

1 Theodore A. Griffinger, Jr. (SBN 66028)
2 Ellen A. Cirangle (SBN 164188)
3 LUBIN OLSON & NIEWIADOMSKI LLP
4 The Transamerica Pyramid
5 600 Montgomery Street, 14th Floor
6 San Francisco, CA 94111
7 Telephone: (415) 981-0550
8 Facsimile: (415) 981-4343
9 tgriffinger@lubinolson.com
10 ecirangle@lubinolson.com

11 Attorneys for Interested Parties
12 GLOBAL GENERATION GROUP, LLC
13 and BENCHMARK CAPITAL, LLC

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 v.

20 JOHN V. BIVONA; SADDLE RIVER
21 ADVISERS, LLC; SRA MANAGEMENT
22 ASSOCIATES, LLC; FRANK GREGORY
23 MAZZOLA,

24 Defendants,

25 SRA I, LLC; SRA II LLC; SRA III LLC;
26 FELIX INVESTMENTS, LLC; MICHELE
27 J. MAZZOLA; ANNE BIVONA; CLEAR
28 SAILING GROUP IV LLC; CLEAR
SAILING GROUP V LLC,

Relief Defendants.

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

**SUPPLEMENTAL DECLARATION OF
JOHN SYRON**

Date: July 16, 2018
Time: 1:30 p.m.
Courtroom: 5, 17th Floor
Judge: Hon. Edward M. Chen

I, John Syron, declare:

1. On May 25, 2017, I signed a Declaration in this matter which was submitted and filed on my behalf by the Securities and Exchange Commission on June 29, 2017. I understand it is on the Court's Docket as Document 198. This Declaration is intended to supplement my prior declaration. In that regard, the first time I had heard of the Securities and

1 Exchange Commission's forensic accounting expert Monica Yp was after her Declaration was
2 filed in this action on June 29, 2017. When I had signed my May 25, 2017 Declaration, I was not
3 aware of Ms. Yp or any of her work on this case.

4 2. On January 26, 2018, I executed a Claim to the Receiver on behalf of
5 Interested Party Global Generation Group, LLC. Attached to this Supplemental Declaration as
6 Exhibit 1 is a true and correct copy of that Claim. A true and correct copy of the Judgment
7 entered in favor of Global Generation against Defendants in the United States District Court for
8 the Eastern District of Michigan is attached to the Claim as Exhibit 1's Exhibit C.

9 3. During the period August-October 2011, Global Generation Group, LLC
10 ("Global Generation") invested a total of \$3,223,740.88 through Defendants to acquire shares of
11 Facebook, Inc. Class B ("Facebook") at a price of roughly \$30 a share.

12 4. Also during the period August-October 2011, Benchmark Capital, LLC
13 ("Benchmark") invested a total of \$331,695.96 through Defendants also to acquire shares of
14 Facebook at a price of roughly \$30 a share. .

15 5. Benchmark did not invest in Palantir Technologies, Inc. ("Palantir")
16 through Defendants. Benchmark has never invested in or owned any shares in Palantir.

17 6. Facebook completed its initial public offering ("IPO") on May 18, 2012, at
18 \$38 a share. By the time the lock up period (which prohibits the sale of pre-IPO shares) expired,
19 the price of Facebook shares had dropped. After the offering, Facebook's stock price dropped. In
20 October 2012, Facebook's stock price was approximately \$19 a share.

21 7. In October 2012, Global Generation and Benchmark gave Defendants
22 notice of their exercise of their right under the Letter Agreement to put their Facebook shares
23 back to Defendants . The details of the Letter Agreement are discussed in more detail in my prior
24 Declaration (CD 198, ¶¶ 4-8). At that of their exercise, Defendants became obligated to
25 reimburse Global Generation and Benchmark the amount of each of their original investments in
26 Facebook. Although not timely under the Letter Agreement, Defendants did reimburse Global
27 Generation and Benchmark the approximate dollar amount of their original investment in
28 Facebook as follows:

1
2
3
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

<u>Global Generation Investment in Facebook</u>		\$3,223,740.88
Reimbursements	6/27/2013	(\$2,719,000.00)
	7/1/2013	(\$50,000.00)
	7/9/2013	(\$27,741.48)
	7/12/2013	(\$50,000.00)
	7/31/2013	(\$200,000.00)
	10/18/2013	(\$177,000.00)
	Total:	\$3,223,741.48

With regard to the 10/18/2013 Reimbursement listed above, the actual amount paid was \$500,000. Because only a part of that amount, \$177,000, was needed to complete the redemption of Global Generation's Facebook position, Global applied the difference, \$323,000, as a partial reimbursement of Global Generation's Palantir investment. See paragraph 10 below.

<u>Benchmark Investment in Facebook</u>		\$331,695.95
Reimbursements	6/18/2013	(\$100,000.00)
	6/21/2013	(\$100,000.00)
	6/24/2013	(\$75,000.00)
	7/3/2013	(\$50,000.00)
	7/9/2013	(\$22,258.22)
	Total:	\$347,258.22

8. In October 2012, Global Generation gave Defendants notice of its exercise of its right under the Letter Agreement to put its Palantir shares back to Defendants. A year later, as of October 16, 2013, Global Generation had not received any portion of its \$2,800,000 original investment in Palantir.

9. Global Generation has never received any Palantir shares from Defendants but has received a portion of its original investment as follows:

<u>Global Generation Investment in Palantir</u>		\$2,800,000
Reimbursements	10/18/2013	(\$323,000)
	11/22/2013	(\$300,000)
	11/29/2013	(\$300,000)
	Total:	(\$923,000)
	Total Unreimbursed:	\$1,877,000

10. At the agreed upon share price of \$3 a share, the Total Unreimbursed amount of \$1,877,000 translates to 625,666 shares which is the amount of Global Generation's

1 Claim in this matter.

2 11. As of the end of November 2013, Defendants still owed Global Generation
3 a significant amount of money with no prospects of payment.

4 12. With regard to the American Arbitration Association arbitration between
5 Global Generation and Defendants, Global Generation incurred and paid hundreds of thousands
6 of dollars in attorneys' fees, forum costs and arbitrators' fees. Indeed, Global General was forced
7 to pay Defendants' share of forum costs and arbitrators' fees because Defendants failed to do so.

8 13. Subsequent to the Judgment, I have authorized and it is my understanding
9 Global Generation tried to collect in numerous jurisdictions utilizing a number of local collection
10 procedures. For example, the Judgment has been recorded/registered with the states of New
11 Jersey, New York and California. The Judgment was has been recorded/registered with a number
12 of courts in those states including the United States District Court for the Northern District of
13 California. Sister States Judgments have been obtained. An Abstract of Judgment was issued and
14 recorded in various counties in California. In addition, a debtor's exam was conducted by Global
15 Generation of defendant Frank Gregory Mazzola in New Jersey. A wage garnishment was issued
16 in California. Liens were recorded against real estate in Defendants' names in New Jersey.

17 14. To date, Global Generation has not received any Palantir shares or any
18 payments on account of the Judgment.

19 I declare under penalty of perjury under the laws of the United States of America
20 that the foregoing is true and correct and that this Declaration was executed in Grand Blanc,
21 Michigan on June 29, 2018.

22
23 
24 _____
25 JOHN SYRON
26
27
28

EXHIBIT 1

Securities and Exchange Commission v. Bivona et al., Case No. 3:16-cv-1386 (N.D. Cal.)

