

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,	X	
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Plaintiff,	:	
	:	
-v-	:	No. 1:22-cv-03897-LAK
	:	
STRAIGHTPATH VENTURE PARTNERS LLC,	:	
STRAIGHTPATH MANAGEMENT LLC,	:	
BRIAN K. MARTINSEN,	:	
MICHAEL A. CASTILLERO,	:	
FRANCINE A. LANAIA, and	:	
ERIC D. LACHOW,	:	
	:	
Defendants.	:	
	X	

**THE RECEIVER’S SEVENTH QUARTERLY STATUS REPORT TO THE COURT**

Melanie L. Cyganowski, the receiver (the “***Receiver***”) for StraightPath Venture Partners LLC (“***SP Fund Manager***” or “***SPVP***”), StraightPath Management LLC (“***SP Advisor***”), SP Ventures Fund LLC, SP Ventures Fund 2 LLC, SP Ventures Fund 3 LLC, SP Ventures Fund 4 LLC, SP Ventures Fund 5 LLC, SP Ventures Fund 6 LLC, SP Ventures Fund 7 LLC, SP Ventures Fund 8 LLC, SP Ventures Fund 9 LLC (collectively, the “***SP Funds***” and together with SP Fund Manager and SP Advisor, the “***Receivership Entities***” or “***StraightPath***”), by her undersigned counsel, hereby submits this Seventh Quarterly Status Report, covering the period from October 1, 2023, through and including December 31, 2023 (the “***Reporting Period***”), as required by the Consent Order Appointing Receiver [Dkt. No. 56] (the “***Receivership Order***”),<sup>1</sup> entered on June 14, 2022, which appointed the Receiver for the estate of the Receivership Entities (the “***Receivership Estate***” or “***Receivership***”).<sup>2</sup>

<sup>1</sup> Capitalized terms used but not defined herein shall have the same meanings ascribed in the Receivership Order.

<sup>2</sup> The Receiver already reported on a portion of her activities during the Reporting Period in her Sixth Quarterly Report to the Court [Dkt. No. 234], dated October 30, 2023. Similarly, as this report is being filed after the conclusion of the

## I. PRELIMINARY STATEMENT

### A. Summary of Activities During the Reporting Period

Among other things, during and following the Reporting Period, the Receiver and members of her retained professional team<sup>3</sup>:

- (i) reviewed the criminal indictment (the “**Indictment**”) against Brian K. Martinsen (“**Martinsen**”), Michael A. Castillero (“**Castillero**”), Francine A. Lanaia (“**Lanaia**”), which was unsealed on November 28, 2023 in the criminal action captioned *United States v. Castillero, et al.*, 23-cr-00622-JMF (S.D.N.Y.) (the “**Criminal Action**”) commenced by the U.S. Attorney’s Office for the Southern District of New York (the “**USAO**”);
- (ii) prepared the Receiver’s motion for entry of an order authorizing her use of Escrow Funds (as defined in the Receivership Order) to purchase equity interests in pre-IPO companies to cover the shortfall in equity interests held by the Receivership Entities, and establishing a procedure therefor [Dkt. Nos. 228-232] (the “**Escrow Motion**”), which was filed on October 25, 2023, and prepared and filed the Receiver’s reply in support of the Escrow Motion [Dkt. No. 243];
- (iii) continued to implement the Receiver’s processes and procedures set forth in the *Procedures for Resolution of Claims and Interests and Setting Bar Dates for Claims* [Dkt. Nos. 166-169] (the “**Resolution Procedures**”), which the Court granted on March 30, 2023 [Dkt. No. 180], including (A) reviewing objections submitted by investors

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Reporting Period, this report will include descriptions by the Receiver of activities that occurred both during and after the Reporting Period.

<sup>3</sup> The Receivership Team includes Otterbourg P.C. (“**Otterbourg**”) as the Receiver’s legal counsel, Stout Risius Ross, LLC (“**Stout**”) as the Receiver’s financial advisor, Stretto, Inc. (“**Stretto**”) as her claims and noticing agent, Berkeley Research Group, LLC (“**BRG**”) as her tax advisor, and Liquid Advisors, Inc., as her investment advisor (“**Liquid Advisors**,” and along with Otterbourg, Stout, Stretto, and BRG the “**Receivership Team**”).

