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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
 ADVISORS, LLC; SRA MANAGEMENT
 18 LLC; FRANK GREGORY MAZZOLA,

19 Defendants, and

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

23 Relief Defendants.

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

**THE SRA FUNDS INVESTOR GROUP'S
 RESPONSE TO THE COURT'S
 SEPTEMBER 22, 2017 ORDER**

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

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 25 The SRA Funds Investor Group (the "Investor Group") respectfully submits this response
 26 to the Court's September 22, 2017 Order Requiring Parties to Submit Additional Information and
 27 Requiring Joshua Cilano to Respond (the "Order"). Set forth below are the Investor Group's
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1 responses to the nine questions posed by the Court in the Order. Concurrent with the filing of this
2 response and at the Court's request, Mr. Cilano is submitting a declaration responding to the SEC
3 and the Receiver's unfounded criticisms of his proposed role as the new manager for the SRA Funds
4 and providing the additional information requested by the Court in the Order.

5 The Investor Group has access to some historical investor data relating to the SRA Funds
6 and was provided with limited additional information from the SEC and the Receiver, but does not
7 have full access to all of the books and records of the SRA Funds and their related management
8 entities that are in the Receiver's possession. Therefore, the Investor Group's responses set forth
9 below are based on the information available to it at this time (and qualified accordingly), which
10 may differ from the more complete and more current information possessed by the SEC and the
11 Receiver, since they have full access to all of the books and records of the SRA Funds and their
12 related management entities.

13 **1. The projected value of the SRA Funds investment portfolio**

14 The Investor Group sets forth below its estimates for the projected value of the SRA Funds
15 investment portfolio if that portfolio is (i) held to maturity as proposed by the Investor Group's
16 Alternative Plan of Distribution, or (ii) liquidated pre-IPO, as contemplated by the SEC and the
17 Receiver's Joint Distribution Plan. The Investor Group's estimates assume that all companies
18 remaining in the portfolio (with the exception of the six companies that are already worthless) will
19 have a liquidity event at some point in the future. The Investor Group's estimates do not take into
20 account any investment banking fee (likely to be in the range of 4-6%) that will be paid under the
21 Joint Distribution Plan and that will reduce the amount of proceeds available to SRA Funds
22 investors from a pre-IPO liquidation.

23 The two largest holdings in the SRA Funds investment portfolio are Palantir Technologies
24 Inc. (about 6.4 million shares) and Practice Fusion Inc. (about 1.6 million shares). Because these
25 holdings are relatively so large, they are analyzed individually. The holdings for the rest of the
26 companies that constitute the SRA Funds investment portfolio are much smaller, and are addressed
27 collectively rather than individually.

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1 **Palantir**

2 Palantir's last trade on the secondary auction market was done at \$6.50 per share for a block
3 of 30,000 shares, which would result in a company valuation of \$11.14 billion. However, if a block
4 of shares as large as that held by the SRA Funds was sold in the secondary auction market, it would
5 be at a discount, likely \$5.75 - \$6.00 per share. This would result in a company valuation of \$9.85
6 billion - \$10.2 billion.

7 Palantir's last round of venture capital funding was done at \$11.68 per share, which would
8 result in a company valuation of \$20.33 billion. And finally, according to news articles, Goldman
9 Sachs had expressed interest in taking Palantir public in 2015 at \$17.50 - \$29.17 per share, which
10 would have resulted in a company valuation of \$30 billion - \$50 billion.

11 Applying these three metrics yields the following results: If the Palantir shares held by the
12 SRA Funds are liquidated pre-IPO, the total position would be worth \$36.8 - \$38.4 million. If the
13 Palantir shares are held to a liquidity event, the total position could be worth \$74.8 million if the
14 last round of venture capital is used as the measuring basis. The total position could be worth as
15 much as \$112 million - \$186 million if the estimated IPO valuation reported in the press is used as
16 the measuring basis.

17 **Practice Fusion**

18 Practice Fusion's last trade on the secondary auction market was done at \$0.55 per share for
19 a block of 786,000 shares, which would result in a company valuation of \$185 million. This is
20 likely the same price that could be attained for the 1.6 million shares held by the SRA Funds.

