

1 ERIN E. SCHNEIDER (Cal. Bar No. 216114)
JOHN S. YUN (Cal. Bar No. 112260)
2 yunj@sec.gov
MARC D. KATZ (Cal. Bar No. 189534)
3 katzma@sec.gov
JESSICA W. CHAN (Cal. Bar No. 247669)
4 chanjes@sec.gov

5 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
6 44 Montgomery Street, Suite 2800
San Francisco, CA 94104
7 Telephone: (415) 705-2500

8 [Additional counsel appear on signature pages]

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 SECURITIES AND EXCHANGE COMMISSION,

14 Plaintiff,

15 v.

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

19 Defendants, and

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

**SUPPLEMENTAL JOINT STATUS
REPORT**

Date: December 13, 2018
Time: 1:30 pm
Courtroom: 5
Judge: Edward M. Chen

1 ***Recovery of Shares from Equity Acquisition Corporation and Ben Sabrin:***

2 ***SEC and Receiver Position:***

3 After the October 23, 2018 hearing, the Bermuda-based counsel for Equity Acquisition
4 Corporation (“EAC”) provided the SEC and Receiver with a small set of additional documents
5 relating to the purported guarantee by SRA Management of the two New York state court confessions
6 of judgment (totaling \$1.5 million) that Silverback Management, LLC provided to two purchasers of
7 Badgeville, Inc. pre-IPO shares through the Silverback Funds. The SEC and Receiver believe that
8 those additional documents suggest several grounds for disputing the receivership’s liability under
9 the purported SRA Management guarantee and Silverback Management’s confessions of judgment.

10 EAC’s counsel has asked the SEC and Receiver for a proposal to settle the issue of the
11 guarantees as part of settling the issue of shares owed between EAC and the receivership. In light of
12 the anticipated appointment of a new receiver in the near future, the SEC then advised EAC’s counsel
13 that further settlement discussions should be postponed until a new receiver has the opportunity to
14 participate in the discussions. Subsequently, on the afternoon of December 6, 2018, EAC’s counsel
15 emailed a letter to the Receiver’s counsel and the Investor Group’s counsel indicating EAC’s
16 willingness to move forward now on making the share exchanges that the parties had previously
17 agreed upon. The Receiver and its counsel are considering this latest email communication, as is the
18 SEC’s counsel. The Investor Group mistakenly claims that this issue has been resolved because there
19 has been no opportunity for the Receiver and SEC to formulate and document a response to the letter.

20 During the October 23, 2018 hearing, the SEC advised the Court that it and the Receiver had
21 asked Ben Sabrin to transfer his remaining MongoDB shares to the receivership. Mr. Sabrin has not
22 transferred any MongoDB shares to the receivership. The SEC believes that it is appropriate to
23 postpone action regarding Mr. Sabrin and his MongoDB shares until a new receiver has been
24 appointed.

25 ***Investor Group Position:***

26 The Investor Group does not believe that the SEC or the Receiver have correctly represented
27 the record as it pertains to their communications with EAC. Moreover, in light of the December 6,
28 2018 letter from EAC’s counsel, it appears that the EAC dispute has in fact been resolved,

1 notwithstanding the SEC and the Receiver' decision to halt efforts to recover shares for the
2 Receivership estate until a new receiver is appointed. Because the EAC issue has now been resolved,
3 there are once again no longer any material share shortfalls and there is no longer any reason for the
4 Court to approve the amended plan of the SEC and the Receiver. The Investor Group will address
5 these issues in its filing.

6 ***Appointment of New Receiver:***

7 ***SEC Recommendation:***

8 During the October 23, 2018 hearing, counsel for the Receiver and for the SEC informed the
9 Court that a search was underway for a new receiver who could provide a lower cost billing and
10 staffing structure for implementation of the Joint Distribution Plan. The SEC is submitting to the
11 Court a recommendation that the Court appoint Kathy Bazoian Phelps, Esq. of the Diamond
12 McCarthy LLP law firm, 1999 Avenue of the Stars, Suite 1100, Los Angeles, CA 90067, telephone:
13 (310) 651-2997, email: kphelps@diamondmccarthy.com, to succeed Sherwood Partners, Inc. as the
14 court-appointed receiver in this case. As demonstrated by Ms. Phelps' attached written proposal, she
15 is highly qualified to serve as the new receiver. Additionally, Ms. Phelps and her firm will follow
16 billing rates and policies to reduce the receivership's fees and costs. By having an attorney serve as
17 the replacement receiver, the Court's appointment of Ms. Phelps will reduce costs by avoiding the
18 need to have both the receiver and the receiver's counsel bill professional time for receivership and
19 legal counsel work. Ms. Phelps will be assisted by a partner and associate in Diamond McCarthy's
20 San Francisco Office. Ms. Phelps has also agreed that the receiver's non-legal and non-professional
21 administrative tasks will be billed at the rate of \$130 per hour even if Ms. Phelps is performing those
22 tasks. Additionally, Ms. Phelps is discounting her normal \$650 per hour billing rate to \$425 per hour
23 for this engagement, and other Diamond McCarthy will also provide discounted billing rates. All of
24 the billings for Ms. Phelps and Diamond McCarthy will be subject to SEC review, court approval and
25 a 20% holdback.

26 ***Investor Group Recommendation:***

27 The Investor Group will be filing an objection to the appointment of Ms. Phelps as the new
28 receiver. The Investor Group proposes that Susan L. Uecker be appointed as an oversight officer or

1 wind-down receiver, as previously argued, because of Ms. Uecker's locality within the District (she
2 has offices in San Francisco, California), her familiarity and experience serving in similar court-
3 appointed roles, and her demonstrated ability to perform all necessary functions attendant to her role
4 in a way that is responsive to the Court and investors at far less cost to SRA Funds investors than the
5 SEC's current proposal.

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7 Dated: December 6, 2018

Respectfully submitted,¹

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9 /s/ John S. Yun

John S. Yun

Marc Katz

Jessica W. Chan

Attorneys for the Plaintiff Securities and Exchange
Commission

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13 /s/

John W. Cotton

Gartenberg, Gelfand & Hayton LLP

15260 Ventura Blvd.

Suite 1920

Sherman Oaks, CA 91403

Special Counsel to the Receiver for Defendant SRA
Management LLC, and Relief Defendants SRA I LLC,
SRA II LLC, SRA III LLC, and LLC, Clear Sailing
Group IV LLC, and Clear Sailing Group V LLC

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19 /s/ Jonathan K. Levine

Jonathan K. Levine

Pritzker Levine LLP

180 Grand Avenue, Suite 1390

Oakland, CA 94612

Attorneys for the SRA Funds Investor Group

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23 /s/

Theodore A. Griffinger, Jr.

Lubin Olson & Niewiadomski LLP

The Transamerica Pyramid

600 Montgomery St., 14th Floor

San Francisco, CA 94111

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27 ¹ Unable to obtain some counsel review and signature approval due to need for last minute edits to
28 this Statement.

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Attorneys for Global Generation Group, LLC

/s/ Avi Israeli
Avi Israeli (*pro hac vice*)
Holwell Shuster & Goldberg LLP
425 Lexington Avenue
New York, NY 10017

Attorneys for Progresso Ventures, LLC

/s/
Patrick E. Gibbs
Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304

Attorneys for Telesoft Capital, LLC