- regarding the information in their investor statements (an “***Investor Objection***”) and other inquiries submitted by investors, (B) investigating and reconciling information to address Investor Objections, and (C) reviewing proofs of claim (each a “***Proof of Claim***”) submitted by parties asserting creditor claims against the Receivership Entities (“***Purported Creditors***”);
- (iv) analyzed issues regarding a plan of distribution (a “***Plan***”) and prepared documents in support of a Plan;
  - (v) communicated with counsel for Martinsen, Castellero, Lanaia, and Eric D. Lachow (“***Lachow***” and together with Martinsen, Castellero, and Lanaia, the “***Individual Defendants***”) regarding various matters, related to, among other things, the use of the Escrow Funds and various issues surrounding a Plan;
  - (vi) analyzed tax issues related to the Receivership, and made tax filings for SPVP and the Receivership for the year 2022;
  - (vii) continued to inventory, marshal, and price Shares<sup>4</sup> (“***Shares***”) in specific private companies (each, a “***Pre-IPO Company***”) owned by the Receivership Entities and to prepare for potential liquidity events of certain Pre-IPO Companies;
  - (viii) filed the *Application for Order Approving the Retention of Liquid Advisors, Inc. as of October 27, 2023* [Dkt. No. 235-237], and the related certificate of no objection [Dkt. No. 245], which the Court granted on November 22, 2023 [Dkt. No. 258]; and

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<sup>4</sup> Although this report generally refers to “Shares” in Pre-IPO Companies, the Receivership Entities’ interests in Pre-IPO Companies are not necessarily actual shares of stock in Pre-IPO Companies. As described below and in prior Reports filed by the Receiver, StraightPath purchased Pre-IPO interests using various methods and the interests acquired are varied, including but not limited to: (i) interests in special purpose vehicles, which are non-StraightPath entities controlled by third-parties that invested in Pre-IPO Companies; (ii) forward contracts; (iii) economic interest agreements; and (iv) direct shares. Solely for convenience, this report refers to “Shares” to include all such interests acquired by the Receivership Entities.

- (ix) prepared and filed *The Receiver's Sixth Quarterly Status Report To The Court* [Dkt. No. 234] (the “*Sixth Quarterly Report*”).

All of the foregoing tasks are necessary for the Receiver to complete her primary objective – implementation of a Plan to distribute value to investors and creditors – and she is moving as efficiently as possible to reach that goal.

## **II. SUMMARY OF OPERATIONS OF THE RECEIVERSHIP**

### **A. The Criminal Action**

During the Reporting Period, the Receiver and members of the Receivership Team reviewed and analyzed the Indictment. In the Indictment, the USAO charges all Criminal Defendants with conspiracy, securities fraud, wire fraud, and investment adviser fraud in connection with their management of SPVP, SP Advisor, and the SP Funds, and charges Castellero and Martinsen with obstruction of justice. During the Reporting Period, each of the Criminal Defendants appeared for arraignment, pleaded not guilty to the charges against them, and were released on personal recognizant bonds. [23-Cr-622; Dkt. Nos. 12, 14, 17]. Among other things, in the Criminal Action, the Court entered a Scheduling Order, which scheduled the next pre-trial conference in the Criminal Action for May 22, 2024 at 3:00 pm, at which time the Court will schedule a trial date in the Criminal Action. [23-Cr-622; Dkt. No. 11].

### **B. The Stay Application**

On October 18, 2022, the USAO initially filed an Application to Stay [Dkt. No. 101] the Civil Action (the “*Stay Application*” and the “*Civil Action*”), which the Court granted. During the Reporting Period, following the filing of the Indictment, the USAO requested to extend the stay until completion of the Criminal Action. The Receiver and her counsel reviewed the USAO’s Stay Application. On December 13, 2023, the Court granted the USAO’s request to extend the stay until completion of the Criminal Action [Dkt. No. 264]. As with the prior stay orders, by its

terms, the order approving this most recent stay application does not affect the Receiver's rights, obligations and duties under the Receivership Order.

### C. Scopely Buy-Out

During the Reporting Period the Receiver and the Receivership Team took necessary steps to prepare for the receipt of additional funds from the Scopely Buy-Out (i.e., funds previously withheld by the Scopely purchaser for expenses) in the amount of \$94,837.80 (the "**Scopely Expense Proceeds**").<sup>5</sup> The Scopely Expense Proceeds were received by the Receiver on January 5, 2024.

The Receiver cannot at this time state what distributions will ultimately be issued to StraightPath investors and creditors from the Total Scopely Cash Proceeds.<sup>6</sup> (*See* discussion *infra* at II.G. concerning Plan issues.) The Receiver is continuing to analyze potential tax implications of the Scopely Buy-Out, including any potential tax due on the Total Scopely Cash Proceeds.

### D. Preparing for Liquidity Events of Pre-IPO Companies

During the Reporting Period, the Receiver prepared for the possible public listing, or other liquidity event, of certain Pre-IPO Companies. Among other things, the Receiver and the Receivership Team reviewed legal issues in connection with potential public listings, reviewed the agreements relating to the Receivership Entities' legal interests with respect to the Pre-IPO Companies, and communicated with certain Pre-IPO Companies and their counsel, and StraightPath counterparties and intermediaries, concerning StraightPath's ownership interests in

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<sup>5</sup> On April 5, 2023, Scopely announced that it signed an agreement to be acquired by Savvy Games Group ("**Savvy**"). On July 12, 2023, Savvy announced that it completed its acquisition of Scopely for \$4.9 billion in cash (the "**Scopely Buy-Out**"). As the Receiver has previously reported, prior to the Receivership, StraightPath purchased 332,278 Shares of Scopely, which were comprised of common and preferred shares. On or around September 7, 2023, the Receiver received proceeds from the Scopely Buy-Out in the amount of \$15,026,428.73 (the "**Scopely Cash Proceeds**" and together with the Scopely Expense Proceeds, the "**Total Scopely Cash Proceeds**").

