

1 JINA L. CHOI (N.Y. Bar No. 2699718)  
JOHN S. YUN (Cal. Bar No. 112260)  
2 yunj@sec.gov  
MARC D. KATZ (Cal. Bar No. 189534)  
3 katzma@sec.gov  
JESSICA W. CHAN (Cal. Bar No. 247669)  
4 chanjes@sec.gov

5 Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
6 44 Montgomery Street, Suite 2800  
San Francisco, CA 94104  
7 Telephone: (415) 705-2500  
Facsimile: (415) 705-2501  
8  
9

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

14 SECURITIES AND EXCHANGE COMMISSION,

15 Plaintiff,

16 v.

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

20 Defendants, and

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

24 Relief Defendants.  
25  
26  
27  
28

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

**PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION'S  
SUBMISSION OF ADDITIONAL  
INFORMATION IN SUPPORT OF JOINT  
MOTION FOR APPROVAL OF THE  
PROPOSED JOINT DISTRIBUTION PLAN**

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

**PLAINTIFF'S SUBMISSION OF ADDITIONAL INFORMATION**

In accordance with the Court's Order of September 22, 2017 (Docket No. 247), plaintiff Securities and Exchange Commission ("Commission") makes this Submission of Additional Information:

**Question 1:** *The projected value of the SRA Funds investment portfolio if it matures as originally intended versus the liquidation value under the Receiver and SEC's proposed plan. The Court appreciates that such projections cannot be made with guarantees or exactness, but the parties should advise the Court to the extent they have information or reasoned expectations. If available, such information may be shared on a company-by-company basis.*

The Commission is unable to provide the Court with an estimate of any specific pre-IPO holding or any specific pre-IPO company if it matures, rather than being sold in accordance with the Joint Distribution Plan. The future value of a pre-IPO company is subject to numerous variables, such as industry and general economic developments, the emergence of new competitors, the loss of important customers, management changes, stock issuances and equity dilution, available financing and working capital, etc., which could increase, decrease, or destroy a pre-IPO company's value.<sup>1</sup> Additionally, whether a pre-IPO company will go public, be acquired, or merge in the future is speculative until the company's management takes concrete steps to implement such a corporate transaction. Given this inherent uncertainty in predicting a pre-IPO company's future, the proper course for a court-appointed receiver, under the "prudent man/woman" fiduciary standard, is to seek to maximize the current value of the receivership's assets through their orderly sale.<sup>2</sup>

---

<sup>1</sup> Unlike public companies such as nVIDIA Inc., private companies such as Palantir Technologies, Inc., do not issue periodic reports containing information such as revenues, cost of goods sold, major competitors, expenses, current assets, accounts payables, accounts receivables, total shares outstanding, management compensation, long-term liabilities, etc. from which investors and professional analysts can attempt to forecast the price target for the public company's shares. As a result, forecasting the price target for a pre-IPO company's shares is a speculative exercise.

<sup>2</sup> The Commission notes that, as a general matter, the operating agreements for the SRA, NYPA and FMOF Funds generally granted the manager the discretion to sell particular positions, even without a liquidity event or the investor's knowledge. In the past, John Bivona ordered the sale of Palantir Technologies interests, while offering investors the chance to repurchase shares at a higher price from the Fortuna funds. See Declaration of John Bowmer, ¶¶ 15-18 and Exhibit 2 (Docket No. 5).

1 With respect to this receivership, the Joint Distribution Plan provides for the retention of an  
 2 investment banker that has the expertise, experience and resources to find buyers for the current  
 3 portfolio of pre-IPO shares. The Receiver has advised the Commission that it intends to propose  
 4 retention of an investment banker as soon as an agreement is negotiated. The Receiver also intends  
 5 to raise with the Court the Receiver's concerns about publicly disclosing the potential range of selling  
 6 prices for a particular pre-IPO holding while attempting to find buyers for that holding.

