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5 Counsel to Receiver
Sherwood Partners, Inc.
6

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 SECURITIES AND EXCHANGE
COMMISSION,

11 Plaintiff,

12 v.

13 JOHN V. BIVONA; SADDLE RIVER
14 ADVISORS, LLC; SRA
MANAGEMENT ASSOCIATES, LLC;
15 FRANK GREGORY MAZZOLA

16 Defendants
17

) Case No. 3:16-cv-1386

) **DECLARATION OF**
) **NICOLAS HERNANDEZ IN**
) **SUPPORT OF RECEIVER'S**
) **REPLY TO SRA INVESTOR**
) **GROUP'S OPPOSITION TO**
) **JOINT PLAN OF**
) **DISTRIBUTION**

) Date: September 28, 2017
) Time: 1:30 PM
) Court: 5
) Judge: Edward M. Chen

18
19 DECLARATION OF NICOLAS HERNANDEZ

20 I, Nicolas Hernandez, a Senior Vice President of Sherwood
21 Partners, Inc., Receiver ("Sherwood" or "Receiver") for defendants John V.
22 Bivona, Saddle River Advisors, LLC, SRA Management Associates, LLC and
23 Frank Gregory Mazzola, et al, in the above action, declare as follows:

24 1) I have personal knowledge of the facts set forth herein and if
25 called as a witness could testify competently thereto.
26
27
28

1 2) Since on or about March 25, 2016, I have been part of the
2 team of Sherwood’s personnel assigned to assisting the Court in its
3 administration of the Defendants John V. Bivona, Saddle River Advisors,
4 LLC, SRA Management Associates, LLC and Frank Gregory Mazzola (the
5 “SRA Defendants”). During the time between Sherwood’s appointment as
6 Independent Monitor (“IM”) on March 25, 2016 and its appointment as
7 Receiver on October 11, 2016, I was regularly involved in the day-to-day
8 review and monitoring activities conducted by the IM and Receiver over the
9 SRA Defendants, including that of the distribution of shares of Square, Inc.
10 (“Square”) conducted by the SRA Defendants in July and August 2016.

11 3) As part of its assignment by the Court to be IM, the IM was
12 specifically tasked with the review and monitoring of all proposed transfers of
13 money or assets and to object to any that it believed were not in the best
14 interests of investors.

15 4.) In or about July 2016, John V. Bivona (the “Manager”) acting
16 in his capacity as the managing member of SRA Management Associates,
17 LLC (“SRA Management”), SRA I, LLC, SRA II, LLC, SRA III, LLC
18 (collectively, the “SRA Funds”), Clear Sailing Group IV, LLC and Clear
19 Sailing Group V, LLC (together, “Clear Sailing”), proposed to the IM team, of
20 which I was a member, that there be a distribution of 379,666 shares of Square
21 (the “Square Distribution”) among the different investors who have
22 subscription agreements pertaining to their investments in membership
23 interests in the SRA Funds, which subsequently constituted beneficial
24 interests in the shares of the common stock of Square.

25 5.) As part of its proposal, the Manager provided the IM team with
26 schedules, spreadsheets, calculations and most importantly a signed
27 declaration from the Manager certifying that the proposed Square Distribution
28

1 encompassed all of the investors and all of the shares for Square. A copy of
2 the Manager's declaration is attached hereto as Exhibit A.

3 6.) The Manager also provided the IM team with a July 28, 2016
4 statement of securities holdings from Clear Sailing's transfer agent, American
5 Stock Transfer & Trust Co., LLC ("AST"). This statement reflected a total of
6 391,255 shares of Square being held at AST in the name, and for the benefit
7 of Clear Sailing.

8 7.) The IM reviewed the Square Distribution proposed by the
9 Manager based on information provided by the Manager and by AST. After
10 the IM completed its review, including a schedule that purportedly listed
11 securities held by Clear Sailing that are owned by Clear Sailing and not
12 allocated to any membership interest or attributable to capital contributions of
13 any investor, there were indications that Clear Sailing had sufficient shares of
14 Square to distribute to all the entitled investors of the SRA Funds.

15 8.) In addition and based on the Manager's calculations, upon the
16 completion of the Square Distribution, a total of 11,589 shares of Square would
17 still remain available and unallocated. Of the 11,589 shares that were expected
18 to remain available, 6,174 shares represented the holdback from the Manager
19 to cover his fees and the balance (5,415 shares) represented shares that were
20 not allocated. A schedule showing the summary of the above calculations is
21 attached hereto as Exhibit B.

22 9.) Additionally, the IM reviewed the Manager's calculations against
23 subscription agreements, welcome letters and a separate spreadsheet prepared
24 by the Manager which purportedly listed all the purchases by Clear Sailing of
25 privately held companies' stock in the SRA Funds and allocated these
26 securities among all the funds that invested in the series of privately held
27 companies' stock (the "Purchase Spreadsheet"). The role of the IM was not to
28 generate calculations and approve distributions but rather to review proposals

1 from the Manager and to object to any transfer of money or assets that the IM
2 determined was not in the best interests of the SRA Funds and its investors. At
3 that time and based on the information and evidence provided by the Manager
4 and AST, the IM had no objections to the Square Distribution prepared by the
5 Manager.

6 10.) After the IM was appointed as Receiver on October 11, 2016,
7 it became necessary to conduct a forensic examination of the Square
8 Distribution to determine whether it had been conducted properly by the
9 Manager and AST. At that time, the Square Distribution was not complete and
10 it was necessary to determine what had been distributed, and what remained to
11 be distributed by the Receiver, of the Square share inventory held by Clear
12 Sailing.