<sup>6</sup> A party asserts that pre-Receivership, as a purchaser and not as an investor, it purchased 18,000 Scopely shares from StraightPath (the party's contract was with StraightPath Holdings, Inc.) The Receiver is reviewing this claim and reserves all rights.

Pre-IPO Shares. The complicated investment structure (described in previous reports) involves multiple parties holding different types of interests, and poses potential risks to the Receiver's ultimate receipt of Shares or proceeds thereof.

While the Receiver and the Receivership Team monitored all of the Pre-IPO Companies in which StraightPath owns Pre-IPO Shares, during the Reporting Period particular attention was focused on the following Pre-IPO Company:

**i. Triller**

During and after the Reporting Period (specifically on October 6, 2023, November 22, 2023, December 26, 2023, and January 12, 2024), Triller Corp. filed amendments to its Form S-1 (as amended, the “*Triller S-1*”). A Form S-1 is the disclosure form that the SEC requires that private U.S. companies complete and submit for SEC approval in order for such company to offer new securities to the public or permit its securities to trade on a public stock exchange.

According to the Triller S-1, Triller Corp. is not undertaking an initial public offering, but is pursuing something known as a “direct listing,” which means that if and when the Triller S-1 is approved by the SEC, and subject to other restrictions that might be relevant, such as “lock-ups,” registered stockholders of a company named Triller Corp. will be able to trade their Class A common stock in that company on a public exchange at prevailing market prices.

The date when the SEC will approve the Triller S-1, if at all, is unknown. The Triller S-1 does not identify the price at which Triller Corp. shares will trade, and the success of the listing will depend on a number of factors, including, without limitation, market conditions at that time.

StraightPath purchased Pre-IPO Shares in “Triller” through two different types of ownership structures.

The first type of ownership structure in which StraightPath holds “Triller” Shares is comprised of “economic interest agreements” concerning equity of Triller Acquisition LLC owned by one entity and certain trusts. The Triller S-1 discusses a complicated restructuring under which certain entities, including Triller Acquisition LLC, have been or will be merged, with Triller Corp. ultimately becoming the surviving entity. During the Reporting Period, the Receiver’s counsel communicated with counsel for Triller Corp. concerning StraightPath’s position in Triller Acquisition LLC, and to understand how StraightPath’s holdings will convert to publicly traded Shares of Triller Corp. These time-consuming discussions are ongoing.

The second type of ownership structure in which StraightPath holds Triller Shares is comprised of agreements between StraightPath and a foreign entity that itself holds interests in another foreign entity that owns “Triller” equity. During the Reporting Period, the Receiver’s counsel communicated with the various parties in this ownership structure with an effort to simplify the arrangements. These discussions are ongoing.

#### **E. The Escrow Motion**

From the outset of this Receivership, one of the issues the Receiver has faced is the sizable shortfall in equity holdings that existed across various Receivership Entities as of her appointment. Specifically, as the Receiver has previously reported, the Receivership Entities own fewer interests in certain Pre-IPO Companies (the “*Shortfall Companies*”) than investors were advised through so-called “Welcome Letters” (the “*Shortfall*”). Initially there were eight (8) Shortfall Companies, but, as previously reported, given the developments with Scopely and Virgin Hyperloop One (a/k/a Hyperloop Technologies, Inc.), there are currently only six (6) such entities.<sup>7</sup>

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<sup>7</sup> The remaining Shortfall Companies are (1) Automation Anywhere; (2) Eat Just; (3) Impossible Foods; (4) Kraken; (5) Rubrik; and (6) ThoughtSpot.

Under the Receivership Order, if the Court approves, the Receiver may use Escrow Funds to purchase equity interests to cover this Shortfall. During the Reporting Period, at the Receiver's instruction, Otterbourg prepared the Escrow Motion, which was filed on October 25, 2023. [Dkt. Nos. 228-232]. Pursuant to the Escrow Motion, the Receiver seeks authority to use Escrow Funds to cover the Shortfall in accordance with certain procedures set forth in the Escrow Motion. Based on several factors described in more detail in the Escrow Motion, including what appeared at the time of the Motion to be a downward turn in the pricing of Pre-IPO Shares, the Receiver determined that it was appropriate to seek to purchase interests in the Shortfall Companies to cover the Shortfall. This Motion has not been decided by the Court and remains *sub judice*.

#### **F. Claims Process**

During the Reporting Period, the Receiver continued implementation of the Resolution Procedures, which the Court approved on March 30, 2023 [Dkt. No. 180].

