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14  
15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17  
18 SAN FRANCISCO DIVISION  
19

20 SECURITIES AND EXCHANGE COMMISSION,

21 Plaintiff,

22 v.

23 JOHN V. BIVONA; SADDLE RIVER  
24 ADVISORS, LLC; SRA MANAGEMENT  
25 ASSOCIATES, LLC; FRANK GREGORY  
26 MAZZOLA,

27 Defendants, and

28 SRA I LLC; SRA II LLC; SRA III LLC;  
29 FELIX INVESTMENTS, LLC; MICHELE J.  
30 MAZZOLA; ANNE BIVONA; CLEAR  
31 SAILING GROUP IV LLC; CLEAR  
32 SAILING GROUP V LLC,

33 Relief Defendants.

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

**[PROPOSED] ORDER GRANTING  
PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION'S MOTION  
FOR ORDER ESTABLISHING  
SHORTFALLS**

Date: July 16, 2018  
Time: 1:30 pm  
Courtroom: 5  
Judge: Edward M. Chen

**ORDER ESTABLISHING SHARE SHORTFALLS**

1  
2 In accordance with the Court's Minute Order, entered June 25, 2018 (ECF 351), plaintiff  
3 Securities and Exchange Commission (the "SEC" or "Commission") submitted a Motion for an order  
4 establishing the shortfall in shares regarding Palantir Technologies, Inc. ("Palantir") and certain other  
5 companies. In support of its Motion, the SEC submitted the Supplemental Declaration of M. Monica  
6 Ip setting forth her expert opinion regarding the shortfall in the shares of Palantir held or control by  
7 the Receiver in this proceeding. Based upon the SEC's showing, as well as additional evidence  
8 submitted by the interested investors, the Court determines that the Palantir shortfall is at least  
9 590,576 shares with 408,333 Palantir shares allocated to Global Generation, LLC. The Court further  
10 determines that this shortfall increases to 908,525 Palantir shares if an off-shore holding company  
11 known as Equity Acquisition Corporation ("EAC") fails to transfer to the Receiver the net amount of  
12 317,649 Palantir shares that EAC owes to the receivership.

13 The SEC also submitted the Declaration of Ellen Chen setting forth her analysis of the Uber,  
14 Inc., Airbnb, Inc., Pinterest, Inc., Lyft, Inc., and Practice Fusion, Inc. shares owed to the receivership  
15 investors for which the receivership must receive shares from EAC. Based upon the SEC's showing,  
16 as well as additional evidence submitted by the interested investors, the Court's determines that, if  
17 EAC persists in its failure to transfer the shares owed to the receivership, there is an additional  
18 shortfall to receivership of:

- 19 (i) 500 Uber, Inc. shares;  
20 (ii) 11,125 Airbnb, Inc. shares;  
21 (iii) 69,614 Pinterest, Inc. shares;  
22 (iv) 9,479 Lyft, Inc. shares; and  
23 (v) 545,094 Practice Fusion, Inc. shares.  
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The Court also notes that the Receiver no longer has any Square, Inc. shares following the sale of those shares at market prices.

SO ORDERED.

Dated: July \_\_, 2017

EDWARD M. CHEN, Judge  
United States District Court

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13 SECURITIES AND EXCHANGE COMMISSION,

14 Plaintiff,

15 v.

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

18 Defendants, and

19 SRA I LLC; SRA II LLC; SRA III LLC;  
20 FELIX INVESTMENTS, LLC; MICHELE J.  
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21 SAILING GROUP IV LLC; CLEAR  
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22 Relief Defendants.  
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1 In accordance with the Court's Minute Order, entered June 25, 2018 (ECF 351), plaintiff  
2 Securities and Exchange Commission (the "SEC" or "Commission") submits this Motion for an order  
3 establishing the shortfall in shares of Palantir Technologies, Inc. ("Palantir") and certain other  
4 companies. The SEC moves, first, for the Court's determination that the Palantir shortfall is at least  
5 590,576 shares and that this shortfall increases to 908,525 Palantir shares if Equity Acquisition  
6 Corporation ("EAC") fails to transfer the Palantir shares that EAC owes to the receivership. The  
7 SEC moves, second, for the Court's determination that, if EAC persists in its failure to transfer the  
8 shares that EAC owes to the receivership, there is an additional shortfall of: 500 Uber, Inc. shares;  
9 11,125 Airbnb, Inc. shares; 69,614 Pinterest, Inc. shares; 9,479 Lyft, Inc. shares; and 545,094  
10 Practice Fusion, Inc. shares. Finally, the SEC sets forth below its position regarding the Palantir  
11 investor claims by Global Generation, LLC and Progresso Ventures, LLC, particularly the SEC's  
12 belief that, under the Distribution Plan proposed jointly by the SEC and the Receiver, designation of  
13 those two claimants as either "investors" or "creditors" will make no practical difference. The SEC's  
14 Motion is supported by the Supplemental Declaration of M. Monica Ip, CPA, the Declaration of  
15 Ellen Chen, the Declaration of Tony Stearns and the pleadings on file.

