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7 *Successor Receiver*

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

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

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

20 Defendants, and

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

27 Relief Defendants.  
28

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

**ADMINISTRATIVE MOTION BY  
RECEIVER KATHY BAZOIAN PHELPS  
PURSUANT TO LOCAL CIVIL RULE 7-11  
FOR ORDER AUTHORIZING EXECUTION  
OF LOCK-UP AGREEMENT AND  
APPROVING SALE OF SECURITIES  
PURSUANT TO DISTRIBUTION PLAN**

Date: No Hearing Set  
Time: No Hearing Set  
Judge: Edward M. Chen

1 Kathy Bazoian Phelps, the successor receiver herein (the “Receiver”) of SRA  
 2 Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, Clear Sailing Group  
 3 IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-  
 4 Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA  
 5 Fund II, LLC, NYPA Management Associates, LLC and Solis Associates Fund LLC  
 6 (collectively, the “Receivership Entities” and their estates the “Receivership Estate”), hereby files  
 7 this Motion for Order Authorizing Execution of Lockup Agreement and Approving Sale of  
 8 Securities Pursuant to Distribution Plan (the “Motion”).<sup>1</sup>

9 **I. Introduction**

10 The Receiver seeks authority to sign a confidential Lock-Up Agreement (the “Lock-Up  
 11 Agreement”) sent to it by Palantir Technologies, Inc. (“Palantir”) in advance of its plan to go  
 12 public by directly listing its shares on a publicly traded exchange (similar to an IPO except no  
 13 new shares are created).<sup>2</sup> The Lock-Up Agreement will permit the Receiver to liquidate up to  
 14 20% of the estate’s Palantir holdings expeditiously as soon as the stock becomes publicly traded  
 15 and will eliminate substantial uncertainty as to which of the estate’s Palantir shares may be  
 16 publicly traded. The Receiver seeks further authority to sell no more than 20% of the estate’s  
 17 Palantir shares for a price of not less than \$10 per share. At a price of \$10 per share or greater,  
 18 the Receiver can liquidate sufficient Palantir stock to fully fund the Plan Fund, as set forth in the  
 19 Plan, as well as to fully fund the Tax Holding Account to pay the taxes on that sale. As such, for  
 20 the reasons that follow, the Receiver requests authority from this Court to execute the Proposed  
 21 Lock-Up Agreement and to sell sufficient shares of Palantir, after they become publicly traded, in  
 22 order to fund the Plan Fund and Tax Holding Account and to pay appropriate commissions.

23 The Receiver has conferred with counsel for the Securities and Exchange Commission and  
 24 with the Investor Advisory Committee, neither of whom oppose the Motion. A stipulation with all

25 \_\_\_\_\_  
 26 <sup>1</sup> The Receiver will serve this Motion and supporting documents on all interested parties pursuant  
 to Civil Local Rule 66-6, and will post the papers on the Receivership website. Any interested party  
 has four days to file any opposition to or support for this motion. *See* Civil L.R. 7-11.

27 <sup>2</sup> The Lock-Up Agreement is confidential and therefore not attached to this Motion in the interest  
 28 of efficiency. The Receiver is prepared to present a copy for *in camera* review or to file such a  
 copy under seal should the Court so request.

1 parties was deemed impractical given, among other things, the entry of judgment against the  
2 defendants and pending bankruptcy of defendant John Bivona. (L.R. 7-11 1(a).)

3 **II. Background**

4 The Court approved the Plan in this case by Order entered on May 25, 2020 [Dkt No.  
5 613]. Pursuant to the Plan, once pre-IPO shares held by the Receiver become publicly traded and  
6 free of restrictions, the Receiver is to liquidate a portion of those publicly traded securities to fund  
7 the Plan Fund and the Tax Holding Account, and is authorized to make distributions of shares to  
8 investors. Currently, the estate holds 5,422,600 shares of Palantir (the “Shares”).<sup>3</sup> The Receiver  
9 has been advised by her valuation experts that the tax basis of these Palantir shares is \$10 per  
10 share. Palantir is preparing to go public by a direct listing possibly later this month.