The Resolution Procedures provide for a process in which (a) the Receiver notified each investor of the net amount(s) of each investor's investment in an SP Fund and/or the amount each investor received in distribution(s); (b) claimants (i.e., non-investor creditors) are provided with the opportunity of submitting Proof(s) of Claim setting forth the alleged value and basis of their asserted Claim(s); and (c) investors and claimants can resolve any disputes with the Receiver concerning the quantity and/or value of asserted interests and Claims, as applicable.

As previously reported, in accordance with the Resolution Procedures, the Receiver issued individualized Investor Statements to over 2,000 investors in the Receivership Entities. The Receivership Team reviewed Investor Objections and other inquiries that were submitted by investors in order to resolve as many as possible without the need for further proceedings. To date, investors submitted 171 Investor Objections to the Receiver, of which 149 have been resolved



through a process of reviewing documents submitted by the respective investor, reviewing the Receivership Entities' books and records, and communicating with the investors regarding their respective disputes.<sup>8</sup> The Receiver is seeking to resolve the Investor Objections that remain outstanding in accordance with the Resolution Procedures. However, certain Investor Objections raise issues that may relate to other investors, and may be most appropriately addressed contemporaneously with a Plan, not resolved outside of the Plan process. Additionally, during the Reporting Period, the Receiver issued updated Investor Statement(s) to certain investors, where appropriate.

Purported Creditors of the Receivership Entities submitted 22 Proofs of Claim on the Receiver.<sup>9</sup> The Receiver is reviewing and analyzing the Proofs of Claim that were submitted. During the Reporting Period, the Receiver communicated with certain of these creditors to discuss potential resolution of their claims. These discussions are ongoing.

#### **G. Plan Process**

During the Reporting Period, the Receiver continued efforts to structure a Plan, communicated with parties-in-interest concerning a Plan and potential formats, and the Receivership Team continued preparation of Plan related documents.

Investors and creditors will have the opportunity to respond to the Plan proposed by the Receiver, including the distribution methodology and treatment of claims and equity interests. The Receiver cannot at this time state what type or amount of distributions will ultimately be issued to

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<sup>8</sup> Investor Objections were submitted via various channels, including through the submission of Investor Objections or Proofs of Claim and/or direct investor email correspondence and/or phone calls with the Receivership Team. Duplicative submissions have been excluded from the total count of Investor Objections stated above.

<sup>9</sup> Of the 22 Proofs of Claim, 6 do not appear to be related to StraightPath. Additionally, the total number of Proofs of Claim discussed above does not include 73 Proofs of Claim that were submitted by investors and which should have been submitted as Investor Objections. These 73 Proofs of Claim have been treated as Investor Objections and are included in the number of Investor Objections discussed above.

creditors and investors. Following approval of a Plan, the timing of distributions might also be impacted by, among other things, the claims that are asserted against the Receivership Entities.

## H. Taxes

During the Reporting Period, the Receivership Team reviewed issues concerning the final 2022 tax return for SPVP and an initial 2022 tax return for the “Qualified Settlement Fund” (both were filed on October 16, 2023).<sup>10</sup> The Receiver and the Receivership Team are continuing to review issues related to the pre-Receivership tax liability, if any, of the Receivership Entities and the tax implications of the “Qualified Settlement Fund.”

## I. *SEC v. Hollender et al.*

As previously reported, on March 23, 2023, the SEC commenced an action titled *SEC v. Hollender et al.*, 23-cv-02456-LAK (S.D.N.Y.) (the “*Hollender Action*”) against Scott J. Hollender, Gabriel F. Migliano, Jr., Frank M. Vecchio, (collectively, the “*Hollender Defendants*”) and relief defendants GSH Empire, Inc. and 21st Century Gold & Silver Inc. (the “*Hollender Relief Defendants*”).<sup>11</sup> As reflected in the complaint (the “*Hollender Complaint*”), the SEC alleges that the Hollender Defendants were among a network of sales agents hired by SP Fund Manager to solicit investments in the SP Funds. *Hollender Complaint* ¶ 1. The SEC alleges that the Hollender Defendants successfully solicited a combined total of at least \$13 million in SP Fund investments from at least 115 investors. *Id.* at ¶ 2.

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<sup>10</sup> The Receiver previously reported that she intended to provide investors with an Administrative Adjustment Request (“AAR”) prior to the end of 2023, to report each investor’s original 2021 Schedule K-1 information as well as the adjusted (amended) Schedule K-1 information. During the Reporting Period, the Receiver continued to review tax issues and has determined to issue AARs to investors prior to the end of 2024.

<sup>11</sup> On May 11, 2023, the Court entered a partial consent judgment as to Vecchio, which resolved issues of Vecchio’s liability and left the amounts of monetary relief against Vecchio to be decided at a later date [*Hollender Action*; Dkt. 20]. On May 26, 2023, the SEC voluntarily dismissed its claims against 21st Century Gold & Silver Inc. [*Hollender Action*; Dkt. 23], which the Court approved on May 31, 2023 [*Hollender Action*; Dkt. 26].

