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7 Attorneys for the SRA Funds Investor Group

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 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN FRANCISCO DIVISION**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

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

19 Defendants, and

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

23 Relief Defendants.

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

**DECLARATION OF JONATHAN K.
 LEVINE IN SUPPORT OF THE SRA
 FUNDS INVESTOR GROUP'S (1)
 OBJECTIONS TO JOINT
 DISTRIBUTION PLAN OF THE
 RECEIVER AND THE SEC, AND (2)
 PROPOSED ALTERNATIVE PLAN OF
 DISTRIBUTION**

Date: September 28, 2017

Time: 1:30 PM

Courtroom: 5

Judge: Hon. Edward M. Chen

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 28 **LEVINE DECL. IN SUPPORT OF SRA FUNDS INVESTOR GROUP'S OBJECTIONS TO
 JOINT DISTRIBUTION PLAN AND PROPOSED ALTERNATIVE PLAN OF DISTRIBUTION**

1 I, Jonathan K. Levine, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am a partner
3 in the firm of Pritzker Levine LLP, counsel for the SRA Funds Investor Group (the “Investor
4 Group”). I submit this declaration in support of the Investor Group’s objections to the Joint
5 Distribution Plan (Dkt. No. 196) being proposed for Court approval by the Receiver, Sherwood
6 Partners, Inc., and plaintiff Securities and Exchange Commission (“SEC”). This declaration is also
7 being submitted in support of the Investor Group’s Alternative Plan of Distribution, which the
8 Investor Group requests that the Court approve in place of the Joint Distribution Plan of the
9 Receiver and the SEC. I have personal knowledge of the facts stated herein and, if called upon to
10 do so, could and would testify completely thereto.

11 2. The Investor Group consists of 134 individuals and entities who purchased and
12 continue to own membership interests in one or more of the seven SRA Funds at issue in the
13 litigation (SRA I LLC, SRA II LLC, SRA III LLC, NYPA Fund I LLC, NYPA Fund II LLC, Felix
14 Multi-Opportunity Fund I LLC, and Felix Multi-Opportunity Fund II LLC). The Investor Group
15 collectively has a significant and direct financial stake in the outcome of the litigation and any plan
16 of distribution approved by the Court, with \$40 million still invested in the SRA Funds. This
17 represents 75% of the \$53 million still invested in the SRA Funds.

18 3. Another objector to the Joint Distribution Plan is Telesoft Capital, LLC (“Telesoft”),
19 which has \$1.5 million still invested in Palantir Technologies, Inc. through Clear Sailing Group IV
20 LLC. Telesoft supports the Alternative Plan of Distribution being proposed by the Investor Group.
21 See Dkt. No. 226. If Telesoft’s holdings are included with those of the Investor Group, the investors
22 objecting to the Joint Distribution Plan and seeking approval of the Investor Group’s Alternative
23 Plan of Distribution increases from 75% to 79%.

24 4. As counsel for the Investor Group, we have obtained signed written commitments
25 from SRA Funds investors to advance up \$5 million in new money to pay legitimate, Court-
26 approved monetary claims against the receivership estate if the Investor Group’s Alternative Plan

1 of Distribution is approved by the Court. SRA Funds investors have agreed to advance these funds
2 to avoid the need to sell at a significant discount any of the shares of the pre-IPO companies
3 remaining in the receivership estate at this time, as contemplated by the Joint Distribution Plan
4 being proposed by the Receiver and the SEC.

5 5. Since appearing in this action on behalf of the Investor Group (*see* Dkt. Nos. 189,
6 193), and as part of my investigation on behalf of the Investors Group, I have had a number of
7 communications with the Receiver, the Receiver's counsel, and the SEC about the litigation and
8 their proposed Joint Distribution Plan. In order to understand the overall magnitude of the case, I
9 asked the Receiver and the SEC how much in total was raised from investors by the seven SRA
10 Funds, how many investors still had money invested in the SRA Funds, and for an estimate of the
11 total amount of money that is still invested in the SRA Funds. The Receiver and the SEC informed
12 me that they did not know the answers to these questions, and stated that they had not sought to
13 ascertain any of this information during the pendency of the litigation.

14 6. The motion for approval of the Joint Distribution Plan filed by the Receiver and the
15 SEC stated that there is a shortfall of 26,608 shares of Square stock. At my request, the Receiver
16 further investigated this shortfall and determined on August 22, 2017 that the shortfall was only
17 22,796 shares, not 26,608 shares. The Receiver corrected this information in a subsequent filing on
18 August 24, 2017. *See* Dkt. No. 228.

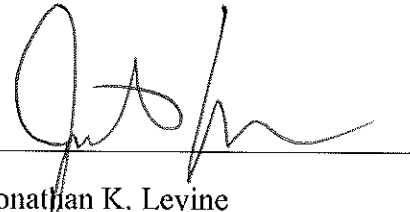
19 7. Most of the Square share shortfall admittedly was caused by the misallocation of
20 16,808 Square shares to four SRA Funds investors by the Monitor (which is the same entity as the
21 Receiver). In my conversations with the Receiver, the Receiver's counsel and the SEC, I asked
22 whether they (i) knew the identity of the four SRA Funds investors who received too many Square
23 shares, (ii) had contact information for these four investors, and (iii) how many surplus shares each
24 had received. The Receiver, the Receiver's counsel and the SEC acknowledged that they knew this
25 information. I asked what steps the Receiver and the SEC had undertaken to recover the 16,808
26 shares from these four SRA Funds investors. The Receiver, the Receiver's counsel and the SEC

1 acknowledged in our discussions that they had done nothing, to date, to try to recover any of these
2 shares that the Receiver misallocated.

3 8. As of August 23, 2017, Square shares currently trade at \$25.48 per share. The failure
4 of the Receiver and the SEC to recover the 16,808 misallocated Square shares would result in a loss
5 under the Joint Distribution Plan to SRA Funds investors of \$428,267, if calculated at the August
6 23, 2017 trading price.

7 9. Attached as **Exhibit A** hereto is a true and correct copy of the October 1, 2013
8 Limited Liability Company Operating Agreement of SRA I LLC. Article VI of the Operating
9 Agreement (pp. 24-25) provides a mechanism for the investors in the SRA I fund to remove current
10 management, and select a new or replacement manager for the fund. A similar provision is
11 contained in the operating agreements for the other six SRA Funds.

12 I declare under penalty of perjury and under the laws of the State of California and the
13 United States of America that the foregoing is true and correct. Executed on this 24th day of August,
14 2017 at Oakland, California.

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16 By: 
17 Jonathan K. Levine
18 Counsel for the SRA Funds Investor Group
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