11 The Receiver has received a request from Palantir’s counsel to sign the Lock-Up  
12 Agreement, under which Palantir would work with its transfer agent to guarantee that 20% of the  
13 Shares (1,084,520) are freely tradeable once the direct listing is finalized, whereas the remaining  
14 80% of the Shares (4,338,080) shares could not be transferred until after Palantir reports its 2020  
15 annual earnings (in early 2021). If the Receiver agrees to the Lock-Up Agreement, the estate will  
16 have enough freely tradeable Palantir shares to liquidate to fund the Plan Fund and associated  
17 taxes, provided that the estate can sell them above \$10 per share. (*See infra* Part IV.) Palantir  
18 requested that the Receiver sign the Lock-Up Agreement by September 4, 2020, but the Receiver  
19 requested an extension of time so that Court approval may be obtained, which Palantir granted.

20 As an alternative to agreeing to the Lock-Up Agreement regarding 80% of the Shares, the  
21 Receiver is advised that approximately 2.6 million of the 5,422,600 shares currently in the estate,  
22 might be freely tradeable. The timing of when those shares would be received and therefore  
23 available for distribution is uncertain, however, as the failure to sign the Lock-Up Agreement may  
24 slow the delivery of the Shares from the transfer agent. The Palantir transfer agent will likely  
25 want to review the original contracts before agreeing that the 2.6 million shares in question are in

26 \_\_\_\_\_  
27 <sup>3</sup> The Receiver is in the process of obtaining an additional 317,649 shares from the EAC settlement,  
28 which out of an abundance of caution are excluded from the calculations in this Motion, as they  
have not yet been delivered into the Receiver’s account and, in any event, their inclusion would not  
otherwise impact the Receiver’s recommendation and proposed course of action.

1 fact freely tradeable. The Receiver is advised that there may be substantial delay and expense to  
2 the estate in attempting to sell or distribute any Palantir shares that have not been preapproved by  
3 Palantir as freely tradeable (i.e., the 20% under the Lock-Up Agreement), as the Palantir transfer  
4 agent may have to verify that any shares the estate wishes to sell or distribute are in fact  
5 unrestricted. Such a process could be time-consuming, causing the estate to incur additional  
6 administrative costs, and would not have a certain outcome. However, once received, the  
7 Receiver could make a limited interim distribution of a portion of those 2.6 million shares above  
8 the amount to be sold for the Plan Fund and associated taxes. The amount of such early interim  
9 distribution is unknown given the uncertainty in the price of the shares but would likely not  
10 exceed 20-35% of the allowed claims.

11 **III. Proposed Lockup Agreement Options and Recommendation**

12 The Receiver is therefore left with a choice between two proposed courses of action:

13 A. Option One (Sign the Proposed Lock-Up Agreement)

14 (1) Sign the Lock-Up Agreement that guarantees that 20% of the estate's holdings  
15 will be freely tradeable immediately upon the direct listing of Palantir, which will likely permit  
16 the Receiver to fund the Plan Fund and associated Tax Holding Account in full;

17 (2) Make a single interim distribution of Palantir to claimants in early 2021 at the  
18 end of the expiry period but hold back a substantial (~50%) administrative reserve; and

19 (3) Make a final distribution once the tax treatment of the estate is fully resolved  
20 by the Internal Revenue Service, possibly as late as 2022.

21 B. Option Two (Do Not Sign the Proposed Lock-Up Agreement)

22 (1) Do not sign the Lock-Up Agreement and hope that the 2.6 million shares will  
23 in fact be freely tradeable as of the time of the direct listing. If so, shares can be sold immediately  
24 to fund the Plan Fund and Tax Holding Account and, if not, the sale would be subject to any  
25 delays or restrictions imposed by the Palantir transfer agent;

26 (2) Make a first interim distribution to claimants of any remaining shares after the  
27 sale for the Plan Fund, which depending on the price of Palantir will be between 20 and 35% of  
28 the allowed shares after the Plan Fund, taxes, and commissions, subject to any delays or

1 restrictions imposed by the Palantir transfer agent;

2 (3) Make a second interim distribution of Palantir to claimants in early 2021 at the  
3 end of the expiry period but hold back a substantial (~50%) administrative reserve; and

4 (4) make a final distribution once the tax treatment of the estate is fully resolved by  
5 the Internal Revenue Service, possibly as late as 2022.

