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Attorneys for Interested Party
Progresso Ventures, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

SRA I LLC; SRA II LLC; SRA III LLC; FELIX INVESTMENTS, LLC; MICHELE J. MAZZOLA; ANNE BIVONA; CLEAR SAILING GROUP IV LLC; CLEAR SAILING GROUP V LLC,

Relief Defendants.

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

DECLARATION OF KAREN A. SEBASKI FILED IN SUPPORT OF INTERESTED PARTY PROGRESSO VENTURES, LLC'S MOTION REGARDING CLASSIFICATION OF ITS INVESTOR AND CREDITOR CLAIMS

Date: July 16, 2018
Time: 1:30 pm
Courtroom: 5
Judge: Edward M. Chen

DECLARATION OF KAREN A. SEBASKI

I, KAREN A. SEBASKI, declare as follows:

1. I am an associate with the law firm of Holwell Shuster & Goldberg LLP, counsel for interested party Progresso Ventures, LLC in the above-captioned action, and am admitted *pro hac vice* to appear before this Court. I submit this declaration in support of Progresso's Motion Regarding Classification of its Investor and Creditor Claims.

2. Attached as Exhibit A is a true and correct copy of the judgment entered by Justice Ramos in Progresso Ventures, LLC v. FB Management Associates, LLC, No. 650614/2015 (Sup. Ct. N.Y. Cnty.), Dkt. No. 350, on January 9, 2017.

3. The judgment amount accounts for $2,939,007.50 that Progresso was repaid between February 2012 and July 2012. Attached as Exhibit B is a true and correct copy of a Calculation of Principal and Interest Thereon Due Under the Promissory Note, Dkt. No. 346 in Progresso Ventures, LLC v. FB Management Associates, LLC, No. 650614/2015 (Sup. Ct. N.Y. Cnty.), which reflects the payments made to Progresso.

4. Attached as Exhibit C is a true and correct copy of the judgment entered by Justice Ramos in Progresso Ventures, LLC v. Frank Mazzola et al., No. 652730/2015 (Sup. Ct. N.Y. Cnty.), Dkt. No. 174, on June 29, 2017.

5. Attached as Exhibit D is a true and correct copy of an affidavit of Frank Mazzola, Dkt. No. 51 in Progresso Ventures, LLC v. FB Management Associates, LLC, No. 650614/2015 (Sup. Ct. N.Y. Cnty.).

6. Progresso has been unable to collect any portion of the judgments, which remain outstanding in their entirety.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed June 29, 2018 at New York, New York.

/s/ Karen A. Sebaski
Karen A. Sebaski

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PROGRESSO VENTURES, LLC, Plaintiff, -against- FB MANAGEMENT ASSOCIATES, LLC, Defendant.	:	Index No. 650614/2015 Commercial Part 53 Justice Charles E. Ramos JUDGMENT

Plaintiff, Progresso Ventures, LLC ("Progresso"), having moved this Court for an order pursuant to CPLR 3212, directing entry of Summary Judgment against Defendant FB Management Associates, LLC ("FB Management") on January 13, 2016 (Dkt. Nos. 32-48);

Defendant having filed its opposition to Plaintiff's Summary Judgment motion on February 16, 2016 (Dkt. Nos. 50-71); and Plaintiff having filed its reply in further support of its Summary Judgment motion on March 4, 2016 (Dkt. Nos. 73-79);

The Court having reviewed the papers that were submitted thereof; and the hearing on such motion being held on June 2, 2016; and said motion for Summary Judgment having been granted in its entirety and matter being referred to a Special Referee to hear and determine the computation of the total sum to be awarded to Plaintiff, including outstanding principal, accrued interest at the contractual rate of 15 percent, the contractual "additional return," and attorney's fees and costs by Order issued from Hon. Charles E. Ramos on October 6, 2016 (Dkt. No. 324); and such Order being entered in the office of the Clerk of the Court on November 1, 2016;

The hearing before Special Referee Jeffrey A. Helewitz held on December 13, 2016; and the Special Referee issuing an Order directing the clerk to enter judgment in favor of Plaintiff and against Defendant in the amount of $3,171,508.93 in outstanding principal owed; $392,311.31 in accrued interest as calculated at the contractual rate of 15 percent; $363,374.96 as "additional return;" $1,544,147.10 in legal fees and $58,021.95 in disbursements (Dkt. No. 336);

NOW, on motion of Holwell Shuster & Goldberg LLP, attorneys for Plaintiff, it is hereby

ADJUDGED that Plaintiff, Progresso Ventures, LLC, with offices located at 13621 Deering Bay Drive, Apartment #402, Coral Gables, FL 33158, have judgment against Defendant FB Management Associates, LLC, with offices located at 17 State Street, 5th floor, New York, New York 10004, in the amount of $3,171,508.93 in outstanding principal owed; $392,311.31 in accrued interest as calculated at the contractual rate of 15 percent; $363,374.96 as "additional return;" $1,544,147.10 in legal fees and $58,021.95 in disbursements; for a total sum of $5,529,364.25, plus interest on the outstanding principal, interest, "additional return" at the contractual rate of 15% per annum compounded annually, and interest on legal fees and disbursements at the statutory rate from the date of entry of this judgment, and that Plaintiff have execution therefor.

Judgment entered this 9 day of January, 2017.

