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Attorneys for the SRA Funds Investor Group

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

13 SECURITIES AND EXCHANGE
14 COMMISSION,

Plaintiff,

15 vs.

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

Defendants, and

19
 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,

Relief Defendants.

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

**THE SRA FUNDS INVESTOR GROUP'S
 (1) OBJECTIONS TO THE AMENDED
 JOINT DISTRIBUTION PLAN FILED BY
 THE SEC AND THE RECEIVER ON
 11/21/18; (2) OBJECTIONS TO THE
 SEC'S PROPOSED NEW RECEIVER
 AND PROPOSED REVISED ORDER
 APPOINTING RECEIVER; AND (3)
 RENEWED APPLICATION FOR ENTRY
 OF THE INVESTOR GROUP'S
 PROPOSED ALTERNATIVE
 DISTRIBUTION PLAN**

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

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 28 **THE SRA FUNDS INVESTOR GROUP'S OBJECTIONS TO AMENDED JOINT
 DISTRIBUTION PLAN, NEW RECEIVER AND PROPOSED REVISED ORDER
 APPOINTING RECEIVER**

1 **I. INTRODUCTION**

2 At the October 23, 2018 hearing on the competing proposed distribution plans, the SEC
3 advised the Court that it had very recently learned about “new issues” being raised by EAC that
4 prevented a resolution of the ongoing share dispute with EAC. According to the SEC, the inability
5 to resolve the dispute with EAC meant that there would be share shortfalls in some of the portfolio
6 companies still held by the SRA Funds. In light of this new information about EAC, and because it
7 appeared that there would in fact be share shortfalls, at the conclusion of the October 23 hearing, the
8 Court indicated that it was at least preliminarily inclined to adopt a modified version of the
9 distribution plan submitted by the SEC and the Receiver. But, the Court noted, if things changed
10 with respect to the EAC issue, that preliminary determination could well change too: “Now, if
11 something breaks and EAC comes to the table and all is made well and good, that could change the
12 picture.” Declaration of Elizabeth C. Pritzker, Ex. A (October 23 hearing transcript) at p. 58.

13 While the SEC and the Receiver threw up their hands and gave up trying to seek a resolution
14 with EAC (Dkt. No. 431 at p. 2), the SRA Funds Investor Group (the “Investor Group”) is pleased
15 to inform the Court that as a result of its counsel’s direct discussions with EAC, the EAC issue
16 (which was not in fact new and was known to the SEC and the Receiver more than seven months
17 earlier), has now been resolved. On December 6, 2018, EAC’s counsel provided a letter to the
18 Receiver’s counsel and counsel for the Investor Group stating that EAC is prepared to exchange its
19 shares as agreed upon without any resolution of any of the other issues EAC has raised. *See* Pritzker
20 Decl., Ex. B (Dec. 6 EAC letter). This means that there are once again no material shortfalls in any
21 of the portfolio companies still held by the SRA Funds.

22 In light of these new developments, the Investor Group respectfully requests that the Court
23 decline to adopt the amended joint distribution plan filed by the SEC and the Receiver (Dkt. No.
24 420). As has been repeatedly stated, and remains true today, that plan that has no support from any
25 SRA Funds investors and, in fact, is actively opposed by the vast majority of those investors.

1 The Investor Group also requests that the Court adopt its alternative distribution plan (Dkt.
2 No. 407-1), which is not opposed by any SRA Funds investors, is actively supported by the vast
3 majority of investors, and most closely hews to the investment objectives of SRA Funds investors.

4 The Investor Group also respectfully requests that the Court decline to appoint Ms. Kathy
5 Phelps, an attorney in Los Angeles, as the new receiver in this matter and decline to enter the SEC's
6 proposed revised order appointing receiver. The appointment of Ms. Phelps under the revised order
7 will solve none of the problems with the existing receivership, is likely to exacerbate those problems,
8 will be just as expensive as the existing receivership, and has not been endorsed by any SRA Funds
9 investors.

10 **II. BACKGROUND**

11 The Investor Group filed its proposed alternative distribution plan on September 28, 2018.
12 In its brief supporting the plan, the Investor Group noted that this is a *sui generis* receivership and
13 securities fraud action in which all investors and creditors can still be made whole and the original
14 investment objectives of the SRA Funds and SRA Fund investors can still be achieved because there
15 are no material share shortfalls in the portfolio companies still held by the SRA Funds.¹ *See* Dkt.
16 No. 407 at p. 1. In fact, it appears that for eleven of the fourteen portfolio companies still held by
17 the SRA Funds (including Palantir), there are actually share *surpluses*, many of which are
18 substantial. For the other three portfolio companies, there are neither surpluses nor shortfalls. *Id.*

19 When the competing distribution plans were filed in late September 2018, the share dispute
20 with EAC had not yet been resolved. Several days before the October 23 hearing on the distribution
21 plans, the SEC advised counsel for the Investor Group that a "new issue" had arisen with EAC
22 concerning a claim by EAC for certain back-end brokers fees and for payment of guarantees on two
23

24
25 ¹ At the October 23 hearing, counsel for the SEC acknowledged that if the EAC issue was resolved,
26 there would not be any material shortfalls in any of the portfolio companies remaining in the SRA
27 Funds. *See* Pritzker Decl., Ex. A at p. 32.

1 judgments relating to investments in Badgeville. According to the SEC, this was a new issue that
2 the SEC and the Receiver were unaware of until just days before the October 23 hearing.

3 At the October 23 hearing, the SEC told the Court that EAC was tying the resolution of the
4 new issue with the outcome of the existing share dispute and that as a result, it did not appear that it
5 would be possible for the EAC share dispute to be resolved. This would result in large share
6 shortfalls in several of the portfolio companies. While the Court did not approve any distribution
7 plan at the October 23 hearing, it did indicate that in light of the share shortfalls caused by the
8 ongoing EAC dispute, it was inclined to ultimately adopt a modified version of the SEC and the
9 Receiver's plan, and not the alternative plan proposed by the Investor Group. However, the Court
10 stated that if the EAC dispute could be resolved, then it would reconsider that determination. *See*
11 *Pritzker Decl., Ex. A at p. 58.*

12 After the October 23 hearing, counsel for the Investor Group reached out to confer directly
13 with EAC. Based on these discussions, it appears that the SEC's representations to the Court at the
14 October 23 hearing about EAC were not accurate. As it turns out, the "new" issue was not new at
15 all: it was raised by EAC back in early March 2018, but apparently ignored by the SEC and the
16 Receiver until shortly before the October 23 hearing. Carsten Klein, the principle for EAC travelled
17 to New York on March 2, 2018 to meet in person with Peter Hartheimer and Georgiana Nertea from
18 the Receiver and with Ellen Chen from the SEC. At that meeting, the issue of the back-end brokers'
19 fees and the Badgeville guarantees was raised by Mr. Klein and discussed with the Receiver and the
20 SEC at that meeting. Copies of documents supporting these claims by EAC -- the very same
21 documents the SEC claims were only provided in October 2018 -- were not only shown to the
22 Receiver and the SEC at the March meeting, but copied by Ms. Nertea so that they could be provided
23 to Mr. Cotton, counsel for the Receiver.

24 On March 6, 2018, Mr. Hartheimer sent Mr. Klein an email about the back-end brokers' fees
25 and the Badgeville guarantees, and on March 8, 2018, Mr. Hartheimer sent Mr. Klein another email
26

1 asking if a claim was going to be filed for the back-end brokers' fees. *See* Pritzker Decl., Exs. C-D
2 (March 6 and 8 emails). These communications confirm that these claims were not new at all, but
3 rather had been placed at issue by EAC in March 2018, not October 2018.

4 Whether new or old, the claims by EAC were preventing the resolution of the share dispute
5 issue and creating shortfalls within the SRA Funds. Counsel for the Investor Group had multiple
6 conversations with Mr. Klein and ultimately was able to convince Mr. Klein to delink the two issues
7 and resolve the share dispute now, without tying that resolution to the resolution of the dispute
8 concerning the back-end brokers' fees and the Badgeville guarantees. On December 6, 2018,
9 counsel for EAC sent counsel for the Receiver and for the Investor Group a letter confirming that
10 EAC was prepared to resolve the share dispute along the lines of what had previously been agreed
11 upon between EAC and the Receiver and that EAC would defer the resolution of the dispute
12 concerning the back-end brokers fees and the Badgeville guarantees. *See* Pritzker Decl., Ex. B.

13 **III. ARGUMENT**

14 **A. The Court Should Approve the Investor Group's Alternative Distribution Plan** 15 **and Reject the SEC and the Receiver's Amended Joint Plan of Distribution**

16 In light of the resolution of the EAC share dispute, there are no longer any material shortfalls
17 in any of the portfolio companies still held by any of the SRA Funds. Also, there is no longer a need
18 for the Court to consider approving the amended joint plan of distribution submitted by the SEC and
19 the Receiver, because of such shortfalls. It bears noting that, notwithstanding the passage of time
20 and notice to *all* SRA Funds investors and creditors of the competing plans, the SEC and the
21 Receiver's amended plan has zero support from any SRA Funds investors, is affirmatively opposed
22 and objected to by the vast majority of all SRA Funds investors, and is opposed by the two largest
23 creditors of the SRA Funds as well.

24 More than a year ago, when the Court was first presented with the competing distribution
25 plans, it made clear that it was unlikely to approve a distribution plan that was opposed by most of
26 the investors, particularly when those investors were all sophisticated. Nothing that has happened

1 in the ensuing year should change the Court's view in that regard. To the contrary, now that it is
2 clear that there are no material shortfalls, and that all investors have been apprised of the competing
3 plans, the continued uniform opposition to the SEC and the Receiver's distribution plan should be
4 fatal and dispositive.

5 In contrast, the Investor Group's alternative distribution plan has the support of the vast
6 majority of all SRA Funds investors and is not affirmatively opposed or objected to by any SRA
7 Funds investors. On this record, and in light of the lack of any material shortfalls in any of the SRA
8 Funds, there is no basis for the Court to approve a distribution plan that is opposed by the very
9 investors and creditors the plan is intended to benefit. For the reasons set forth in the Investor
10 Group's September 28 brief (Dkt. No. 407) and by its counsel at the October 23 hearing, the Court
11 should approve the Investor Group's plan and reject the SEC and the Receiver's amended plan.

12 **B. The Court Should Not Approve the SEC's Proposed New Receiver or the**
13 **Proposed Revised Order Appointing Receiver**

14 The SEC has proposed to replace the current Receiver, Sherwood Partners, with a new
15 receiver, Kathy Phelps, a partner at the Diamond McCarthy law firm in Los Angeles. Ms. Phelps
16 would then retain her law firm to act as counsel for the receiver if she is appointed. The Court
17 should not appoint Ms. Phelps as the new receiver in this matter for a host of reasons.

18 First, replacing one out-of-town receiver with another is not economical and a continued
19 waste of receivership assets. If the Court is going to appoint a replacement for Sherwood Partners,
20 and it should, that replacement should be in the Bay Area.

21 Second, the SEC fails to explain how Ms. Phelps, a partner at Diamond McCarthy, is going
22 to save the receivership any money since she will plainly need to get up to speed on the case and the
23 business and intends to hire her own law firm (among other professionals) to do work on her behalf.

24 Third, Ms. Phelps proposes to retain the law firm in which she is a partner to provide legal
25 advice and perform legal work on behalf of the receivership – a strong indication that, if appointed,
26 she will not receive independent legal advice that will enable her to provide independent oversight

1 over the receivership, or of the professionals retained for the receivership.

2 Fourth, there is nothing in the proposed revised order appointing receiver that suggests that
3 the new receiver would be any less costly to SRA Funds investors than the current Receiver, who
4 has already billed more than \$1.2 million (with its counsel) to investors so far.

5 Fifth, the vast majority of SRA Funds investors oppose the appointment of Ms. Phelps for
6 the reasons set forth above.

7 Because the Investor Group has proposed a well-qualified, experienced and local individual
8 (Susan Uecker) who can serve in the capacity as either receiver or oversight officer, there is no
9 reason for the Court to appoint Ms. Phelps (or her law firm) to any role in this case.

10 **IV. CONCLUSION**

11 For all of the foregoing reasons, the Investor Group respectfully requests that the Court (1)
12 approve its proposed alternative distribution plan, (2) not approve the SEC and the Receiver's
13 proposed amended joint plan of distribution, (3) not approve the SEC's recommendation to appoint
14 Kathy Phelps as the new Receiver in this matter, and (4) not enter the SEC's proposed revised order
15 appointing receiver.

16 Respectfully submitted,

17 DATED: December 7, 2018 PRITZKER LEVINE LLP

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19 By: /s/ Elizabeth C. Pritzker

20 Jonathan K. Levine
21 Elizabeth C. Pritzker
22 Bethany Caracuzzo

23 Attorneys for the SRA Funds Investor
24 Group

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Attorneys for the SRA Funds Investor Group

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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
18 ADVISORS, LLC; SRA MANAGEMENT
LLC; FRANK GREGORY 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.

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

**DECLARATION OF ELIZABETH C.
 PRITZKER IN SUPPORT OF THE SRA
 FUNDS INVESTOR GROUP’S (1)
 OBJECTIONS TO THE AMENDED
 JOINT DISTRIBUTION PLAN FILED BY
 THE SEC AND THE RECEIVER ON
 11/21/18; (2) OBJECTIONS TO THE
 SEC’S PROPOSED NEW RECEIVER
 AND PROPOSED REVISED ORDER
 APPOINTING RECEIVER; AND (3)
 RENEWED APPLICATION FOR ENTRY
 OF THE INVESTOR GROUP’S
 PROPOSED ALTERNATIVE
 DISTRIBUTION PLAN**

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

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 DECLARATION OF ELIZABETH C. PRITZKER IN SUPPORT OF THE SRA
 FUNDS INVESTOR GROUP’S OBJECTIONS

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I, Elizabeth C. Pritzker, declare as follows:

1. I am a partner of Pritzker Levine LLP, counsel for the SRA Funds Investor Group. I submit this declaration in support of the Investor Group’s Alternative Plan of Distribution and its objections to the Joint Distribution Plan of the Receiver and the SEC and proposed new Receiver. I have personal knowledge of the facts stated herein and, if called upon to do so, could and would testify completely thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the transcript of the October 23, 2018 hearing in this matter.

3. Attached hereto as Exhibit B is a true and correct copy of a December 6, 2018 letter from Roderick M. Forrest, counsel for EAC.

4. Attached hereto as Exhibit C is a true and correct copy of a March 6, 2018 email from Peter Hartheimer of Sherwood Partners to Carsten Klein of EAC.

5. Attached hereto as Exhibit D is a true and correct copy of a March 8, 2018 email from Peter Hartheimer of Sherwood Partners to Carsten Klein of EAC.

I declare under penalty of perjury and under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed on this 7th day of December, 2018 at Oakland, California.

By: /s/ Elizabeth C. Pritzker
Elizabeth C. Pritzker
Counsel for the SRA Funds Investor Group

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 16-01386 EMC
)	
JOHN V. BIVONA; et al.,)	
)	
Defendants.)	
_____)	

San Francisco, California
Tuesday, October 23, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

U.S. SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street - Suite 2600
San Francisco, California 94104

**BY: JOHN S. YUN, DISTRICT TRIAL COUNSEL
MARC D. KATZ, ATTORNEY AT LAW**

U.S. SECURITIES AND EXCHANGE COMMISSION
200 Vessey Street - Suite 400
New York, New York 10281

BY: PATRICIA H. SCHRAGE, ATTORNEY AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporter

1 **APPEARANCES:** (CONTINUED)

2 For the Receiver:

3 GARTENBERG GELFAND HAYTON LLP
15260 Ventura Blvd. - Suite 1920
Sherman Oaks, California 91403

4 **BY: JOHN W. COTTON, ATTORNEY AT LAW**

5 For Interested Party SRA Funds Investor Group:

6 PRITZKER LEVINE LLP
180 Grand Avenue - Suite 1390
Oakland, California 94612

7 **BY: JONATHAN K. LEVINE, ATTORNEY AT LAW**

8 For Interested Party Global Generation Group LLC:

9 LUBIN, OLSON & NIEWIADOMSKI LLP
The Transamerica Pyramid
600 Montgomery Street - 14th Floor
San Francisco, California 94111

10 **BY: THEODORE A. GRIFFINGER, ATTORNEY AT LAW**

11 For Interested Party Progresso Ventures, LLC:

12 HOLWELL, SHUSTER & GOLDBERG LLP
425 Lexington Avenue
New York, New York 10017

13 **BY: DANIEL P. GOLDBERG, ATTORNEY AT LAW**
14 **KAREN A. SEBASKI, ATTORNEY AT LAW**

15 Also Present:

16 **Georgiana Nertea (via CourtCall)**
Sherwood Partners, Inc.
17 **Andrew DeCamara (via CourtCall)**
Sherwood Partners, Inc.

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1 Tuesday - October 23, 2018

3:41 p.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Calling Civil Action 16-1386, Securities
5 and Exchange Commission versus Bivona, et al.

6 Counsel, please approach the podium and state your
7 appearances for the record.

8 **MR. YUN:** Good afternoon, Your Honor. John Yun
9 appearing on behalf of the Securities and Exchange Commission.

10 **THE COURT:** All right. Thank you, Mr. Yun.

11 **MS. SCHRAGE:** Good afternoon. Patricia Schrage also
12 for the Securities and Exchange Commission.

13 **THE COURT:** All right. Good afternoon.

14 **MR. KATZ:** And good afternoon again, Your Honor.
15 Marc Katz for the SEC as well.

16 **THE COURT:** All right. Thank you.

17 **MR. COTTON:** Good afternoon, Your Honor. John Cotton,
18 counsel to the receiver.

19 **THE COURT:** All right. Thank you.

20 **MR. LEVINE:** Good afternoon, Your Honor. Jonathan
21 Levine for the investor group.

22 **THE COURT:** All right. Thank you, Mr. Levine.

23 **MR. GRIFFINGER:** Good afternoon, Your Honor. Theodore
24 Griffinger for interested party Global Generation.

25 **THE COURT:** All right. Thank you.

1 **MR. GOLDBERG:** Good afternoon, Your Honor. Daniel
2 Goldberg and my colleague Karen Sebaski from Holwell, Shuster &
3 Goldberg on behalf of Progresso Ventures.

4 **THE COURT:** All right. Thank you.

5 We have the competing plans as well as the objections and
6 comments from the interested parties.

7 Perhaps the SEC can give me an update on the EAC
8 situation.

9 **MR. YUN:** Yes. There had been an exchange of e-mails.
10 I think we'd been telling the Court we've been trying to engage
11 them, see what could be resolved. Eventually we were able to
12 have a conference call last Friday afternoon with myself
13 representing the SEC; Mr. Cotton and Ms. Nertea representing
14 the receiver, she's in-house at the receiver; Carsten Klein,
15 the head of EAC and Silverback Funds was on the phone, along
16 with his Bermuda counsel, Mr. Roderick Forrest.

17 Just before we had that conference call, about two days
18 previously, they had been raising issues about some sort of
19 guaranty related to one of the investments, Badgeville, which
20 failed about a month or two before the receivership went into
21 effect. We did not know what they were talking about.

22 And then we received last week Wednesday a purported
23 guaranty signed by Mr. Bivona on behalf of SRA Management,
24 which is one of the receivership entities, guarantying
25 repayment of two confessions of judgment by two investors in

1 Silverback and Badgeville. They invested half a million
2 dollars each. The money went to Silverback and then went to
3 Clear Sailing to buy Badgeville shares along with other shares.

4 And the confessions of judgment were in the fall of 2015
5 for \$750,000 each. So this was a guaranty of one and a half
6 million dollars signed by Mr. Bivona sometime in 2016. It was
7 undated. We had never seen those documents before.

8 **THE COURT:** And a confession of judgment, is it a
9 judicial -- tied to --

10 **MR. YUN:** New York Supreme Court. It was -- these are
11 two New York judgments in favor of these two investors against
12 Silverback and then a purported guaranty letter by Mr. Bivona.

13 Interestingly, Mr. Bivona was the plaintiffs' counsel for
14 these two gentlemen in obtaining the confessions of judgment
15 against Silverback, and then he turned around and was the
16 guarantor by SRA Management of the obligation of Silverback to
17 these two gentlemen. So he was on both sides of this
18 transaction.

19 I can also tell you that when Mr. Bivona provided his
20 affidavit of all assets and liabilities of the receivership
21 entities, including SRA Management, there was not a word in
22 that affidavit about this. We were -- Mr. Cotton and I were
23 completely blindsided when we saw these documents.

24 In any event, we held the conference call. It was good
25 that everybody was actually just talking to one another, but

1 twice in that conversation I specifically asked Mr. Klein and
2 his counsel: To the extent that we agree on the books that we
3 owe these company shares to you and you owe these company
4 shares to us, can we at least have a stipulation on those
5 agreed-upon shares? We'll get a stipulation to the Court, and
6 leave the other issues for discussion at a later date. We
7 think maybe the receivership is owed additional shares in some
8 companies, such as Airbnb and Lyft, but we are willing to put
9 those aside and we should put aside the guaranty issue plus
10 another issue relating to payment of fees, \$235,000, that
11 Silver -- Saddle River Advisors pledged to Mr. Klein.

12 And we were told twice that given the size of these
13 confessions of judgment, Silverback would, quote, be rendered
14 insolvent unless the receivership entities were willing to
15 stand behind the guaranties. They are not demanding payment
16 now but they say they, quote, want an agreement on the priority
17 of the payment of the guaranties before they are willing to
18 move forward.

19 We had that discussion at the beginning of the
20 conversation. After they explained the nature of the
21 guaranties, I once again asked at the end: Is there any
22 possibility on moving forward with a stipulation on the
23 exchange of shares? And they said no.

24 So that's where we are. They have agreed to send us the
25 e-mails backing up these purported guaranties. We are told

1 we'll get them in about two weeks. They say they're happy to
2 share them with us, but that's where we are with EAC.

3 We are in discussions but there is no agreement imminent
4 and it's a very problematic situation when you have these types
5 of guaranties.

6 **THE COURT:** How does that affect the estate, or
7 whatever we want to call it, the fund that is the subject of
8 the receivership? Is this now another -- is it essentially a
9 creditor, or what is the --

10 **MR. YUN:** Well, there's two issues. There's the
11 principal legal issue of should any of the receivership
12 entities stand by this guaranty when it is created under this
13 fashion.

14 **THE COURT:** Right.

15 **MR. YUN:** We want to see those.

16 **THE COURT:** So I understand there's some question
17 about that.

18 **MR. YUN:** We have that issue. Then there's just the
19 practical question of how do we get these shares if their
20 position is they won't move until they are satisfied in one way
21 or another about how these guaranties are handled. That's just
22 that, you know.

23 **THE COURT:** But is there a threat that these
24 guaranties will then now take the form of another claim on the
25 assets under the receivership's --

1 **MR. YUN:** I would say that their position is
2 somewhere, somehow the receivership needs to give us some money
3 for these guaranties. I think that is the upshot of their
4 position, and we have made no commitment on that point. We say
5 we need to discuss it. We need to see the backup documents.
6 We have made no commitment.

7 **MR. COTTON:** One additional related point, Your Honor.
8 John Cotton for the receiver.

9 During that call, reference was made by EAC's manager to
10 an earlier discussion about the so-called guaranty that he
11 claimed occurred in March of this year with the receiver staff.
12 We went back and looked at all the e-mails, and I canvassed the
13 staff of the receiver. It turns out there were no documents
14 provided to the receiver that relate to this guaranty.

15 There was in an e-mail in March of this year reference by
16 Sherwood to Mr. Klein about the fact that if he had a guaranty
17 for any purpose, that he should make a claim in the
18 receivership, and he didn't make any such claim and he didn't
19 provide a copy of the guaranty.

20 So until this past week, not only were we not aware of it,
21 EAC was aware of the claim procedure and they were aware of the
22 fact that if they had a claim against SRA, they should file
23 that claim, and it wasn't -- it has not been filed.

24 **MR. YUN:** Yeah. So in terms of where we are in terms
25 of the receivership, without the EAC shares, both the shares

1 that we were trying to stipulate to, everybody agrees with, and
2 without the additional shares, I can go through the numbers of
3 the shortfall but we have a shortfall.

4 **THE COURT:** When you say "stipulate," can you
5 differentiate between stipulate and other nonstipulated?

6 **MR. YUN:** Yes. There is something called the Andrea
7 Long sheet, which shows you guys are holding these shares in
8 these companies for us, we are holding these shares in these
9 companies for you. So far as that went, everybody agrees those
10 are the right numbers.

11 On top of that, there's what we call the excess issue,
12 which is we see that you, EAC, are holding shares in Airbnb or
13 Lyft or other companies, Pinterest, but it looks like the
14 receivership paid for those shares. Unless you can show that
15 you have reimbursed us in some fashion for those shares, it
16 seems to make sense to us that there has been an overallocation
17 of those shares to you that should also come back to the
18 receivership.

19 As far as those other shares goes, we've been willing to
20 say, "Let's put those aside for now. Let's exchange what we
21 agree about." And there has been no movement on that. We
22 said, "Let's do those." Their answer is, "We've got to resolve
23 the guaranty issue."

24 And, you know, if you want, I can go through which shares
25 now go into shortfall without the EAC transfers. I mean, we've

1 gone through --

2 **THE COURT:** Well, if you're saying -- obviously
3 shortfall, if they don't do anything. And there's still a
4 shortfall if they -- the stipulated shares, if they were to
5 return those, there's still a shortfall?

6 **MR. YUN:** For some shares, yes. For some shares, no.

7 **THE COURT:** And for Palantir?

8 **MR. YUN:** For Palantir, it goes into a surplus but
9 without the 317,000 net shares, we come up with a shortfall of
10 195,239 shares.

11 **THE COURT:** So you don't see a quick resolution I'm
12 hearing.

13 **MR. YUN:** I don't see a quick resolution and, you
14 know, it may end up in litigation. I mean, we're willing to
15 keep talking. We think it makes sense to at least keep talking
16 for a little while, see what they have, see what they really
17 are insisting upon. I think that's worth some more
18 conversations but, no, there is no quick resolution with
19 respect to EAC.

20 **THE COURT:** All right. Well, so then let me ask the
21 investor group. In light of this, in light of the fact that,
22 at least as we stand now, there does appear to be a shortfall,
23 because I think your proposal assumed that there was going to
24 be some recovery from EAC and, therefore, no shortfall, at
25 least as to major shares, and that's why it makes sense to do

1 away with the receivership and kind of go back to something
2 akin to status quo, with this information now, what's your
3 response or reaction?

4 **MR. LEVINE:** Well, first of all, let me say we did get
5 the information from the SEC. We got it Monday. They got it
6 Friday. We got it Monday, which is fine. We've looked at it.
7 We are, frankly, as confused as I think they are. This is
8 certainly new information for everyone. It's not information
9 we had when we put in our brief, and we thought the issue was
10 simply the exchange as Mr. Yun said.

11 So it is troubling. I, frankly, don't know, you know. It
12 just seems, off the top of my head, that those guaranties
13 aren't something that the receivership is responsible for,
14 but -- so, you know -- I mean, I'm an eternal optimist. I'm
15 always a glass half full.

16 This seems to be a situation, and since this just came up
17 and maybe it needs a little bit of time, and the parties are
18 now talking, to work its way through, but EAC has things that
19 the receivership wants and the receiver has things EAC wants of
20 value, a lot of value, on both sides, and it would seem that
21 that is something that should lead to some compromise that
22 works out.

23 And whether it's ultimately the SEC's suggestion that, you
24 know, they break it into two pieces and deal with the
25 agreed-upon stuff now and agree to, you know, put over for

1 another day the more difficult stuff, I don't know.

2 I would like to think a compromise can be reached. We're
3 not involved in these discussions, but I'd like to think that a
4 compromise would be reached because each side needs something
5 from the other.

6 So it just came up literally two days ago. I'd like to
7 see now -- going to Your Honor's question as to what does this
8 do, I think what we explained in our plan was it can absorb
9 certain shortfalls and still work. So these shortfalls are not
10 of the magnitude that they can't be absorbed by the plan,
11 particularly with respect to Palantir, and still work. I mean,
12 we stress tested our plan at different levels of a Palantir IPO
13 to see if it still works, is there enough money, are there
14 enough shares to handle these issues; and the answer is yes,
15 yes, there are and, yes, it is.

16 I mean, remember the receivership, I believe, has almost
17 6 million shares or -- well, it would have less, but about --
18 is it 5.4?

19 **MR. YUN:** 5.7.

20 **MR. LEVINE:** -- 5.7 million shares of Palantir so this
21 shortfall of 200,000 seems large but in light of the overall
22 holdings, it's a small piece. It's not insubstantial
23 obviously.

24 Now, the other new development is -- and, again, this
25 is -- you know, it just -- it's just news and a lot can happen

1 in the world, but the *Wall Street Journal* did report two days
2 ago that Palantir is looking to do an IPO sometime in the
3 second quarter of 2019. The estimated range is 36 to
4 \$41 billion.

5 If Your Honor will recall, the valuation that the
6 investment banker provided that he based his analysis on for
7 the Court was at 34 billion. We used that valuation in our
8 analysis to stress test our plan. We also then cut that in
9 half and used 17 billion. It still works.

10 But obviously if there's an IPO, and that's a big if, but
11 if there is an IPO next year at the range that people are
12 talking about, which is anywhere from 36 to 41 billion, that's
13 higher than the investment banker's estimate, which would yield
14 more than enough money to cover this shortfall, all the
15 creditor claims, all the administrative claims, and everything
16 else.

17 Now, if there's no Palantir IPO, neither of these plans is
18 going to return much money to any of the investors, frankly.
19 So I think both plans really, in order to be remotely
20 successful, need there to be a Palantir IPO.

21 **MR. YUN:** I am not sure we agree with that. I mean,
22 our concept is we create a plan that is flexible. A pro rata
23 consolidated plan by its nature says "We sell what we can
24 sell." If it makes sense to wait, that is why you hired the
25 investment banker. But when assets come in, they are shared on

1 a pro rata basis. We're willing for investors whose companies
2 for whatever reason have failed to take a lower recovery, 25 to
3 30 percent, but at least everybody can get something and the
4 thing can move forward.

5 What does not make sense to us is to hold an entire
6 receivership hostage to the issue of whether or not there is or
7 is not a dispute with a holder of shares, whether it be someone
8 with a forward contract or, as in this case, where there has
9 been essentially a commingling of funds and assets such that
10 they're holding shares that belong to us and we're holding
11 shares that belong to them. I mean, that's what this is about.

12 And so we think, number one, we've got a structured,
13 consolidated pro rata plan that can work; and, number two, that
14 still doesn't deal with what we think is the fundamental issue
15 dividing the parties, which is: Are you going to get rid of
16 the receivership or are you going to allow a former insider
17 salesperson to take over and let the receivership dissolve?
18 And that's a separate issue, that is a very separate issue.

19 And their point about dissolving the receivership is,
20 well, they're assuming certain shares come in and everything.
21 They want the receivership to do the hard work of going out,
22 doing these negotiations; if there's litigation, doing the
23 litigation, bringing in the shares; and then once all that is
24 done and everything is nice and neat, then they take over and
25 they get to allocate carried interest, if possible, to

1 Mr. Silano, and that's just sort of -- that has everything
2 backwards.

3 This receivership is in place. It should keep moving
4 forward without the possibility of termination or dissolution
5 hanging over its head. Because if you do that, what is the
6 incentive for somebody else to negotiate? They're negotiating
7 something that may go away in six months.

8 **THE COURT:** Let me ask. In the final analysis if one
9 trusts the investment advisers under your plan to make the
10 right decision regarding timing and all that, and if you put
11 aside those who invested in a failed company who they say
12 should get nothing and you say should get some discounted
13 number, but assume for a moment they get nothing --

14 **MR. YUN:** They get nothing?

15 **THE COURT:** Just assume that for a moment, that we
16 don't go with your 25 or 30 percent; we go with zero or some
17 lesser number. What is the largest difference in the end to
18 the investor who did back the right horse and anticipated on
19 investing a lot in the Palantir stock between the two plans? I
20 mean, given, you know, you've got first, second, and third
21 distribution, they've got a whole different scheme; but in the
22 final analysis, what's the disadvantage, I guess, to your
23 people? You've got a bunch of investors.

24 I understand part of it is the rewarding those who really
25 don't deserve anything because there's no causal relationship

1 between the alleged commingling and fraud and their loss.

2 Theirs was a market loss. So you put that -- I can understand
3 that so you put that aside for the moment.

4 There are fees, receiver's fees, and that stuff. Put that
5 aside for the moment. What is the -- in the end, if we make
6 the same timing decision with respect to liquidation and all
7 that, what's the main difference here?

8 **MR. YUN:** Should I start?

9 **THE COURT:** Either one of you. Why don't you go ahead
10 and start.

11 **MR. YUN:** Two major differences. Number one, what do
12 you do about Global Generation and Progresso Ventures? They
13 are out at least \$3 million, more if you include attorneys'
14 fees and interest. That's the issue --

15 **THE COURT:** And they can be treated --

16 **MR. YUN:** -- but they need to be --

17 **THE COURT:** -- one way or the other under both plans.
18 I mean, they're objecting now to the way you've got them where
19 there's no priority, they're not treated like creditors who
20 normally have some hierarchical priority over equity owners,
21 and we can talk about that; but assuming for a moment that
22 Progresso and Global debts are treated similarly, whether
23 they're treated as investors or treated in terms of hierarchy
24 of things or given some priority, what I want to figure out is,
25 in the end, what's the difference?

1 **MR. YUN:** Well, the difference for them is they are
2 pro rata. Whatever the amount of their allowed claim is, it
3 goes into the pot of whatever eligible claims. If you drop out
4 losing investments, that's a smaller pot. They get a pro rata
5 share right from the beginning of any distributions. That's
6 how our plan works. Interest, attorneys' fees is for a later
7 date, but that's how our plan works.

8 As I understand it, the investor plan says there's
9 8 percent management fees on average plus maybe carried
10 interest, and they get a third position on those after
11 administrative expenses, operating expenses, and then they
12 share pro rata. So there's just a different level of priority
13 under their plans versus ours. That's one of the issues.

14 And then our plan is nothing goes out of the estate except
15 what the Court approves in terms of court-approved receivership
16 fees and professional fees. That's the -- and investment
17 banker fees. That's how expenses are paid.

18 Under their plan, it's 8 percent management fees plus
19 carried interest; and, you know, if there's anything left over,
20 it can flow down to Mr. Silano. So it's a different payment
21 structure as well.

22 So those are two, I think, pretty significant differences
23 in terms of costs. If we keep the receivership costs down, the
24 overall costs down, under their plan, the management fees are
25 the management fees -- 8 percent, 6 percent, whatever it is --

1 plus carried interest. That doesn't have to be approved by the
2 Court under their plan because the receivership goes away.

3 **THE COURT:** All right. Maybe I should actually ask
4 you. What's the prejudice to your group, your clients, if we
5 went with -- if the liquidation decision were the same in terms
6 of the hold and doing the timing in terms of, you know,
7 assuming Palantir goes public, et cetera, et cetera, in the
8 end, what's the difference? Can you describe how it is that
9 investors are going to be prejudiced under the SEC's joint
10 plan?

11 **MR. LEVINE:** Well, you can't separate out. The SEC's
12 plan has an early payment option. It has an investment banker
13 who may sell shares early, liquidate shares early to pay for
14 people who take an early payment option. It has interest
15 payments. It keeps the receivership going, which, you know,
16 has already billed 1.2 million and ticking on the investors'
17 nickel. And it's not going to return any shares.

18 When investors signed up for this, the whole purpose of
19 this is to get shares of stock. That's what they get. They
20 don't get money at the end of this process.

21 Now, yes, there's a possibility that they will be sold out
22 but, you know, that possibility -- but what they invested in is
23 to get shares of stocks. So let's take the Palantir investor
24 as an example.

25 Andreas, I don't know if you don't mind me using you as an

1 example since you're here.

2 But Mr. Fischer is an SRA investor. He purchased 70,000
3 shares of Palantir. What he wants at the end of this process
4 is his 70,000 shares of Palantir less whatever management fee
5 he agreed to pay upfront, and he expects that to be deducted,
6 plus any back-end interest. That's what he wants. He doesn't
7 want a check that's a taxable event for him. What he wants is
8 his shares that he gets tax free.

9 **THE COURT:** So the key, even though at any particular
10 point in time the monetary equivalent -- the money would be
11 equivalent to the share value, is a taxable event? Is that the
12 main -- that's the prejudice?

13 **MR. LEVINE:** That is in part the prejudice, sure, but
14 it's carried -- then they have a different carrying value for
15 the shares. I mean, these people, you know, bought to get
16 shares and, you know, these are sophisticated people that some
17 of them have bought very large positions of stock and, you
18 know, they don't expect to get a check that may or may not be a
19 loss. It may be a gain.

20 Remember, the SEC's plan spreads it out amongst lots of
21 different people. Whether they end up ahead or not, they don't
22 know, but what the investors want is their shares of stock.
23 That's what they invested in.

24 **THE COURT:** And the SEC's position is given the
25 commingling, then, has occurred and the extreme difficulty of

1 tracing, as ideal as it might be to get people their shares,
2 it's hard to reconstruct that? Is that essentially the SEC's
3 position?

4 **MR. YUN:** Yes. It is --

5 **THE COURT:** That's why it has to be prorated and given
6 monetary --

7 **MR. YUN:** We are not standing here and absolutely
8 ruling out ever doing a share distribution. We do not rule
9 that out completely. But, yes, the normal way this would work
10 is when it becomes tradable with the courts, then it could be
11 sold at that time, and cash is easier to distribute than
12 shares. I mean, we ran into so many problems with Square.

13 **THE COURT:** You say you don't rule out a potential
14 share distribution. What does that mean? Does that mean that
15 your plan provides for that possibility or no?

16 **MR. YUN:** It doesn't rule it out. The assumption,
17 however, is that cash is distributed, that is correct.

18 **THE COURT:** Can you imagine how shares could be
19 distributed under your plan under some scenario?

20 **MR. YUN:** We'd have to --

21 **MR. LEVINE:** It's not in their plan, Your Honor, it
22 just isn't. I mean, this has been the fundamental difference
23 between -- I hate to interrupt, but it's the fundamental
24 difference between the two plans. It's just not there. If
25 that was their position, we probably could have done a deal,

1 you know, a year ago.

2 **MR. YUN:** Well, I'm not sure about that.

3 But the point is, yes, the assumption is shares are sold
4 and cash is distributed because that is administratively -- and
5 in terms of making sure that you figure out who got what
6 payback, yes, that is the most administratively reliable and
7 direct way of making sure that a distribution is done and that
8 everybody gets what they're owed when you have a commingled
9 consolidated pro rata plan. That, I agree with.

10 **THE COURT:** All right.

11 **MR. YUN:** That doesn't mean you can never do a share
12 distribution, but that is a standard way it is done, and that's
13 how our plan works.

14 **THE COURT:** Right. I understand that's the standard
15 way it's done. Can you imagine as you sit here whether there
16 might be, if things go well, some kind of share distribution so
17 that the original investors fulfill at least partially their
18 original goals?

19 **MR. YUN:** Let me give this as a hypothetical. Let's
20 assume the Court decides for whatever reason these claims are
21 allowed, these types of claims aren't allowed; but if you've
22 had a losing investment, this is what you get. You come up
23 with a number. And Palantir does go public and it turns out
24 3.7 million shares is enough to cover the distribution. Then
25 the question is: Do you need to sell the rest or don't you?

1 That's a question for the Court to address, but that's what I
2 mean.

3 But, yes, the starting point for all of the Commission's
4 plan is that we try to give investors as much of their money
5 back as the Court decides they should get, and administratively
6 you almost have to do that with cash because you've done an
7 assessment of what they put in, principal amount, you've
8 determined their share; but if that has been covered because
9 some speculative event happens -- and it is a speculative
10 event -- then the question is: Do you sell more shares than
11 you need to cover that?

12 That is something that can be handled at some point
13 related to a second or third distribution. I'm not saying
14 that's a typical way, but you asked me for a theoretical
15 possibility.

16 **THE COURT:** That contemplates a sale in at least
17 earlier distributions with the possibility of some residual
18 amount. It wouldn't be the full distribution of shares. It
19 would be a partial distribution of shares.

20 **MR. YUN:** It would be very unlikely in all honesty and
21 candor.

22 **MR. LEVINE:** And the starting point from our plan,
23 Your Honor, is what can we do creatively given that -- you
24 know, we use the word *sui generis* for this receivership because
25 we think it is. So doing the same old same old just because

1 the SEC has done it for 20 years doesn't answer the question.

2 And, you know, the SEC says "We're unaware of any case or
3 any receivership case where the court has adopted something
4 what you're proposing." And they're probably right, but you
5 know what? I'm probably unaware, and maybe they're unaware, of
6 any receivership case where there is a distinct possibility
7 that, notwithstanding the fact that this company has -- there's
8 been commingling and there's been, you know, Ponzi-like
9 activity and money has been lost and there are creditors where
10 everybody can be paid in full and still achieve their
11 investment objectives exactly as they intended.

12 And this may be the only case of its kind, but to not
13 acknowledge that and to punish the investors because they're
14 trying to be creative and trying to come up with a plan that
15 pays administrative claims, pays creditor claims in full, you
16 know, if necessary and still allows them to achieve their
17 investment objectives in whole, what's wrong with that?

18 **THE COURT:** Well --

19 **MR. YUN:** And the answer is it doesn't happen.

20 **THE COURT:** -- how can we be confident that that's the
21 case? If I were to rule, for instance, that Global and
22 Progresso should be treated as creditors as --

23 **MR. LEVINE:** Correct.

24 **THE COURT:** -- as they are in a normal hierarchy of
25 things, you've got that. Now you've got this problem with the

1 EAC. You know, something is going to have to probably give.
2 How do I know that -- you say there's plenty of cushion and
3 resources here. What confidence do I have?

4 **MR. LEVINE:** There's -- there's -- so let me just
5 be -- if I can, I just want to address two issues, first about
6 what we're proposing in terms of the receivership and
7 Mr. Silano and the oversight officer and correct because
8 there's been a lot of misstatements in the record on the
9 briefing on this just so we're perfectly clear.

10 Okay. The oversight officer has complete control over all
11 money and all shares at all time. The accounts would be in the
12 oversight officer's name subject to the jurisdiction and
13 oversight of this Court. We are not trying, and never have
14 been, to run from the jurisdiction or oversight of this Court,
15 which is something that we've been accused of doing by several
16 of the parties who submitted briefs. And that is absolutely
17 not true.

18 And we made this clear in our papers and I will say it
19 now, that the oversight officer will control all money, all
20 shares, all accounts. Nothing goes in or out of these funds
21 without the oversight officer's signature on it. She is
22 subject to the jurisdiction of this Court and the reporting to
23 this Court.

24 The purpose of this process and the reason we set it up
25 the way we did is because the investors have already paid

1 \$1.2 million to the receiver and its counsel, and they don't
2 want to do that anymore. And it's a way to -- this is a
3 wind-down at this point. There's no more decision-making
4 really to be done under our plan. It's just waiting for things
5 to happen and then figuring out how to distribute that.

6 **THE COURT:** Well, with this latest development, I
7 don't see how you can say there's no decisions to be made.

8 **MR. LEVINE:** Well, yes. The other point is they say,
9 "Well, they want the receiver to do the hard work and then we
10 take over." And the answer to that is no. If you look at our
11 plan, we take over -- not we, the investors -- the oversight
12 officer takes over and runs this like a business, which means
13 if she has to go file a lawsuit to get something back, she'll
14 go do it. And that's not unusual.

15 A receiver -- you know, it's just less burdensome.
16 Receiverships are cumbersome and slow and expensive. They are.
17 I mean, a fee application takes six months, four months.

18 **THE COURT:** What is this Court's jurisdiction? The
19 idea of a receivership is an arm of the court with court
20 supervision. If it's not a receivership, what jurisdiction
21 does this Court have?

22 **MR. LEVINE:** It could -- well, they subject themselves
23 to the jurisdiction. It could be as a monitor. It could be as
24 a liquidating trustee. I mean, we picked that name because we
25 were trying to come up with something that wasn't a

1 receivership, but it doesn't -- we're trying to come up with a
2 less cumbersome, easier vehicle to accomplish this without, you
3 know -- we're not running or hiding from the jurisdiction of
4 the Court. We're just trying to get this done and
5 understanding that at this point we're winding down a business.
6 All we're doing at this point is running this business out.

7 **THE COURT:** If she has such control, why do you need
8 Mr. Silano?

9 **MR. LEVINE:** Because he has institutional knowledge.
10 He has institutional knowledge. He knows the investors. The
11 investors trust him. He's worked with the investors. He knows
12 these underlying companies.

13 You know, everyone has accused him of being an insider, of
14 engaging in some kind of wrongdoing, of profiting from the
15 fraud. You know what? None of that is true. He's not an
16 insider. He hasn't been sued by anyone. He hasn't been
17 accused of doing anything wrong. He didn't profit from
18 wrongdoing. He earned commissions for work he did. And he has
19 the -- notwithstanding every bad thing that's been said about
20 him by everyone in this room, he has the trust of all the
21 investors because, frankly, without him standing up and
22 organizing the investors and hiring lawyers to protect their
23 interests, the SEC's original plan last year probably would
24 have been approved and they would have liquidated the entire
25 portfolio last year at pre-IPO prices and everybody would have

1 lost money. Every single investor and the creditors would have
2 gotten pennies on the dollar but for Mr. Silano's work, and
3 that is why the investors want him involved, to protect them
4 because no one else is.

5 So, you know -- now, we recognize that people have
6 concerns about him, which is why he has no control of any of
7 the money or any of the shares or anything else.

8 Now, going to your -- I'll finish my rant and go back --

9 **THE COURT:** Let me ask something else. You say you
10 represent 75 percent of the investors --

11 **MR. LEVINE:** Yeah.

12 **THE COURT:** -- or the money. What effort has been
13 made to enlist and, quote, "sell" this plan to the other
14 25 percent holders?

15 **MR. LEVINE:** I mean, we've been -- I think the
16 receiver has been publishing all of the -- the receiver
17 certainly has reached out at this point to every investor who
18 submitted claims. Those people are now aware. The receiver
19 has a website. All the documents are posted on the receiver's
20 website.

21 We've always been an open book to everyone. We've tried
22 to communicate with anyone who -- the investor group
23 communicates with anyone who wants to hear from us. There are
24 some people who, you know, just choose to remain silent. They
25 haven't -- no one's come in and objected to our plan. The

1 creditors have, but no one --

2 **THE COURT:** Has anyone objected to the joint plan, the
3 SEC's plan?

4 **MR. LEVINE:** No one's supported it.

5 **THE COURT:** So the 25 percent remain sort of silent as
6 to either plan?

7 **MR. LEVINE:** I think you can -- yes, and they've
8 chosen, you know, not to speak. Now, 75 percent have spoken
9 and they've said, you know --

10 **THE COURT:** What has been presented to the 25 percent
11 in terms of your plan? How has it gotten to them?

12 **MR. LEVINE:** I think -- my understanding is -- I don't
13 know. Is our plan on your website, the receiver's website?
14 Not your website, the receiver's website.

15 **MR. COTTON:** Your Honor, I think we do have
16 representatives from Sherwood, I hope, on the phone, and they
17 can tell you. I believe it is posted on the website but we
18 should confirm it with them.

19 **THE COURT:** On the phone do we have Sherwood
20 representatives?

21 **MS. NERTEA:** Yes, your Honor. Georgiana Nertea from
22 Sherwood Partners.

23 **THE REPORTER:** I'm sorry. I can't --

24 **MS. NERTEA:** Both plans are on the --

25 **THE COURT:** Hold on. Hold on. We need your name.

1 **THE CLERK:** Please make your appearance, Counsel.

2 **THE COURT:** Or not counsel, but --

3 **MR. COTTON:** She's not counsel.

4 Georgiana Nertea, N-E-R-T-E-A. She is with Sherwood
5 Partners, which is the receiver.

6 **THE REPORTER:** Thank you very much.

7 **THE COURT:** All right. Ms. Nertea, go ahead.

8 **MS. NERTEA:** Good afternoon, Your Honor, again.

9 Both plans, the competing plans, are posted on the
10 receiver's website for everybody. Everybody has access to
11 them. They can be viewed over there with the same court
12 document numbers as in the original court docket.

13 **THE COURT:** And can I assume that there have been no
14 comments made, other than what's been filed with the court,
15 from any investors that you've received?

16 **MS. NERTEA:** The investors normally reach out to us
17 either by phone or e-mail, and we direct them to the website.
18 We explain to them about the competing plans in front of you
19 today. We direct them to the website so they can read
20 themselves those plans.

21 **THE COURT:** All right. And do you know if anybody has
22 voiced any views for or against any one of the plans through
23 e-mails, for instance?

24 **MS. NERTEA:** No, Your Honor. No, I'm not aware of
25 those.

1 **THE COURT:** Okay.

2 **MR. YUN:** So I don't know if I can respond to any of
3 those points.

4 In terms of costs going forward, as I say, we have to look
5 at collecting the shares. That's potential litigation. Those
6 are costs. The receivership is in place. There's an entity to
7 do that.

8 Under their plan, we don't know who sues. I mean, who
9 sues to get the shares? I mean, that's question number one
10 because the receivership goes away. Here you have a
11 receivership. You know who sues on behalf of all the entities.
12 You know how the fees are going to be supervised, and the
13 litigation will be authorized and any settlement will be
14 approved. That's point number one.

15 Point number two, assuming you can put that aside, we
16 agree that the cost of the receivership needs to come down with
17 a plan. We try to go as much as possible into a wind-down mode
18 and the fees should be reduced accordingly; and if we need to
19 look at another entity or consider other entities to look at
20 that, Mr. Cotton can address that but that is something that
21 can be looked at, a different cost structure.

22 They've said several times "Everybody gets a recovery.
23 This is a different type of receivership." That has never been
24 true from day one because even if you were completely defrauded
25 when you purchased your Practice Fusion, your Badgeville,

1 whatever shares you've got, you get nothing under their plan.
2 That is not a recovery for everyone.

3 **MR. LEVINE:** That's not what I said, Your Honor. What
4 I said is everyone's investment objectives according to their
5 original investment intents are fulfilled. An investor who
6 purchased -- made an investment in Badgeville lost that
7 investment through absolutely nothing to do with the fraud that
8 was --

9 **THE COURT:** What about aren't there shortfalls with
10 other stocks? There's several different shares involved, some
11 of them not worthless, but there's shortfalls, as I recall.

12 **MR. LEVINE:** I don't -- well --

13 **MR. YUN:** Yeah. Without the EAC shares, we took a
14 look at their Footnote 6 on page 7 of their brief -- I mean,
15 page 5 of their brief. Let me just sort of run through what we
16 come up with.

17 I gave you the Palantir number.

18 For SoftDot we have a shortfall of 20,134 shares, for
19 Airbnb we have a shortfall of 11,125 shares, for Pinterest we
20 have a shortfall of 39,597 shares, and for Lyft we have a
21 shortfall without EAC numbers of 9,479 shares.

22 **MR. LEVINE:** So this is saying without a resolution
23 with EAC?

24 **MR. YUN:** That's correct.

25 **MR. LEVINE:** Okay. But what happens if there is a

1 resolution with EAC?

2 **THE COURT:** If there is a resolution, if these shares
3 were recovered, are there no shortfalls?

4 **MR. YUN:** Then these numbers are pretty close to being
5 right, yes.

6 **THE COURT:** Okay.

7 **MR. YUN:** We may disagree a couple hundred shares here
8 or there but this is the ballpark.

9 **THE COURT:** Let me ask the SEC this: If there were --
10 somehow miraculously you were able to get EAC to cooperate and
11 eliminate this problem with the guaranties and they were to
12 produce what they're supposed to produce in terms of the shares
13 and there is no shortfall of either these four or Palantir,
14 then would the SEC agree at that point you're almost back at
15 the status quo? I mean, there's no -- what would there --
16 there wouldn't be a need to have a receivership and a wind-down
17 and a liquidation, would there?

18 **MR. YUN:** There are still forward contracts but in
19 terms of does the receivership's task become simpler and
20 shorter, yes, of course.

21 **THE COURT:** Could there be a distribution of shares at
22 that point? If there's no shortfall, why would there need to
23 be -- well, I guess because there's expenses and things that
24 have to be --

25 **MR. YUN:** Yes.

1 **THE COURT:** So some decision is going to have to be
2 made about how to cover debts and expenses.

3 **MR. YUN:** And Global Generation and Progresso
4 Ventures, I mean, they have to be paid --

5 **MR. LEVINE:** We agree.

6 **MR. YUN:** -- and there is no cash to pay them.

7 **THE COURT:** So what about those debts?

8 **MR. LEVINE:** Well, we agree. That's why our plan -- I
9 mean, that's -- what -- you know, I think --

10 **THE COURT:** How do they get paid?

11 **MR. LEVINE:** They get paid out of the management fee.
12 That's the creative -- the solution here is to go back -- what
13 we did is we went back to the original offering documents and
14 we said "What do the investors expect right now?" Using
15 Mr. Fischer again as an example, Mr. Fischer, say, in his
16 original investment thing he has an 8 percent -- he has a
17 2 percent annual management fee, which we all seem to agree is
18 about 8 percent at this point -- this is annual -- plus, say, a
19 20 percent back-end carry fee, back-end interest.

20 So Mr. Fischer expects that if there's a Palantir IPO, six
21 months or at some point after that IPO is done, what he will
22 get is his 70,000 shares less 8 percent and any carried
23 interest. Those shares are used or liquidated -- that
24 8 percent plus whatever carried interest are liquidated to pay
25 the creditor claims and the other claims.

1 The back-end fees depends on whether there's a profit or
2 not, but the management fees are accrued no matter what. So
3 everybody is subject to -- pretty much subject to the
4 management fees at about 8 percent.

5 So what we did is, to test our plan is -- well, first of
6 all, there's five companies that have already gone -- that are
7 already liquid. So those five alone if you take 8 -- if you
8 take surpluses -- plus all the surplus shares if there are
9 surpluses -- and there are surpluses here if EAC is resolved
10 and the forward contracts are obtained -- you take all the
11 surplus shares and you sell them, you take the management fee
12 shares and you sell those, you take any carried interest or
13 back-end interest shares and you sell those, and that's your
14 pool of money to pay administrative claims, creditor claims,
15 ongoing claims of the thing.

16 And we think there's more than enough. There's already
17 2.2 -- as we calculated it from the five companies that are
18 already liquid, there's already -- if you just look at
19 8 percent and don't even try and figure out back-end, if you
20 just look at the management fee plus surplus shares for those
21 five companies, it's about \$2.2 million at last week's trading
22 prices plus the money in the -- there's 1 million something in
23 the receivership estate. That's, like, \$3.3 million that's
24 already there, and we haven't even gotten to Palantir and the
25 eight other companies in the portfolio. If Palantir goes out

1 at 34 million or 40 million, just management fees alone are
2 \$11 million and that's enough.

3 Now, in terms of prioritizing, I mean, I think
4 administrative claims always go first. I think they
5 contemplate paying administrative claims first too. Our plan
6 doesn't treat the creditors any differently than the investors
7 because the way the creditors get paid is at the same time the
8 investors get their shares because those shares, some of them
9 are liquidated, the creditors get paid their portion and the
10 investors get paid their portion, which goes in shares, and the
11 creditors get their money at the same time. It's not --
12 there's --

13 **THE COURT:** What's the risk to the creditor?

14 **MR. LEVINE:** The risk to the creditor, I guess, which
15 we've -- is that some investors get their shares but the
16 creditors don't get all their money. So some investors -- but
17 investors don't get all their shares. They never get all their
18 shares because we're having a holdback of an additional
19 5 percent to ensure that there is enough money for the
20 creditors to be paid off.

21 I mean, the creditor claims aren't -- I mean, there's
22 really two so far substantial ones, and we know what they are
23 and we know how much they are, and we think we can pay those
24 off. I mean, certainly if Palantir goes out, that's a given.
25 You know, there's already 3.2 million. We've done the math in

1 our thing. We've tested this. We think this works, and it
2 would allow the creditors to be paid and it would allow every
3 investor to follow their investment objectives. Every investor
4 for better or for worse, understanding that that means some
5 investors get nothing, and that's what they signed up for; and
6 you don't hear -- no investor has stepped forward and said,
7 "You know, no, we don't like that," or, "We don't want that."

8 I mean, these are sophisticated people who made, you know,
9 intelligent decisions and they understand that they lost money
10 not because of commingling by John Bivona. They lost money
11 because they made a bad bet on a company that went bankrupt and
12 they're not expecting to be paid for that. Nobody is. No one
13 has asked for that. I mean, people file claims because they
14 were sent claim forms and said, "Here. You want some free
15 money? You want to make -- here. We know you made a bad
16 investment. Would you like some money?"

17 **THE COURT:** All right. Let me hear from Global and
18 from Progresso about --

19 **MR. YUN:** Yeah. Can I just make one --

20 **THE COURT:** I have more questions for you, but I want
21 to hear their response to this. I know they object with
22 respect to Mr. Silano and the ending of the receivership, but I
23 want to know what your view is about the adequacy of this
24 funding payment of creditors via the management fee, back-end
25 fees, and surplus sales.

1 **MR. GOLDBERG:** So, Your Honor, Daniel Goldberg for
2 Progresso Ventures, Inc. First, thank you for allowing me to
3 appear *pro hac vice* today.

4 **THE COURT:** Sure.

5 **MR. GOLDBERG:** I don't know that we have a ton of
6 insight in terms of the viability of the SRA investors plan
7 particularly after Your Honor's ruling that we're a creditor.
8 That sort of changes our posture quite a bit. Our viewpoint is
9 that creditors ought to get paid before equity holders, and I
10 have a few other things to add there.

11 But to answer your question directly, I don't know that we
12 have a view, an informed view, as to whether their plan is
13 feasible. If it's feasible, then I don't think we as a
14 creditor would have an objection to that.

15 I think -- and I can tell you being a lawyer chasing
16 Mr. Bivona and his team for quite a long time, having any one
17 of his cohorts, however innocent as counsel may claim him to
18 be, having that fox guarding these chickens is something that
19 would give us a bit of pause, but there's nothing to say that
20 another truly independent third party couldn't effectuate that
21 plan.

22 We have a few other quibbles with it, such as there
23 doesn't seem to be any provision for disallowing claims by
24 insiders who may have been wrongdoers. That strikes us as
25 something that ought to happen, but that's something that can't

1 be worked out.

2 But from our perspective, provided that the two things
3 that we have complained about are addressed, I don't know that
4 we have a strong view as to either plan.

5 **THE COURT:** Okay. I appreciate that. Thank you.

6 **MR. GOLDBERG:** I have other things to say, but I don't
7 want to interrupt the flow of what Your Honor was talking
8 about.

9 **THE COURT:** That was the key thing.

10 **MR. GOLDBERG:** Sure.

11 **THE COURT:** Does Global have any comments?

12 **MR. GRIFFINGER:** Global has nothing to add,
13 Your Honor.

14 **THE COURT:** Okay. Then let me ask the SEC. I mean,
15 one of the differences is the payment, discounted payment, to
16 those who invested in failed companies and --

17 **MR. YUN:** Can -- go ahead.

18 **THE COURT:** -- you know, and I don't know how much
19 that amounts to but that obviously eats away at the pie, and
20 the question is: Why should somebody who invested in a bad
21 company who suffered a loss but not causally related, at least
22 as far as I can see, to the commingling and fraud?

23 **MR. YUN:** Let me answer that, but let me just make a
24 comment about their point that the management fees and the
25 carried interest will be enough to pay off everything.

1 **THE COURT:** Yeah.

2 **MR. YUN:** If you were to ask John Bivona or Frank
3 Mazzola "Why did you do what you did?" I think the answer is,
4 "Well, we were hoping that the management fees and the carried
5 interest would pay everybody off even though we took their
6 money and misappropriated it." I mean, that is the essence of
7 how this Ponzi scheme worked. They took somebody else's money
8 and they said, "Let's hope the carried interest and management
9 fees allows us to pay them back."

10 They're asking the Court to do the rather extraordinary
11 thing of saying, "Well, let's see if this type of arrangement
12 can go on, basically bless what was a rationale for the Ponzi
13 scheme in the first place."

14 Having said that, now I can come to this point, which is
15 that everyone, whether or not they got a number of shares in or
16 not, their money was diverted. I mean, this was a fraud.
17 Their money was not used in the way it was intended. The
18 management fees are not limited in the way it was intended.
19 Millions of dollars were taken out in a way that was not
20 intended.

21 They were put into deals with forward contracts that
22 carried risks. They were not disclosed or intended by the
23 investors. There was a fraud and that gives them the
24 opportunity normally if they were to go to state court and seek
25 a rescission. It doesn't matter what the losses are. They can

1 rescind.

2 It is very -- it is completely unjustified and there's no
3 case authority to say "We are going to create a distribution
4 plan. You have been defrauded, but you will get nothing."
5 That is the problem. That is why --

6 **THE COURT:** So the leverage is the right of rescission
7 under typical fraud state common law?

8 **MR. YUN:** Yes.

9 **THE COURT:** And that's worth -- even though the thing
10 they bought -- the thing they thought they bought ends up being
11 worthless, transactionally at some point they could opt to
12 rescind --

13 **MR. YUN:** Yes.

14 **THE COURT:** -- under the fraud remedy?

15 **MR. YUN:** And, frankly, if the receivership goes away
16 and the stay on litigation goes away and I'm sitting there with
17 a loss and I can find myself a contingent fee attorney, that is
18 where I'm going next. And how are they going to deal with
19 that? They haven't explained that. So our point is you need
20 to get them something.

21 **THE COURT:** It also occurred to me that there is an
22 argument that these folks that have put their money in, because
23 it was commingled and used, there's a use-of-money aspect; that
24 they put money in, although it was destined for a failed
25 investment, that money had value when it went in and it was

1 used. There's a time use of money. It's almost like a loan.

2 **MR. YUN:** Yes. The alternative is --

3 **THE COURT:** So there's some compensation should be due
4 for use of money.

5 **MR. YUN:** The way I think of it is as follows: Yes,
6 maybe they wanted to invest in pre-IPO Palantir, Badgeville, or
7 Bloom Energy shares; but if they had known it was a fraud, they
8 could have put it into Apple, Netflix, or Google for the last
9 six years.

10 Maybe they don't get the upside if Palantir goes big like
11 everybody hopes, but at least they would have gotten something.
12 It was an investment choice that they were denied because they
13 were lied to, and you can't just say --

14 **THE COURT:** Well, they weren't lied to about the thing
15 they invested in. In other words, if they were told that, you
16 know, whatever the stock was that failed, that "Don't worry,
17 this is going to be a great company," et cetera, et cetera,
18 that's one thing. That's not part of the fraud that's claimed
19 here.

20 **MR. YUN:** Yes, but the fraud is your money is going
21 in, you think you're buying these shares, and then for a period
22 of time you are facing a potential shortfall. You are exposed.

23 You buy the Netflix shares today, it goes into your
24 account today. You are covered today. We put it in. You're
25 exposed five, six, seven months until we get the shares to

1 cover it. That's a different risk than having the shares in
2 your account.

3 **THE COURT:** It is a different risk so the argument is
4 that consequentially it is of no consequence because even if
5 you weren't exposed to that unfair and unadvertized risk, you
6 would have lost everything. But I think your response is,
7 "Well, you would have had a right to rescind because you
8 wouldn't have engaged in this transaction with these people in
9 the first place. You might have done something else."

10 **MR. YUN:** Yes.

11 **THE COURT:** And that's the whole idea of rescission.

12 **MR. YUN:** Yes. You could have made another investment
13 that was more in line with what you expect. I will have my
14 interest today not six months from now depending on if Frank
15 Mazzola can talk some other investor into giving you the money
16 to go out and buy the shares that I was supposed to get.
17 That's a different analysis in terms of investment.

18 **THE COURT:** Let me ask you the other aspect that's
19 been objected to, the early election, which threatens to force
20 an early liquidation. Why do you need that?

21 **MR. YUN:** Again, it's a similar thing of normally a
22 receivership the liquidation or the sell off of interest goes
23 off -- begins as soon as you've got a collect that you look to,
24 sell it off and collect for people as soon as possible.

25 Here we've agreed that if an investment banker recommends

1 holding shares for a longer period, that the receivership takes
2 on a level of risk that it doesn't normally do.

3 We believe that it is fair to investors to say, "I do or
4 don't want that risk with my money. I would rather get
5 something now and know I have it."

6 It's a fairness of an offer. We don't know how many
7 people are going to take that or not. I have -- I think I know
8 one investor that will; but with that said, we think it's
9 worthwhile to offer that opportunity.

10 **THE COURT:** And how do you arrive at the 25 or
11 30 percent level?

12 **MR. YUN:** If I said rough justice, would that sort of
13 make any sense? I mean, it's a concept.

14 **THE COURT:** It wasn't based on any calculus of values
15 of potential IPO?

16 **MR. YUN:** No. It's a concept of they're given
17 something more than nominal but, you know, money is still left
18 in the receivership for all the other claims.

19 **THE COURT:** And what they'd be giving up is their
20 capital, their investment claim; right? This is in lieu of the
21 100 percent of their investment.

22 **MR. YUN:** Perhaps on a third distribution if there's a
23 whole bunch of money sitting around, maybe they can be
24 reconsidered in equity interest.

25 But, yes, what they're giving up is a long-term

1 opportunity for more of their interest but what they're getting
2 is an opportunity to get some money now. And actually if you
3 look at lots of receiverships, a 25 to 30 percent recovery is a
4 very good recovery in a lot of receiverships.

5 **THE COURT:** Is there a danger that those who invested
6 in companies that aren't doing so well will be the ones who
7 they can almost Monday morning quarterback and hedge their bets
8 and say "Such and such is not doing well so I'll take my
9 30 percent or 25 percent"?

10 **MR. YUN:** That's a possibility, or if they just need
11 to liquidate now for whatever reason. When I mentioned a
12 possible investor that may or may not take this, I was thinking
13 of the Aleve Group, which is now in a rescission -- is now
14 being handled as a restitution claim by the United States
15 Attorney for the Northern District of New York. I don't know
16 if they're going to want to say "Let's hold off" or "Let's get
17 what we can now."

18 But if somebody says they need the money now, they at
19 least have the opportunity to ask. We don't promise that
20 they're going to get the money, but we at least -- I think it
21 makes sense to say to them "Is this something you want to take
22 advantage of?" We give them the option.

23 **THE COURT:** Let me ask something. In your brief you
24 make it sound like that early election right is subject to
25 being feasible and that the Court -- I didn't quite see the

1 way -- it didn't seem to say that in the actual plan, that it
2 is subject to Court approval or if it's an assessment of
3 feasibility. In other words, the Court could say, "No, I'm not
4 going to allow this."

5 **MR. YUN:** That's right.

6 **THE COURT:** Is that the intent?

7 **MR. YUN:** No. The intent was if we are able to sell
8 shares without upsetting the entire receivership, we will do
9 so. We cannot tell you that the investment banker will give us
10 that recommendation; but if we can, we will try to fulfill
11 this.

12 **THE COURT:** And that would require Court approval?

13 **MR. YUN:** That would require Court approval.

14 And let me say, in terms of the investment banker, that is
15 something that's worth an independent expert judgment. Yes,
16 maybe Palantir will go public second quarter. I mean, is it
17 irrational to say do you sell some shares now and hedge your
18 bet, or do you go hold it all? I mean, that's a professional
19 judgment. We're not prejudging any of that.

20 **THE COURT:** And in terms of the concern about receiver
21 costs and fees, I mean, you project it will go down because a
22 lot of the forensic accounting and all that stuff is done.
23 Have you -- has the SEC solicited any proposals or do we have
24 anything to give some assurances that there is going to be a
25 substantial declination in terms of the fees that are --

1 **MR. YUN:** I will answer that, but at this point I'd
2 like to defer to John Cotton for his thoughts from the
3 receiver's standpoint on that issue.

4 **MR. COTTON:** Thank you, Your Honor.

5 I first wanted to just point out from the standpoint of
6 the receiver, qua receiver, receivers don't like to take risk.
7 Receivers like to remain flexible. The advantage of the
8 Commission's plan is that it is flexible. It has ways to deal
9 with uncertainty, such as the EAC problem that we're now
10 facing; or, frankly, the question of what happens if, God
11 forbid, Palantir doesn't go the way the hopeful people think it
12 will, the market goes south for the next six months, and
13 Palantir doesn't go public. The receiver wants to be flexible.

14 The receiver also knows that when there are commingling
15 issues, there is always a potential for rescission claims. And
16 from the very beginning, the beauty of the receiver's and the
17 SEC plan, the combined plan, has been the flexibility that it
18 provides for uncertainty and it's also been the fact that
19 there's a possibility that risk can be reduced if, for example,
20 the investment banker came to the Commission and the receiver
21 and said, "Based on some market changes and conditions, we
22 think it would be a good opportunity and it might limit risk of
23 waiting two or three more years to sell some pieces of the
24 assets."

25 Those were the issues that in general have made it more

1 favorable to look at the combined plan from the standpoint of
2 the receiver. The receiver doesn't want to take sides between
3 investor groups; and with all due respect to the SRA investment
4 group, the receiver is not trying to take a position against
5 them. It wants to be agnostic in this process, but at the same
6 time it needs to find ways to deal with the uncertainty, deal
7 with financial risk and, frankly, deal with the 25 percent of
8 the investors we haven't heard from.

9 It's true we haven't heard one way or the other from them,
10 but I think the receiver's view about the SRA IG plan might be
11 different if it represented 98 or 99 percent of the investors
12 and we only have a few outliers; but there's a significant
13 number of investors that are not represented and, as a result,
14 on balance the plan that makes the most sense is the
15 Commission's plan.

16 Having said that, the receiver also recognizes that a lot
17 of the heavy lifting has been done and the service delivery
18 platform, the whole way Sherwood represents clients and does
19 business, it's a platform that at this point is probably too
20 expensive for this continuing role as receiver.

21 So we've had conversations with the SEC in the past two
22 weeks about looking for another way to deal with the
23 receivership going forward. And this receiver has been proud
24 and honored to do the work and will do it as long as the Court
25 wishes it to do that work, but we also want to see if we can

1 find a less expensive alternative for the kind of tasks that
2 are coming up. So we've had a conversation with the Commission
3 about that. The Commission I think can explain what
4 alternatives they're looking at. Sherwood would make the
5 transition as smooth as it could and would have no difficulty
6 in so doing.

7 But the fact is Sherwood doesn't have a delivery model
8 that focuses on pure distribution. That's a level of service
9 that probably requires less talent and experience than Sherwood
10 has; and Sherwood can't, for lack of a better term, dumb down
11 its staff in billing rates to create something it isn't. So
12 we'd like to help in the process and we'll certainly do that.

13 **THE COURT:** Well, how far are you from -- it may be
14 that it would be useful to see what this plan is because that's
15 one of the big issues is the costs involved. How close are you
16 to being able to come up with something that explains what the
17 new version -- you know, the job function, estimated costs?

18 **MR. COTTON:** And the Commission can -- we can both
19 explain our views on that, Your Honor, but one point to make
20 and I'd actually like to say something positive today, and that
21 is, of the four issues that we faced at the last hearing,
22 Cloudera and the Cloudera shares and the Dropbox shares that
23 were being held captive for a while, we've resolved those
24 issues. The Cloudera shares are now in the name of the
25 receivership. The Dropbox shares are on their way. We're

1 working with a transfer agent to do that. So two of the four
2 big issues that we faced at the last hearing have been
3 resolved.

4 Now, EAC and MongoDB have not been resolved but, as I view
5 it, these are issues that are legal issues. Lawyers are going
6 to deal with either the negotiation or the resolution of EAC
7 and MongoDB.

8 Sherwood as receiver is not necessary in that process.
9 They can provide the information, but any distribution agent or
10 other entity continuing the role of overseer could do the same.
11 So we see the tasks now being fundamentally different than they
12 were when Sherwood was appointed monitor over two years ago.
13 Those tasks were suited to what Sherwood does, and they've done
14 them well for the last two years.

15 But at this point we're open to suggestions, and we'll
16 work with the Commission.

17 **THE COURT:** All right. Mr. Yun?

18 **MR. YUN:** There have been phone calls. There have
19 been exchanges of résumés. We have not made any definitive
20 request for a proposal and they haven't provided it in part
21 because we had this hearing and we need to be able to tell a
22 new receiver what will be the distribution plan. I mean, we
23 certainly have provided them with a copy of our plan and I
24 believe perhaps a copy of their alternative, but their
25 alternative doesn't call for a receiver.

1 So this is a chicken-and-egg problem. We need to be able
2 to tell a new receiver what will it be required to do and how
3 will it be required to do it.

4 **THE COURT:** All right.

5 **MR. YUN:** And that's why we sort of need -- again, I
6 mean, we need to press for a decision today in terms of is the
7 receivership going or staying and, you know, how are we going
8 to structure some sort of distribution plan. It's hard to
9 bring in somebody for a job that is not yet defined.

10 **THE COURT:** All right.

11 **MR. KATZ:** Can I just add one point, Your Honor --
12 Marc Katz for the SEC -- because I've been having these
13 discussions with some potential folks who could step in as sort
14 of wind-down agent?

15 What we're trying to find is somebody who can do the legal
16 work and the receiver work, to the extent there's an
17 administrative piece, as one entity, not have multiple layers.
18 So that's what we're looking at in trying to get that, and we'd
19 be able to present recommendations to the Court pretty quickly
20 after this hearing because we have had a bunch of
21 conversations.

22 **THE COURT:** And the receiver function, other than
23 trying to resolve these two outstanding claims, it seems like
24 largely would be working with the investment banker making the
25 decisions about --

1 **MR. YUN:** Yes.

2 **THE COURT:** -- when and when not to, and it's no
3 longer an accounting function.

4 **MR. KATZ:** Exactly. We believe it's -- and maybe
5 liaison with the claims agent, those kinds of things. But,
6 that's right, it's not a restructured person parachuting in to
7 deal with computers and all the things that's happened in the
8 past.

9 **THE COURT:** I'll give you the last word.

10 **MR. LEVINE:** Thank you, Your Honor. And I know it's
11 been a long day.

12 **THE COURT:** Yeah.

13 **MR. LEVINE:** Two things. Look, Ms. Uecker can be a
14 receiver. She served as a receiver. The SEC hired her as a
15 receiver in this very courthouse and she's serving as one right
16 now. She's been a receiver all over the place. So she's
17 certainly qualified.

18 We raised that subject with her. I think it's alluded to
19 in the briefing where we had a discussion why can't we have the
20 receiver -- have Ms. Uecker be the receiver. She could do
21 that. We asked her and she said, "That's a terrible idea."
22 And we said, "Why?" And she said, "Because receiverships are
23 very expensive. They're cumbersome. It keeps everything
24 going." She said, "You know," she said, "it really should be
25 more of, like, a liquidating" --

1 I mean, you've heard it. It's a wind down. Everyone
2 agrees it's a wind down. We don't need the receivership entity
3 to do that. It can be a liquidating trustee. It can be a
4 monitorship, which is what this started as. It can be
5 something that's less cumbersome where, you know, everything
6 doesn't have to be done by a formally noticed motion on three
7 months' notice, or whatever else, to the Court.

8 The problem --

9 **THE COURT:** What do we call it? I don't know why we
10 couldn't stipulate that whatever you call it, we could do
11 things informally and we could change the approval process.

12 **MR. LEVINE:** I think that's fine but if it's a
13 receivership, I don't think you can do that. I think that's
14 the problem, is there are sort of formal things that go with
15 these receiverships. The SEC is involved and everything's got
16 to be run through them. You've got to get their permission
17 before you file anything. I mean, it's just -- we were trying
18 to just simplify it and turn this back to what it was.

19 Two other sort of quick matters --

20 **THE COURT:** Yeah.

21 **MR. LEVINE:** -- which is bringing in just a new
22 receiver without any institution, so replacing Sherwood without
23 somebody there, I mean, that's the worst solution because you
24 have no institutional knowledge. What, you're just going to
25 throw this stuff in some new person's lap and say, "Here. Go

1 figure it out and run this thing and distribute it"?

2 I mean, that's the worst solution and that's why we
3 have -- that's why what our proposal was is to have Ms. Uecker,
4 you know, to address all the concerns and report to the Court
5 and run this thing but with somebody there below her who has
6 institutional knowledge, not insider knowledge, institutional
7 knowledge; and our plan, by the way, does --

8 **THE COURT:** Wouldn't an investment banker have that
9 kind of institutional knowledge and familiarity?

10 **MR. LEVINE:** What's that? I'm sorry.

11 **THE COURT:** Wouldn't the investment banker have that
12 kind of knowledge about timing and what --

13 **MR. LEVINE:** Not the timing issue. It's not a timing
14 issue. It's institutional knowledge about these funds and
15 shares and who owns them and who the investors are and where
16 the shares are held. I mean, you know, it's not --

17 **THE COURT:** I thought that was all -- I thought that
18 was -- that's what the whole purpose of this receivership is to
19 figure all that out.

20 **MR. LEVINE:** Right, but the receiver has now been
21 running this business. Somebody has to run this business,
22 whether it's as a receivership or as a business, for the next
23 three years and there's got to be some institutional knowledge
24 about the business. It's a business. It's a bunch of funds.
25 Ms. Uecker has experience running winding-down investment

1 funds.

2 Now, our proposal does provide for disallowed claims and
3 does disallow claims by insiders. There's a specific
4 provision. It generally tracks the same language as the SEC
5 with one change, which was only done to make sure that
6 Mr. Silano wasn't inadvertently deemed an insider, which he's
7 not. No one has accused him of being one.

8 The problem with the SEC's plan, the fundamental problem,
9 and it's why we were going to be back here next year, is let's
10 take the example that Mr. Cotton provided, which is their plan
11 is adopted. A year from now there's no Palantir IPO. The
12 receiver decides unilaterally, "You know what? I'm going to go
13 consult the investment bank." And the investment banker says,
14 "Yeah, maybe you want to sell, maybe you don't want to sell.
15 Maybe sell half of your Palantir shares." And, once again, the
16 investors haven't been consulted about their shares.

17 I mean, that's -- and the investors -- we're going to be
18 back here in a year, and maybe it won't be me. Maybe it will
19 be some other lawyer representing a different group of the
20 investor group. It will be called the Palantir SRA Investor
21 Group at that point. And we're going to be standing here
22 saying, "They're ignoring us again." And this is the problem
23 with their plan, is it doesn't give any voice to the investors
24 whose money they're playing with. It never has. They have
25 never consulted the investors. Their plan ignores the

1 investors. It ignores their investment objectives and there's
2 no need for that. There is enough here to pay everyone.

3 **THE COURT:** All right. Let's say I'm not that
4 confident that there is enough to pay everyone and I want to
5 set up a structure. Is there a way that the SEC can give some
6 input to the investors, particularly ones who have the large
7 lion's share of the investments?

8 I mean, are these decisions just going to be made by the
9 investment banker together with the receiver as to whether --
10 what's the process?

11 **MR. YUN:** I mean, there can be a variety of process.
12 I mean, obviously everything comes before the Court in an open
13 hearing. There should be transparency. This could be a lot of
14 money at stake. If you want to form an Advisory Committee, we
15 can always talk about an Advisory Committee.

16 But, you know, at bottom, the foundation is you have a
17 court-appointed fiduciary that reports to the Court and owes a
18 duty to the investors. How you then want to make sure that
19 there are lines of communication between a receiver or that
20 fiduciary and the investors can be a very flexible process
21 based on what the Court approves and what seems to work over
22 time.

23 **THE COURT:** All right. What I would like to do -- I'm
24 going to take this under submission. I will tell you right now
25 I hear what the investor group is saying, but I have a number

1 of concerns, many of which have been echoed.

2 But the assumption that this will all work, that there's
3 enough stress tests going on, I'm not as confident,
4 particularly now in view of this latest development with the
5 EAC situation; and so I am leaning towards the SEC plan, but I
6 want to see something that -- some proposed mechanism, whether
7 it's an Advisory Committee or some other mechanism, so that the
8 investors who have everything at stake have some voice and some
9 input into the process.

10 I also want to see what -- the slimmed-down receivership
11 because I'm concerned about expenses eating up the fund. The
12 one thing that's probably unavoidable will be, you know,
13 there's going to be some liquidation and not shares,
14 distribution of cash, not shares under the SEC plan. That is
15 the biggest prejudice and downside.

16 But if we assume that there's going to be some kind of
17 shortfall with various shares given the problems with EAC, it
18 is hard to see -- and the fact that there has been commingling,
19 I have problems seeing how we can avoid that.

20 So the next best thing is to make sure that the investment
21 objectives are adhered to as best as possible. It's not going
22 to be 100 percent but with some input in minimizing of expense.

23 And I do want to think some more about the premium or the
24 discount in compensation given to unsuccessful investors. I
25 think your footnote suggests that, well, if they're going to

1 get something, it should be more in the tune of 10 percent or
2 something, and maybe there's something to that. I'd have to
3 think about what they're doing.

4 And to make sure that with respect to any early option,
5 that that's done, if feasible, and the Court would have to
6 approve that because I don't want to jeopardize everybody
7 else's -- we're balancing various interests here, and I
8 understand that people in a receivership normally would get
9 liquidated interests soon. On the other hand, had they just
10 invested and all this hadn't happened, there may have been a
11 longer term hold in any event so I'd have to think about that.

12 But I would like to see a revised plan from the SEC that
13 includes the input component as well as whatever comes to
14 fruition with respect to a slim-down. And I don't care whether
15 you call it -- I don't know legally the fact that you call it
16 receivership now then requires a certain set of panoply of
17 procedures as opposed to a liquidating trustee or whatever you
18 want to call it. My main goal is there does have to be
19 somebody to take responsibility for this particularly because
20 there's going to be some substantial negotiations and potential
21 oversight of transactional negotiations with EAC and the other
22 one that's outstanding, but I also want to see a preservation
23 of capital here.

24 **MR. YUN:** Okay.

25 **MR. LEVINE:** Your Honor, if I may, it's unclear from

1 your comments, which I take to heart, whether Your Honor is
2 intending to enter an order now or wait until a plan comes in.
3 My suggestion -- my request would be that because this new EAC
4 issue just arose and it may be worked out in the next two or
5 three weeks --

6 **THE COURT:** I am not going to enter anything yet.

7 **MR. LEVINE:** Okay.

8 **THE COURT:** I'm giving you my sort of tentative views
9 and direction of where I'm headed because I don't want you to
10 spin your wheels for no reason. So now you have a reason to
11 spin your wheels because I'm giving you my tentative views.

12 **MR. YUN:** Okay.

13 **THE COURT:** Now, if something breaks and EAC comes to
14 the table and all is made well and good, that could change the
15 picture. I mean, if everybody can be clearly made whole and
16 there's no risk, and that includes, you know -- I'm hearing
17 about the -- I understand the concerns about the creditors,
18 whether they should be given priorities they normally would in
19 bankruptcy or other insolvency situations or whether they
20 should be treated -- there's some discretion there, and I'm
21 going to continue to look at that question. All right?

22 **MR. LEVINE:** Thank you, Your Honor.

23 **MR. YUN:** Thank you, Your Honor.

24 **THE COURT:** All right. Thank you.

25 **MR. GOLDBERG:** Your Honor?

1 **THE COURT:** Yeah?

2 **MR. GOLDBERG:** Sorry. I don't want to throw a wrench
3 in this.

4 **MR. COTTON:** I'll let him go. We also have a fee
5 application motion hearing.

6 **THE COURT:** I'm going to grant that fee application.

7 **MR. GOLDBERG:** I just have a couple things to add on
8 the priority point that might not have been as clear in the
9 papers as they might have been, and if Your Honor will indulge
10 me for 90 seconds at most.

11 **THE COURT:** Sure.

12 **MR. GOLDBERG:** So on the issue of full faith and
13 credit of our judgment, in Your Honor's July 30th decision
14 ruling that Progresso's claim is not as a creditor, you noted
15 that the Court has to accept our judgment but you said that you
16 would leave open for supplemental briefing whether or not the
17 Court has discretion to lessen the amount of the claim or
18 otherwise alter its priority.

19 The subsequent briefing that you got from the parties, as
20 far as I can tell, no one has provided Your Honor with any
21 authority for the notion that the Court does not have to and
22 isn't required to accept the full faith and credit of the
23 New York judgment that we have, and that's our position.

24 The SEC wants to dismantle our judgment and the claim that
25 we only are entitled to principal, but they actually go farther

1 and do worse than just saying that. Our judgment delineates
2 what -- the aspect of our judgment is principal, which is
3 \$3.17 million in principal, but yet the SEC wants to award us a
4 claim of \$1.5 million.

5 So we just think that whole construct and the SEC's
6 position illustrates the purpose of the full faith and credit
7 clause. You cannot have the United States government decide
8 what aspects of a state court judgment it's going to give
9 credit to or not give credit to. That's our point on the full
10 faith and credit.

11 On the priority point, Your Honor had just said a moment
12 ago there's some discretion there, and that may very well be.
13 I just want one thing to note. The cases that have been cited
14 to Your Honor where they say a, quote/unquote, judgment
15 creditor doesn't necessarily get priority over other equity
16 holders, those judgment creditors in all the cases that have
17 been cited to Your Honor on that point, those were investor
18 claims where the investor got a judgment in its capacity as an
19 investor and was trying to jump the line in front of other
20 similarly situated investors.

21 **THE COURT:** You're not casting aspersions on Global,
22 are you?

23 **MR. GOLDBERG:** No, no, no. Not remotely. Not
24 remotely. But what I'm saying is those cases don't address
25 what Your Honor has ruled our situation is. We're a lender.

1 We're not an equity holder.

2 **THE COURT:** You had a kicker, though. Your client had
3 a kicker possibility.

4 **MR. GOLDBERG:** Oh, that's true.

5 **THE COURT:** It wasn't just a straight, you know,
6 12 percent loan.

7 **MR. GOLDBERG:** No. No, it was not. No. That's -- I
8 understand. No, no. There are aspects of our investment that
9 could look like equity, but Your Honor has ruled that that's
10 not us; right? We're a creditor. So having ruled that we're a
11 creditor --

12 **THE COURT:** Well, I've ruled that you are
13 characterized as a creditor, not as an equity holder. That's
14 not to say that if there's some adjustment, that you would
15 stand in exactly the same shoes as a creditor that was just a
16 pure lender with no -- a pure payback with no piece of the
17 action.

18 **MR. GOLDBERG:** Well, we got no piece of the action.
19 There were no ups on that the way that that worked out.

20 **THE COURT:** I understand.

21 **MR. GOLDBERG:** So as it turned out, it was straight up
22 just a loan with repayment of interest that hasn't been repaid.

23 **THE COURT:** I will say, I mean, some cases say that
24 lenders who make a loan having no knowledge of, you know, sort
25 of -- the only thing they expected was just a straight payback,

1 may have a slightly different equitable position than somebody
2 who's going in it with a bit of a risk taking.

3 **MR. GOLDBERG:** Sure. No, I understand that. I'm
4 just -- and we look a whole lot like -- in light of
5 Your Honor's ruling, we look a whole lot like that lender more
6 than we do an equity holder.

7 **THE COURT:** I understand what you're saying.

8 **MR. GOLDBERG:** And on the equities -- right? -- we've
9 heard from the parties that in the name of equity, we shouldn't
10 follow the full faith and credit clause. In the name of
11 equity, we shouldn't follow the normal rules of priority as
12 between creditor and equity holder. Let me give you what our
13 view of the equities in this case are.

14 Apologies. I know I'm speaking fast. I'm trying to get
15 through.

16 Everybody agrees the success or failure of this
17 receivership and whether people actually get paid turns on this
18 Palantir. How does this receivership come by Palantir as an
19 investment? Our money. 57 percent of the Palantir shares that
20 this receivership holds comes directly out of the money taken
21 from Progresso and put into Clear Sailing to buy it.

22 So after that happening and having the investors say
23 "We -- Progresso, you're just a creditor, you're not entitled
24 to any appreciation in the value of the upside," okay, we're a
25 creditor. But to say "You're not going to get the upside,

1 you're not going to get priority, you're not going to get the
2 full value of your judgment," that's hardly -- "and we, the
3 investors, will use your money for six years. Thank you very
4 much. We'll make tons of money if this investment pops and
5 we're not going to give you any aspect of that and not even
6 give you priority," that's not really equity. That's not
7 equity.

8 **THE COURT:** I understand. I understand.

9 **MR. GOLDBERG:** Thank you, Your Honor.

10 **THE COURT:** Thank you .

11 **MR. YUN:** And our point on full faith and credit is
12 they're certainly right but they don't have a judgment against
13 any of the receivership entities. That's their problem. Their
14 judgment is against FB Management, Frank Mazzola, John Bivona,
15 Emilio DiSanluciano, a whole bunch of persons and entities but
16 not any of the receivership entities. What they do have, and
17 we agree, is an equitable unjust enrichment claim to the extent
18 that money was put in and they weren't paid back, and that's
19 where we are where we are.

20 **THE COURT:** All right.

21 **MR. YUN:** Thank you.

22 **THE COURT:** I'll take it under submission.

23 Do we have a further status conference date?

24 **MR. YUN:** No.

25 **THE COURT:** We will know more in what? 45 days? 60

1 days?

2 **MR. YUN:** I should hope so, yes.

3 **THE COURT:** And I would like you to resubmit
4 something. How much time do you need to resubmit based on what
5 I just said?

6 **MR. YUN:** Another amendment to our plan?

7 **THE COURT:** Yeah. Because you need to talk to
8 potential --

9 **MR. KATZ:** Talk to potential --

10 **THE COURT:** Do you need a month?

11 **MR. YUN:** I don't think a month.

12 **THE COURT:** A month? Why don't we get together in 45
13 days. I don't want this to go too long. I want to reach a
14 resolution one way or the other.

15 **MR. YUN:** Okay.

16 **THE CLERK:** December the 11th, Your Honor.

17 **THE COURT:** December 11th.

18 **MR. YUN:** December 11?

19 **THE COURT:** December 11th at 10:30. Let's make it --
20 let's put it on the law and motion calendar.

21 **THE CLERK:** Okay. December 13th.

22 **THE COURT:** December 13th at 1:30.

23 **MR. YUN:** That should be fine, Your Honor.

24 **THE COURT:** Great. All right. Thank you.

25 **MR. LEVINE:** Thank you, Your Honor.

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MR. GOLDBERG: Thank you, Judge.

THE COURT: Thank you.

(Proceedings adjourned at 5:06 p.m.)

---oOo---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Wednesday, October 31, 2018



Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter

EXHIBIT B



December 6, 2018

Mr. John W. Cotton
Gartenberg, Gelfand & Hayton LLP
15260 Ventura Blvd.
Suite 1920
Sherman Oaks, CA 91403
USA

Dear Mr. Cotton,

Saddle River Advisors, LLC and related entities (the “SRA Entities”).

We are writing further to our recent correspondence and calls in respect of reconciliation of the beneficial ownership of various positions held between Equity Acquisition Company Limited (“EAC”) and Clear Sailing on behalf of our clients.

During our recent call, on behalf of our clients, we confirmed that our client was prepared to agree with the settlement proposal set out in an email from Jessica Chan, Senior Counsel at the SEC, on the condition that we hear from the Receiver of the SRA Entities, that he is aware of the claims of our client to back-end fees and under a guarantee granted by Saddle Ridge Advisers. Since that call we have provided you with background information in respect of these claims and, despite this, we have not heard anything further from you.

To repeat the settlement proposal set out by Ms. Chan, this was along the lines that settlement take place in 2 parts, as follows:

Part A being an agreement in respect of the transfer of ownership of securities held between EAC and Clear Sailing, as set out in the “Long sheets” and that such transfers be settled.

Part B was in respect of the satisfaction of obligations due to our client from surplus assets of the SRA Entities in respect of the back-end fees and guarantee obligations. Our concerns, expressed during the call, were that the Receiver professed to have no knowledge of these obligations to our client.

Our client is under increasing pressure, including time pressure, to formalize this settlement. Accordingly, we can confirm that our client is prepared to proceed with the settlement as proposed by Ms. Chan and set out above. Our client wishes this “Part A” to be implemented as a matter of urgency. Our client is content to await a response from the Receiver in respect of Part B, however, the exchange of securities under Part A should not be delayed as a result of this.

Wakefield Quin Limited

Victoria Place, 31 Victoria Street, Hamilton HM 10, Bermuda
TEL. 441.494.4000 FAX. 441.494.4111 wq.bm



From our call, we understand that there are a number of formalities which have to be met in order for the Receivers to obtain court approval to effect the transfers of securities under Part A and we would ask that these steps now be taken. Furthermore, we would be happy to agree a form of settlement agreement under which the

We would ask that you confirm your acceptance of this proposal in order that we can have the matter settled, and the securities transferred, without delay.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Roderick M. Forrest', with a small circle at the end of the signature.

Mr. Roderick M. Forrest

Cc Carsten Klein, Equity Acquisition Company Ltd.
Jonathan Levine, Pritzker Levine

EXHIBIT C

From: [Peter Hartheimer](#)
To: [Chen, Ellen](#); [Carsten Klein](#)
Cc: [Georgiana Nertea](#)
Subject: RE: EAC Additional Support Requested
Date: Tuesday, March 06, 2018 8:14:17 AM

Hey Carsten,

A few follow up items.

I wanted to see if you were making any progress on the materials that Ellen requested. Also, You were going to send in a claim for the back end fee's you were due as a broker, and the cross-collateralized obligations of SRA to Badgeville investors. Have you made any headway on these?

Regards,

Peter

From: Chen, Ellen [mailto:chene@SEC.GOV]
Sent: Friday, March 02, 2018 5:38 PM
To: Carsten Klein <carsten@silverbackfund.com>; Peter Hartheimer <p.hartheimer@shrwood.com>
Cc: Georgiana Nertea <gnertea@shrwood.com>
Subject: EAC Additional Support Requested

All,

Please find attached the request list of additional items needed to further our discussions prior to Friday. A few items to point out:

- After further research, it looks like Carsten's calculation of Palantir shares owed to SRA Funds is correct at 698,446. The difference was due to shares that are actually held by CSG not EAC. As EAC is owed 380,797, this results in a net due to SRA Funds of 317,649 shares.
- Some of the requests are for additional documentation to help understand the lateral sales or transactions at hand. Anything you can find to help support would be helpful. If you don't have bank statements, providing dates of wires and noting which entity funds were sent to would be helpful as well.
- The data on many of the investors from Silverback are extracted from a Christine Caridi spreadsheet.

Let me know if you have any questions on these. Please send over any documentation as you are collecting.

Thanks,
Ellen

From: Carsten Klein [mailto:carsten@silverbackfund.com]
Sent: Thursday, March 01, 2018 7:21 AM

To: 'Peter Hartheimer'
Cc: 'Georgiana Nertea'; Chen, Ellen
Subject: RE: EAC Meeting Friday 11:00 AM (ET).

Hi Peter,

I am sure you see the storm coming in.

My flight may be canceled – I will keep you posted as best as I can.

Best,

C

From: Peter Hartheimer [<mailto:p.hartheimer@shrwood.com>]
Sent: Monday, February 26, 2018 10:50 AM
To: Carsten Klein
Cc: Georgiana Nertea; Chen, Ellen (chene@SEC.GOV)
Subject: SRA: EAC Meeting Friday 11:00 AM (ET).

Carsten,

We are looking forward to it. I will reserve a meeting room.

If you have any documentation that you think will help sort this out, please send it to me.

- “What is owed EAC-SB v3” spreadsheet: Support/backup of purchased shares held by CSG (welcome letters and bank statements/wires)
- “What is long for SRA” spreadsheet: Support/backup of payment for shares purchased from sellers held in the name of EAC. We don't have EAC bank statements to confirm the payments made by EAC (even if partial)

Thank you,

Peter

From: Carsten Klein [<mailto:carsten@silverbackfund.com>]
Sent: Monday, February 26, 2018 9:06 AM
To: Peter Hartheimer <p.hartheimer@shrwood.com>
Cc: Georgiana Nertea <gnertea@shrwood.com>
Subject: Friday

Hi Peter,

I expect to be by your office around 11am on Friday.

Best,

C

--

Carsten Klein
Fund Manager
Silverback Fund
26 Victoria Street
Hamilton, Bermuda HM12

Office: 441.296.2800 x202
Mobile: 201.321.5275

Homepage: www.SilverbackFund.com

Admin: www.WQ.bm

Bank: www.BCB.bm

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EXHIBIT D

From: [Peter Hartheimer](#)
To: [Carsten Klein](#); [Georgiana Nertea](#)
Subject: RE: Follow-up to meeting in NYC
Date: Thursday, March 08, 2018 12:26:48 PM

Carsten,

Can you let me know if you are filing a claim for the back end fees?

Peter

From: Carsten Klein [mailto:carsten@silverbackfund.com]
Sent: Thursday, March 08, 2018 3:25 PM
To: Georgiana Nertea <gnertea@shrwood.com>
Cc: Peter Hartheimer <p.hartheimer@shrwood.com>
Subject: RE: Follow-up to meeting in NYC

Hi Georgiana,

Sorry I ment to email earlier.

Yes please postpone – we need more time.

Best,

C

From: Georgiana Nertea [mailto:gnertea@shrwood.com]
Sent: Thursday, March 08, 2018 3:23 PM
To: Carsten Klein
Cc: Peter Hartheimer
Subject: Follow-up to meeting in NYC

Carsten:

Hope all is well. It was nice meeting you last Friday in NY.

Per our meeting, we are following up on materials/supporting documents that you can provide so that Ellen could update the analysis.

Please let us know when to expect that.

We will postpone our follow-up call scheduled for tomorrow until next Friday, March 16.

Thank you and regards,

Georgiana

	<p>Georgiana Nertea gnertea@shrwood.com (212) 930-2247 Direct (650) 454-8003 eFax (646) 532-8310 Cell www.shrwood.com</p> <p>Silicon Valley Los Angeles New York</p>
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