On July 15 and July 23, Migliano and Hollender each filed an Answer to the Hollender Complaint [Hollender Action; Dkt. Nos. 27, 28]. On September 6, 2023, the Court granted the SEC's Motion to Strike Migliano's Sixth Affirmative Defense [Hollender Action; Dkt. No 32]. During the Reporting Period, the Court entered a Case Management Plan and Scheduling Order [Hollender Action; Dkt. No 35].

Neither the Receiver nor any of the Receivership Entities are parties in the Hollender Action.

#### **J. Receivership Website, Receivership Email, and Communications**

During the Reporting Period, the Receiver and the Receivership Team communicated with investors and other parties-in-interest regarding the Receivership.

To facilitate communications with parties-in-interest, the Receivership Team updated the dedicated website for this Receivership (<https://www.straightpathreceivership.com>). This website provides investors and other interested parties with, among other things, periodic updates, access to Court documents including status reports, and answers to frequently asked questions.

During the Reporting Period, members of the Receivership Team also monitored the dedicated email address for inquiries ([StraightpathReceiver@Otterbourg.com](mailto:StraightpathReceiver@Otterbourg.com)).

During the Reporting Period, the Receivership Team received phone calls and correspondence from investors and other parties and communicated with those parties. As of mid-January 2024, the Receivership Team has received or made over 3,800 individual communications by phone and email with parties-in-interest, including receiving inquiries from over 1,190 investors and other parties-in-interest.

### **K. Phishing Attempt**

During the Reporting Period, the Receiver and the Receivership Team addressed a fraudulent phishing attempt using the Receiver's name as the alleged receiver of a company named "Zoomcar, Inc." in a non-existing action pending in U.S. District Court for the Southern District of New York. The Receiver and the Receivership team updated the Receivership website to provide notice of the phishing attempt and communicated with parties that were reported targets of the phishing attempt.

### **L. The Sixth Quarterly Status Report**

In accordance with Section XV of the Receivership Order, on October 30, 2023, the Receiver filed her Sixth Quarterly Status Report to the Court [Dkt. No. 234].

## **III. CASH, EXPENSES, AND UNENCUMBERED ASSETS**

Attached hereto as **Exhibit A** is the Standardized Fund Accounting Report ("**SFAR**") as of December 31, 2023, which sets forth a schedule summarizing cash receipts and disbursements, as well as cash on hand for the Reporting Period, in the Receivership case.

### **A. Financial Information**

As of December 31, 2023, the Receivership accounts held approximately \$35,167,194.78 in cash and securities, of which (1) \$29,516,181.64 was cash comprised of (i) Escrow Funds of \$14,038,268.38 (in the Receiver's custody but which cannot be used unless permitted by Court order), (ii) \$15,026,428.73 in cash proceeds from the buyout of the Scopely Shares, (iii) \$400,049.00 of cash transferred from the Receivership Entities' pre-Receivership accounts, (iv) \$50,748.21 of cash from interest income, and (v) \$687.32 in cash held in brokerage accounts; and (2) \$5,651,013.14 in securities held in brokerage accounts.

As of December 31, 2023, the court-approved interim fees and expenses of the Receivership Team are approximately \$5,401,738.70 in fees and \$70,857.94 in expenses, of which (i) the aggregate amount of \$1,421,538.40 is subject to holdback, and (ii) the aggregate amount of \$4,051,058.24 is not subject to holdback (the “*Previously Approved Non-Holdback Amount*”). The Receiver has paid \$2,349,494.01 of the Previously Approved Non-Holdback Amount.<sup>12</sup> In all, \$1,701,564.23 of the Previously Approved Non-Holdback Amount remains unpaid.

On November 21, 2023, the Receiver, Otterbourg, Stout, Stretto, and BRG submitted applications for compensation for the Third Quarter 2023 in the total amount of \$1,151,948.12 [Dkt. Nos. 246, 249, 252, 255], which remain pending before the Court.

The estimated fees and expenses for the Receiver, Otterbourg, Stout, Stretto, BRG, and Liquid Advisors that have been incurred during the Reporting Period are in the amount of \$1,015,328.97.

## **B. Cash Disbursements and Receipts**

Cash disbursements during the Reporting Period totaled \$775,504.43. This amount consisted of (i) \$4,855.54 in business expenses (including bank and technology fees, Town Hall transcript fees, and subscription fees to QuickBooks and Ooma phone services); (ii) \$29,998.98 in cumulative hosting and document processing fees for electronic data and hard copy documents collected by the Receiver; and (iii) \$740,649.91 in professional fees and expenses paid to Otterbourg, Stout, and BRG as approved by Order of the Court for fees and expenses recorded during the Fourth Quarter 2022. [Dkt. No. 266].

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<sup>12</sup> With the exception of one relatively minor amount (\$2,864.16), the Receiver has not paid any Court approved fees and expenses due her and the Receivership Team for the calendar year 2023. In December 2023, in accordance with an order of the Court [Dkt. No. 266], the Receiver paid a portion of the approved fees and expenses incurred in the Fourth Quarter 2022.

