

EXHIBIT B

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

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

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

19 Defendants, and

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

23 Relief Defendants.

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

**THE SRA FUNDS INVESTOR GROUP'S
 PROPOSED ALTERNATIVE
 DISTRIBUTION PLAN**

Date: October 23, 2018
 Time: 1:30 PM
 Courtroom: 5
 Judge: Hon. Edward M. Chen

1 The SRA Funds Investor Group (the “Investor Group”) respectfully submits for the Court’s
2 consideration and approval the following alternative plan for the distribution of the assets of the
3 SRA Funds Receivership Estate.

4 **PROPOSED ALTERNATIVE DISTRIBUTION PLAN**

5 **A. Determination of eligible claims**

6 Within 14 days of approval of this distribution plan, the Receiver and the SEC shall: (1)
7 provide the Court and the oversight officer (defined in paragraph C(1) below) with a particularized
8 list of all valid administrative claims, investor claims, Square investor claims, creditor claims and
9 subordinated claims, and a particularized list of all proposed disallowed claims;¹ and (2) provide
10 written notice to each claimant for whom the proposed approved claim amount is less than the
11 amount claimed by claimant or for whom the claim has been recommended to be disallowed.

12 Within 45 days of approval of this distribution plan, any claimant who disputes the proposed
13 disallowance or the proposed reduction in the amount of claimant’s claim shall serve a written
14 objection on the Receiver, the SEC and the oversight officer.² All claim objections, if not promptly
15 preliminarily resolved by the claimant and the oversight officer (in consultation with the operational
16 manager (defined in paragraph C(2) below), will be heard by the Court at a noticed hearing.

17 Once all claim objections have been resolved, a final list of approved administrative claims,
18 investor claims, Square investor claims, creditor claims and subordinated claims shall be prepared
19 by the oversight officer and submitted to the Court for approval. The claims set forth on the final
20 list of approved claims shall be referred to herein as the “eligible claims” for the purposes of

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23 ¹ Administrative claims are those of the Receiver and its counsel (as well as other professionals) and
24 taxes. Investor claims are those of SRA Funds investors. Square investor claims are those of SRA
25 Funds investors who invested in Square but did not receive a distribution of their Square shares prior
26 to the creation of the Receivership. Creditor claims are those of vendors, judgment creditors,
27 business debt holders and other claims of taxing authorities. Subordinated claims are those for back-
28 end guarantees, broker fees, management fees and advisory fees.

² Nothing in this paragraph A shall be construed to allow a claimant whose claim already has been
ruled on by the Court to file a new claim objection.

1 administering this distribution plan. The list of eligible claims shall be used as the final and exclusive
2 basis for any distributions of money or shares pursuant to this distribution plan.

3 **B. Disallowed claims**

4 The following claims shall be automatically disallowed under this distribution plan: all
5 claims asserted by or on behalf of: (i) John V. Bivona; (ii) Frank Mazzola; (iii) Anne Bivona; (iv)
6 Michele Mazzola; (v) David Jurist; (vi) Alice Jurist; (vii) former employees of Saddle River
7 Advisors, Felix Investments, FMOF Management, NYPA Management, SRA Management, Clear
8 Sailing IV and Clear Sailing V; (viii) Emilio DiSanluciano; (ix) inter-company claims; and (x) any
9 claim for the guarantee of a debt or financial obligation for the benefit of insiders, including, but not
10 limited to, John V. Bivona, Frank Mazzola, Anne Bivona, Michele Mazzola, David Jurist, and Alice
11 Jurist, by FMOF Management, or NYPA Management or any other of the Receivership Entities.