**If you invested money with
SRA Management, LLC, managed by John Bivona, or any
of the entities below, you may be entitled to relief if you
complete and submit this claim form
by January 31, 2018.**

A federal court authorized this notice. This is not a solicitation from a lawyer.

- This case involves an action for securities fraud initiated by the Securities and Exchange Commission. The Court has placed all assets belonging to the following entities under the control of a Court-appointed Receiver:

Receivership Defendants ⁸⁵	Affiliated Entities
Saddle River Advisors, LLC SRA Management, LLC SRA I, LLC SRA II, LLC SRA III, LLC Clear Sailing Group IV, LLC Clear Sailing Group V, LLC	Felix Multi-Opportunity Fund I, LLC Felix Multi-Opportunity Fund II, LLC Felix Management Associates, LLC NYPA Fund I, LLC NYPA Fund II, LLC NYPA Management Associates, LLC

- The assets include the following pre-IPO securities interests and funds within SRA:
 - Addepar, Inc.
 - Airbnb, Inc.
 - Badgeville, Inc.
 - Bloom Energy, Inc.
 - Box
 - Candi Controls, Inc.
 - Check
 - Cloudera, Inc.
 - Dropbox, Inc.
 - Evernote, Inc.
 - Flurry, Inc.
 - Glam, Inc.
 - Jawbone, Inc.
 - Lookout, Inc.
 - Lyft, Inc.
 - Mongo DB, Inc.
 - oDesk
 - Palantir, Inc.
 - Pinterest
 - Practice Fusion, Inc.
 - Snap, Inc.
 - Square, Inc.
 - Twitter, Inc.
 - Uber, Inc.
 - Virtual Instruments
 - ZocDoc
 - Big Ten
 - Series X
- The Court must determine a fair and equitable means to distribute the assets above to investors in the aforementioned entities, as well as any potential creditors. The purpose of this claim form is to identify all potential investors and creditors with valid claims against Saddle River Advisors, LLC, SRA Management, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC and NYPA Management Associates, LLC (collectively, the "Receivership Entities").

⁸⁵ Felix Investments, LLC is also a defendant in this action, but not within the Receivership.

- **If you invested money with any of the entities above, or are a creditor, you must complete and submit this form to the Court-appointed Receiver or its claims agent, JND Corporate Restructuring, by January 31, 2018.** Completed claims should be delivered to:

Sherwood Partners, Inc.
c/o JND Corporate Restructuring
8269 E. 23rd Avenue, Suite 275
Denver, CO 80238
E-mail: SRAClaimsProcessing@JNDLA.com

If you have any questions, a representative of the Receiver can be contacted at Sherwood Partners, Inc., (650) 329-9996.

PROOF OF CLAIM

This is an important legal document that will affect your legal rights if you have an interest in one or more of the Receivership Entities as an investor or creditor. If you have an interest in one or more of the Receivership Entities as an investor or creditor, you must submit this Proof of Claim Form to the Receiver or its claims agent on or before January 31, 2018. Failure to do so could result in the forfeiture of your claim.

The Court has not yet determined how the assets of the Receivership Entities will be managed or distributed or how claims against the Receivership Entities will be paid. However, when the Court makes this determination, the information provided in this Proof of Claim Form will be used to calculate your interest in the Receivership Entities and your entitlement, if any, to participate in any distribution from the Receivership.

The Receiver has the right to dispute and/or verify any information you have provided in order to determine the proper distribution amount, if any, to which you may be entitled. The Receiver additionally reserves the right to request additional documentation supporting your claim at a later date. All original documentation should be preserved as it may be requested at a future date. If you are an investor, the Receiver has the right to correct for administrative, or computational error, any information you may have provided as to your Net Investment Amount. The Receiver does not waive any right to (1) deny, contest the validity of, or otherwise object to a claim, or (2) if warranted, amend the provided Net Investment Amount.

IMPORTANT INFORMATION TO READ PRIOR TO SUBMITTING THIS FORM:

ANY PERSON OR ENTITY SUBMITTING THIS PROOF OF CLAIM FORM, EXCEPT FOR STATE AND LOCAL GOVERNMENT ENTITIES, SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AS TO ANY CLAIMS, OBJECTIONS, DEFENSES, OR COUNTERCLAIMS THAT COULD BE OR HAVE BEEN ASSERTED BY THE RECEIVER AGAINST SUCH CLAIMANT OR THE HOLDER OF SUCH CLAIM IN CONNECTION WITH THIS RECEIVERSHIP, INCLUDING THOSE ARISING OUT OF (1) ANY DEALING OR BUSINESS TRANSACTED BY OR WITH ANY RECEIVERSHIP ENTITY OR (2) ANY DEALING OR BUSINESS TRANSACTED THAT RELATES IN ANY WAY TO ANY RECEIVERSHIP PROPERTY.

YOU MUST SUBMIT THIS COMPLETED FORM, SIGNED UNDER PENALTY OF PERJURY, TO THE RECEIVER BY NO LATER THAN JANUARY 31, 2018. SEND YOUR FORM TO:

Introduction to Global Generation Group, LLC Claim

Investment. In separate amounts, paid on October 6, 24 and 31, 2011, Global Generation Group, LLC (“Global”) invested a total of \$2,800,000 for 100% of the membership interest in Felix Multi-Opportunity Fund, II, LLC, Series E-2(B) which owned, as its sole asset, 933,333 shares of the Class A Common Stock of Palantir Technologies Inc. (“Palantir”). A copy of a December 12, 2011 confirming letter is attached as Exhibit A to Global’s Claim.

Partial Redemption. Under the express terms of its investment agreement, Global had the right to elect to redeem its Palantir shares for \$3 a share. In October 2012, Global gave the required notice to redeem Global’s Palantir shares. There was a partial redemption: 307,667 of Global’s 933,333 shares were redeemed. Global’s remaining 625,666 Palantir shares were not redeemed. (A schedule of the partial redemption, including amounts received and unredeemed Palantir shares, is attached as Exhibit B to Global’s Claim.)

Demand for Delivery of Remaining Shares. Global then demanded Defendants deliver Global’s unredeemed 625,666 Palantir shares. None of those shares were delivered.

Court Judgment. On December 9, 2013, Global filed suit in the United States District Court, Eastern District of Michigan. On September 16, 2015, Judgment was entered in favor of Global. A copy of the Judgment is attached as Exhibit C to Global’s Claim. The Judgment specifically found that Global had been defrauded in its investment in Palantir.

Global has received nothing on account of this Judgment.

To briefly summarize, Global was one of the earliest and largest investors in Palantir. Global gave notice of redemption of its Palantir shares but did not receive anything for 625,666 of its Palantir shares. Global demanded delivery of those unredeemed shares. None were delivered. Global obtained a fraud judgment. Nothing has been paid on that judgment.

Global’s Claim – Part Creditor’s Claim, Part Investor Claim. This receivership is based in equity. Case law uniformly confirms that broad discretion is given to effect fairness, to fashion remedies that are fair and reasonable as to both creditors and investors based on their individual circumstances. Global submits that, to be equitable, its claim should be treated partly as a Creditor Claim and partly as an Investor Claim. Were Global’s claim classified strictly as an Investor Claim, Global would be put in the same position as an investor who took no steps to mitigate its damages. Global would be penalized if the time, energy and resources it expended trying to mitigate its losses, requesting redemption of its shares, demanding delivery of its shares and successfully prosecuting an action to judgment, is not recognized. Similarly, if Global’s claim were to be classified strictly as a Creditor Claim, Global would be penalized by not receiving the upside, if any, realized from its 625,666 unredeemed shares of Palantir.