7 **Question 2:** *Which three companies in the SRA Fund portfolio have folded and thus*  
 8 *no longer have stock value? How many investors had an interest in those companies*  
 9 *and what was the magnitude of each such interest?*

10 With respect to interests in pre-IPO companies sold to investors in SRA I, II and III, the  
 11 Commission understands that Mode Media Inc., formerly known as Glam Media, Inc., might not be  
 12 operating. The total SRA Funds' holding in Glam Media was \$1,072,876 including the Series X and  
 13 Big 10 subfunds. With respect to AliphCom Inc. d/b/a Jawbone, the company has assigned its assets  
 14 for the benefit of creditors as part of a corporate dissolution process. The gross amount of SRA  
 15 Funds' investments in Jawbone was \$1,746,153 including the Series X subfund. The Commission  
 16 also notes that a pre-IPO company, Jumio, Inc., is in bankruptcy proceedings. There not any known  
 17 investments in Jumio by the SRA Funds. However, the NYPA Funds had gross investments of  
 18 \$5,569,731 in Jumio.<sup>3</sup>

19 **Question 3:** *Is the nature of every investor's claim currently known (i.e., is there a list*  
 20 *of the number of shares claimed by each investor and in which companies)?*

21 Pursuant to investigative subpoenas, the Commission received two sets of investor lists for the  
 22 SRA, FMOF and NYPA Funds from the counsel for those firms. Although providing useful  
 23 information, the Commission, as well as the Independent Monitor, questions the completeness and  
 24 accuracy of the lists because investors, such as Global Generation, were dropped from the later set of  
 25 investor lists without explanation. Such lists also failed to account for other investors, such as

26 <sup>3</sup> In September 2016, the assets of Badgeville, Inc. were sold to another company for \$7.5 million.  
 27 The gross amount of SRA Fund direct investments in Badgeville was \$1,480,097, plus another  
 28 \$161,987 in invested through the Big 10 sub-fund for a total of \$1,642,084. The FMOF and NYPA  
 Funds also had combined investments of \$1,291,106 in Badgeville.

1 Telesoft Ventures, which made direct investments in Clear Sailing IV.

2       Additionally, John Bivona provided the Receiver with a purported consolidated list of  
3 investors in October 2016. Although this consolidated list is useful, the Commission is unsure of the  
4 completeness and accuracy of this list. The Commission therefore believes that although many of  
5 receivership entity investor claims are currently known through the investor lists, the available  
6 information might be incomplete or inaccurate.

7               **Question 4:** *Is a notice and claims process necessary to determine whether there are*  
8 *any unknown claims (including both claims to an interest in securities and creditor*  
9 *claims) against the Receivership Entities?*

10       Given questions regarding the reliability of the investor lists and prior management's  
11 recordkeeping, the Commission agrees with the Independent Monitor's prior recommendation in its  
12 May 10, 2016 report (Docket No. 74), that a claims process involving published notification be used  
13 to solicit claims by investors and creditors. The information will also be provided on the Receiver's  
14 website and in Court filings.

15               **Question 5:** *Whether, other than the claimed shortfall of Square and Palantir shares,*  
16 *there are any other known shortfalls in securities interests at this time.*

17       The Commission understands that the Receiver is investigating possible shortfalls in the  
18 assets available for distribution to investors in Flurry, Inc. and Box, Inc. Additionally, the Court  
19 should be aware that a significant portion of the receivership's interests in pre-IPO companies take  
20 the form of "forward contracts," rather than stock certificates being held by Clear Sailing or being  
21 held in Clear Sailing's name on the pre-IPO company's share ownership ledgers. Because some pre-  
22 IPO interests are only forward contracts, the Receiver faces the risk that the actual holder of the pre-  
23 IPO shares will breach the contract and not deliver the shares to Clear Sailing in a timely fashion.  
24 This will result in a shortfall of available shares for investors. The interests in Badgeville, described  
25 above, take the form of forward contracts.

26       According to the Independent Monitor's May 2016 report, the interests in Cloudera are  
27 forward contracts. The SRA Funds had a gross investment of \$370,523, while the NYPA Funds  
28 invested another \$266,722 in Cloudera. The interests in Dropbox, Inc. are also forward contracts

1 with a total of \$1,778,067 in gross investments by the SRA Funds and the Big 10 and Series X  
2 subfunds. Similarly, the interests in Lookout are forward contracts with a total of \$1,976,853 in  
3 principal investments by the SRA Funds. It also appears that the SRA Funds' \$842,654 investment  
4 in Airbnb, Inc. is a forward contract, as is the SRA Funds' \$212,000 investment in Pinterest, Inc.  
5 Additionally, the Independent Monitor previously reported that 12,500 of 52,500 shares in  
6 MongoDB, Inc. are forward contracts. The SRA Funds invested \$1,002,322 in MongoDB including  
7 the Series X subfund. Using a ratio, approximately \$238,648 of the MongoDB investment could be  
8 imputed to forward contracts. In total, the receivership entities are apparently holding about \$5.68  
9 million in forward contract interests, even if the Badgeville interests are excluded.