12 **C. The SRA Funds will continue to operate under new management to allow the**
13 **investment objectives of SRA Funds investors to be met**

14 The Investor Group proposes to have new management assume control of the SRA Funds to
15 allow the Funds to continue to operate until the investment objectives of the Funds and the individual
16 SRA Funds investors can be achieved and the original contractual rights and obligations honored as
17 written to the extent possible (*i.e.*, that is, liquidation of the portfolio company investments as
18 initially contemplated pursuant to an initial public offering or a merger/acquisition exit).³

19 **1. The oversight officer**

20 The decision-making authority for the SRA Funds, and control of all money and shares held
21 by or on behalf of the SRA Funds, will reside with an oversight officer (identified below). The
22 payment of eligible claims and all distributions and/or transfers of money or shares by the SRA
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24 ³ While the relevant provision is not being invoked here, all of the SRA Funds operating agreements
25 allow for the investors of each Fund to vote to oust current management and select a new manager.
26 *See, e.g.*, Dkt. No. 230 (Levine Declaration), Ex. A at pp. 24-25 (SRA I LLC Operating Agreement,
27 Article VI (Removal of Manager)). Thus, the proposal to replace the Receiver and substitute new
28 management that has the support of most SRA Funds investors is entirely consistent with the original
operating agreements for all of the SRA Funds.

1 Funds will be reviewed and approved in advance by the oversight officer. The oversight officer will
2 also have the authority to retain professionals, as necessary and subject to appropriate reporting to
3 the Court, to assist in the management and operation of the SRA Funds. The oversight officer will
4 submit bi-annual reports to the Court and all SRA Funds investors setting forth the activities and
5 financial condition of the SRA Funds for each reporting period. The oversight officer will be
6 compensated as set forth in paragraph G below.

7 The Investor Group proposes to have Susan L. Uecker serve as the oversight officer. Ms.
8 Uecker, located in San Francisco, is a respected and experienced fiduciary with more than 25 years
9 of experience serving as a trustee, receiver, referee, and in other fiduciary capacities. She has been
10 appointed as receiver in more than 220 proceedings in 23 different counties in California, as well as
11 the U.S. District Courts for the Northern and Eastern Districts of California and the District of
12 Columbia. Ms. Uecker currently serves, at the request of the SEC, as the receiver in *SEC v. San*
13 *Francisco Regional Center, LLC, et al.*, No. 3:17-cv-00223-RS, an SEC receivership action pending
14 before Judge Seeborg.⁴ Ms. Uecker also has been appointed as trustee and in a host of other fiduciary
15 positions in more than 90 proceedings in the U.S. Bankruptcy Courts for the Northern and Eastern
16 Districts of California.⁵ Ms. Uecker is independent of and has had no prior relationship or
17 communications with Investor Rights, LLC or the advisory committee, who are discussed below.

18 2. The operational manager

19 The Investor Group proposes to have Investor Rights, LLC serve as the operational manager
20 for the SRA Funds on a day-to-day basis, subject to oversight by the oversight officer. Investor
21 Rights was formed specifically to retain and oversee counsel to represent SRA Funds investors in
22

23 ⁴ In seeking Ms. Uecker’s appointment as receiver in the SEC action pending before Judge Seeborg,
24 the SEC told the Court that “Ms. Uecker is highly qualified and has significant experience as a
25 receiver, including in equity receiverships in SEC cases,” and that Ms. Uecker “is located in the Bay
26 Area, and has experience in cases in the Northern District of California.” *SEC v. SFRC, et al.*, No.
3:17-cv-00223-RS, Dkt. 10 at p. 32 (SEC Mot. for Prel. Inj. and Appt. of Receiver).

27 ⁵ Ms. Uecker’s bio is attached as Exhibit A to the Levine Declaration, submitted concurrently
herewith. Further information about Ms. Uecker is available at <http://www.ueckerassoc.com>.

1 this litigation and to serve as the new operational manager for the SRA Funds. The managing
2 member of Investor Rights, LLC is Joshua Cilano. Mr. Cilano personally invested in one of the
3 SRA Funds and serves as a consultant for many other SRA Funds investors. Dkt. No. 231 (Cilano
4 Declaration), ¶ 3. Mr. Cilano has more than 17 years of experience in the securities industry and
5 specializes in the evaluation of pre-IPO companies. *Id.*, ¶ 2. Mr. Cilano has the support of all of the
6 members of the Investor Group to act as the operational manager for the SRA Funds on a day-to-
7 day basis, subject to oversight by the oversight officer. The operational manager will be reimbursed
8 as set forth in paragraph G below.⁶

9 **3. An advisory committee of other SRA Funds investors will be available**
10 **to assist the oversight officer and operational manager**