21 Practice Fusion's last round of venture capital funding was done in 2013 at \$1.63 per share,
22 which would result in a company valuation of \$560 million. And finally, according to very recent
23 news articles, J.P. Morgan has been retained to take Practice Fusion public at \$3.66 - \$5.00 per
24 share, which would result in a company valuation of \$1.1 billion - \$1.5 billion.

25 Applying these metrics yields the following results: If the Practice Fusion shares held by
26 the SRA Funds are liquidated pre-IPO, the total position would be worth \$877,250. If the Practice
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1 Fusion shares are held to a liquidity event, the total position would be worth \$5.8 million - \$8.0
2 million, using the estimated IPO valuation reported in the press.

3 **The rest of the investment portfolio**

4 If sold on the secondary auction market on a pre-IPO basis, the remaining companies in the
5 SRA Funds investment portfolio would likely yield around \$9.1 million. If held to a liquidity event,
6 the remaining companies in the SRA Funds investment portfolio would likely yield about \$13.3
7 million.

8 **Total valuation differential**

9 Totaling the calculations above, if the SRA Funds investment portfolio is liquidated on a
10 pre-IPO basis, it could result in total net proceeds of \$45.9 million - \$47.5 million for the SRA
11 Funds investors. If the SRA Funds investment portfolio is held to maturity in accordance with the
12 investment objectives of the SRA Funds and its investors, it could result in total net proceeds of
13 \$93.9 million to as high as \$207.3 million for the SRA Funds investors.

14 While all of these numbers are estimates, the differential in either instance is exponential.
15 SRA Funds investors may recover anywhere from two to four times as much money under the
16 Alternative Plan of Distribution as under the Joint Distribution Plan. This large difference in
17 outcomes under the two plans is entirely consistent with the views expressed by Sherwood Partners
18 earlier in the case, when it informed the Court that “sales of large blocks of privately held company
19 securities into the marketplace prior to a liquidation event (i.e. an IPO or company sale) would
20 likely be heavily discounted.” *See* Dkt. No. 74 at pp. 12-13.

21 **2. Information about the companies in the SRA Funds investment portfolio that no**
22 **longer have any investment value**

23 There are six companies in the SRA Funds investment portfolio whose shares no longer
24 have investment value. Glam Media, Jawbone and Jumio are all out of business. The assets of
25 Badgeville were sold to Callidus Cloud in 2016 for just \$7.5 million, which is a fraction of the \$40
26 million raised by that company in venture capital funding. Virtual Instruments merged with Load
27 DynamiX in 2016, and its shareholders were effectively wiped out in the transaction. The same is
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1 true with respect to oDesk, which merged with Elance in 2014. Specific information for each of
2 these companies is set forth below.

3 **Glam Media**

4 Three SRA Funds investors have interests in Glam Media, of which two are members of the
5 Investor Group. The SRA Funds in total invested \$260,000 in Glam Media, of which \$210,000
6 came from members of the Investor Group.

7 **Jawbone**

8 Seventeen SRA Funds investors have interests in Jawbone, of which nine are members of
9 the Investor Group. The SRA Funds in total invested \$1.34 million in Jawbone, of which \$909,971
10 came from members of the Investor Group.

11 **Jumio**

12 Forty-one SRA Funds investors had an interest in Jumio, of which 11 are members of the
13 Investor Group. The SRA Funds in total invested \$6,454,205 in Jumio, of which \$4,036,947 came
14 from members of the Investor Group.

15 **Badgeville**

16 Thirty-six SRA Funds investors have interests in Badgeville, of which 23 are members of
17 the Investor Group. The SRA Funds in total invested \$2,072,106 in Badgeville, of which
18 \$1,404,706 came from members of the Investor Group.

19 **Virtual Instruments**

20 One SRA Funds investor has an interest in Virtual Instruments, who is a member of the
21 Investor Group. That investment was for \$25,000.