### 16 I. The SEC's Palantir Shortfall Analysis

17 To support its analysis of the shortfalls in Palantir shares, the SEC has presented declarations  
18 from its expert, M. Monica Ip, CPA. First, on June 29, 2017, the SEC submitted the Declaration of  
19 M. Monica Ip, CPA ("Ip Dec."). ECF 200. Using the materials then available to her, Ms. Ip  
20 analyzed the Palantir shortfall as of November 2015. *Id.* at ¶¶ 1-21 and Exs. 1, 2, 2-A and 2-B. Ms.  
21 Ip previously opined that there was a shortfall of 413,444 Palantir shares as of November 16, 2015.  
22 *Id.*, at Ex. 1.

23 Ms. Ip has prepared a Supplemental Declaration ("Ip Supp. Dec.") analyzing the Palantir  
24 shortfall in light of additional accounting and banking information. Ms. Ip has used bank account  
25 records, investor lists, and other information to calculate the number of shares owed to receivership  
26 investors as of mid-March 2016 (when this action was filed), rather than the previous mid-November  
27 2015 cut-off date. Ip Supp. Dec. at ¶ 1. Based upon this updated analysis, the receivership is  
28 obligated to investors for 6,330,825 Palantir shares as of mid-March 2016. *Id.* at ¶ 3 and Updated

1 Exhibit 1. As with her initial declaration, Ms. Ip's supplemental declaration continues to treat Global  
 2 Generation as being owed 408,333 Palantir Shares because Global Generation has never received the  
 3 \$3.00 per share redemption payment for those shares. *Id.* at Updated Exhibit 1.<sup>1</sup>

4 Ms. Ip has also performed an updated analysis of the number of Palantir shares available for  
 5 distribution to investors when this proceeding commenced in mid-March 2016. This updated  
 6 analysis includes Ms. Ip's review of accounting documents showing the dates when Palantir shares  
 7 were acquired by Clear Sailing or EAC and also showing how those shares should be allocated into  
 8 series for investors by Clear Sailing IV and EAC. *Ip Supp. Dec.* at ¶ 1. EAC is a Bermuda-based  
 9 entity which is wholly-owned and managed by Carsten Klein and which acquires and owns various  
 10 pre-IPO shares or interests in such shares. Interview Transcript of Carsten Klein, dated December 4,  
 11 2015 ("Klein Transcript"), at 33:8-34:3 (attached as Exhibit A to the Declaration of Tony Stearns).  
 12 EAC was originally set up to hold those pre-IPO shares for non-receivership entities such as the off-  
 13 shore Bermuda-based funds known as the "Silverback Funds." *Id.* at 31:18-33:15, 34:3-37:10. The  
 14 Silverback Funds are managed and partly owned by Carsten Klein, and were launched by Frank  
 15 Mazzola in 2013 so that Mazzola could operate through an off-shore entity. *Id.* at 24:6-29:22.  
 16 Although set up to hold shares for the Silverback Funds, an analysis of the accounting records shows  
 17 that EAC also holds pre-IPO shares and interests that are owed to the receivership entities.

18 Updated Exhibit 2-A of the *Ip Supp. Declaration* provides Ms. Ip's analysis of the Palantir  
 19 shares available for distribution by Clear Sailing to receivership investors. Clear Sailing owns  
 20 5,422,600 shares according to the Palantir stock certificates issued to Clear Sailing. *Ip Supp. Dec.* at  
 21 ¶ 5 and Updated Exhibit 2-A at 1. According to accounting records, Clear Sailing is holding a total  
 22 of 380,797 Palantir shares for the off-shore "Silverback" investment funds, while EAC is holding  
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24 <sup>1</sup> The purchase or redemption of shares is not completed, or "settled," until payment is made:  
 25 "[S]ettlement is generally the term applied to the exchange of payment to the seller and the exchange  
 26 of securities to the buyer of a trade. It is the final step in the lifecycle of a securities transaction."  
 27 Depository Trust and Clearing Corporation, *Understanding the DTCC Subsidiaries Settlement*  
 28 *Process*. ECF 240 (Supplemental Declaration of John S. Yun) at Exhibit 5. *See also* Financial  
 Industry Regulatory Authority, *FINRA Rules, Uniform Practice Code*, Rule 11330 Payment  
 (Amended by SR-FINRA-2010-030 eff. Dec. 15, 2010) (stating that "The party making delivery [of  
 shares] shall have the right to require the purchase money to be *paid upon delivery* by certified check,  
 cashier's check, bank draft or cash") (emphasis added). ECF 240 at Exhibit 6.