Global’s Proposed Solution. Global submits the most equitable result is for its claim to be viewed as a hybrid, partly as a Creditor Claim and partly as an Investor Claim. Specifically, Global’s claim should be recognized as a Creditor Claim for the amount of the Judgment and as an Investor Claim to the extent the amount, if any, realized from its 625,666 unredeemed shares of Palantir exceeds the amount Global receives on account of its Creditor Claim. Global

emphasizes that it is not asking for a double recovery, but only to recover its damages arising from Defendants' fraud. Global submits its proposed solution is not only fair and equitable but called for by the circumstances of its investment and its attempts to recover its damages.

Sherwood Partners, Inc.
c/o JND Corporate Restructuring
8269 E. 23rd Avenue, Suite 275
Denver, CO 80238

YOU CAN ALSO EMAIL YOUR COMPLETED FORM TO THE AGENT OF THE RECEIVER AT:
SRAClaimsProcessing@JNDLA.com

IF YOU DO NOT SUBMIT YOUR COMPLETED CLAIM FORM BY JANUARY 31, 2018, YOU WILL BE FOREVER BARRED FROM ASSERTING ANY CLAIM AGAINST THE RECEIVERSHIP ENTITIES' ASSETS AND YOU WILL NOT BE ELIGIBLE TO RECEIVE ANY DISTRIBUTIONS FROM THE RECEIVER.

Contact Information

Please check all that apply:

- I am (we are/my firm is) an investor in one or more of the above Receivership Entities.
- I am (we are/my firm is) a creditor for one or more of the above Receivership Entities.

My contact information is as follows:

Name(s): Global Generation Group, LLC c/o Theodore Griffinger

Address: 600 Montgomery Street, 14th Floor
San Francisco, CA 94111

Telephone: (415) 981-0550

E-mail: tgriffinger@lubinolson.com

Fax: (415) 981-4343

Investor Claim

Records provided by the Receivership Entities indicated that you invested the following amount(s) into one or more of the Receivership Entities on the date(s) as follow(s) for the pledged numbers of shares or units. Please review this information carefully to ensure that it is accurate and consistent with your records. If any of the information set forth below is inaccurate, please provide the correct information and supporting documentation.

Date: December 12, 2011

Intended Fund (e.g., SRA I, LLC): FMOF II - Series E-2(B)

Intended Investment (e.g., Bloom Energy): Palantir, Inc.

Net Investment Amount (s): \$2,800,000.00

Shares/Units Purchased 933,333

Management Fee _____

Carried Interest Fee _____

Date: _____
 Intended Fund (e.g., SRA I, LLC): _____
 Intended Investment (e.g., Bloom Energy): _____
 Net Investment Amount (s): _____
 Shares/Units Purchased _____
 Management Fee _____
 Carried Interest Fee _____

Supporting Documents: Please attach copies of any documents that support the investment, such as cancelled checks, Welcome Letters, statements or subscription agreements. DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain below:

Disbursements Received

Please check only one box:

- I *have* received cash or stock due from one of the investments identified above.
- I have *not* received any cash or stock due from the investments identified above.

If you have received cash or stock, please provide information about the cash or stock you have already received below. Please list each disbursement separately. Use as many pages as necessary to enter all disbursements received. Include copies of any bank/broker statement, copy of certificates, or acknowledgment of receipt.

Fund Invested (e.g., SRA I, LLC): _____
 Pre- IPO Investment (e.g., Bloom Energy): Palantir, Inc.
 Original Amount Invested: \$2,800,000.00
 Amount of shares
 or Cash Received: 307,667 shares
 Date Received: See Exhibit B attached.
 Amount of shares or Cash Outstanding: 625,666 shares

Creditor Claim

If you are a creditor of one or more of the Receivership Entities, please list any loans, fees for service, unpaid wages separately and the entity for which you are a creditor. Use as many pages as necessary to list all of your claims.

TGRIFFINGER@LUBINOLSON.COM
NOTICE ID: 0.597

Date debt was incurred: September 16, 2015

Amount of Claim (as of the date of the Receivership, October 11, 2016): \$ 2,236,376.30

Check box if all or part of claim is secured.

Check box if claim includes interest or other charges in addition to the principal amount

Principal amount of the claim: \$ 2,227,570.96

Interest or other charges: \$ 88,065.34 (28 U.S.C. section 1961)

Please attach a statement that itemizes all interest or other charges.

Basis for Claim: (check one)

Goods sold

Services performed

Money loaned

Equipment leased

Taxes

Equity Interest (Not investments)

Other (Describe briefly):

Judgment entered in United States District Court, Eastern District of Michigan (attached)

If a court judgment exists, what date was the judgment obtained and what is the amount of the judgment:
September 16, 2015; \$2,227,570.96

Supporting Documents: Please attach copies of any documents that support your creditor claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, attach copies of documents providing evidence of perfection of a security interest. DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain below:


See Exhibit C attached.

Attestation

I have enclosed copies of my subscription(s), cancelled check(s) or other acknowledgment of my investment or claim, as well as the most recent correspondence and/or information I received from Saddle River Advisors, et. al., including a copy of my most recent statement form to support the above claim. I acknowledge that I have read, understood, and agreed to all of the requirements above.

I declare under penalty of perjury that all the foregoing information is true and correct.

Executed in Grand Blanc Michigan on January 25, 2018.

Signature: 

Print Name: JOHN BYRON

EXHIBIT A

FELIX MULTI-OPPORTUNITY FUND II, LLC
17 State Street, 5th Floor
New York, NY 10004

December 12, 2011

Global Generation Group LLC
8485 Warwick Groves Court
Grand Blanc, MI 48439

Re: FELIX MULTI-OPPORTUNITY FUND II, LLC - SERIES E-2(B)

Dear Mr. Syron:

Enclosed please find copies of your accepted subscription agreements pertaining to your recent investments in membership interests in Series E-2(B) of Felix Multi-Opportunity Fund II, LLC (the "Company") on October 6, 2011, October 24, 2011 and October 31, 2011.

At this time the Company will not be preparing formal certificates reflecting your Series E-2(B) membership interests. We advise you to retain a copy of this letter, along with the enclosed accepted subscription agreement, as evidence of your admission as a member Series E-2(B) of the Company.

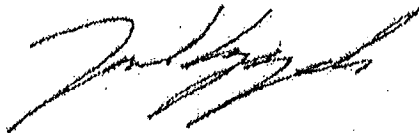
Your total investment of \$2,800,000.00 constitutes a 100% membership interest in Series E-2(B) of the Company. Series E-2(B) currently owns 933,333* shares of Class A Common Stock of Palantir Technologies Inc.

If you have any questions regarding the Company or your investment therein, please contact Frank Mazzola at (646) 597-4301 or Emilio DiSanluciano at (646) 597-4305.

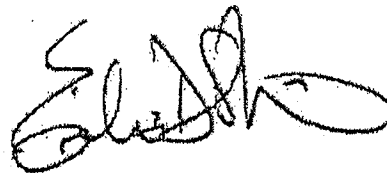
Sincerely,

FELIX MULTI-OPPORTUNITY FUND II, LLC

By:



Frank G. Mazzola, Manager of
FMOF Management Associates, LLC
Manager



Emilio DiSanluciano, Manager of
FMOF Management Associates, LLC
Manager

* The number of shares (and/or proceeds thereof) to be distributed to Series E-2(B) investors upon liquidation is subject to adjustment for allocation of organizational and operating expenses of the Company.