22 **oDesk**

23 Two SRA Funds investors have interests in oDesk, of which one is a member of the Investor
24 Group. The SRA Funds in total invested \$150,000 in oDesk, of which \$100,000 came from a
25 member of the Investor Group.

26 **3. Information about investor claims**

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1 There a number of documents (some maintained electronically and some in paper form) that
2 set forth extensive information about each SRA Funds investor, including name, physical address,
3 email address, and phone number. For each company in which an SRA Funds investor purchased
4 shares, the documents also set forth the following information (on an investor by investor basis):
5 the company whose shares were purchased; the SRA Fund in which the purchase was made; the
6 Fund Series for the purchase; the date of the purchase; the closing date of the purchase; the total
7 dollar amount of the purchase; the price per share; the total number of shares purchased; the
8 management fee to be paid by the investor; and the carried interest (back-end fee) to be earned by
9 the sponsor. In addition, each time a SRA Funds investor made a share purchase, this was
10 memorialized in a welcome letter that was sent to the investor and that set forth all of the details of
11 the transaction.

12 If this information is accurate, it is more than sufficient to document the nature of each SRA
13 Funds investor's claims. The only question remaining then is whether the information is accurate
14 and complete. The SEC and the Receiver contend that it is not, but do not appear to have undertaken
15 any efforts to determine whether the information is over or under-inclusive or what, if anything, is
16 in error. The Investor Group believes that a straightforward notice and claims process, discussed
17 below, can be used to confirm the accuracy of the information that already exists and to determine
18 whether there are any gaps in the information that need to be pursued.

19 **4. Is a notice and claims process necessary here?**

20 While there is extensive information about each SRA Funds investor's claim, there are
21 legitimate questions about the completeness and accuracy of the information. The Investor Group
22 proposes a straightforward notice process, utilizing the information that already exists, to confirm
23 the completeness and accuracy of that information. The purpose would be for each SRA Funds
24 investor to "prove up" his or her claim to ensure that, on a going forward basis, the new manager
25 of the SRA Funds would be working with accurate and complete information. This process would
26 also serve to provide finality with respect to who is or is not an SRA Funds investor and in what
27 amounts, so that there will be no disputes later when shares may be distributed. This process would
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1 also confirm whether there are any share shortfalls other than those that have already been
2 identified.

3 With respect to potential creditor claims, a similar process could be utilized, but it appears
4 that the largest claims that may be asserted against the receivership estate already have been
5 identified, though they may be subject to dispute as to amounts due.

6 **5. Share shortfalls within the SRA Funds investment portfolio**

7 The SEC and the Receiver have only identified share shortfalls with respect to Square and
8 Palantir. It is the position of the Investor Group that there is not a share shortfall with respect to
9 Palantir, but rather a share surplus, and that the Palantir share shortfall identified in the SEC and
10 the Receiver's filings is solely the result of the incorrect manner in which the SEC and the Receiver
11 are treating the creditor claim of Global Generation Partners. *See* Investor Group's Objections,
12 Dkt. No. 229 at pp. 14-15.

13 The SEC and the Receiver also discuss potential share shortfalls for companies in which the
14 SRA Funds own forward contracts and not the actual shares (i.e., Badgeville, Dropbox, Lookout,
15 Mongo DB, Snapchat and Cloudera), but these are hypothetical shortfalls and there is nothing in
16 the record to suggest that there will be any problem enforcing the forward contracts, which have
17 been fully paid for in advance by the SRA Funds. *See* Investor Group's Objections, Dkt. No. 229
18 at p. 14, fn. 9.

19 **6. The Receiver's efforts, if any, to recover the mis-distributed Square shares**

20 In his declaration submitted in support of the Receiver's reply, Peter Hartheimer of
21 Sherwood Partners makes clear that to date, the Receiver has made no efforts to recover the mis-
22 distributed Square shares. *See* Hartheimer Reply Declaration, Dkt. No. 237-2 at ¶ 9. While Mr.
23 Hartheimer claims that the Receiver has not yet undertaken these efforts because there is no money
24 to pay counsel, he fails to explain why the Receiver has not even taken the simple step of contacting
25 the four investors by way of a letter to see if the issue can be resolved without the need for litigation
26 or the involvement of counsel.