Cash receipts during the Reporting Period totaled \$11,547.34, consisting of interest income of \$11,332.97 from the Receivership accounts, and a tax refund of \$214.37.

#### **IV. RECEIVERSHIP PROPERTY, PRE-IPO SHARES, AND INTERESTS SOLD TO INVESTORS**

##### **A. Receivership Property**

As of December 31, 2023, the primary assets of the Receivership Estate consisted of the following:

- i. Cash (including the Escrow Funds in the Receiver's custody but which cannot be used unless permitted by Court order), cash equivalents, and securities of approximately \$35,167,194.78; and
- ii. Pre-IPO Shares, including holdings in special purpose vehicles, forward contracts, economic interest agreements, and direct Shares, held either directly or indirectly, in an undetermined value.

As reported in the Interim Report,<sup>13</sup> prior to the Receivership, the Receivership Entities received approximately \$395,901,668<sup>14</sup> in investor contributions of which \$272,143,367 was used to acquire a total of 18,611,440 Shares in Pre-IPO Companies and the balance was used for payments, including to the Individual Defendants in the approximate amount of \$75 million, and to sales agents in the approximate amount of \$54 million. The current value of the Receivership

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<sup>13</sup> The "Interim Report" refers to the *Interim Status Report Concerning Preliminary Findings on Commingling and Share Shortfall* [Dkt No. 144], which was filed on January 6, 2023, in which the Receiver reported that (1) investors' funds were commingled; and (2) a Share Shortfall exists across certain Pre-IPO Companies, while a surplus of Shares exists for certain other Pre-IPO Companies. Stout has continued its analysis since the filing of the Interim Report and the Receiver may, as and when appropriate, provide updated information in future reports.

<sup>14</sup> Total investor contributions are net of any broker's commissions of \$3,990,975 or other fees charged to investors, if applicable.

Entities' investment portfolio has not been determined and is subject to change based on the market for Pre-IPO Shares.<sup>15</sup>

The Receiver has previously reported on specific information with respect to the Pre-IPO Shares (*See* Fourth Quarterly Report to the Court, Section IV.B.) [Dkt. No. 183] and refers to that prior report which is incorporated by reference to the extent of such information.

**V. LIQUIDATED AND UNLIQUIDATED CLAIMS HELD BY THE RECEIVERSHIP ESTATE/INVESTIGATION OF TRANSACTIONS**

The Receiver is continuing to investigate potential liquidated and unliquidated causes of action, if any, held by the Receivership Entities. The Receivership Entities may have causes of action against a number of parties that the Receiver is considering. The Receiver at this time cannot state whether any actions will be commenced and, if commenced, their value or the likelihood of collecting on any judgment that may ultimately be obtained.

**VI. CLAIMS ANALYSIS**

With respect to formal claims proceedings, as explained above, during the Reporting Period, the Receivership Team continued implementation of the Resolution Procedures.

**VII. RECOMMENDATIONS FOR CONTINUATION OR DISCONTINUATION OF RECEIVERSHIP**

The Receiver believes that continuation of the Receivership is in the best interests of the creditors and investors of StraightPath. While the Receivership Entities could be administered in a bankruptcy proceeding, the Receiver believes that continuing with the orderly administration of the Receivership Entities in this receivership case provides much greater flexibility to achieve an equitable result for the investors.

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<sup>15</sup> The Receivership is a Qualified Settlement Fund for purposes of tax reporting. See Receivership Order at Section XI. As required for purposes of Qualified Settlement Fund tax reporting, the Receiver's financial advisor has valued the Receivership Entities' investment portfolio as of June 14, 2022, the date that the Receivership was created.

This receivership case arose as a result of an alleged fraud with respect to the Individual Defendants' alleged actions in connection with the Receivership Entities. As the United States District Court for the Southern District of New York stated in *SEC v. Byers*, 637 F. Supp. 2d 166 (S.D.N.Y. 2009), in which the Court considered whether estate administration through an SEC receivership or through a bankruptcy case was preferable: “[u]nder these circumstances, it would be inequitable to force the case into bankruptcy, where the bankruptcy court would have less flexibility in determining the most equitable approach to distribute assets to victims. The overriding goal of these proceedings should be fairness to the defrauded investors, and forcing this case into bankruptcy would, I believe, be inconsistent with that goal.” *Byers*, 637 F. Supp. 2d at 175-76.

The Receiver believes that the reasons set forth in the *Byers* case hold true here. The Receiver also has the ability to propose a plan for distribution of assets that does not adhere to the absolute priority rule, which is required in bankruptcy. Here, the Receiver has not made any decisions regarding the treatment of creditor and investor claims, but remaining in the Receivership offers her flexibility, if appropriate, to prioritize investors.



### **VIII. CONCLUSION**

While the Receiver cannot at this time state when she expects the case to be concluded, the Receiver has made substantial progress in administering the Receivership Estate and is working to propose a Plan as soon possible.