EXHIBIT B

EXHIBIT B

- As of December 2, 2011, Global had invested a total of \$2,800,000 in 933,333 shares of Palantir (Exhibit A).
- Global gave notice to redeem its Palantir shares in October 2012 at the agreed upon price of \$3 per share.
- Global received the following amounts on the following dates:

10/18/13	\$323,000.00*
11/22/13	\$300,000.00
11/29/13	<u>\$300,000.00</u>
	\$923,000.00

- The result was 307,667 of Global's Palantir shares were redeemed ($923,000.00 \div \$3 = 307,667$). The remainder of its 933,333 Palantir shares, a total of 625,666, were not.

* Global received a wire for \$500,000.00: \$177,000.00 was for Global's redemption of Facebook shares, \$323,000.00 was for redemption of Palantir shares.

EXHIBIT C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Global Generation Group, LLC and
Benchmark Capital, LLC,

Plaintiffs,

Case No. 13-cv-14979

Hon. Judith E. Levy

Mag. Judge Michael J. Hluchaniuk

v.

Frank Mazzola, Emilio
DiSanluciano, FB Management
Associates II, LLC, Pipio
Management Associates, LLC,
Felix Venture Partners Qwiki
Management Associates, LLC,
Facie Libre Management
Associates, LLC, and FMOF
Management Associates, LLC,

Defendants.

JUDGMENT

The award of arbitrators William L.D. Barrett, Aurthur D. Felsenfield and Nicholar J. Cooney, dated July 9, 2015, having been confirmed by this Court on September 9, 2015 (Dkt. 32), and this Court having made and caused its statement of decision to be filed in this case,

IT IS ADJUDGED that Plaintiffs are to recover from Defendants Frank Mazzola, Emilio Disanluciano, FB Management Associates II, LLC, Pipio Management Associates, LLC, Felix Venture Partners Qwiki Management Associates, LLC, Facie Libre Management Associates, LLC and FMOF Management Associates, LLC, jointly and severally,

1. \$1,700,000.00;
2. Interest thereon from December 1, 2012 through June 15, 2015 at 5.75% pursuant to Delaware law – totalling \$244,241.10;
3. Interest for delayed repayment in respect of Palantir put \$59,012.33;
4. Interest for delayed repayment in respect of Facebook put \$104,179.17;
5. Attorneys fees in the amount of \$66,624.43, which we find to be reasonable together with \$5,378.93 in expenses;
6. The administrative fees and expenses of the American Arbitrator Association, totalling \$14,450.00, and the compensation and expenses of the Arbitrators, totalling \$38,385.00. Therefore, Respondents shall jointly and severally pay to petitioners an

amount of \$48,135.00, representing that portion of said fees and expenses in excess of the apportioned costs previously paid by Petitioners.

IT IS FURTHER ADJUDGED that Defendant FMOF MANAGEMENT ASSOCIATES, LLC committed fraud upon Petitioners.

DAVID J. WEAVER
CLERK OF THE COURT

By: s/Felicia M. Moses
DEPUTY COURT CLERK

APPROVED:

s/Judith E. Levy
JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

I hereby certify that the foregoing is a true copy of the original on file in this Office.
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

BY: 

Deputy

1 Theodore A. Griffinger, Jr. (SBN 66028)
Ellen A. Cirangle (SBN 164188)
2 LUBIN OLSON & NIEWIADOMSKI LLP
The Transamerica Pyramid
3 600 Montgomery Street, 14th Floor
San Francisco, CA 94111
4 Telephone: (415) 981-0550
Facsimile: (415) 981-4343
5 tgriffinger@lubinolson.com
ecirangle@lubinolson.com

6
7 Attorneys for Interested Parties
GLOBAL GENERATION GROUP, LLC
8 and BENCHMARK CAPITAL, LLC

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

16 JOHN V. BIVONA; SADDLE RIVER
ADVISERS, LLC; SRA MANAGEMENT
17 ASSOCIATES, LLC; FRANK GREGORY
MAZZOLA,

18 Defendants,

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

22 Relief Defendants.
23
24
25
26
27
28

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

**[PROPOSED] ORDER GRANTING
MOTION FOR DETERMINATION OF
NUMBER OF SHARES TO BE
ALLOCATED TO GLOBAL
GENERATION GROUP, LLC AND ITS
STATUS AS A CLAIMANT**

Date: July 16, 2018
Time: 1:30 p.m.
Courtroom: 5, 17th Floor
Judge: Hon. Edward M. Chen

1 **ORDER ESTABLISHING NUMBER OF PALANTIR TECHNOLOGIES, INC.**
2 **SHARES ALLOCATED TO GLOBAL GENERATION GROUP, LLC**
3 **AND ITS STATUS AS A CLAIMANT**

4 Pursuant to this Court’s Order at the June 25, 2018 Case Management Conference,
5 Interested Party Global Generation Group, LLC (“Global Generation”) submitted a brief
6 regarding the number of Palantir Technologies, Inc. (“Palantir”) shares it should be allocated and
7 whether Global Generation should be classified as a Creditor or an Investor in this proceeding. In
8 support of its brief, Global Generation submitted the Supplementary Declaration of John Syron
9 regarding the calculation of the number of Palantir shares which should be allocated to Global
10 Generation and the circumstances supporting its claim.

11 Based upon the showing of Global Generation Group, LLC, the Court determines:

12 (1) The number of shares in Palantir Technologies, Inc. to be allocated to
13 Global Generation Group, LLC in this proceeding is 625,666; and

14 (2) Global Generation Group, LLC is a Creditor up to the amount of its
15 Judgment against Defendants and an Investor to the extent a Palantir Technologies, Inc.
16 liquidating event generates an amount that, based on the 625,666 shares of Palantir Technologies,
17 Inc. allocated to Global Generation Group, LLC, exceeds the amount distributed to Global
18 Generation Group, LLC on account of its Judgment.

19 DATED: July ____, 2018

20 _____
21 EDWARD M. CHEN, Judge
22 United States District Court

1 Theodore A. Griffinger, Jr. (SBN 66028)
Ellen A. Cirangle (SBN 164188)
2 LUBIN OLSON & NIEWIADOMSKI LLP
The Transamerica Pyramid
3 600 Montgomery Street, 14th Floor
San Francisco, CA 94111
4 Telephone: (415) 981-0550
Facsimile: (415) 981-4343
5 tgriffinger@lubinolson.com
ecirangle@lubinolson.com

6
7 Attorneys for Interested Parties
GLOBAL GENERATION GROUP, LLC
8 and BENCHMARK CAPITAL, LLC

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12
13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 v.

16 JOHN B. BIVONA; SADDLE RIVER
17 ADVISERS, LLC; SRA MANAGEMENT
ASSOCIATES, LLC; FRANK GREGORY
18 MAZZOLA,

19 Defendants.

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Gloria Beasley, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is The Transamerica Pyramid, 600 Montgomery Street, 14th Floor, San Francisco, California 94111. On June 29, 2018, I served a copy of the following document(s):

**INTERESTED PARTY GLOBAL GENERATION GROUP, LLC'S
BRIEF REGARDING CERTAIN ISSUES CONCERNING ITS
CLAIM**

SUPPLEMENTAL DECLARATION OF JOHN SYRON

**[PROPOSED] ORDER GRANTING MOTION FOR
DETERMINATION OF NUMBER OF SHARES TO BE
ALLOCATED TO GLOBAL GENERATION GROUP, LLC AND
ITS STATUS AS A CLAIMANT**



(BY MAIL) by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.