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1 The Investor Group cannot answer the question whether the investors to whom the Square
2 shares were over-distributed also have other pre-IPO interests, since their identities are not known
3 to the Investor Group.

4 **7. Who are the members of the Investor Group?**

5 The Investor Group includes 133 individuals and entities who purchased and continue to
6 own membership interests in all seven of the SRA Funds. Members of the Investor Group
7 collectively own shares in every company held in the investment portfolios of the seven SRA Funds.
8 All members of the Investor Group are accredited investors, which means they either had annual
9 income in excess of \$200,000, a net worth of at least \$1 million (excluding a primary residence) or
10 were otherwise deemed to be a sophisticated investor at the time of their investments.¹

11 Many of the members of the Investor Group are sophisticated investors with prior
12 experience investing in non-publicly traded securities. Many are professionals, including partners
13 in law firms, accountants, business executives, executives in the financial sector, and partners in
14 business consulting firms. The members of the Investor Group's proposed Advisory Committee
15 are a representative sample of the members of the Investor Group, and include two CPAs, a partner
16 in a large multi-national law firm with private equity experience, a managing director of a global
17 business consulting firm, and a managing director of an investment management firm (who is also
18 a chartered financial analyst).

19 **8. Who are the investors that have not joined the Investor Group?**

20 Because all SRA Funds investors were required to be accredited investors, it is likely that
21 the investors that have not joined the Investor Group would share the same profile as the members
22 of the Investor Group. There are at least 190 SRA Funds investors that have not joined the Investor
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24 ¹ Donald Harivel has withdrawn from the Investor Group and filed his own objection to the Joint
25 Distribution Plan, but he continues to support both the Investor Group's Alternative Plan of
26 Distribution and having Investor Rights LLC serve as the new manager for the SRA Funds on a
27 going forward basis. Telesoft Capital LLC similarly is not a member of the Investor Group, but
28 also opposes the Joint Distribution Plan and supports both the Investor Group's Alternative Plan of
Distribution and having Investor Rights LLC serve as the new manager for the SRA Funds on a
going forward basis.

1 Group. While larger in number, they collectively hold a much smaller financial interest in the SRA
2 Funds than the Investor Group (\$11.5 million as compared to \$40 million). These investors
3 collectively own shares in 15 of the companies held in the investment portfolios of the seven SRA
4 Funds.

5 The Investor Group has provided information about their proposed Alternative Plan of
6 Distribution and the SEC and the Receiver's proposed Joint Distribution Plan to at least 121 SRA
7 Funds investors who are not members of the Investor Group.

8 **9. Alternative investment managers**

9 The Investor Group continues to support having Investor Rights LLC (of which Joshua
10 Cilano is the Managing Member) serve as the new manager of the SRA Funds on a going forward
11 basis. Mr. Cilano has the experience and resources to manage the SRA Funds, he is familiar with
12 how the Funds operate and what issues may exist with respect to the securities held by the Funds,
13 and he has been in regular communication with hundreds of SRA Funds investors for months, and
14 some since the inception of their investments. Moreover, Mr. Cilano will be subject to ongoing
15 oversight by a group of experienced business professionals (all of whom have a direct financial
16 interest in the success of the SRA Funds and in ensuring that Mr. Cilano does his job well), his
17 work will be reviewed by an independent accounting firm, and he will be reporting to the SEC and
18 the Court as needed.

19 If the Court believes that an alternative investment manager would be best, the Investor
20 Group proposes that Mr. Cilano serve as a co-manager for the reasons discussed above. There are
21 other individuals and entities that could serve as a co-manager for the SRA Funds. The Investor
22 Group can propose alternative investment managers to the Court, subject to input from the SEC,
23 within two weeks.

24 Respectfully submitted,

25 DATED: September 27, 2017

PRITZKER LEVINE LLP

26 By: /s/ Jonathan K. Levine
27 Jonathan K. Levine
28 Elizabeth C. Pritzker

Bethany Caracuzzo

Attorneys for the SRA Funds Investor Group

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