible portions of unsecured claims that have been subordinated by agreement in
13 connection with settlements. The Receiver’s Plan does not provide any guarantees of payment to
14 the Subordinated Class and such claims would only be paid after payment in full to the Unsecured
15 Creditors from the Plan Fund.

16
17 **IV.**

18 **RECEIVER’S REQUEST FOR INSTRUCTIONS AND AUTHORIZATION**

19 The Receiver seeks instruction and permission from the Court on the following issues to
20 assist in her administration of the Receivership Estate and for the implementation of a plan
21 designed to maximize recovery to creditors and investors.

22 **A. Determination on Unsecured Creditor Payment Requirements**

23 The Receiver requests clarification from the Court on whether the Court requires payment
24 in full to Unsecured Creditors before Investors receive distribution of shares. Alternatively, the
25 Receiver requests approval of the proposed language in the Receiver’s Plan which holds open the
26 possibility of less than 100% distribution to creditors.

27 **B. Consolidation of Solis Fund**

28 The Receiver requests authority to substantively consolidate the Solis Fund into the

1 Receivership Estate so that the surplus shares for the Solis investors can be shared with the
2 shortfall of shares for the receivership investors who invested in Bloom Energy.

3 According to an Agreement and Plan of Merger by and among Solis Associates I, LLC,
4 Solis Associates II, LLC and Solis Fund Associates LLC effective as of August 12, 2013, the
5 entities Solis Associates I, LLC (“Solis I”) and Solis Associates II, LLC (“Solis II”) were merged
6 into the surviving entity Solis Fund Associates LLC (“Solis Fund”). Solis I and Solis II agreed that
7 those entities would be terminated and members of those entities would become members of Solis
8 Fund, the surviving entity. The Amended and Restated Limited Liability Company and Operating
9 Agreement of Solis Associates Fund LLC (“Amended Solis LLC Agreement”) of the same date,
10 August 12, 2013, recites that the primary purpose of Solis Associates Fund LLC was to acquire and
11 hold interests in Bloom Energy Corporation (“Bloom”), eSolar, Inc., and Silver Spring Networks,
12 Inc. The Receiver believes that Solis Associates Fund LLC and the surviving entity Solis Fund
13 Associates LLC are one and the same entity and that the name of Solis Associates Fund LLC in the
14 Amended Solis LLC Agreement incorrectly transposed the name of Solis Fund. Further, the
15 Receiver is informed and believes the remaining investors in Solis Fund only have claims for
16 investments in Bloom Energy Corporation (“Bloom Energy”) as the other companies that were
17 targeted for investment are no longer operating.

18 Solis Fund was managed by John V. Bivona through SRA Management Associates LLC.
19 The Receiver is advised that funds of the Receivership Entities were used to acquire shares in
20 Bloom Energy for Solis Fund investors. Additionally, the records reflect that there has been
21 commingling of funds and assets and a failure to recognize the Solis Fund entity as a separate
22 entity, but rather that it was treated similar to and as part of the other group of Receivership
23 Entities.

24 For these and other reasons, the Receiver believes that the Solis Fund should be formally
25 added as one of the Receivership Entities with its assets made part of the Receivership Estate. The
26 interest of Investor Claimants in Bloom Energy shares will be combined with the interest of the
27 investors in the Solis Fund in Bloom Energy shares so that all Bloom Energy shares held in the
28 name of the Solis Fund and the Receivership Entities will be available to satisfy the claims of

1 Solis Fund investors and the Investor Claims of investors with an interest in Bloom Energy
2 shares. A listing of the investors in Bloom Energy is attached to the Receiver's Plan as Exhibit
3 "4." The Bloom Energy shares would also be used to satisfy payments to Classes 1, 2, and 3 as set
4 forth in the Receiver's Plan.

5 **C. Authorization to Commence Litigation against EAC**

6 The Receiver has been in active negotiations with Equity Acquisition Company, Ltd.
7 ("EAC") and remains hopeful that the parties can resolve their differences. If not, however, the
8 Receiver requests authority to commence litigation to resolve the issues with EAC.

9 **D. Authorization to Commence Litigation against Ben Sabrin**

10 Ben Sabrin is contractually obligated to the estate to deliver MongoDB shares or the
11 current value of those shares. The Receiver has made repeated demand and Mr. Sabrin has chosen
12 to stop responding or to deliver what he owes the estate. The Receiver requests authority to
13 commence litigation against Mr. Sabrin for recovery of the MongoDB shares of the value thereof.

14 **E. Authorization to Commence Litigation against Pradeep Sindhu**

15 Sindhu has filed a claim against the estate for over \$3.9 million based on a confession of
16 judgment. The Receiver is in settlement discussions with Sindhu and is in the process of gathering
17 documentation regarding the claim. While she remains hopeful that the matter can be resolved
18 consensually, the Receiver requests permission to commence litigation to avoid the judgment
19 entered in favor of Sindhu on a fraudulent transfer theory if litigation becomes necessary.

20 **F. Authorization to Commence Litigation to Recover Securities on Forward Contracts**

21 In the event that the Receiver is unable to obtain the voluntary turnover of securities from
22 obligors on forward contracts owing the estate securities, the Receiver requests authority to
23 commence litigation to compel turnover of those securities.

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V.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court (a) approve the Receiver's Plan or a form of Plan that is feasible and provides for payment in full to Class 1 and 2 claims; (b) substantively consolidate the Solis Fund into the Receivership Estate; (c) authorize the commencement of litigation as requested herein and (d) for all other appropriate relief.

DATED: June 6, 2019

By: /s/ Kathy Bazoian Phelps
Kathy Bazoian Phelps, Successor Receiver

EXHIBIT A

INTENDED INVESTMENT	# of claims	Gross Investment	Net Investment	Allowed Shares Claim ¹	Estimated 30% holdback ²	Estimated Management Fee through 6/30/19	Carried Interest Fee
ADDEPAR, INC.	46	1,150,684	1,125,185	995,509	345,205	31,855	-
AIRBNB, INC.	12	842,654	834,351	11,125	252,796	25,060	-
BLOOM ENERGY, INC. (post-split)	93	3,449,073	3,345,461	117,017	1,034,722	146,431	764
BLOOM ENERGY - SOLIS	45	5,036,486	4,788,912	22,566	-	-	-
CLOUDERA, INC.	11	637,245	623,460	37,639	191,173	5,290	-
DROPBOX, INC. (post-split)	59	1,783,457	1,760,127	46,000	535,037	38,216	22,608
EVERNOTE CORP.	11	1,179,964	1,155,844	88,287	353,989	21,360	-
LOOKOUT, INC.	36	1,976,853	1,920,441	171,797	593,056	48,445	-
LYFT, INC.	6	250,756	246,454	9,479	75,227	10,528	27,061
MONGODB, INC. (post-split)	46	1,002,322	986,588	22,171	300,697	21,826	698,397
PALANTIR TECHNOLOGIES, INC.	377	32,551,706	30,829,417	5,895,853	9,765,512	1,255,191	-
PINTEREST, INC. (post-split)	10	550,470	547,900	23,206	165,141	5,691	13,491
SNAP, INC.	4	549,821	545,525	31,173	164,946	536	-
UBER TECHNOLOGIES, INC.	1	19,388	19,000	500	5,816	971	126
ZOCCDOC, INC.	15	354,594	340,227	21,598	106,378	32,634	-
	772	51,335,473	49,068,893	7,493,920	13,889,696	1,644,035	762,447

¹ The Receiver reserves the right to object to claims as her investigation and review of claims is ongoing.

² The 30% holdback is based off gross investment. Calculation for Bloom-Solis still to be determined and is not included.