Frank Gregory Mazzola
27 Dogwood Hill Drive
Upper Saddle River, NJ 07458

Michele J. Mazzola
27 Dogwood Hill Drive
Upper Saddle River, NJ 07458

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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 June 29, 2018, at San Francisco, California.



Gloria Beasley

1 Theodore A. Griffinger, Jr. (SBN 66028)
Ellen A. Cirangle (SBN 164188)
2 LUBIN OLSON & NIEWIADOMSKI LLP
The Transamerica Pyramid
3 600 Montgomery Street, 14th Floor
San Francisco, CA 94111
4 Telephone: (415) 981-0550
Facsimile: (415) 981-4343
5 tgriffinger@lubinolson.com
ecirangle@lubinolson.com

6
7 Attorneys for Interested Parties
GLOBAL GENERATION GROUP, LLC
8 and BENCHMARK CAPITAL, LLC

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12
13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 v.

16 JOHN B. BIVONA; SADDLE RIVER
17 ADVISERS, LLC; SRA MANAGEMENT
ASSOCIATES, LLC; FRANK GREGORY
18 MAZZOLA,

19 Defendants,

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.
24
25
26
27
28

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

**INTERESTED PARTY GLOBAL
GENERATION GROUP, LLC'S BRIEF
REGARDING CERTAIN ISSUES
CONCERNING ITS CLAIM**

Date: July 16, 2018
Time: 1:30 p.m.
Courtroom: 5, 17th Floor
Judge: Hon. Edward M. Chen

1
2
3
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

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. BACKGROUND FACTS RELEVANT TO THIS MOTION.....	2
A. Global Generation and Benchmark’s Investments with Defendants.	2
B. Global Generation and Benchmark’s Redemption of Their Facebook Shares.	2
C. Global Generation’s Redemption of Its Palantir Shares.	4
III. LEGAL DISCUSSION	6
A. Global Generation’s Claim Correctly States the Number of Its Unredeemed Palantir Shares.....	6
B. The Circumstances Of Its Claim Warrant That Global Generation Be Deemed A Creditor Up To The Amount Of Its Judgment And An Investor To The Extent A Palantir Liquidating Event Generates Proceeds That, Based On The Palantir Shares Allocated To Global Generation, Exceed The Amount Distributed To Global Generation On Account Of Its Judgment.	9
IV. CONCLUSION	11

1
2
3
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

TABLE OF AUTHORITIES

Page(s)

CASES

Farmers Insurance Exchange v. Zerin,
53 Cal.App.4th 445 (1997)..... 11

S.E.C. v. Basic Energy & Affiliated Res., Inc.,
273 F.3d 657 (6th Cir. 2001)..... 9

S.E.C. v. Elliot,
953 F.2d 1560 (11th Cir. 1992)..... 9

S.E.C. v. Enter. Trust Co.,
559 F.3d 649 (7th Cir. 2009)..... 9

S.E.C. v. Levine,
881 F.2d 1165 (2d Cir. 1989)..... 9

S.E.C. v. Wang,
944 F.2d 80 (2d Cir. 1991)..... 9

1 **I. INTRODUCTION**

2 Interested Party Global Generation Group, LLC (“Global Generation”) submits
3 this brief in connection with the July 16, 2018 hearing set by the Court to address certain issues
4 raised by the claim of Global Generation Group, LLC in this matter. Global Generation’s claim
5 (“Claim”) is Exhibit 1 to the Supplementary Declaration of John Syron filed contemporaneously
6 with this brief.

7 One issue is to determine the number of Global Generation’s unredeemed shares in
8 Palantir Technologies, Inc. (“Palantir”). The Claim is that 625,666 of Global Generation’s
9 Palantir shares remain unredeemed. While the Securities and Exchange Commission
10 (“Commission”) agrees Global Generation has unredeemed Palantir shares, the Commission’s
11 forensic accounting expert, Monica Ip, relying on Defendants’ records, believes the number of
12 Global Generation’s unredeemed Palantir shares is 408,333. (Court Docket No. (“CD”) 342, Ex.
13 1; CD 342, 6: fn.7; 200, 7:14-8:10) Global contends the Commission’s calculation is
14 understandably inaccurate because it is based on Defendants’ records, which are inaccurate.

15 Global Generation and Progresso Ventures, LLC (“Progresso”) share certain
16 common background facts as to a second issue. Both Global Generation and Progresso invested
17 in Palantir through Defendants. Both were harmed by Defendants’ wrongful conduct. Unlike
18 other investors, Global Generation and Progresso spent the time, money and effort to pursue their
19 legal remedies and obtained judgments in their favor and against Defendants. In Global
20 Generation’s case, this effort involved filing a federal action which became a lengthy arbitration
21 which became a federal court judgment. (CD 198, 5:17-6:7) (“Judgment”). Global Generation
22 then pursued collection efforts against Defendants in Michigan, New York, New Jersey and
23 California. (*Id.*) Global submits limiting its status to that of a Creditor in this proceeding could
24 penalize it for enforcing its legal rights to Judgment and beyond, potentially depriving it of the
25 upside of Palantir going public. On the other hand, classifying Global Generation solely as an
26 Investor would not acknowledge Global Generation’s effort to obtain its Judgment and to collect
27 that Judgment. Global Generation requests the Court exercise its equitable power to classify
28 Global Generation as a Creditor up to the amount of its Judgment and an Investor to the extent a

1 Palantir liquidating event generates proceeds that, based on the Palantir shares allocated to Global
2 Generation, exceed the amount distributed to Global Generation on account of its Judgment.

3 **II. BACKGROUND FACTS RELEVANT TO THIS MOTION**

4 **A. Global Generation and Benchmark's Investments with Defendants.**

5 Global Generation Group, LLC ("Global Generation") and Benchmark Capital,
6 LLC ("Benchmark") are each Michigan limited liability companies based in Grand Blanc,
7 Michigan. (CD 198, 2:3-8.) John Syron is the managing member of Global Generation and
8 Benchmark. *Id.*

9 In October 2011, Global Generation purchased a total of 933,333 shares of Palantir
10 Technologies, Inc. ("Palantir") through Defendants, investing a total of \$2.8 million. (CD 198,
11 1:20-2:2 and Exhibit 1) A letter, dated December 11, 2011, from Defendants to Global
12 Generation confirmed Global Generation's investment through Defendants of \$2,800,000 for
13 933,333 shares of Palantir Class A stock, a price of approximately \$3 a share. *Id.* Also in
14 October 2011, Global Generation invested a total of \$3,223,740.88 through Defendants for shares
15 of Facebook, Inc. Class B stock ("Facebook"), at a price of roughly \$30 a share. (Supplementary
16 Declaration of John Syron, ¶ 3) *Id.*¹

17 On October 4, 2011, Benchmark invested a total of \$331,695.96 through
18 Defendants for shares of Facebook. (Supplementary Declaration of John Syron, ¶4)

19 In connection with these investments, Global Generation and Benchmark
20 negotiated a Letter Agreement with Defendants, dated December 7, 2011. (CD 198, 2:3-3:26.)
21 Among other things, that Letter Agreement provided that Global Generation and Benchmark each
22 had the right to "put back" to Defendants some or all of the securities purchased through
23 Defendants at which point, Defendants would be obligated to reimburse Global Generation and
24 Benchmark the amount of their original investments. (CD 198, 3:14- 26)

25 **B. Global Generation and Benchmark's Redemption of Their Facebook Shares.**

26 In early October 2012, Global Generation exercised its right to put back to

27 _____
28 ¹ Global Generation also invested in Groupon, Inc. stock through Defendants; however, Global Generation redeemed its purchase of that stock. Global Generation's investment in Groupon, Inc. is not relevant to this motion.

