

1 JONATHAN K. LEVINE (SBN: 220289)
 ELIZABETH C. PRITZKER (SBN: 146267)
 2 BETHANY L. CARACUZZO (SBN: 190687)
PRITZKER LEVINE LLP
 3 180 Grand Avenue, Suite 1390
 Oakland, CA 94612
 4 Telephone: (415) 692-0772
 Facsimile: (415) 366-6110
 5 Email: jkl@pritzkerlevine.com
 ecp@pritzkerlevine.com
 6 bc@pritzkerlevine.com

7 Attorneys for the SRA Funds Investor Group

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

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants, and

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

Relief Defendants.

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

**THE SRA FUNDS INVESTOR GROUP'S
SUPPLEMENTAL BRIEF RE GLOBAL
GENERATION PURSUANT TO THE
COURT'S AUGUST 16, 2018 MINUTE
ORDER [DKT. 395]**

Prior Hearing Date: July 16, 2018
Time: 1:30 PM
Courtroom: 5
Judge: Hon. Edward M. Chen

1 On June 29, 2018, Global Generation Group, LLC (“Global”) filed a brief in support of its
2 claim that it should be treated as both a judgment creditor and a Palantir shareholder for the purposes
3 of any distribution plan approved by the Court. Dkt. 359. The SRA Funds Investor Group (the
4 “Investor Group”) filed an opposition on July 6, 2018, in which it explained why Global should be
5 treated only as a judgment creditor. Dkt. 362. Global filed a reply on July 10, 2018 [Dkt. 368] and
6 the Court held a hearing on the matter on July 16, 2018.

7 At the hearing, and as memorialized in a July 17, 2018 written order, the Court ruled that it
8 would not permit Global to file claims as both a judgment creditor and a Palantir investor. Dkt. 379.
9 The Court ordered the parties to file briefs by July 24, 2018 addressing three questions, one of which
10 was whether Global should be permitted to choose between creditor or investor status or whether it
11 should simply be treated as a creditor based on its judgment. *Id.* In its July 24 brief, Global argued
12 that it should be permitted to choose between creditor or investor status for its claim. Dkt. 382. The
13 Investor Group, in its July 24 brief, argued that Global effectively had already made its choice, and
14 that was to be treated as a creditor. Dkt. 383.

15 Subsequently, on July 30, 2018, the Court issued a more detailed order concerning Global’s
16 claim and its receivership status. Dkt. 385. The Court made the following findings with respect to
17 Global:

- 18 • “Global’s loss of the potential reward from increase in Palantir share value is the result of its
19 own decision-making, not Defendants’ conduct. Global opted to exercise its put right and in
20 doing so abandoned the potential upside of an investment in Palantir shares. Global opted to
21 sell its shares back to Defendants at the pre-determined price. Thereafter, Global sued
22 Defendants and sought a money judgment –not restitution or delivery of shares. Thus, at two
23 steps, Global elected to abandon its potential investment in Palantir.” Dkt. 385 at p. 4.
- 24 • “Global’s election situates it differently from other investors . . . Global could have either
25 sought to recover its shares or the amount of its original investment pursuant to the put. It
26 could not have been awarded both. Having been awarded full monetary judgment, it is not
27 entitled to Palantir shares as well; this would sanction double or overlapping recovery. The
28 relief Global now seeks is barred by its election of remedy.” Dkt. 385 at p. 5.
- “It is also barred by the merger doctrine . . . Because Global has obtained a money judgment
for its ‘claim’ against Defendants, its original ‘claim’ (whether for shares or money) has been
extinguished, and all it can do now is recover on the money judgment.” Dkt. 385 at p. 5.

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

- “Finally, Global’s claim is further barred by res judicata . . . To the extent Global sought only money but not shares or lost profit damages in prior litigation, it cannot now make an alternative claim for those remedies when it could have sought, but did not seek, in the first case.” Dkt. 385 at pp. 5-6.

While the Court deferred making a final determination as to Global’s status in the July 30 Order, the Investor Group respectfully submits that the Court’s findings quoted above fully support the Investor Group’s position that, as a legal and factual matter, Global has already made its choice, and that choice is to be treated as a creditor. There is nothing in the Court’s July 30 Order that would support an argument by Global that it should be treated as an investor. Allowing Global to choose to be treated as an investor now would ignore Global’s earlier choice and provide a windfall to Global at the expense of the true investors, including the members of the Investor Group. For all of the foregoing reasons, the Court should deem Global to be a judgment creditor and not a Palantir shareholder.

Respectfully submitted,

DATED: August 23, 2018

PRITZKER LEVINE LLP

By: /s/ Jonathan K. Levine
 Jonathan K. Levine
 Elizabeth C. Pritzker
 Bethany Caracuzzo

Attorneys for the SRA Funds Investor Group