13 11.) This examination utilized a Square Distribution worksheet
14 prepared by Susan Diamond ("Diamond"), an employee and Chief
15 Compliance Officer of the SRA Funds, and records obtained directly and
16 indirectly from the Securities and Exchange Commission ("SEC")
17 communications with AST. The result of this forensic examination was that
18 there was a shortfall of Square shares available for the remaining
19 commitments to the SRA Funds' investors who subscribed to Square. The
20 insufficient amount of Square shares (the "Square Shortfall") was mainly
21 driven by misdistributions to some Square investors.

22 12.) One example of the cause for the Square Shortfall is
23 represented by a distribution made to "Investor A", who according to the
24 Manager's and Diamond's calculations, was entitled to receive 10,333 shares
25 of Square, but according to the AST records received 17,323 shares of Square.
26 Another similar example is represented by a distribution made to Investor B.
27 According to the Manager's and Diamond calculations, Investor B was
28 entitled to receive 1,664 shares of Square, but was actually distributed 9,500

1 shares of Square. There were similar instances of over-distribution to other
2 entitled investors.

3 13.) The calculations and number of required Square shares
4 received by the IM in 2016 were practically the same as those received from
5 the Diamond worksheet in 2017; in other words, the calculations and required
6 Square shares were practically the same as provided by the Manager and by
7 Diamond (There were two minor differences reflected in the distribution
8 worksheets prepared by the Manager and Diamond. The two differences
9 related to the Manager's and Diamond's calculation of the final share
10 distributions. The difference between the two worksheets amounts to a net
11 583 shares of Square.). Nonetheless, when the Receiver obtained the actual
12 number of Square shares that were distributed by AST to Investor A and
13 Investor B, the amounts of Square shares distributed to those investors and
14 several others, differed from the calculations received from the Manager and
15 Diamond.

16 14.) The IM had no objection to Investor A and Investor B
17 receiving 10,333 and 1,664 shares of Square respectively; nor with the other
18 investors who ultimately received the number of Square shares that the
19 Manager's and Diamond's calculations provided, as the IM reasonably relied
20 on them to properly calculate the correct amount of shares to be distributed at
21 the time they were. However, the eventual number of Square shares that AST
22 distributed to Investor A and Investor B were different and misallocated from
23 the calculations and evidence provided to the IM by the Manager and to the
24 Receiver by Diamond. This over allocation to Investor A and Investor B was
25 only discovered after the actual distribution was processed by AST.

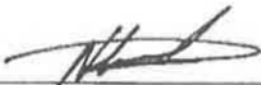
26 15.) The IM was clear throughout its time of appointment that the
27 weak documentation practices, inconsistent procedures, unreliable records and
28 conflicted data, combined with a widespread lack of controls created an

1 atmosphere of internal mismanagement and lack of accuracy in dispatching
2 the Manager's duties. The IM faced these same challenges while attempting to
3 properly and thoroughly dispatch its obligations to the Court. Indeed, these
4 challenges made the task of acting as IM very time consuming and
5 problematic as the IM stated to the Court in its various Interim Reports.
6 Finally, the failures as they relate to the Square Distribution were only
7 apparent after the IM became Receiver, and only in 2017 as the forensic
8 examination of the Square Distribution was conducted.

9 16.) The main reasons why the Square Shortfall became detectable
10 and measureable include and can be attributable to the excess misdistributions
11 to some Square investors. The IM did not act recklessly or with self-interest.
12 Quite the opposite, the IM reviewed the calculations and information as
13 provided by the Manager, including documents the Manager received from
14 AST. Additionally, the IM asked for and received a signed declaration from the
15 Manager attesting to the correctness of its calculations and ability to satisfy the
16 needs of the SRA Funds and its investors in Square. Any information that
17 could have possibly been unearthed and substantiated any over allocation or
18 excess distribution of the Square shares, was simply not available to the IM at
19 that time. Consequently, there was no reason for the IM to object to the Square
20 Distribution as proposed by the Manager.

21 I declare under penalty of perjury under the laws of the United
22 States of America that the forgoing is true and correct.

23
24
25 Dated: September 12, 2017



Nicolas Hernandez, Senior Vice
President, Sherwood Partners, Inc.

Exhibit A

SADDLE RIVER ADVISORS LLC

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Upper Saddle River, New Jersey 07458
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jbivona@saddleriveradv.com

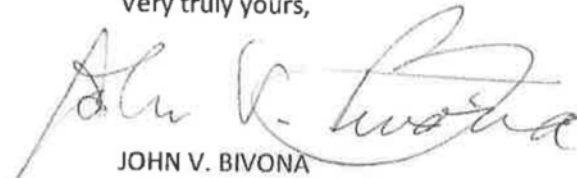
August 8, 2016

Mr. Michael Hogan
Sherwood Partners, Inc.

I, John V. Bivona, the Manager for both Saddle River Advisors LLC and Clear Sailing Group IV LLC certify that to the best of my knowledge and reasonable investigation that the proposed distributions encompass all of the investors and all of the shares for Square, Inc.

There are 6,157 shares of Square, Inc. attributable to the 2% Management fee (less 600 shares owed to Kevin and Kathleen Smith) leaving 5,557 shares which we intend to sell. Half of the proceeds will be used to pay Sherwood's invoice and the other half will be used to pay expenses for the Saddle River Funds.

Very truly yours,



JOHN V. BIVONA
Manager

Exhibit B

Exhibit B – Square Distribution Calculations

379,666	Square shares to be distributed
<u>6,174</u>	Add shares in fees to holdback
385,840	
<u>391,255</u>	Shares registered with AST
5,415	Additional shares - Unallocated
<u>6,174</u>	Shares in fees to holdback
5,415	Unallocated shares
<u>11,589</u>	Total Square shares after distribution