1 Defendants all of Global Generation's Facebook shares. (CD 198, 4:1-3)

2 At the same time, Benchmark exercised its right to put back to Defendants all of
3 its Facebook shares. (Benchmark's exercise was limited to Facebook because Benchmark did not
4 invest in nor has it ever owned any shares in Palantir.) (Supplementary Declaration of John
5 Syron, ¶5)

6 As stated above, Global Generation and Benchmark had invested in Facebook
7 through Defendants at approximately \$30 a share. A little more than six months later, on May 18,
8 2012, Facebook completed its initial public offering at \$38 a share (Supplementary Declaration of
9 John Syron, ¶6) By the time the lock up period (which prohibits the sale of pre-IPO shares) had
10 expired, the price of Facebook shares had dropped. In October 2012, Facebook's stock price was
11 approximately \$19 a share. (*Id.*).

12 In October 2012, both Global Generation and Benchmark exercised their right
13 under the Letter Agreement to put their Facebook shares back to Defendants, at which point
14 Defendants became obligated to reimburse Benchmark and Global Generation the amount of each
15 of their original investments in Facebook. (Supplementary Declaration of John Syron, ¶ 7)
16 Although not timely, Defendants did reimburse Global and Benchmark their initial investments in
17 Facebook as follows.

18	<u>Global Generation Investment in Facebook</u>	\$3,223,740.88
19	Reimbursements	
	6/27/2013	(\$2,719,000.00)
20	7/1/2013	(\$50,000.00)
	7/9/2013	(\$27,741.48)
21	7/12/2013	(\$50,000.00)
	7/31/2013	(\$200,000.00)
22	10/18/2013	(\$177,000.00) ²
	Total:	\$3,223,741.48

23 (Supplementary Declaration of John Syron, ¶ 7)

24
25
26 ² On October 18, 2013, Defendants made a \$500,000 payment to Global Generation. (CD 200, Ex. 5, p. 56).
27 \$177,000 of that amount was applied by Global Generation to complete the redemption of its Facebook position.
28 (Supplemental Declaration of John Syron, ¶¶ 7-9) The remaining \$323,000 was applied by Global Generation as the
first partial redemption payment for its Palantir position. (*Id.*) This October 18, 2013 payment was the first payment
of any kind Global Generation had received on its Palantir position despite having exercised its put a year earlier, on
October 12, 2012. (*Id.*)

1	<u>Benchmark Investment in Facebook</u>		\$331,695.95
2	Reimbursements	6/18/2013	(\$100,000.00)
3		6/21/2013	(\$100,000.00)
4		6/24/2013	(\$75,000.00)
5		7/3/2013	(\$50,000.00)
6		7/9/2013	(\$22,258.22)
7		Total:	\$347,258.22

(Supplementary Declaration of John Syron, ¶ 7)

C. Global Generation’s Redemption of Its Palantir Shares.

Global Generation also exercised its put on its Palantir shares, putting those shares back to Defendants in October 2012. (CD 198, 4:1-3) Defendants did not respond. Attached to John Syron’s May 13, 2017 declaration in this matter are a series of communications he exchanged with various of the Defendants spanning the period October 2012 through October 16, 2013, which variously describe Defendants’ “unfilled promises, and missed deadlines” “regarding the date by which they would find a new buyer for the redemption of Global Generation’s Palantir shares.” (CD 198, 4:1-24) Mr. Syron’s Declaration attaches his October 16, 2013 letter to Defendants which begins: “Currently, you are holding approximately 1,647,000 shares of Palantir for Global Generation Group. An investment of \$2,800,000....” and then demands Defendants “transfer control” of those Palantir shares to Global Generation. (CD 198, 4:25-5:16) In other words, despite its October 2012 put of its Palantir shares back to Defendants, Global Generation had not, as of October 16, 2013, been reimbursed any portion of its \$2,800,000 Palantir investment. Mr. Syron’s October 16, 2013 letter shows Global Generation’s strategy had switched at that point from trying to be reimbursed the amount of its investment to trying to obtain its Palantir shares themselves from Defendants.

Ultimately, Defendants did not transfer any Palantir shares to Global Generation; however, on October 18, 2013, Defendants began a series of payments, which ultimately reimbursed Global Generation \$923,000 of its \$2,800,000 Palantir investment:

26	<u>Global Generation Investment in Palantir</u>		\$2,800,000
27	Reimbursements	10/18/2013	(\$323,000)
28		11/22/2013	(\$300,000)

1	11/29/2013	(\$300,000) ³
2	Total:	(\$923,000)
3	Total Unreimbursed:	\$1,877,000

3 (Supplementary Declaration of John Syron, ¶ 9)

4 Thus, as of the end of November 2013, Defendants still owed Global Generation a significant
5 amount of money. (Supplementary Declaration of John Syron, ¶¶ 9-10)

6 On December 9, 2013, Global Generation filed a complaint in the United States
7 District Court for the Eastern District of Michigan (No. 13-cv-14979) against Defendants for
8 federal securities fraud, breach of contract and state law tort claims. (CD 198, 5:20-25). The
9 District Court ordered the claims to arbitration before the American Arbitration Association, and
10 that arbitration concluded on June 16, 2015. (*Id.*) On July 9, 2015, the American Arbitration
11 Association issued its Final Award awarding Global Generation monetary damages, prejudgment
12 interest, arbitration costs, attorneys' fees and costs. (CD 198, 5:26-6:3) On September 16, 2015,
13 that award was made a Judgment of the United States District Court for the Eastern District of
14 Michigan, which included a specific finding that Global Generation had been defrauded.
15 (Supplementary Declaration of John Syron, Exhibit 1's Exhibit C)

16 Global Generation subsequently attempted to collect the Judgment by initiating
17 post-Judgment collection efforts in the states of Michigan, New York, New Jersey and California
18 utilizing through available federal and state procedures. (Supplementary Declaration of John
19 Syron, ¶ 13) In doing so, Global Generation obtained legal rights of a judgment creditor of the
20 various states and jurisdictions in which it sought to collect. (*Id.*) Nevertheless, Global
21 Generation has not recovered any money or stock from its Judgment. (*Id.*)

22 ///

23 ///

24 ///

25 _____
26 ³ CD 200, Ex. 5, p. 56. This payment exceeded what was necessary to complete the redemption of Global
27 Generations' Facebook position. As such, the necessary amount, \$177,000, was applied to complete the redemption
28 of Global Generation's Facebook position. (Supplemental Declaration of John Syron, ¶¶ 7 and 9) The remaining
\$323,000 was applied to partially redeem Global Generation's Palantir position. (*Id.*) This October 18, 2013
payment was the first payment Global Generation had received on account of its Palantir shares since the exercise of
its put in October 2012. (*Id.*)