1 698,446 Palantir shares for the benefit of receivership entities such as the SRA Funds. *Id.* at ¶ 6 and  
2 Updated Exhibit 2-A at 2. After netting out these numbers, the total net number of Palantir shares  
3 available for distribution by Clear Sailing to receivership investors is 5,740,249 shares as of March  
4 2016. *Id.*

5 Because Clear Sailing owes 6,330,825 shares to the receiverships investors, Ms. Ip opines that  
6 the current Palantir shortfall is 590,576 shares. Ip Supp. Dec. at ¶¶ 2, 7 and Updated Exhibit 1. That  
7 shortfall total assumes, however, that EAC will transfer the net amount of 317,649 Palantir shares to  
8 Clear Sailing for distribution to the receivership's investors. *Id.* at ¶ 10. If EAC persists in its failure  
9 to date to transfer those shares, then the Palantir shortfall increases to 908,225 shares. The shortfall  
10 further increases if the Court determines that Global Generation is owed more than 408,333 Palantir  
11 shares, or if the Court determines that Progresso Ventures should receive Palantir shares.

12 Notably, a significant Palantir share shortfall exists, whether or not any shares are allocated to  
13 Global Generation or Progresso Ventures. Because the total Palantir shortfall is, at a minimum,  
14 590,576 shares, even if Global Generation's claim for Palantir shares was reduced to zero shares,  
15 there would still be a 182,243 shortfall in Palantir shares ( $590,576 - 408,333 = 182,243$ ). If EAC  
16 does not return to the Receiver the 317,649 Palantir shares owed by EAC, that shortfall increases,  
17 however, to 499,892 shares.

18 To aid the Court, Ms. Ip has performed a basic analysis of the number of Palantir shares that  
19 could be owed to Progresso Ventures under various assumptions. Ip Supp. Dec. at ¶¶ 8-10.  
20 Assuming, hypothetically, that Progresso Venture's \$4.45 million was allocated to the purchase of  
21 Palantir shares at \$3.00 per share in November 2011, then Progresso Ventures would have had a  
22 claim to 1,483,333 Palantir shares at the time. Because Ms. Ip has identified a series of payments to  
23 Progresso Ventures, she treats those a series of payments to Progresso Ventures as redemption  
24 payments at \$3.00 per share. Taking those redemption payments into account, Progresso Ventures  
25 would still hold 503,558 unredeemed Palantir shares. *Id.* at ¶ 9.

## 26 II. The SEC's Analysis of Shortfalls For Other Companies

27 In addition to Palantir, there will be shortfalls for other companies due to court-approved  
28 expenses for the receivership, as well as to EAC's possible persistence in failing to transfer shares

1 owed to the Receiver. When the receivership began in October 2016, the distribution of Square, Inc.  
2 shares to investors was incomplete because over 97,000 shares had not yet been distributed. The  
3 Receiver sold the remaining Square shares at current market prices and placed the sales proceeds in a  
4 receivership bank account. Those proceeds have been used, with court authorization, to pay the  
5 court-approved expenses of the receivership. As a result, the receivership cannot distribute Square  
6 shares to the remaining Square investors without re-purchasing such shares.

7 In addition to the 317,649 Palantir shares discussed above, EAC owns shares (or forward  
8 contracts for shares) in Uber, ZocDoc, Inc., Airbnb, Pinterest, Lyft and Practice Fusion that are owed  
9 to the receivership. Declaration of Ellen Chen (“Chen Dec.”) at ¶¶ 5, 7 and Ex. 1. With respect to  
10 Uber, Airbnb, Pinterest, Lyft and Practice Fusion, there will be a shortfall in the shares owed to  
11 receivership investors unless EAC transfers shares in those companies to the Receiver. *Id.* at ¶ 7 and  
12 Ex. 1.

13 According to the Long Sheets, EAC owns all of the shares or forward contracts for Uber,  
14 Airbnb, Pinterest or Lyft, but EAC owes shares in those companies to the receivership so that the  
15 receivership can transfer those shares to the receivership’s investors. *Id.* at ¶ 5. For example, EAC  
16 has a forward contract for 70,000 Uber shares, but owes the receivership the 500 Uber shares which  
17 are, in turn, owed to an SRA investor.<sup>2</sup> As a result, there is a 500 share shortfall in the receivership’s  
18 Uber position unless EAC transfers that number of Uber shares to the receivership. *Id.* at ¶ 7 and Ex.  
19 1.