6 C. Recommendation

7 The Receiver has consulted with the Investor Advisory Committee and with the Securities  
8 Exchange Commission, who both concur that the Receiver should execute the Proposed Lock-Up  
9 Agreement (Option One above). Such a course of action will (1) remove any uncertainty around  
10 the ability of the Receiver to sell the Shares to fund the Plan Fund immediately upon the direct  
11 listing; (2) reduce costs by allowing the Receiver to distribute Palantir stock in two distributions  
12 instead of three distributions; and (3) reduce costs by obviating any potential disputes between the  
13 Receiver, Palantir, and Palantir's transfer agent as to which of the 2.6 million shares are actually  
14 freely tradeable.

15 **IV. Sale of Securities for the Plan Fund**

16 The Receiver also requests authority to sell sufficient Palantir shares in order to (a) fund  
17 the Plan Fund, (b) fund the Tax Holding Account associated with the Plan Fund, and (c) pay the  
18 commissions such sale of stock. Pursuant to the Plan approved by this Court, the Plan Fund is  
19 equal to 30% of the Gross Investment. For Palantir, the Gross Investment Amount is \$32,551,706,  
20 and 30% of that amount is \$9,765,512 (the "Plan Fund Amount"). (*See* Plan Fund, Doc. 570-1, at  
21 12.) The Receiver is advised by her accountants that the expected tax rate is 42.57%, and that the  
22 basis of the Palantir shares is reasonably \$10 per share. The Receiver also expects that the  
23 commission for the sale of stock will be up to 0.25% of the amount sold, but the Receiver will  
24 nevertheless endeavor to negotiate as low a commission as possible.

25 The price of Palantir is currently unknown, but the *net amount* of the sale, after taxes are  
26 set aside and commissions are paid, must equal the Plan Fund Amount. As the price of Palantir  
27 goes up, fewer shares need be sold to fund the Plan Fund, but that is somewhat offset by the fact  
28 that there is more gain and therefore more potential taxes. The below table illustrates the number

1 of shares that would need to be sold at a certain price in order for the net proceeds to be sufficient  
2 to fully fund the Plan Fund:

Sale Price Per Share	\$10.00	\$12.50	\$15.00	\$20.00	\$25.00
Total Shares to Sell	978,999	856,286	760,910	622,285	526,386
% of Shares Owned	18.1%	15.8%	14.0%	11.5%	9.7%
Gross Proceeds	\$9,789,990	\$10,703,575	\$11,413,650	\$12,445,700	\$13,159,650
Gain from Sale	\$-	\$2,140,715	\$3,804,550	\$6,222,850	\$7,895,790
Tax Holding (42.57%)	\$-	\$911,302	\$1,619,597	\$2,649,067	\$3,361,238
Commission (0.25%)	\$24,475	\$26,759	\$28,534	\$31,114	\$32,899
Net Proceeds	\$9,765,515	\$9,765,514	\$9,765,519	\$9,765,519	\$9,765,513

8 Since the Lock-Up Agreement will not permit the sale of more than 20% of the Shares, the  
9 Receiver does not plan to sell the Shares at less than \$10 per share to fund the Plan Fund. If the  
10 price exceeds the tax basis of \$10 per share, the estate will need to sell no more than 1,000,000  
11 Shares to on account of the Plan Fund. If the Receiver signs the Lock-Up Agreement, 1,084,520  
12 Shares will become freely tradeable upon the direct listing of Palantir.

13 The Receiver seeks authority from this Court to sell, as soon as practicable after Palantir  
14 becomes publicly traded, sufficient Shares to fund the Plan Fund, Tax Holding Account for the  
15 Plan Fund, and to pay reasonable commissions, not to exceed 1,000,000 Shares and at a price of  
16 not less than \$10 per share. The Receiver believes that the Shares are exempt from registration,  
17 and any sale of such Shares will be fully compliant with all applicable laws and regulations under  
18 the securities laws of the United States. The Receiver expects to file a further motion at the  
19 appropriate time for instructions on distribution, closer in time to the expiry of the lockup period.

## 20 V. Conclusion

21 The Receiver respectfully requests that the Court authorize the Receiver to execute the  
22 Lock-Up Agreement, to liquidate the Palantir Shares on the terms and timing set forth herein, to set  
23 aside or pay all taxes and commissions, and requests all other appropriate relief.

24 DATED: September 4, 2020

By: /s/ Kathy Bazoian Phelps  
Kathy Bazoian Phelps  
Receiver