10 **Question 6:** *The Receiver's efforts, if any, to recover the mis-distributed Square*  
11 *shares; the feasibility and cost of re-acquiring the mis-distributed shares; and whether*  
12 *the investors to whom Square shares were over-distributed have an interest in the pre-*  
*IPO securities of other companies.*

13 The Commission defers to the Receiver's response on this question.

14 **Questions 7 and 8:** *7. What is the profile of members of the SRA Fund Investor Group?*  
15 *Are they experienced investors? In which companies are these members believed to have*  
*invested?*

16 *8. What is the total number of investors who are not part of the SRA Fund Investor*  
17 *Group? Are they experienced investors? In which companies do they believe they have*  
*invested? Have they received notice of the plans proposed by the SEC, the Receiver, and*  
*the SRA Fund Investor Group?*

18 The Commission has not done an analytical profile of all of the SRA Fund Investor Group  
19 investors. The Commission notes that membership interests in the SRA, FMOF and NYPA Funds  
20 could not be offered or sold with registration or an exemption from registration under the Securities  
21 Act of 1933 ("Securities Act") and rules promulgated thereunder. The Funds purported to offer and  
22 sell membership interests pursuant to a private placement exemption under the Securities Act rules.  
23 Those rules, in general, required that the offers and sales be made to "accredited" or "qualified"  
24 investors who had certain levels of income and/or net worth and who had some level of  
25 sophistication. The Commission does not currently take a position regarding whether all of the  
26 Funds' investors were "accredited" or "qualified" under the Securities Act rules.  
27  
28

1 The Investor Group claims that it represents 75% of the “\$53 million still invested in the SRA  
 2 Funds.” Based on the Commission’s preliminary calculations in the limited time available, however,  
 3 the Investor Group represents 50% of the gross investment amounts still invested in the FMOF,  
 4 NYPA, and SRA Funds and 30% of the investors who are still invested in the Funds:

	Gross Amount of Investment	Count of Investors
SRA Funds Investor Group	39,983,401	108
Total Investors (FMOF I, FMOF II, NYPA I, NYPA II, SRA I, SRA II, SRA III)	80,228,095	363
Percentage represented by SRA Funds Investor Group	50%	30%
Percentage of other investors	50%	70%

10 The Investor Group appears to be weighted towards Palantir investors:

Palantir Technologies Inc.		
Gross investment by SRA Funds Investor Group	\$	16,077,839
Gross investment by all investors	\$	30,764,641
Percentage of SRA Funds Investor Group invested in Palantir		52%

14 In any event, the equitable interests of the investors outside the Investor Group must be fairly  
 15 provided for. The Receiver has posted all of the distribution plan pleadings on its website to provide  
 16 information to all investors, even if not it the Investor Group.

17 **Question 9:** *If the funds are not liquidated, are there alternative investment managers*  
 18 *other than Mr. Cilano? What process would the parties propose for choosing a*  
 19 *manager?*

20 Although it is not recommending the hiring of an investment manager, the Commission  
 21 believes that any process for the potential selection of an investment manager for some or all of the  
 22 receivership pre-IPO holdings should assure competence, integrity and fairness to investors. In  
 23 particular, the Court must ensure that all investors who choose not to have their interests managed by  
 24 a new investment advisor will still receive an appropriate pro rata distribution from the receivership’s  
 25 assets. Furthermore, such investment manager candidates should be solicited through a court-  
 26 approved process whereby multiple proposals are sought from registered investment advisors with  
 27 experience in managing portfolios of illiquid securities, clean disciplinary histories and complete  
 28 independence from the prior managers and insiders. Potential candidates should also submit bids for

1 the terms of their management contracts that the Court would review, select and approve following a  
2 noticed hearing.

3 DATED: September 27, 2017

Respectfully submitted,

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

/s/ John S. Yun  
John S. Yun  
Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION