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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 SECURITIES AND EXCHANGE COMMISSION,
14 Plaintiff,
15 v.
16 JOHN V. BIVONA; SADDLE RIVER
ADVISORS, LLC; SRA MANAGEMENT
17 ASSOCIATES, LLC; FRANK GREGORY
MAZZOLA,
18 Defendants, and
19 SRA I LLC; SRA II LLC; SRA III LLC;
20 FELIX INVESTMENTS, LLC; MICHELE J.
MAZZOLA; ANNE BIVONA; CLEAR
21 SAILING GROUP IV LLC; CLEAR
SAILING GROUP V LLC,
22 Relief Defendants.
23

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

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S BRIEF IN
RESPONSE TO THE SRA INVESTOR
GROUP'S OBJECTIONS TO THE
AMENDED JOINT DISTRIBUTION PLAN
AND REVISED ORDER APPOINTING
RECEIVER**

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

1 Plaintiff Securities and Exchange Commission (“Commission” or “SEC”) submits this
2 Response to the Objections filed by the SRA Investor Group (“Investor Group”)(ECF 432). The SEC
3 will not reargue the merits of the SEC’s and Receiver’s Joint Distribution Plan over the Investor
4 Group’s Alternative Plan. The Court largely resolved that issue by stating that it planned to adopt the
5 Joint Distribution Plan, subject to receiving additional information regarding proposals to provide
6 investor input, to create a pared down and less costly receivership and to provide the Court with
7 flexibility in allowing an early pay-out to investors who wished to exit the receivership. *See* Minute
8 Order dated October 23, 2018 (ECF 413).

9 This Response primarily addresses the Investor Group’s surprising disclosure that it
10 supposedly negotiated, without the Receiver’s knowledge or permission, a resolution with Equity
11 Acquisition Corporation (“EAC”) for the exchange of pre-IPO shares sought by the receivership.
12 Based upon its purported backroom deal with EAC, the Investor Group asks the Court to adopt its
13 Alternative Plan and dispense with the receivership. Investor Group Objections at 4-5 (ECF 432).
14 These unauthorized secret negotiations between counsel for the Investor Group, which is controlled
15 by former Saddle River insider Joshua Cilano, and counsel for EAC, which is owned and managed by
16 former Saddle River insider Carsten Klein, suggest insider self-dealing. These secret negotiations
17 demonstrate the need for accountability by maintaining the receivership.

18 The Investor Group’s direct negotiations with EAC were improper, and violated the Order
19 Appointing Receiver (“Receivership Order”) (ECF 142). Section II of the Receivership Order gives
20 the Receiver control of the receivership entities and the power to pursue all claims, while depriving
21 all other persons of “any authority to act by or on behalf of” the receivership entities. *Id.* at pg. 3,
22 lines 19-22. Similarly, Section VII(A) of the Receivership Order prohibits any person “without the
23 express written agreement of the Receiver” from interfering with the Receiver’s efforts to “take
24 control, possession, or management of any Receivership Property.” *Id.* at pg. 8, lines 22-26. The
25 Investor Group contravened these provisions by conducting negotiations over the receivership’s
26 claims to shares held by EAC, and presumably over EAC’s claims against the receivership as well,
27 without the Receiver’s knowledge and consent.

28 The SEC’s counsel informed the Court on October 23, 2018, that EAC’s counsel, Roderick

1 Forrest, told the SEC and Receiver in a recent conference call that the \$1.5 million confessions of
2 judgment that John Bivona arranged for two investors against Silverback would render Silverback
3 “essentially insolvent” unless SRA Management stood behind the guarantee that John Bivona
4 arranged for Silverback. October 23, 2018 Hearing Transcript at pp 4:7-8:6 (previously filed as ECF
5 432-2). Mr. Forrest stated in the conference call that EAC could not agree to the exchange of shares
6 with the receivership until EAC learned how the receivership would honor the guarantees. *Id.*

7 From October 30, 2018 through November 30, 2018, counsel for the SEC and EAC
8 exchanged emails, which the Receiver and John Cotton were copied on, regarding the guarantees and
9 share transfer issues. Attachment A. As late as November 20, 2018, Mr. Forrest sent an email
10 describing EAC’s understanding that once Mr. Klein provided information to the Receiver about the
11 guarantees, the SEC and the Receiver “were going to determine whether the receivers were able to
12 acknowledge that there is this liability and we could then determine how to proceed in good faith.”
13 Attachment A at 1. EAC therefore recently affirmed its demand for a commitment on the paying the
14 guarantees before negotiating the share transfers. *Id.*

15 Surprisingly, Mr. Forrest changed negotiating positions on December 6, 2018 by sending a
16 letter to John Cotton, copied to Jonathan Levine but not to the SEC’s counsel, stating that if the
17 Receiver acknowledged its awareness of the EAC’s claims, then EAC would be willing to exchange
18 shares with the receivership. ECF 432-3. The Investor Group attributes EAC’s change in negotiating
19 position to Jonathan Levine’s direct negotiations with EAC. Investor Group Opposition at 4.¹

20 The Investor Group’s secret negotiations with EAC present the risk of insider self-dealing,
21 while EAC’s sudden change in negotiating positions is highly suspicious. Because the Court stated
22 on October 23, 2018 that one advantage of the Joint Distribution Plan was its flexibility in dealing

23 _____
24 ¹ The Investor Group unfairly claims that the SEC and Receiver have known about, but ignored,
25 EAC’s guarantee claims and demand for back-end fee payments. As shown in Peter Hartheimer’s
26 email on March 6, 2018 to Klein, Mr. Hartheimer properly told EAC that if it had claims for payment
27 of guarantees and backend fees, EAC should submit a claim to the Receiver. Pritzker Declaration,
28 Exhibit C (ECF 432-4 at 2). As Mr. Cotton previously informed the Court, EAC has failed to submit
a claim to the Receiver. October 23, 2018 Hearing Transcript, p. 8:7-23 (ECF 432-2). Mr. Forrest
has not responded to emails from Mr. Cotton on December 7, 2018 and from Mr. Yun on December
10, 2018 requesting a conference call regarding the December 6th letter. Counsel wished to discuss,
among other things, the history of the letter and EAC’s willingness to submit a claim to the Receiver.

1 with potential share shortfalls, Cilano has the obvious self-interest in trying to have EAC *appear*
 2 willing to resolve its share transfer dispute with the receivership. Given their prior relationship,
 3 Cilano and Klein are predisposed to help one another.² Keeping the receivership in place is
 4 necessary to ensure that all “deals” are above-board and not entered into for the purpose of
 5 advantaging one investor over another, or to advance the purposes of would-be managers.

6 The SEC’s and Receiver’s Amended Joint Distribution Plan and the SEC’s Revised Order
 7 Appointing Receiver, ECF 420, addressed the three issues raised by the Court in the October 23
 8 Minute Order, namely a process for receiving investor input, a proposal to pare down the receivership
 9 and increased flexibility to allow early redemptions. The Court should therefore implement the
 10 Amended Joint Distribution Plan as being flexible, equitable and workable.

11 As part of implementing the Amended Joint Distribution Plan, the Court should appoint
 12 Kathy Phelps, Esq., as the successor receiver. Because she is an experienced receivership attorney
 13 who proposes discounted billing rates, the Court’s appointment of Ms. Phelps will reduce the
 14 receivership’s future billings by eliminating the need for professional fees by both a receiver and the
 15 receiver’s counsel.

16 Dated: December 10, 2018

Respectfully submitted,

18 /s/ John S. Yun

John S. Yun

19 Attorneys for the Plaintiff Securities and Exchange
 20 Commission

21
 22 _____
 23 ² EAC’s current manager and owner, Carsten Klein, previously sold shares for Saddle River while
 24 employed at the Alexander Capital brokerage firm. Klein worked with Cilano at Alexander Capital
 25 in making sales for Saddle River. Carsten Klein Interview Transcript (“Klein Transcript”), p. 19:3-
 26 20:10 (excerpts attached as Appendix B). Later, Klein set up the Silverback Funds to help defendant
 27 Frank Mazzola move his business activities off-shore and circumvent the SEC’s three year
 28 suspension of Mazzola. *Id.*, pp. 25:21-26:15, 55:6-23. To open bank accounts for the Silverback
 Funds, Klein had Cilano serve as a witness signatory on the account documents. *Id.*, pp. 90:19-93:10.
 After leaving Alexander Capital, Cilano became the second highest grossing salesperson for Saddle
 River Advisors by selling pre-IPO shares to investors from mid-2014 through 2015. SEC Reply in
 Support of Joint Distribution Plan at 2 (ECF 238)(citing Supplemental Declaration of John S. Yun
 (ECF 240)).

From: [Yun, John S.](#)
To: "Roderick Forrest"
Cc: ["John Cotton \(JCotton@cgllp.com\)"; "Georgiana Nertea"; Schrage, Patricia; Chan, Jessica; Chen, Ellen; Katz, Marc](#)
Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees
Date: Friday, November 30, 2018 11:31:00 AM

Hello, Rod

Since our email exchange last week, the Commission has identified an attorney whom the Commission will recommend to the Court as the successor receiver for Sherwood Partners in the SEC v. John V. Bivona litigation. The decision to find a successor receiver involved mutual discussions and agreements between the Commission and Sherwood Partners.

The candidate to be the successor receiver understandably wishes to participate fully in our current discussions to resolve the share transfer issues between Clear Sailing and Equity Acquisition Corporation. That participation should take place soon after the Court appoints the successor receiver. We hope that the Court will make the appointment on December 13, 2018 during the next court appearance. We therefore desire to postpone providing you and Mr. Klein with our thoughts on the Silverback Management confessions of judgment and guarantee issues until the week of December 17, 2018 so that the replacement receiver can provide input into the response at that time.

Best regards, John Yun

From: Yun, John S.
Sent: Tuesday, November 20, 2018 11:11 AM
To: 'Roderick Forrest'
Cc: John Cotton (JCotton@cgllp.com); Georgiana Nertea; Schrage, Patricia; Chan, Jessica; Chen, Ellen; Katz, Marc
Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

Rod,

My understanding of the conversation is that we did ask for whatever information you possessed about the guarantees because counsel for the Receiver and the Commission did not have any prior knowledge about those guarantees. You have provided us with additional information about the guarantees, and we appreciate the information. We will attempt to provide you with some thoughts next week when others return from the Thanksgiving Holiday.

From: Roderick Forrest [mailto:RForrest@wq.bm]
Sent: Tuesday, November 20, 2018 10:52 AM
To: Yun, John S.
Cc: John Cotton (JCotton@cgllp.com); Georgiana Nertea; Schrage, Patricia; Chan, Jessica; Chen, Ellen; Katz, Marc
Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

John,

My understanding of the outcome of the phone call was that we would provide you with evidence of the matters which the SEC had categorized as a "Part B" to a proposed settlement. Once we had provided this, you and the receivers were going to determine whether the receivers were able to acknowledge that there is this liability and we could then determine how to proceed, in good faith. If your recollection of the conclusion of our call differs from this, please let me know.

Kind regards

Rod

Roderick M. Forrest
Wakefield Quin Limited
Bermuda

Direct Line: +(441) 494 4040

From: Yun, John S. [mailto:YunJ@sec.gov]
Sent: Tuesday, November 20, 2018 2:15 PM
To: Roderick Forrest <RForrest@wq.bm>
Cc: John Cotton (JCotton@cglp.com) <JCotton@cglp.com>; Georgiana Nertea <gnertea@shrwood.com>; Schrage, Patricia <SchrageP@SEC.GOV>; Chan, Jessica <ChanJes@SEC.GOV>; Chen, Ellen <chene@SEC.GOV>; Katz, Marc <katzma@SEC.GOV>
Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

Roderick,

Thanks for your email. I did not realize that you were anticipating a specific response by now. Most members of the SEC group that is working on this matter are out for the Thanksgiving Holiday. We will try to provide a response sometime next week after they return. Best wishes, John

From: Roderick Forrest [mailto:RForrest@wq.bm]
Sent: Tuesday, November 20, 2018 10:05 AM
To: Yun, John S.
Cc: John Cotton (JCotton@cglp.com); Georgiana Nertea; Schrage, Patricia; Chan, Jessica; Chen, Ellen; Katz, Marc
Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

John

Another week has passed and we have not heard back from you and your team. Can you let me know whether there has been any progress on your side?

Thanks

Rod

Roderick M. Forrest
Wakefield Quin Limited
Bermuda

Direct Line: +(441) 494 4040

From: Yun, John S. [<mailto:YunJ@sec.gov>]
Sent: Thursday, November 08, 2018 2:16 PM
To: Roderick Forrest <RForrest@wq.bm>
Cc: John Cotton (JCotton@cglip.com) <JCotton@cglip.com>; Georgiana Nertea <gnertea@shrwood.com>; Schrage, Patricia <SchrageP@SEC.GOV>; Chan, Jessica <ChanJes@SEC.GOV>; Chen, Ellen <chene@SEC.GOV>; Katz, Marc <katzma@SEC.GOV>
Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

Rod,

Thank you for forwarding these emails, John Y

From: Roderick Forrest [<mailto:RForrest@wq.bm>]
Sent: Thursday, November 08, 2018 10:05 AM
To: Yun, John S.
Cc: John Cotton (JCotton@cglip.com); Georgiana Nertea; Schrage, Patricia; Chan, Jessica; Chen, Ellen; Katz, Marc
Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

John,

Further to our recent call, can you let me know when you expect to be able to take a position in respect of the issues we raised?

On that subject, I have reviewed some historical emails with my client in relation to the backend fees and the Badgeville matters. Please see the attachments. These emails show that the receiver has been made aware of the obligations.

Kind regards

Rod

Roderick M. Forrest
Wakefield Quin Limited
Bermuda

Direct Line: +(441) 494 4040

From: Yun, John S. <YunJ@sec.gov>

Sent: Wednesday, October 31, 2018 10:33 AM

To: Roderick Forrest <RForrest@wq.bm>

Cc: John Cotton (JCotton@cglp.com) <JCotton@cglp.com>; Georgiana Nertea <gnertea@shrwood.com>; Schrage, Patricia <SchrageP@SEC.GOV>; Chan, Jessica <ChanJes@SEC.GOV>; Chen, Ellen <chene@SEC.GOV>; Katz, Marc <katzma@SEC.GOV>

Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

Thank you for this information, John

From: Roderick Forrest [<mailto:RForrest@wq.bm>]

Sent: Wednesday, October 31, 2018 6:19 AM

To: Yun, John S.

Cc: John Cotton (JCotton@cglp.com); Georgiana Nertea; Schrage, Patricia; Chan, Jessica; Chen, Ellen; Katz, Marc

Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

John

Attached is a copy of the Fedex receipt for a package delivered to Mr. Klein. He believes this may actually be the package which enclosed the letter of 20 June 2016 in which the debt owed to him is acknowledged in respect of back-end profit participation. He recalls that the guarantee letter was received before this, but he does not actually have the date or the fedex receipt.

I hope this is helpful.

Rod

Roderick M. Forrest
Wakefield Quin Limited
Bermuda

Direct Line: +(441) 494 4040

From: Yun, John S. [<mailto:YunJ@sec.gov>]

Sent: Tuesday, October 30, 2018 5:17 PM

To: Roderick Forrest <RForrest@wq.bm>

Cc: John Cotton (JCotton@cglp.com) <JCotton@cglp.com>; Georgiana Nertea <gnertea@shrwood.com>; Schrage, Patricia <SchrageP@SEC.GOV>; Chan, Jessica <ChanJes@SEC.GOV>; Chen, Ellen <chene@SEC.GOV>; Katz, Marc <katzma@SEC.GOV>

Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

By the way, Rod

Carsten said during our conference call that he had the Fed Ex Envelope that contained the guarantee letter regarding the Badgeville transactions. The delivery date on the Envelope would show when he first received the guarantee letter. Could you provide us with a copy of that Envelope

so that we can see the delivery date? Much thanks, John

From: Yun, John S.
Sent: Tuesday, October 30, 2018 12:37 PM
To: 'Roderick Forrest'
Cc: John Cotton (JCotton@cglip.com); Georgiana Nertea; Schrage, Patricia; Chan, Jessica; Chen, Ellen; Katz, Marc
Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

Thanks for promptly forwarding these materials to us. We will back in touch shortly. Best regards,
John

From: Roderick Forrest [<mailto:RForrest@wq.bm>]
Sent: Tuesday, October 30, 2018 12:31 PM
To: Yun, John S.
Cc: John Cotton (JCotton@cglip.com); Georgiana Nertea; Schrage, Patricia; Chan, Jessica; Chen, Ellen; Katz, Marc
Subject: RE: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

John

Since my client returned from his vacation I have had a number of conversations with him on this matter.

The background to the Badgeville matter is that two investors, through Silverback, bought shares in Badgeville. The share purchase was facilitated through a SRA entity and the shares were purchased from the CEO of Badgeville. My instructions are that Badgeville went into liquidation very shortly after the purchase and the two investors sought to make a claim against Silverback. Given that the transaction was facilitated by SRA, on behalf of Silverback, John Bivona agreed to make the investors good for their losses and loss of profits and cooperated with the investors in obtaining a court judgement against Silverback in order to preserve their claims for the losses. From the correspondence I have seen, it appears that SRA has a right of claim against the seller of the Badgeville Shares. This background is summarized in the attached letter (first attachment) in which SRA Management Associates LLC has undertaken to meet this liability, given that the investments were purchased through SRA funds. Attachments 2 to 5 give additional support to the foregoing description. I've also attached a copy of the proceedings issued by Clear Sailing against the seller of the Badgeville Shares.

You will see from the attached e-mails that the conduct of this matter and the settlement between SRA and Silverback was facilitated by Mr. Bivona.

In relation to Palantir, I believe we have previously provided you with the letter in which SRA acknowledged its liability to pay back-end fees to Mr. Klein. This is the final attachment to this email. Please let me know what additional background you would like to receive in respect of the fees due to Mr. Klein in respect of the Palantir shares.

Kind regards

Rod

Roderick M. Forrest
Wakefield Quin Limited
Bermuda

Direct Line: +(441) 494 4040

From: Yun, John S. [<mailto:YunJ@sec.gov>]
Sent: Tuesday, October 30, 2018 1:55 PM
To: Roderick Forrest <RForrest@wq.bm>; carsten@silverbackfund.com
Cc: John Cotton (JCotton@cglp.com) <JCotton@cglp.com>; Georgiana Nertea <gnertea@shrwood.com>; Schrage, Patricia <SchrageP@SEC.GOV>; Chan, Jessica <ChanJes@SEC.GOV>; Chen, Ellen <chene@SEC.GOV>; Katz, Marc <katzma@SEC.GOV>
Subject: Supporting Documentation for Badgeville Guarantees and Palantir Backend Fees

Greetings,

During our telephone conference call on October 19, you indicated that you could provide the supporting documents for the Badgeville investments and guarantee letters for Mr. Lacey and Mr. Pisemskiy, along with the Palantir profit participation letter. We understood that we might get those materials this week. Can you tell us when we should receive those materials.

As I stated during the conference call, Mr. Bivona did not disclose the guarantees, confessions of judgments, or profit participation transactions in his sworn affidavit to the Receiver in October 2016. Therefore, whatever information you provide will add greatly to our understanding of those transaction. Thanks for your help, John

The e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received the E-mail in error please notify us by telephone (441) 494-4000. Any views expressed by an individual within this E-mail which do not constitute or record legal advice do not necessarily reflect the views of the firm. This email message has been scanned for viruses and malware by Mimecast Offshore.

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1 APPEARANCES:
 2
 3 On Behalf of the Securities and Exchange Commission
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 5 JEREMY E. PENDREY, ESQ.
 6 Division of Enforcement
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 9 (415) 705-8109
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 12 On behalf of the Witness:
 13 RODERICK M. FORREST, ESQ.
 14 Wakefield Quin
 15 31 Victoria Street
 16 Hamilton, HM 10
 17 Bermuda
 18 (441) 494-4040
 19 rforrest@wq.com
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 21 Also Present:
 22 Tony Stearns, SEC Paralegal
 23
 24
 25

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 3 WITNESS: EXAMINATION
 4 Carsten Klein 6
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 6 EXHIBITS: DESCRIPTION IDENTIFIED
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1 PROCEEDINGS
 2 MS. CHAN: This is the interview of Carsten
 3 Klein going on the record in Bermuda via WebEx to San
 4 Francisco, California, at 9:08 a.m. Pacific time on
 5 December 4th, 2015.
 6 Good afternoon, Mr. Klein, and thank you for
 7 speaking with us today.
 8 My name is Jessica Chan, just to introduce
 9 myself again. And with me today is Jeremy Pendrey, who
 10 is an Assistant Director in the San Francisco Regional
 11 Office. We also have with us Tony Stearns, who is a
 12 paralegal in our office.
 13 We are conducting an investigation in the
 14 matter of Felix Advisors, SFF-3938, to determine
 15 whether there have been any violations of the U.S.
 16 federal securities laws. We believe that you might
 17 have useful information.
 18 Also joining us in San Francisco is a court
 19 reporter, who will be transcribing this interview.
 20 Mr. Klein, do you consent to having this
 21 interview transcribed?
 22 THE WITNESS: I do.
 23 MS. CHAN: Mr. Klein, are you represented by
 24 counsel today?
 25 THE WITNESS: I am.

Page 5

1 MS. CHAN: And would counsel please identify
 2 themselves, and if you could please provide your firm
 3 name, address, and phone number as well.
 4 MR. FORREST: I'm Roderick Forrest. I'm a
 5 Bermuda barrister and attorney and director of
 6 Wakefield Quin, which is a law firm based in Bermuda.
 7 My telephone Number is 441-494-4040. And my office
 8 address is Victoria Place, 31 Victoria Street,
 9 Hamilton, Bermuda.
 10 MS. CHAN: Before we start I am required to
 11 provide you with certain information that we provide to
 12 everyone that we interview.
 13 First, your participation in this interview
 14 is voluntary. By agreeing to speak with us, however,
 15 we do ask that you tell the truth because we will be
 16 relying on your answers. And information given to us
 17 by the public is routinely used by the commission in
 18 its investigations and for other purposes and shared
 19 with other authorities.
 20 So I just want to get a little bit of
 21 background information from you, Mr. Klein.
 22 First, what is your home address?
 23 THE WITNESS: My home address is 9 Kilderry
 24 Drive. That's in Smiths. Zip code is FLO2 Bermuda.
 25 THE REPORTER: Can you spell the name of the

1 Q Is he one of the people who determined what
2 stocks were to go into the fund?

3 A I would think so. I'm not a part of those
4 meetings ever, but I would think so.

5 Q When you say I would think so, are you
6 speaking from personal knowledge, or are you guessing
7 that Mr. Mazzola is involved in this process?

8 A Say that again.

9 MR. PENDREY: Why do you think that's the
10 case?

11 THE WITNESS: Because he was the main sales
12 guy, and, you know, he was taking most of the orders.
13 So I would assume that he would -- again, I never was
14 part of a meeting where people were sitting around
15 saying, okay, what should we be buying or pitching.

16 BY MS. CHAN:

17 Q Did you ever do any research as to what
18 stocks should go into the funds for Saddle River
19 Advisors?

20 A Who me?

21 Q Yes.

22 A Umm, the research I did for the stocks in
23 Saddle River Advisors was -- I wasn't presented like,
24 hey, Carsten, which stocks do you think we should get?
25 It was here's a list of companies we have access to,

1 Q And what was Josh Cilano's role at Saddle
2 River Advisors?

3 A Well, when I was there he was still at
4 Alexander Capital, if I'm not mistaken, and he was --
5 the client that had interest, he was directing them
6 towards -- in the pre-IPO space, he was directing them
7 towards, you know, doing transactions with Saddle
8 River.

9 Q And what about --

10 A He was in sales.

11 Q So he was in sales. And what about Stephen
12 Soler?

13 A So Stephen worked directly for Saddle River
14 Advisors at the time. He was in sales.

15 Q And Christine Caridi?

16 A She was back office -- I mean, basically did
17 everything.

18 Q What do you mean by she did everything?

19 A Like, you know, the paperwork. In other
20 words, e-mails, like making sure everyone's paperwork
21 was in and stuff like that.

22 Q The investor's paperwork was in?

23 A Yeah, she would be the one that did the
24 initial receiving of the documentation, making sure
25 everything was in order before it was passed on to the

1 and I would then do my due diligence based on what we
2 had access to. That's kind of how we did it.

3 Q So your role with Saddle River Advisors was
4 primarily in sales; is that right?

5 A Yes. Well, when I worked for Alexander and I
6 was directed sales into Saddle River, yes.

7 Q So you mentioned Mr. Bivona and Mr. Mazzola.
8 Was anyone else working at Saddle River Advisors?

9 A You mean just people?

10 Q Yes.

11 A Do you mean like managers?

12 Q I just mean who do you know who worked at
13 Saddle River Advisors at the time that you were working
14 with them?

15 A Umm, there is Josh Cilano.

16 Q And what was his role?

17 A Stephen Soler.

18 Q I'm sorry. Why don't you go through the
19 people that you're thinking of. So there's Josh
20 Cilano, Stephen Soler.

21 A Christine Caridi. As you guys know, I'm not
22 the best at names. There was a guy, Vito -- I don't
23 know his last name, V-I-T-O. And there were two or
24 three other people as well in the office, but I don't
25 recognize -- I don't recall their names.

1 lawyers to approve.

2 Q And what about Vito, what was his position or
3 role?

4 A He was like the office handyman. I really --
5 maybe he came in once or twice a week. What his job
6 description was I couldn't tell you.

7 Q Was there an agreement that memorialized the
8 relationship between Alexander Capital and Saddle River
9 Advisors?

10 A There was a selling agreement.

11 Q A selling agreement?

12 A Correct.

13 Q Was there any other agreement besides a
14 selling agreement?

15 A There may have been. I'm not sure.

16 Q How were you paid for the work you performed
17 on behalf of Saddle River Advisors?

18 A I was paid through Alexander Capital. I
19 would get a payout based on the fees up front that were
20 charged. And then we were also given part of the back
21 end, but at the time we never had any of the companies
22 IPO's, so I never got paid on any of the back-end
23 transactions.

24 Q You mentioned the front-end fees. Do you
25 recall what the front-end fees were for the funds for

1 which you sold on behalf of Saddle River Advisors, what
2 was the percentage?

3 A I do. So, well, the percentage was the one
4 percent expense fee, two percent management fee, and
5 there was a five percent placement fee, which would add
6 up to eight percent on the front end.

7 **Q And what portion of that -- of those fees
8 would go to Alexander Capital?**

9 A So they would get the -- well, they would get
10 five percent.

11 **Q And then how was that shared with you or
12 others at Alexander Capital who were selling on behalf
13 of Saddle River Advisors?**

14 A So at the time I was on a 90 percent payout,
15 so I would get -- I'm not a hundred percent sure on it,
16 but I would get 90 percent of that, I think.

17 **Q So you would receive 90 percent of the five
18 percent fee, placement fee charged to investors?**

19 A It was either that or I got 90 percent of two
20 and a half percent.

21 **Q Okay. And so you're saying that it might be
22 that Alexander Capital received 50 percent of the
23 placement fee?**

24 A What I'm -- yeah. Again, I don't recall.
25 I'm not a hundred percent sure because I know that

1 would be making that decision?

2 A That was usually done by Frank Mazzola.

3 **Q Okay. So now I want to just turn to the
4 Silver Back funds.**

5 A Sure.

6 **Q So what are the Silver Back funds?**

7 A So basically we are an SPC, which is a
8 segregated portfolio company. What that means is that
9 all of our investments are segregated from one another
10 based on the underlying company. So if the underlying
11 company is Palantir, it's segregated from, for example,
12 Practice Fusion.

13 What we do is we -- we acquire the shares
14 from either investors, or we acquire the shares from
15 current or former employee, and then we turn around to
16 individual people the opportunity to invest in pre-IPO
17 companies.

18 **Q How many funds have been launched so far
19 under the Silver Back -- that have been managed by
20 Silver Back Management?**

21 A Three.

22 **Q Three. Can you name those funds?**

23 A Sure. Silver Back I, Silver Back II, and
24 then Silver Back European Opportunities Fund.

25 **Q Is there a different focus for each fund?**

1 sometimes, too, those fees weren't always charged
2 exactly like that. So sometimes clients would get, you
3 know, would pay four percent, or sometimes they would
4 pay six percent. It wouldn't always be, you know,
5 standard eight percent.

6 **Q And is that because those fees were
7 negotiable?**

8 A Well, were they negotiable? I mean, it
9 depended on the transaction and depended on the person
10 sometimes, yes.

11 **Q And who was negotiating those fees with the
12 clients? Did you have authority to negotiate on those
13 fees?**

14 A Umm, well, I could negotiate on those fees
15 and come to an agreement with the client, but that
16 doesn't mean that Saddle River or Felix would agree to
17 those fees. So, in other words, I would -- if the
18 client wasn't willing or didn't want to pay eight
19 percent, and they wanted to pay something less, and I
20 thought that was reasonable, what I would do is I would
21 get -- come to a number with the investor, and then I
22 would approach either Felix or Saddle River and say,
23 hey, listen, this guy wants to do this. He's willing
24 to pay that. And then they would say yes or no.

25 **Q And so who at Felix or Saddle River Advisors**

1 A I beg your pardon?

2 **Q Is there a different investment focus for
3 each fund?**

4 A No, they're the same. The only difference is
5 Silver Back I is for non-U.S. investors. Silver Back
6 II is for U.S. investors. And then Silver Back III is
7 through a partnership that I have with a broker out of
8 the UK. And, you know, ultimately the strategy for all
9 three funds are the same.

10 **Q And what is that strategy?**

11 A Well, giving people the chance to invest in
12 pre-IPO's. So that's all we do. That's the only thing
13 the funds do.

14 **Q And when we're talking about the pre-IPO
15 companies, are we talking about U.S. pre-IPO companies,
16 or have your funds been looking elsewhere as well?**

17 A We have been looking elsewhere. We have
18 opportunities in foreign companies, absolutely. But
19 I'm trying to think of the companies we have in there,
20 and I think they are all American.

21 **Q When were the funds launched?**

22 A Umm, they were launched 2013, right?

23 MR. FORREST: 2013 sounds about right.

24 THE WITNESS: 2013. Not all at the same
25 time, though. So first Silver Back I, and a few months

Page 22

1 which you sold on behalf of Saddle River Advisors, what
2 was the percentage?

3 A I do. So, well, the percentage was the one
4 percent expense fee, two percent management fee, and
5 there was a five percent placement fee, which would add
6 up to eight percent on the front end.

7 Q And what portion of that -- of those fees
8 would go to Alexander Capital?

9 A So they would get the -- well, they would get
10 five percent.

11 Q And then how was that shared with you or
12 others at Alexander Capital who were selling on behalf
13 of Saddle River Advisors?

14 A So at the time I was on a 90 percent payout,
15 so I would get -- I'm not a hundred percent sure on it,
16 but I would get 90 percent of that, I think.

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24 THE WITNESS: 2013. Not all at the same
25 time, though. So first Silver Back I, and a few months

1 later we did Silver Back II. And then about six months
2 ago we did Silver Back -- I call it Silver Back III,
3 Silver Back European Opportunity Funds, the third one.

4 BY MS. CHAN:

5 **Q Why did you decide to launch these funds?**

6 A Umm, well, the reason for launching the funds
7 was -- the reason I'm in Bermuda is because at the time
8 Frank Mazzola approached me and said, listen, I'm
9 looking to set up an offshore group of companies, an
10 offshore fund that basically does what we do here in
11 the U.S. And he asked me if I was interested in that,
12 and I said yes. Voila, here I am.

13 **Q So was the idea for the fund, for the launch
14 of the funds, Frank Mazzola's idea?**

15 A Yes, it was.

16 **Q Was anyone else involved besides yourself and
17 Frank Mazzola?**

18 A In what?

19 **Q In launching the Silver Back funds.**

20 A I was involved -- I don't know -- there must
21 have been at least four or five different -- maybe not
22 that. There were at least two or three law firms that
23 were involved in the decision-making process of where
24 to -- where would be the best place to launch the
25 offshore funds.

1 be able to work in an offshore capacity. He said
2 basically he had gotten approval to open up a fund like
3 Silver Back.

4 **Q Did he provide you with any documents showing
5 that the SEC had given him approval to work in an
6 offshore entity?**

7 A No.

8 **Q So why did you pick the Cayman Islands first?**

9 A Umm, because what happened was -- this is
10 what I think happened. The lawyer in the U.S.
11 originally recommended Cayman. So Silver Back I is
12 actually a Cayman fund. And then that guy said -- that
13 guy recommended Bermuda, so that's what happened.

14 **Q And where is Silver Back fund's office
15 located?**

16 A Right across the street, 26 Victoria Street
17 in Hamilton, Bermuda.

18 **Q How are the funds structured? You mentioned
19 that it's a segregated portfolio company. Are all
20 three of the funds structured the same way?**

21 A They are.

22 **Q And are all the series single-stock series,
23 or are there some series that involve multiple
24 companies' stock?**

25 A Like you mean multiple purchases?

1 **Q Okay. So you said there was yourself, Frank
2 Mazzola, and two different law firms. Was anyone else
3 involved in launching the funds?**

4 A Well, trying to think. I mean, John Bivona
5 was involved. Once we figured out that we were going
6 to do it in Bermuda, we were actually introduced to Rod
7 from one of those law firms. And that's how we got in
8 touch with Rod. And then -- yeah, I think that's it.

9 **Q Why did you decide to launch the funds in
10 Bermuda?**

11 A Because at the time -- Rod, who was the
12 lawyer that referred you?

13 MR. FORREST: He was in the Cayman Island.

14 THE WITNESS: The Cayman Island -- I can get
15 you the name. I can get you the name. I don't know
16 off the top of my head who the referring lawyer was,
17 but it was a Cayman -- a lawyer out of Cayman said and
18 recommended Bermuda. And so we took his advice, and
19 then he referred us to Rod.

20 BY MS. CHAN:

21 **Q Why did Frank Mazzola want to launch funds
22 outside of the United States?**

23 A Because he told me that he was being
24 suspended from the business, and that he had made an
25 arrangement with the SEC where they had approved him to

1 **Q Or multiple, you know, whether it's a fund
2 with, you know, stock in maybe five pre-IPO companies?**

3 A We don't have anything like a fund -- we
4 don't have -- whatever you want to call it -- we don't
5 have one investment that has five different companies
6 underneath it, if that's what you're asking.

7 So when an investor invests with us, they
8 invest on a per company basis. We even have the
9 banking that's separate. So, in other words, if you
10 wanted to invest in two companies with me, you'd
11 actually have to do two wires, even if you were doing
12 them at the same time, one for each investment. That's
13 what makes it segregated.

14 **Q And what is your role at the funds?**

15 A I basically do everything.

16 **Q Do you have a position or a title?**

17 A Director.

18 **Q Are you a director of Silver Back Management
19 or just of the Silver Back funds?**

20 A I am the director of everything. I'm a
21 hundred percent -- well, Silver Back I, Rod, what's
22 Silver Back I? Let him explain Silver Back I.

23 MR. FORREST: Do you want me to explain this?

24 MS. CHAN: I think I would rather have Mr.
25 Klein explain to the best of his understanding.

1 Q Okay.

2 A But that is a Bermuda beach.

3 Q That is a Bermuda beach. Great.

4 Try clicking on our funds. So is this --

5 this description of the three funds, is the information

6 here accurate?

7 A It looks a little fuzzy, but it should be

8 accurate.

9 Q Okay. So, I mean, it says that the Silver

10 Back Fund II, that's designated for U.S. investors.

11 And as you explained, that would be U.S. investors

12 living abroad, correct?

13 A Yes. I mean, technically it could be -- it

14 could be an American living in America, too. But the

15 point is there aren't any in there. It's anyone that

16 is a U.S. taxpayer has to go in that one.

17 Q And then the Silver Back European

18 Opportunities Fund Limited, that's the Silver Back III

19 that you were talking about earlier?

20 A Sure.

21 Q Okay. And you said no money has been

22 solicited for that fund yet?

23 A We have not done one transaction in that fund

24 yet.

25 Q Okay. And then I think it says to contact G.

1 Wayne. So that would be --

2 A Gary.

3 Q -- Gary Wayne?

4 A Correct.

5 BY MR. PENDREY:

6 Q I have a follow-up question about Frank

7 Mazzola. So he helped you -- it was his idea to set

8 this up. You go down to Bermuda and set this up. And

9 I understand he's not having operational involvement

10 any more other than that original setup and maybe some

11 solicitation for awhile.

12 What is the purpose -- why did he want to do

13 all this? What does he get out of all this?

14 A Well, I mean, the original pitch to me was we

15 set up an offshore fund in Bermuda because he had to,

16 because he was going to be on a three-year suspension.

17 And I was told by him that he had been given approval

18 by the SEC to open an offshore fund as long as he

19 wasn't dealing with U.S. investors.

20 And so the plan was to obviously set up a

21 fund, like we did, and then, you know, he was talking

22 about coming to Bermuda every two weeks, and we would

23 work, and we would build up Silver Back.

24 Q Did he do that? Did he come to Bermuda every

25 two weeks?

1 A He did not.

2 Q Did he ever do that? Was there a period of

3 time when he did that and it stopped, or did it just

4 never happen?

5 A He really -- I don't really remember it

6 happening, so, obviously, no.

7 Q Does he financially benefit at all from the

8 Silver Back funds activities?

9 A Not to my knowledge.

10 Q So he's not receiving any compensation

11 related to any of Silver Back's activities?

12 A I have never sent Frank Mazzola a dollar.

13 BY MS. CHAN:

14 Q But what about the time for which he was

15 raising funds for you, did you ever pay him for the

16 work that he did?

17 A Well, the problem was at that time we had

18 some pretty high legal bills, thanks to our friend Rod

19 over here, and we -- breaking his pulse -- so really

20 initially we had to set up an office. We had to put

21 down a down payment. We had to buy furniture. We had

22 to buy a computer system. I mean, we didn't have

23 anything. And the prices in Bermuda are times two

24 whatever you pay in New Jersey. So it's very expensive

25 to do anything here.

1 Q Okay. So he didn't -- so because the setup

2 fees were so high, you didn't have enough to pay him?

3 A Well, I mean, you're making it sound like

4 there was an agreement that I was going to pay him like

5 a salary or something, which there wasn't. It was, you

6 know, we were going to -- you know, the reason I came,

7 we were going to build a business, and then once

8 revenue was going to start to be generated, we would

9 pay ourselves from that.

10 MR. PENDREY: And you've been paying yourself

11 from that, but you've not paid him from that?

12 THE WITNESS: I have not because he hasn't

13 done any work.

14 BY MS. CHAN:

15 Q So the time that he was doing the work and,

16 you know, reaching out to investors and so forth, was

17 he doing that work from the U.S. then?

18 A I don't know.

19 Q But he wasn't doing it in Bermuda?

20 A He wasn't sitting in my office.

21 Q Did you ever -- were you ever copied on any

22 of the e-mails that he sent out to investors?

23 A I do have some e-mails, correct, yes, I do.

24 Q So you were aware of how he was pitching some

25 of the investments?

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1 **Group would be sending you money? Can you think of any**
2 **reason?**

3 A They would be sending me -- you mean why
4 would they be sending Silver Back fund money?

5 Q The November 18, 2014, transaction is a wire
6 transfer from Clear Sailing Group to you for \$25,000.
7 Why would they be sending you \$25,000?

8 A I don't remember.

9 Q But can you think of any reason why they
10 would be?

11 A Umm, maybe it was for -- maybe it was for
12 something that I paid for. I'm trying to think. Maybe
13 I was -- I'm not a hundred percent sure. I don't even
14 remember that.

15 Q Okay. And then I just wanted to go through
16 some of your -- some of the documents that you had
17 produced to us quickly.

18 A Sure.

19 Q So if you go back to your binder. So in Tab
20 1 you'll see these are bank records that you produced
21 to us for Silver Back Fund I SPC. And I believe these
22 are supposed to be the account opening records.

23 On the first page there's an e-mail, and the
24 signatory name for the account -- it says thank you for
25 your application for an e-banking account at Bermuda

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1 A That is the law firm that recommended -- that
2 we used in Cayman, who opened the fund, and then
3 recommended -- recommended to do business in Bermuda
4 and referred us to Rod.

5 Q And then if you turn to, and you look at the
6 bottom right corner, there's the Bates Numbers. If you
7 flip to 70. It says: Provide the name and
8 jurisdiction of the financial institution that will be
9 transmitting the initial source of funds. And it says
10 by transfer -- I think it says by transfer from the
11 onshore fund.

12 What is the onshore fund?

13 A I don't know.

14 Q You don't know. Who filled this out? Who
15 filled this form out?

16 A I have secretarial services through Wakefield
17 Quin.

18 Q So do you recognize that handwriting?

19 A I do not.

20 Q Okay. And then if you go to Page 73 -- or
21 actually 74. Let's go to 74.

22 A Okay.

23 Q Is that your signature above Carsten H.
24 Klein?

25 A The squiggles, yes.

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1 **Commercial Bank. It's actually addressed to a Mr.**
2 **Hoskins. And actually the signatory name for the**
3 **account that's to be proposed is Mr. Nicholas John**
4 **Hoskins?**

5 A That's an employee of Wakefield Quin.

6 Q Wakefield Quin. What is their role? Sorry.

7 A It's a law firm.

8 Q But what is their role for the Silver Back
9 funds?

10 A They're counsel for the funds.

11 Q And why would Mr. Hoskins then be a signatory
12 on the account?

13 A This has to do with the trust, the way it's
14 set up, which I don't have specific answer for, and I
15 can't answer that question for you.

16 Q And if you flip the page, there's a name
17 under personal verification form. There's a Richard
18 Horseman. Who is that?

19 A That's an employee of Wakefield Quin. That's
20 what I know.

21 Q Also. And then on the next page, Peter
22 Barrett, is he also an employee of Wakefield Quin?

23 A Correct.

24 Q And who is Mourant Ozannes, M-O-U-R-A-N-T,
25 O-Z-A-N-N-E-S?

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1 Q And then beside it there's Joshua J. Cilano,
2 and he signed as well. Did Josh Cilano have any role
3 or does he have any role in the Silver Back funds?

4 A He does not.

5 Q So his sole purpose was just to provide a
6 witness signature here?

7 A Correct.

8 Q Okay.

9 A This was done when I was in between Alexander
10 and moving here. It was done on April 16th.

11 Q April 16th, 2014. Let's go to Tab 3. We
12 already talked about Tab 2. And this is the wire
13 instructions for Silver Back Fund I SPC that you
14 produced to the SEC?

15 A Correct.

16 Q So if you just flip through the pages,
17 there's Badgeville, Candy Control, Cloudera and others.
18 Are all of these --

19 A Correct.

20 Q Are all of these stock that are in Silver
21 Back Fund I SPC?

22 A Are all of them in there?

23 Q Yes, all of these companies' stock.

24 A No. No. Just because the wire -- just
25 because the wire instructions were created, they're

1 that, who is they?
 2 A That was Frank and John.
 3 Q Oh, Frank and John were reimbursing you. So
 4 they were paying you out of Clear Sailing Group. Why
 5 would they be paying you out of Clear Sailing Group?
 6 A I have no idea, but I guess the point is --
 7 when I got the wire in my account, I'm sure I wasn't
 8 like, hey, why are you guys paying me out of Clear
 9 Sailing.
 10 Q Okay.
 11 A It was like, you know, I was just happy to
 12 get my money back.
 13 MR. FORREST: Clear Sailing -- I thought it
 14 was Saddle River.
 15 MS. CHAN: I think --
 16 BY MS. CHAN:
 17 Q Yeah, unfortunately -- we can show it again.
 18 Unfortunately, for whatever reason, it was -- for
 19 whatever reason there was some Saddle River Advisors or
 20 SRA fund bank account statements appended to those.
 21 So this is actually a Clear Sailing Group
 22 transfer to you, Mr. Klein?
 23 A Like I said, I mean, you asked me, and I was
 24 trying to think what it possibly could have been for,
 25 and that's -- so that's what I'm going to guess for

1 right now until I think about it some more and take a
 2 look at it.
 3 MR. PENDREY: Before we go off the record,
 4 could you do us the favor of taking out your cell phone
 5 and giving us the cell phone number you have --
 6 THE WITNESS: Sure.
 7 MR. PENDREY: -- for Frank.
 8 THE WITNESS: The number I have is
 9 917-921-9249.
 10 MR. PENDREY: Great. Thank you.
 11 MS. CHAN: Thank you. Okay. So we have no
 12 further questions. We might contact Rod if we do need
 13 to get further information from you. But if you do
 14 think of anything else, please, you know how to contact
 15 me.
 16 But thank you so much for your time. We
 17 really appreciate it.
 18 MR. PENDREY: Thank you.
 19 MS. CHAN: Thanks, Rod.
 20 MR. FORREST: Thank you.
 21 THE WITNESS: Thank you. Bye bye.
 22 (Whereupon, at 12:19 p.m., the examination
 23 was concluded.)
 24 * * * * *
 25

1 PROOFREADER'S CERTIFICATE
 2
 3 In The Matter of: FELIX ADVISORS, LLC
 4 Witness: Carsten Klein
 5 File Number: SF-03939-A
 6 Date: Friday, December 4, 2015
 7 Location: San Francisco, CA
 8
 9 This is to certify that I, Maria E. Paulsen,
 10 (the undersigned), do hereby swear and affirm that the
 11 attached proceedings before the U.S. Securities and
 12 Exchange Commission were held according to the record
 13 and that this is the original, complete, true and
 14 accurate transcript that has been compared to the
 15 reporting or recording accomplished at the hearing.
 16
 17 _____
 18 (Proofreader's Name) (Date)
 19
 20
 21
 22
 23
 24
 25