

1 JOHN W. COTTON (SBN 54912)
Email: JCotton@gghslaw.com
2 GARTENBERG GELFAND & HAYTON LLP
15260 Ventura Blvd., Suite 1920
3 Sherman Oaks, CA 91403
(213) 542-2100
4 (818) 292-0898

5 Counsel to Receiver Sherwood
Partners, Inc.

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE
COMMISSION,
11 Plaintiff,
12 v.
13 JOHN V. BIVONA; SADDLE RIVER
14 ADVISERS, LLC; SRA
MANAGEMENT ASSOCIATES, LLC;
15 FRANK GREGORY MAZZOLA

) Case No. 3:16-cv-1386

) **RECEIVER’S REPLY TO**
) **SRA GROUP’S RESPONSE**
) **TO THE RECEIVER’S**
) **SECOND INTERIM FEE**
) **APPLICATION**

) Date: November 16, 2017
) Time: 1:30 PM
) Courtroom: 5
) Judge: Edward M. Chen

16 Defendants, and
17
18 SRA I LLC; SRA II LLC; SRA III
LLC; FELIX INVESTMENTS,
19 LLC; MICHELE J. MAZZOLA;
ANNE BIVONA; CLEAR
20 SAILING GROUP IV LLC;
CLEAR SAILING GROUP V LLC,

21 Relief Defendants.

22
23
24 **INTRODUCTION**

25 By this Reply, Sherwood Partners, Inc. (“Sherwood”), the Receiver in
26 this matter wants to assure the Court that it welcomes the review of the Court,
27 the SEC, the parties, the SRA Investors Group, and any interested investor to
28 its interim applications for fees. The Receiver’s first interim application for

1 fees (Docket No. 204), which utilized the administrative application process
2 provision of L.R. 7-11 (“the Rule”), was filed on July 13, 2017, and approved
3 by the Court on July 25, 2017. This application under the Rule occurred six
4 weeks *after* the Notice of Appearance of the SRA Group on June 2, 2017, with
5 no objection to its use. Therefore, Sherwood again utilized the Rule for its
6 recently-filed second interim application for fees (Docket No. 262), as it
7 assumed the administrative procedure contained in the Rule to be applicable
8 and proper, both under its specific language (that advance review and approval
9 only need be obtained from *parties* to the litigation) and under the
10 circumstances of the SRA Group’s earlier appearance and non-objection to the
11 use of the Rule for the first fee application. That said, the Receiver in the future
12 is willing to refrain from the use of the Rule for any interim fee application, but
13 instead follow any more appropriate procedure for notice and review as
14 ordered by the Court.

15 Notwithstanding the Receiver’s willingness to abide by any procedure
16 the Court orders, it believes that no interested party should be permitted to
17 lodge a blunderbuss “objection” to an *entire* interim fee application, without
18 stating the specific reasons therefore and limiting any request for a “hold back”
19 of funds to a sum certain that corresponds to those specific reasons and this
20 Court’s Order of October 11, 2016 appointing Sherwood (“the Order”).
21 Further, the Receiver believes any such procedure should also require some
22 form of “meet and confer” by the objecting party and Receiver before the
23 objecting party files its written objection to the interim fee request, thereby
24 avoiding any potential waste of the time of the Court and the Receiver, without
25 first attempting to resolve the issue.

26 **I. ANY OBJECTION TO AN INTERIM FEE APPLICATION**
27 **SHOULD BE BASED ON SPECIFIC FACTS AND SUPPORTING**
28 **REASONS**

1 The SRA Group’s “Response” is really a blanket objection to the
2 entire fee application, taking the form of raising (again) the unfounded, and
3 disproven allegation that the Receiver “misallocated” certain shares of Square
4 Inc. and thereby “breached” its fiduciary duty, and that the Receiver “failed to
5 provide any value” in its “receivership work or in its Joint Distribution Plan.”
6 (See: Docket No. 263, Response, p. ii, lines 17-20) The charge of
7 “misallocation” was squarely met and refuted in Docket No. 237, Pages 4-8,
8 the Receiver’s recent Reply to the SRA Group’s Opposition to the Joint Plan
9 (“the Reply”).

10 As the Declaration of Hernandez attached to the Reply set forth,
11 Sherwood had no hand in determining what amounts of Square shares were
12 due to what SRA investors; that responsibility, calculation and ultimate
13 distribution were the sole responsibility of the defendant SRA managers. If
14 any misallocation occurred, the responsibility for that rests with them. No
15 factual evidence has been offered by the SRA Group to refute any of the
16 statements in the Hernandez declaration and as such, they remain unopposed.
17 Sherwood did not violate its fiduciary duties by virtue of the distribution of
18 Square shares by the Defendants and such is not a reason to oppose its entire
19 second interim fee application.