1 **III. LEGAL DISCUSSION**

2 **A. Global Generation’s Claim Correctly States the Number of Its Unredeemed**
3 **Palantir Shares.**

4 The Commission filed the Declaration of forensic accounting expert Monica Ip on
5 June 29, 2017. (CD 200) Ms. Ip states she was retained by the Commission to analyze “[t]he
6 impact of the Palantir Technologies, Inc. . . . sale and purchase transactions upon the Receivership
7 Entities. . . .” and “[t]he manner in which the Receivership Entities operated during the last
8 calendar quarter of 2013.” (CD 200, 1:21-2:19) As part of that assignment, Ms. Ip reviewed
9 Defendants’ records concerning Global Generation’s Palantir transactions, records she concedes
10 have a “fundamental defect.” (CD 200, 5:1-14) Specifically, “there were transactions involving
11 Palantir shares that are not reflected in the Investor Lists. As discussed below, those Palantir
12 transactions specifically involved . . . Global Generation.” (CD 200, 6:3-6)

13 Notwithstanding the problems with Defendants’ records, Ms. Ip appears to agree
14 with Global Generation that Global Generation paid Defendants \$3 a share, a total of \$2,800,000,
15 in October 2011, to acquire 933,333 shares of Palantir. (CD 200, 6:20-24); that Global
16 Generation had a “Put Option” which allowed it “to redeem all or a portion of its 933,333 Palantir
17 shares and pay Global Generation the ‘Redemption Price’ of the original acquisition price of \$3
18 per share. . . .”; that Global Generation had exercised that put as to Palantir in October 2012; and
19 that Global Generation “did not receive payment . . . as required for the redemption of Global
20 Generation’s [Palantir] shares.” (CD 200, 4-13) Ms. Ip also states that “[b]ased on our review of
21 the bank statements and general ledgers [of Defendants], Global Generation and Benchmark
22 Capital, LLC (both entities have the same managing member John Syron) received 11 payments
23 from June 2013 through November 2013 totaling \$1,575,000.” (CD 200, 7:14-17) Global
24 Generation agrees with Ms. Ip that Global Generation, on the one hand, and Benchmark Capital,
25 on the other hand, each received certain of those 11 redemption payments from Defendants on the
26 dates specified.

27 The problem arises in Ms. Ip’s allocation in her Declaration’s Exhibit 5 of all 11
28 payments to the redemption of Palantir shares. (CD, 200: Exhibit 5, p. 56-75) (“Summary”).

1 That allocation is wrong but understandably so because it is based on entries in Defendants'
 2 ledgers, entries which are substantially and demonstrably inaccurate. The 11 redemption
 3 payments were made on the following dates in the following amounts:

	Date	Amount
4		
5	1. 06/18/13	\$100,000.00
6	2. 06/21/13	\$100,000.00
7	3. 06/24/13	\$75,000.00
8	4. 07/01/13	\$50,000.00
9	5. 07/03/13	\$50,000.00
10	6. 07/09/13	\$22,258.52
11	7. 07/09/13	\$27,741.48
	8. 07/12/13	\$50,000.00
	9. 10/18/13	\$500,000.00
	10. 11/22/13	\$300,000.00
	11. 11/27/13	<u>\$300,000.00</u>
		<u>\$1,575,000.00</u>

12 Defendants' ledgers state that five of the eleven payments, Payments 1, 2, 3, 5 and
 13 6, were made to Benchmark, a total of \$347,259.00, were made to Benchmark, not Global
 14 Generation. (CD, 200: Exs.5 (56), 5-A (57), 5-B (58), 5-C (59), 5-E (61) and 5-F (62)) That is
 15 accurate. (Supplementary Declaration of John Syron, ¶ 7) However, Defendants' ledger entries
 16 are not accurate in that these payments were not, and could not have been for the redemption of a
 17 Benchmark investment in Palantir as Benchmark did not own, and has never owned, any shares or
 18 made any investment in Palantir. (Supplementary Declaration of John Syron, ¶ 5) As discussed
 19 above, Benchmark's only investment through Defendants was in Facebook. (Supplementary
 20 Declaration of John Syron, ¶¶ 4-5) Benchmark had exercised its put option on its Facebook
 21 investment in October 2012, months before these five payments were made by Defendants, and
 22 these five payments, Payments Nos. 1, 2, 3, 5 and 6, were made to Benchmark, each as a partial
 23 redemption of Benchmark's position in Facebook. (Supplementary Declaration of John Syron, ¶¶
 24 6-7)

25 As shown above, Global Generation had also invested in Facebook through
 26 Defendants and, like Benchmark, Global Generation had exercised its option to put its Facebook
 27 shares back to Defendants in October 2012. (Supplementary Declaration of John Syron, ¶ 7) The
 28 Summary's Payments Nos. 4, 7 and 8, a total of \$127, 741.48, were made to Global Generation.

1 That was true; however, Payments Nos. 4, 7 and 8 were made to redeem Global Generation's
2 Facebook shares, not Palantir. (CD, 200: Exs.5 (56), 5-D (60), 5-F (62), and 5-G (63))
3 (Supplementary Declaration of John Syron, ¶ 7) How can Global Generation be so sure that
4 Payments Nos. 4, 7 and 8 were made to Global Generation to redeem its investment in Facebook
5 and not Palantir? Payments Nos. 4, 7 and 8 were made on July 1, 2013, July 9, 2013 and July 12,
6 2013, respectively; however, as declared by Mr. Syron, those payments were to redeem Global
7 Generation's Face book positions, not Palantir. (Supplementary Declaration of John Syron, ¶ 7)
8 In his May 25, 2017 Declaration, Mr. Syron states, and attaches numerous communications with
9 Defendants which confirm, that, as of October 16, 2013, Global Generation had received nothing
10 on account of its redemption of its Palantir shares. (CD 198, 4:1-5:16) The credibility of Mr.
11 Syron's May 25, 2017 Declaration (CD 198) is buttressed by the fact he signed that Declaration
12 before Ms. Ip's Declaration was filed and, at the time, Mr. Syron was unaware of Ms. Ip, her, her
13 work or conclusions. (CD 200; Supplementary Declaration of John Syron, ¶ 1) Indeed, Mr.
14 Syron has never spoken to Ms. Ip, much less met with her and was not aware of Ms. Ip's
15 declaration until after it had been filed. (*Id.*) As such, Mr. Syron had no reason to color his
16 declaration in anticipation or reaction to the work of Ms. Ip.

17 Global Generation does acknowledge that Payments Nos. 10 and 11, each for
18 \$300,000, were made to Global Generation as partial redemptions of its Palantir investment.
19 (Supplementary Declaration of John Syron, ¶ 9) Further, Payment No. 9 accurately reflects an
20 October 18, 2013 payment to Global Generation of \$500,000. That amount was more than the
21 \$177,000 which was then necessary to complete the redemption of Global Generation's Facebook
22 position. (Supplementary Declaration of John Syron, ¶¶7-9.) Therefore, the difference
23 (\$323,000) was allocated to the partial redemption of Global Generation's investment in Palantir.
24 (Supplementary Declaration of John Syron, ¶¶ 7-9.)