Dated: January 30, 2024  
New York, New York

### **OTTERBOURG P.C.**

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as Court-Appointed Receiver*

STANDARDIZED FUND ACCOUNTING REPORT for STRAIGHTPATH RECEIVERSHIP - Cash Basis  
 Receivership; Civil Court Docket No. 1.22-cv-03897-LAK

FUND ACCOUNTING (See instructions):							
		Reporting Period 10/1/2023 to 12/31/2023			Cumulative Total from 6/14/2022 to 12/31/2023		
		Detail	Subtotal	Grand Total	Detail	Subtotal	Grand Total
Line 1	Beginning Period Balance			\$ 35,741,698.67			\$ -
	<i>Increase in Fund Balance:</i>						
Line 2	Business Income	\$ -			\$ -		
Line 3	Cash and Securities	189,667.57			7,485,749.66		
Line 4	Interest/Dividend Income	11,332.97			50,748.21		
Line 5	Business Asset Liquidation	-			-		
Line 6	Personal Asset Liquidation	-			-		
Line 7	Third-Party Litigation Income	-			-		
Line 8a	Miscellaneous - Other [1]	-			15,188,182.45		
Line 8b	Miscellaneous - Other [2]	-			15,026,428.73		
Total Funds Available (Lines 1 - 8):			\$ 201,000.54	\$ 35,942,699.21		\$ 37,751,109.05	\$ 37,751,109.05
	<i>Decreases in Fund Balance:</i>						
Line 9	Disbursements to Investors		\$ -			\$ -	
Line 10	Disbursements for Receivership Operations						
Line 10a	Disbursements to Receiver or Other Professionals [3]	(740,649.91)			(2,349,494.01)		
Line 10b	Business Asset Expenses	(33,354.52)			(193,534.26)		
Line 10c	Personal Asset Expenses	-			-		
Line 10d	Investment Expenses	-			-		
Line 10e	Third-Party Litigation Expenses						
	1. Attorney Fees	-			-		
	2. Litigation Expenses	-			-		
	Total Third-Party Litigation Expenses	-			-		
Line 10f	Tax Administrator Fees and Bonds	-			-		
Line 10g	Federal and State Tax Payments	-			-		
Total Disbursements for Receivership Operations			\$ (774,004.43)			\$ (2,543,028.27)	
Line 11	Disbursements for Distribution Expenses Paid by the Fund:						
Line 11a	Distribution Plan Development Expenses:						
	1. Fees:						
	Fund Administrator.....	\$ -			\$ -		
	Independent Distribution Consultant (IDC).....	-			-		
	Distribution Agent.....	-			-		
	Consultants.....	-			-		
	Legal Advisors.....	-			-		
	Tax Advisors.....	-			-		
	2. Administrative Expenses	-			-		
	3. Miscellaneous	-			-		
	Total Plan Development Expenses	\$ -			\$ -		
Line 11b	Distribution Plan Implementation Expenses:						
	1. Fees:						
	Fund Administrator.....	\$ -			\$ -		
	IDC.....	-			-		
	Distribution Agent.....	-			-		
	Consultants.....	-			-		
	Legal Advisors.....	-			-		
	Tax Advisors.....	-			-		
	2. Administrative Expenses	-			-		
	3. Investor Identification:						
	Notice/Publishing Approved Plan.....	-			-		
	Claimant Identification.....	-			-		
	Claims Processing.....	-			-		
	Web Site Maintenance/Call Center.....	-			-		
	4. Fund Administrator Bond	-			-		
	5. Miscellaneous	-			-		
	6. Federal Account for Investor Restitution	-			-		
	7. (FAIR) Reporting Expenses	-			-		
	Total Plan Implementation Expenses	\$ -			\$ -		
Total Disbursement for Distribution Expenses Paid by the Fund			\$ -	\$ -		\$ -	\$ -

STANDARDIZED FUND ACCOUNTING REPORT for STRAIGHTPATH RECEIVERSHIP - Cash Basis  
 Receivership; Civil Court Docket No. 1.22-cv-03897-LAK