20 As to the charge of “failure to provide value” by Sherwood’s
21 receivership work, such a sweeping charge is hardly helpful, as it lacks any
22 specificity or support sufficient to focus the Receiver and the Court on just
23 what activities are claimed to lacking value. Further, the SRA Group may not
24 like, or desire the outcome of a recommended Joint Distribution Plan, but that
25 in and of itself does not merit the charge of “no value”, much less provides
26 any objective support for it. The Receiver and the SEC worked diligently and
27 carefully before recommending the Joint Plan to the Court; to call their work
28 valueless is uncalled for and more importantly, unsupported. The SRA Group,

1 and any other affected investor seeking to challenge an interim fee application
2 should be required in their opposition to cite specific and well-supported
3 reasons for their objections, and only after an opportunity to discuss them first
4 with the Receiver (and the SEC).

5
6 **II. THE COURT’S ORDER APPOINTING SHERWOOD**
7 **SETS FORTH THE STANDARDS FOR ANY HOLD BACK**
8 **OF FEES**

9 In its October 11, 2016 Order, the Court in Sec. XIV stated that it held the
10 discretion to establish a “hold back” of no more than 20% of “each [interim]
11 fee application”, which would be paid out as part of the final fee application at
12 the close of the receivership, based upon a “cost benefit” review of the
13 receiver’s work. The Order’s language does not support the SRA Group’s
14 demand that all of the second interim fee application be withheld by the Court,
15 and therefore that request should be denied. Whether, and how much of a hold
16 back should be ordered is the exclusive province of the Court, based on input
17 from the SEC and after a review of the work of the receiver.

18 **III. THE COURT SHOULD SET A REASONABLE**
19 **PROCEDURE FOR THE FILING AND OBJECTION TO**
20 **ANY INTERIM FEE REQUEST**

21 In the Order, the Court has requested that within 45 days of the end of each
22 quarter, that Sherwood apply to the Court for compensation and expense
23 reimbursement for that quarter. Additionally, the Order requires that “at least
24 30 days prior” to filing each such quarterly interim fee application, that the
25 Receiver serve a copy of it upon the plaintiff SEC. The combination of these
26 two requirements of the Order force the Receiver and counsel to prepare a
27 significant amount of billing documentation, and attendant declarations and the
28 fee application, in a very short, fifteen (15) day period at the end of each
quarter. Such puts an unreasonable time demand upon the Receiver and

1 counsel, and therefore it is respectfully requested that the Order be amended to
2 require that each quarterly interim fee application be filed within sixty (60)
3 days of the end of each quarter. Such an amendment would permit the Receiver
4 and counsel slightly more administrative time to review the billings for edits,
5 corrections and analysis as required by the Order and before submission to the
6 SEC, yet still submit the application in a reasonable amount of time from the
7 end of each quarter for the Court to review. It would also provide for any “meet
8 and confer” ordered by the Court between the Receiver and any interested party
9 like the SRA Group before requiring the time of the Court and the parties to a
10 flurry of pleadings.

11 CONCLUSION

12 The Receiver appreciates that interested investors may desire to be heard on
13 its interim fee applications, and supports any reasonable method to bring their
14 views before the Court. The Receiver also believes that any party objecting to
15 an interim fee request should be required first to meet and confer with the
16 Receiver, and failing to reach any accommodation, to be required to set forth
17 specific time charges to which it objects, and the specific reasons therefore,
18 with supporting documentation.

19
20 Date: November 2, 2017

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22 GARTENBERG, GELFAND & HAYTON

23
24 */s/ John W. Cotton*

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26 _____
27 John W. Cotton
28

1 JOHN W. COTTON (SBN 54912)
Email: JCotton@gghslaw.com
2 GARTENBERG GELFAND & HAYTON LLP
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20 IV LLC; CLEAR SAILING GROUP V
LLC,

21 Relief Defendants.

Case No. 3:16-cv-1386

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 15260 Ventura Blvd., Suite 1920, Sherman Oaks, California 91403.

On November 2, 2017 I served the following document(s) described as

- RECEIVER'S REPLY TO SRA GROUP'S RESPONSE TO THE RECEIVER'S SECOND INTERIM FEE APPLICATION

on the interested parties in this action:

by serving () the original true copies thereof as follows:

Frank Gregory Mazzola 27 Dogwood Hill Drive Upper Saddle River, NJ 07458	Michele J. Mazzola 27 Dogwood Hill Drive Upper Saddle River, NJ 07458
Marc David Katz Securities and Exchange Commission 44 Montgomery Street Suite 2800 San Francisco, CA 94104	

<p><input checked="" type="checkbox"/> BY MAIL</p> <p>I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.</p>	<p><input type="checkbox"/> BY FACSIMILE TRANSMISSION</p> <p>I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (213) 542-2101. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.</p>
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FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED on November 2, 2017 at Sherman Oaks, California.


Nicole Salazar