20 Similarly, EAC has a forward contract for 12,500 Airbnb shares, but owes the receivership  
21 11,125 Airbnb shares for distribution to investors. EAC’s failure to deliver those shares leaves a  
22 shortfall in the receivership’s Airbnb position of 11,125 shares. *Id.* at ¶¶ 5, 7 and Ex. 1. EAC also  
23 holds forward contracts for 152,500 Pinterest shares (on a post-split basis), while the receivership  
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25 <sup>2</sup> A forward contract is a private agreement between the seller of pre-IPO shares and a buyer, such as  
26 Clear Sailing or EAC, of the shares. The buyer normally makes an up-front payment to the seller in  
27 exchange for the seller’s promise to deliver a specific number of shares to the buyer upon a certain  
28 event, such as the company’s public offering or merger. Unlike an actual ownership of pre-IPO  
shares, a forward contract for pre-IPO shares involves the risk that the seller will fail to deliver the  
promised shares.



1 owes – and thereby has a shortfall for – 69,614 post-split Pinterest shares unless EAC transfers that  
2 number of shares to the receivership. *Id.* EAC has purchased 55,000 Lyft shares, while owing to the  
3 receivership the 9,479 Lyft shares that the receivership owes to investors. Unless EAC transfers  
4 those 9,479 Lyft shares to the receivership, the receivership’s Lyft position will experience a shortfall  
5 of 9,479 shares.<sup>3</sup> *Id.*

6 With regard to Practice Fusion, the Saddle River accounting records indicated that EAC owns  
7 835,000 shares, of which 584,616 share are owed to the receivership. Conversely, the receivership  
8 owns approximately 1.5 million Practice Fusion shares of which 39,522 shares are owed to EAC.  
9 EAC therefore owes the net amount of 584,616 Practice Fusion shares to the receivership, which will  
10 experience a 545,094 shortfall without EAC’s transfer of those shares. *Id.* at ¶¶ 6-7 and Ex. 1.

11 Although EAC’s transfer of Practice Fusion shares to the receivership is of little economic  
12 consequence given the minimal (\$0.014) remaining value of Practice Fusion shares, the Uber,  
13 Airbnb, Pinterest and Lyft shares could provide a substantial monetary value to the receivership and  
14 its investors. Notably, in telephone conference calls with the Receiver and Ms. Chen, the principal  
15 for EAC, Carsten Klein, has agreed to the reliability of the Long Sheets and to the numbers in the  
16 Chen Dec. regarding the shares owed by EAC to the receivership and the shares owed by the  
17 receivership to EAC. *Id.* at ¶ 8.

### 18 III. Treatment of the Global Generation and Progresso Ventures Palantir Claims

19 Under the SEC’s and Receiver’s Joint Proposed Distribution Plan, it does not make a practical  
20 difference whether the Court deems Global Generation and Progresso Ventures to be investors or  
21 creditors. Those entities will receive an allowed claim under the Joint Plan for their net principal out-  
22 of-pocket loss whether they are treated as investors or creditors. They will then receive a *pro rata*  
23 share of any future distributions based upon their net out-of-pocket loss. For that reason, the SEC’s  
24 and Receiver’s Joint Plan is administratively simpler than the SRA Investor Group’s plan which ties  
25 all distributions to the types and amounts of shares owned by each investor.

26 \_\_\_\_\_  
27 <sup>3</sup> According to information from the Claims Agent, there have been claims submitted for the Uber,  
28 Airbnb, Pinterest and Lyft share amounts referenced above. The NYPA entities hold a sufficient  
number of ZocDoc shares to cover the claims of receivership investors.

1 The SEC takes no position on whether Global Generation's claim for 625,666 Palantir shares,  
 2 rather than 408,333 shares, is correct.<sup>4</sup> Ms. Ip relied upon Saddle River's accounting records in  
 3 determining that Global Generation had received redemption payments for all but 408,333 Palantir  
 4 shares. If Global Generation convinces the Court that some of those accounting records are incorrect,  
 5 then Ms. Ip is prepared to change her Palantir shortfall calculations accordingly. The SEC also takes  
 6 no position on whether Progresso Ventures should be deemed to be an investor in Palantir shares.

7 **IV. Conclusion**

8 Based upon the foregoing, the SEC requests that the Court determine that the shortfalls set  
 9 forth above, and in the SEC's proposed order exist, which affect the receivership's holdings for  
 10 Palantir, Uber, Airbnb, Pinterest, Lyft, Practice Fusion and Square.

11 Dated: June 29, 2018

Respectfully submitted,

13 /s/ John S. Yun

John S. Yun

14 Attorneys for the Plaintiff Securities and Exchange  
 15 Commission

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 27 <sup>4</sup> Claim Forms seeking a total of about 6.25 million Palantir shares have been submitted to date,  
 28 including the 625,666 shares sought by Global Generation, but not including any specific number of  
 Palantir shares for Progresso Ventures.