FUND ACCOUNTING (See instructions):								
		Reporting Period 10/1/2023 to 12/31/2023			Cumulative Total from 6/14/2022 to 12/31/2023			
		Detail	Subtotal	Grand Total	Detail	Subtotal	Grand Total	
Line 12	Disbursements to Court/Other:							
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees		\$ (1,500.00)		\$ (33,002.00)			
Line 12b	Federal Tax Payments		-		(7,884.00)			
		Total Disbursements to Court/Other:		\$ (1,500.00)		\$ (40,886.00)		
		Total Funds Disbursed (Lines 9 - 11):		\$ (775,504.43)		\$ (2,583,914.27)	\$ (2,583,914.27)	
Line 13	Ending Balance (as of 12/31/2023)							
				\$ 35,167,194.78			\$ 35,167,194.78	
Line 14	Ending Balance of Fund - Net Assets:							
Line 14a	Cash & Cash Equivalents		\$ 29,516,181.64		\$ 29,516,181.64			
Line 14b	Investments		5,651,013.14		5,651,013.14			
Line 14c	Other Assets or Uncleared Funds		-		-			
		Total Ending Balance of Fund - Net Assets		\$ 35,167,194.78			\$ 35,167,194.78	
OTHER SUPPLEMENTAL INFORMATION:								
Report of Items NOT To Be Paid by the Fund:								
Line 15	Disbursements for Plan Administration Expenses Not Paid by the Fund:							
Line 15a	Plan Development Expenses Not Paid by the Fund:							
		1. Fees:						
		Fund Administrator.....	\$ -		\$ -			
		Independent Distribution Consultant (IDC).....	-		-			
		Distribution Agent.....	-		-			
		Consultants.....	-		-			
		Legal Advisors.....	-		-			
		Tax Advisors.....	-		-			
		2. Administrative Expenses	-		-			
		3. Miscellaneous	-		-			
		Total Plan Development Expenses Not Paid by the Fund		\$ -		\$ -		
Line 15b	Plan Implementation Expenses Not Paid by the Fund:							
		1. Fees:						
		Fund Administrator.....	\$ -		\$ -			
		IDC.....	-		-			
		Distribution Agent.....	-		-			
		Consultants.....	-		-			
		Legal Advisors.....	-		-			
		Tax Advisors.....	-		-			
		2. Administrative Expenses	-		-			
		3. Investor Identification:						
		Notice/Publishing Approved Plan.....	-		-			
		Claimant Identification.....	-		-			
		Claims Processing.....	-		-			
		Web Site Maintenance/Call Center.....	-		-			
		4. Fund Administrator Bond	-		-			
		5. Miscellaneous	-		-			
		6. FAIR Reporting Expenses	-		-			
		Total Plan Implementation Expenses Not Paid by the Fund		\$ -		\$ -		
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund		\$ -	\$ -	\$ -	\$ -		
		Total Disbursements for Plan Administration Expenses Not Paid by the Fund			\$ -		\$ -	
Line 16	Disbursements to Court/Other Not Paid by the Fund:							
Line 16a	Investment Expenses/CRIS Fees		\$ -		\$ -			
Line 16b	Federal Tax Payments		-		-			
		Total Disbursements to Court/Other Not Paid by the Fund:		\$ -	\$ -		\$ -	
Line 17	DC & State Tax Payments							

STANDARDIZED FUND ACCOUNTING REPORT for STRAIGHTPATH RECEIVERSHIP - Cash Basis  
 Receivership; Civil Court Docket No. 1.22-cv-03897-LAK

FUND ACCOUNTING (See instructions):							
		Reporting Period 10/1/2023 to 12/31/2023			Cumulative Total from 6/14/2022 to 12/31/2023		
		Detail	Subtotal	Grand Total	Detail	Subtotal	Grand Total
Line 18	No. of Claims:						
	# of Claims Received This Reporting Period.....			1			1
	# of Claims Received Since Inception of Fund.....			171			171
Line 19	No. of Claimants/Investors:						
	# of Claimants/Investors Paid This Reporting Period.....			0			0
	# of Claimants/Investors Paid Since Inception of Fund.....			0			0

Notes:

- [1] The Preliminary Injunction Order (ECF 55) requires that the three individual defendants, Brian Martinsen, Francine Lanaia and Michael Castillero, collectively pay \$15 million, plus the remainder of retainer funds provided to Nardello & Co., into an account established by the Receiver (the "Escrow Funds"). As of July 8, 2022, the account for the Escrow Funds have been fully funded by \$3,275,000 from Mr. Castillero, \$5,862,500 from Ms. Lanaia, and \$5,862,500 from Mr. Martinsen. The remainder of retainer funds of \$188,182.45 from Nardello & Co. were also deposited into the account for the Escrow Funds.
- [2] On April 5, 2023, Scopely announced that it signed an agreement to be acquired by Savvy Games Group ("Savvy"). On July 12, 2023, Savvy announced that it completed its acquisition of Scopely for \$4.9 billion in cash (the "Scopely Buy-Out"). On September 7, 2023, the Receiver received cash proceeds of \$15,026,428.73 from the Scopely Buy-Out transaction.
- [3] The Receivership Order provides that the Receiver shall not use more than \$1,150,000 of the Escrow Funds for fees and expenses associated with the operation of the receivership.
- Of the \$ 2,349,494.01 in professional fees and expenses paid through the Reporting Period, \$964,102.58 was paid from the Escrow Funds and the balance of \$1,385,391.44 was paid from cash that was transferred to the Receivership operating account from the SP Manager bank account.
- Through the Reporting Period, the receivership incurred and paid total disbursements of \$2,583,914.27, of which \$1,149,914.07 was paid from the Escrow Funds, leaving a balance \$85.93 available for fees and expenses of the receivership.

Receiver:

By: /s/ Melanie L. Cyganowski  
 (signature)

Melanie L. Cyganowski, as Receiver  
 (printed name)

Court Appointed Receiver  
 (title)

Date: January 30, 2024