11 The Investor Group proposed to have an experienced committee consisting of other SRA
12 Funds investors available to assist the oversight officer and operational manager in an advisory
13 capacity. The proposed advisory committee will have no formal decision-making authority.
14 Moreover, this distribution plan is not subject to the condition that the below-named SRA Funds
15 investors be named as members of the proposed advisory committee if the Court believes that other
16 SRA Funds investors would be more suitable to serve in this capacity. The proposed advisory
17 committee, subject to Court approval, consists of the following SRA Funds investors and members
18 of the Investor Group:

19 **Robert L. Brunner** – Mr. Brunner is a senior managing director and global practice leader
20 in the San Francisco office of FTI Consulting, a global business advisory firm. Mr. Brunner leads
21 both the residential mortgage-backed securities litigation practice group and FTI’s global data &
22 analytics practice. He is a nationally recognized expert in the areas of collection and analysis of
23 financial, transactional and operational data.

24 **James A.H. Hallett** – Mr. Hallett is the Managing Director and Chief Investment Officer for
25 Alternative Investment Management (Bermuda) Ltd., located in Hamilton, Bermuda. Mr. Hallett is

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27 ⁶ Any compensation provided to the operational manager shall be approved and paid by the oversight
28 officer and disclosed to the Court in the bi-annual reports.

1 a chartered financial analyst with years of experience in capital allocation, negotiation and
2 structuring of investment relationships, bank and prime broker finance, treasury management,
3 financial management and reporting, and general corporate and fiduciary management. From 2006
4 to 2016, Mr. Hallett was the Chairman of the National Museum of Bermuda.

5 **Peter Healy, Esq.** – Mr. Healy is a senior partner in the San Francisco office of O’Melveny
6 & Myers LLP. He represents companies and underwriters in public offerings, private placements,
7 and other capital market transactions. His practice also involves mergers and acquisitions, fund
8 formation and the representation of private equity firms, hedge funds, and sovereign wealth funds in
9 their investment activities. Mr. Healy also represents companies and institutional investors in
10 secondary market transactions and tender offers, and he frequently advises boards of directors,
11 independent committees, investment banks and fund sponsors in connection with various capital
12 market, M&A and secondary market transactions.

13 **Charles R. Pope, CPA** – Mr. Pope is a certified public accountant and a founding partner
14 of Gatto Pope & Walnick LLP, a tax and business consulting firm in San Diego, CA. Mr. Pope
15 oversees firm and client management, and specializes in professional athlete multi-state taxation and
16 business advisory services.

17 **John Woods, CPA** – Mr. Woods is a certified public accountant and currently serves as the
18 Chief Executive Officer of A.J. Siris Products Corporation, a New Jersey-based wholesale drug and
19 cosmetics distributor. From 1999 through 2009, Mr. Woods was the Chief Financial Officer of
20 Tontine Associates, LLC, a multi-billion dollar hedge fund firm located in Greenwich, Connecticut.

21 **D. An independent certified public accounting firm will provide accounting**
22 **services to the SRA Funds and verify the accuracy of all distributions to**
23 **investors and creditors**

24 The SRA Funds will retain an independent certified public accounting firm to provide tax
25 and accounting services to the SRA Funds.⁷ The CPA firm, which must be approved by the oversight

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27 ⁷ For the avoidance of doubt, any CPA firm retained by the SRA Funds will be unaffiliated with
28 and independent of the operational manager and the members of the proposed advisory committee.

1 officer, will verify the accuracy of all proposed payments of eligible claims and proposed
2 distributions of proceeds or shares resulting from any liquidity events as a condition for such
3 payments and/or distributions.

4 **E. Use of cash funds currently held by the Receivership Estate**

5 The oversight officer shall use the cash funds currently held by the Receivership Estate first
6 to pay outstanding eligible administrative claims, and then to pay outstanding eligible Square
7 investor claims and eligible creditor claims on a pro rata basis.

8 **F. Calculation of accrued management fees, back-end fees and share surpluses**
9 **upon the occurrence of a liquidity event**

10 Upon the occurrence of a liquidity event of each portfolio company investment held in an
11 SRA Fund and the expiration of any applicable company or underwriter lock-up period, accrued
12 management fees and back-end fees (if any are generated) for each such portfolio company
13 investment will be calculated by the operational manager in accordance with the original operating
14 agreements for the SRA Funds, subject to any individual agreements originally negotiated between
15 former SRA management and SRA Funds investors, to the extent such agreements exist and are
16 adequately documented in the Receiver's records. All such calculations shall be verified by the CPA
17 firm and approved by the oversight officer.