25 Bottom line, of the \$1,575,000 listed on the Summary, \$923,000 was paid by
26 Defendants in redemption of Global Generation's position in Palantir, and \$652,000 was paid to
27 either Benchmark Capital or Global Generation in redemption of their Facebook positions.
28 (Supplementary Declaration of John Syron, ¶ 10) Subtracting \$923,000 from Global

1 Generation's investment of \$2,800,000 in Palantir results in a difference of \$1,877,000, which,
 2 when divided by the redemption price of \$3 a share, leaves Global Generation with a total of
 3 625,666 unredeemed Palantir shares, the number of shares in Global Generation's Claim. For
 4 these reasons, Global Generation requests the Court make a determination that the number of its
 5 unredeemed shares in Palantir is 625,666

6 **B. The Circumstances Of Its Claim Warrant That Global Generation Be**
 7 **Deemed A Creditor Up To The Amount Of Its Judgment And An Investor To**
 8 **The Extent A Palantir Liquidating Event Generates Proceeds That, Based On**
 9 **The Palantir Shares Allocated To Global Generation, Exceed The Amount**
 10 **Distributed To Global Generation On Account Of Its Judgment.**

11 In a receivership proceeding, this Court has "broad powers and wide discretion" to
 12 determine relief in an equity receivership. *S.E.C. v. Basic Energy & Affiliated Res., Inc.*, 273
 13 F.3d 657, 668 (6th Cir. 2001); *S.E.C. v. Elliot*, 953 F.2d 1560, 1566-67 (11th Cir. 1992).
 14 Whatever plan of distribution is adopted by the Court may result in differing treatment of
 15 claimants. For example, a distribution plan may provide for reimbursement to certain claimants,
 16 while excluding others. *S.E.C. v. Levine*, 881 F.2d 1165, 1173 and 1183 (2d Cir. 1989). A
 17 distribution plan may also provide different treatment for different classes of investors. *S.E.C. v.*
 18 *Wang*, 944 F.2d 80, 86-87 (2d Cir. 1991). In sum, this Court has the "discretion to classify claims
 19 sensibly," to treat claimants reasonably and fairly in adopting a plan. *S.E.C. v. Enter. Trust Co.*,
 20 559 F.3d 649, 652 (7th Cir. 2009).

21 Global Generation submits its Claim ought to be classified in a different category
 22 than other investors, with the possible exception of Progresso. Global Generation understands the
 23 similarities of its position with Progresso are as follows. First, the Commission's filings in this
 24 case confirm Global and Progresso's late 2011 investments with Defendants were used to
 25 purchase 3.1 million shares of Palantir. (CD 197) In other words, the purchase of those 3.1
 26 million shares of Palantir can be traced directly to Global Generation and Progresso's funds. (*Id.*)
 27 Further, Global Generation pursued its legal remedies against Defendants and understands
 28 Progresso did as well.

Specifically with regard to its position, Global Generation filed a complaint
 against Defendants in the United States District Court for the Eastern District of Michigan (Case

1 No. 13-cv-14979) on December 9, 2013. (CD 198, 5:17-6:3) The District Court ordered the
2 matter to arbitration before the American Arbitration Association. A five day arbitration
3 concluded on June 15, 2015. That arbitration cost Global Generation a substantial amount of
4 money, not only for its own fees and costs, but also for those of Defendants who failed to pay
5 their share of the forum costs and arbitrators' fees which required Global Generation to do so.
6 (Supplementary Declaration of John Syron, ¶¶ 12-13) On July 9, 2015, the American Arbitration
7 Association issued a Final Award in favor of Global Generation. (CD 198, 5:26-6:3) On
8 September 16, 2015, the District Court issued the Judgment, a money judgment in the amount of
9 the Final Award in favor of Global Generation and against Defendants which included a specific
10 finding that Global Generation had been defrauded. (Supplementary Declaration of John Syron,
11 Exhibit 1's Exhibit C)

12 Subsequently, Global Generation tried to collect the Judgment in numerous
13 jurisdictions utilizing a number of local collection procedures. (*Id.*) For example, the Judgment
14 has been recorded/registered in the states of New Jersey, New York and California and with a
15 number of courts in those states including the United States District Court for the Northern
16 District of California. (*Id.*) Sister States Judgments were obtained. (*Id.*) In addition, a debtor's
17 exam was conducted by Global Generation of defendant Frank Gregory Mazzola in New Jersey.
18 (*Id.*) A wage garnishment was issued in California. (*Id.*) Liens were recorded against real estate
19 in Defendants' names in New Jersey. (*Id.*)

20 Global Generation pursued its legal rights to obtain the Judgment costing it fees
21 and expenses and time and money not incurred by other investors. Global Generation prosecuted
22 the Judgment, utilizing available federal and state collection procedures in Michigan, New York,
23 New Jersey and California. In doing so, Global Generation not only obtained the Judgment but
24 also obtained the legal rights arising from its post-Judgment efforts in the various states and
25 jurisdictions in which it sought to collect. Global Generation thereby obtained legal rights and
26 interests not held by other investors. Global Generation will not review all of those rights and
27 interests here but, as an example, in California: "An equitable lien is a right to subject property
28 not in the possession of the lienor to the payment of a debt as a charge against that property.

1 [citation omitted] It may arise from a contract which reveals an intent to charge particular
2 property with a debt or out of general considerations of right and justice as applied to the relations
3 of the parties and the circumstances of their dealings.” *Farmers Insurance Exchange v. Zerlin*, 53
4 Cal.App.4th 445, 453-454 (1997). “[E]ven a mere promise to pay from a specific fund may
5 suffice to create an equitable lien if considerations of detrimental reliance or unjust enrichment
6 are implicated.” *Id.* at p. 455. Global Generation submits that when it exercised its put option
7 under the Letter Agreement, it became an equitable lienor as to the Palantir shares Defendants
8 held under California law. That is a right not held by other investors.

9 Further, again unlike other investors, Global Generation spent the time and money
10 to obtain the Judgment and to collect on it. In other words, Global Generation is also unique in
11 that it has been damaged not only by losing a substantial portion of its investment with
12 Defendants but also the time and money it spent on collection. Global Generation has suffered
13 those damages: Other investors have not.

14 Because its position is different than that of other investors, Global Generation
15 submits classifying it solely as a Creditor could penalize it for pursuing its legal rights, by
16 potentially depriving it of the upside of Palantir going public. On the other hand, classifying
17 Global Generation solely as an Investor would ignore the legal rights Global Generation obtained
18 by the Judgment and its collection efforts. Global Generation requests the Court exercise its
19 equitable power to classify Global Generation as a Creditor up to the amount of the Judgment and
20 an Investor to the extent a Palantir liquidating event generates an amount that, based on the
21 Palantir shares allocated to Global Generation, exceeds the amount distributed to Global
22 Generation on account of its Judgment.

23 **IV. CONCLUSION**

24 For these reasons, Global Generation requests the Court determine 1) that the
25 number of Interested Party Global Generation Group, LLC’s unredeemed shares of Palantir
26 Technologies, Inc. is 625,666; and 2) that Global Generation is classified as a Creditor up to the
27 amount of the Judgment and an Investor to the extent a Palantir liquidating event generates an
28

1 amount that, based on the Palantir shares allocated to Global Generation, exceeds the amount
2 distributed to Global Generation on account of its Judgment.

3
4 Dated: June 29, 2018

LUBIN OLSON & NIEWIADOMSKI LLP

5 By: /s/ Theodore A. Griffinger, Jr.
6 Theodore A. Griffinger, Jr.
7 Attorneys for Interested Parties
8 GLOBAL GENERATION GROUP, LLC
9 and BENCHMARK CAPITAL, LLC
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28