18 Accrued management fees and back-end fees (if any are generated) for a portfolio company
19 investment that has experienced a liquidity event shall be used to pay eligible claims and other
20 administrative expenses as set forth in paragraph G below. Nothing in this paragraph F shall be
21 construed to entitle former SRA management to any accrued management fees or back-end fees.

22 To the extent that there is a share surplus for any portfolio company investment that has
23 experienced a liquidity event, the surplus shares shall be liquidated and the cash funds resulting from
24 such sales shall be used to pay eligible claims and expenses as set forth in paragraph G below.

25 **G. Payment of eligible claims and other administrative expenses upon the**
26 **occurrence of liquidity events**

1 The oversight officer shall pay eligible claims and other administrative expenses as follows
2 upon the occurrence of liquidity events and the termination of any subsequent applicable lock-up
3 periods:

4 (1) Shares representing the accrued management fees and back-end fees (if any are
5 generated) and any share surpluses shall be liquidated and the cash funds resulting from such sales
6 shall be used first to pay outstanding eligible administrative claims, then to pay outstanding eligible
7 administrative expenses for the continued operation of the SRA Funds (including the cost and
8 expenses of the oversight officer), then to pay outstanding eligible Square investor claims and
9 eligible creditor claims on a pro rata basis, then to pay outstanding eligible subordinated claims.

10 (2) If any funds remain after paying all of the eligible claims set forth in paragraph
11 G(1) above, the remaining funds shall be held in a segregated account until all portfolio company
12 investments in the SRA Funds have either experienced liquidity events or it has been determined by
13 the operational manager (in consultation with the oversight officer and the advisory committee) that
14 the remaining portfolio company investments will not experience a liquidity event for business
15 reasons. 50% of the remaining funds held in the segregated account will then be distributed pro rata
16 to all SRA Funds investors who have previously received a share distribution pursuant to a portfolio
17 company liquidity event as provided for in paragraph G(3) below. The other 50% of the remaining
18 funds held in the segregated account will be paid to the operational manager as compensation for
19 services provided to the SRA Funds.

20 (3) SRA Funds investors who invested in a portfolio company that has experienced a
21 liquidity event shall receive the shares of that company that they would be entitled to in accordance
22 with their eligible investor claims, subject to (i) any deduction for management fees and back-end
23 fees (if there are any), as appropriate, and (ii) an additional 5% hold-back to ensure that there will
24 be sufficient funds to pay outstanding administrative claims, Square claims, creditor claims and/or
25 ongoing operating expenses of the SRA Funds. The 5% of shares held back will be liquidated at the
26 then market price and those funds shall be held in a segregated account by the oversight officer. If
27 some or all of those held-back funds are not needed to pay claims or expenses, they will be returned

1 to the SRA Funds investors who contributed the shares comprising the fund on a pro rata basis. If
2 there is a net share shortfall for any portfolio company that has experienced a liquidity event, such
3 shortfall shall be allocated on a pro rata basis to all investors in that portfolio company.

4 **H. The receivership should be terminated**

5 Upon the approval of this distribution plan and the timely transition of the SRA Funds from
6 the Receiver to the new management, the receivership will be terminated. All books and records of
7 the SRA Funds will be turned over to the new operational manager with 30 days of the approval of
8 this distribution plan. All bank accounts of the SRA Funds and all securities held by or in the name
9 of the SRA Funds will be turned over to the oversight officer within 30 days of the approval of this
10 distribution plan. The Receiver shall thereafter promptly make a final report to the Court detailing
11 the books and records, bank accounts, cash funds and securities transferred.

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13 Respectfully submitted,

14 DATED: August 30, 2018

PRITZKER LEVINE LLP

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16 By: /s/ Jonathan K. Levine

Jonathan K. Levine
Elizabeth C. Pritzker
Bethany Caracuzzo

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19 Attorneys for the SRA Funds Investor
20 Group