CLERK

FILED

JAN - 9 2017

COUNTY CLERK'S OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PROGRESSO VENTURES, LLC,

Plaintiff,

-against-

FB MANAGEMENT ASSOCIATES, LLC,
Defendant.

Index No. 650614/2015

AFFIRMATION OF HANNAH SHOLL

1. I am an attorney duly admitted to practice law before this Court and counsel at the law firm of Holwell Shuster & Goldberg LLP, attorneys for Plaintiff Progresso Ventures, LLC ("Progresso") in the above-captioned matter. I submit this Affirmation in response to an email dated January 6, 2017 from Karyn Sanders of the New York County Supreme Court.

2. Progresso submitted a proposed judgment on December 27, 2016 in the above-captioned matter. Progresso seeks entry of said judgment in the amount requested therein, which includes the costs and disbursements awarded to Progresso in this Action. Progresso does not intend to submit a bill of costs in addition to the costs and disbursements provided in the proposed judgment.

Dated: January 6, 2017
New York, New York

Hannah Sholl

INDEX NUMBER
650614/2015

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PROGRESSO VENTURES, LLC,

Plaintiff,

v.

FB MANAGEMENT ASSOCIATES, LLC,

Defendant.

JUDGMENT

HOLWELL SHUSTER & GOLDBERG LLP
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Attorneys for Plaintiff

FILED AND DOCKETED
JAN -9 2017
AT 10:50 AM
N.Y., CO. CLK'S OFFICE

EXHIBIT B

Progresso Ventures, LLC v. FB Management Associates, LLC, Index No. 650614/2015

Calculation of Principal and Interest Thereon Due Under the Promissory Note

Beginning Date	Ending Date	Days	Beginning Balance	Prior Period Accrued Interest	Current Period Interest (2)	Repayments	Ending Principal Balance (3)	Accrued Interest	Amount Owed	Notes
02/16/11	07/30/11	164	$4,000,000.00	$0.00	$300,000.00	$0.00	$4,000,000.00	$300,000.00	$4,300,000.00	Note Matures (1) - Minimum 6-Months Interest
07/30/11	02/16/12	201	4,000,000.00	300,000.00	330,410.96	-	4,630,410.96	-	4,630,410.96	Interest compounds annually from issue date
02/16/12	05/25/12	99	4,630,410.96	-	188,387.95	(1,100,000.00)	3,530,410.96	-	3,530,410.96	Payment
05/25/12	06/15/12	21	3,530,410.96	-	30,467.93	(1,354,167.50)	2,176,243.46	-	2,176,243.46	Payment
06/15/12	07/02/12	17	2,176,243.46	-	15,203.89	(272,000.00)	1,904,243.46	-	1,904,243.46	Payment
07/02/12	07/02/12	0	1,904,243.46	-	-	(47,840.00)	1,856,403.46	-	1,856,403.46	Payment
07/02/12	07/12/12	10	1,856,403.46	-	7,629.06	(165,000.00)	1,691,403.46	-	1,691,403.46	Payment
07/12/12	02/16/13	219	1,691,403.46	-	152,226.31	-	2,085,318.60	-	2,085,318.60	Interest Compounds Annually
02/16/13	02/16/14	365	2,085,318.60	-	312,797.79	-	2,398,116.39	-	2,398,116.39	Interest Compounds Annually
02/16/14	02/16/15	365	2,398,116.39	-	359,717.46	-	2,757,833.85	-	2,757,833.85	Interest Compounds Annually
02/16/15	02/16/16	365	2,757,833.85	-	413,675.08	-	3,171,508.93	-	3,171,508.93	Interest Compounds Annually
02/16/16	12/13/16	301	3,171,508.93	-	392,311.31	-	3,171,508.93	392,311.31	3,563,820.24	Principal and accrued interest
Total Paid						($2,939,007.50)				

(1) The Maturity Date of the Note occurs prior to the sixth month anniversery of the Note Issue Date so accrued interest under the loan as of the Maturity Date is equal to six months worth of interest. Interest as of this date was not capitalized.
(2) Interest is calculated at a rate of 15% per annum, compounded annually and computed on the basis of the actual number of days elapsed and a year of 365 days.
(3) Unpaid Interest as of 2/16 of each year is capitalized to principal and interest is charged on the compounded amount in subsequent years.

Six Month Anniversary of Note	**8/16/2011**
Liquidity Event Date	**6/30/2011**
Maturity (30 Days after Liquidity Event Date)	**7/30/2011**

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:

PROGRESSO VENTURES, LLC,	:	
Plaintiff,	:	Index No. 652730/2015 Commercial Part 53
-against-	:	Justice Charles E. Ramos
FRANK MAZZOLA, EMILIO DISANLUCIANO, JOHN BIVONA, WILLIAM BARKOW, FB MANAGEMENT ASSOCIATES, LLC, PIPIO MANAGEMENT ASSOCIATES, LLC, PROFESSIO MANAGEMENT ASSOCIATES, LLC, FELIX VENTURE PARTNERS QWIKI MANAGEMENT ASSOCIATES, LLC, FACIE LIBRE MANAGEMENT ASSOCIATES, LLC, AND FELIX INVESTMENTS LLC.	:	JUDGMENT
Defendants.	:	

Plaintiff, Progresso Ventures, LLC ("Progresso"), having moved this Court on July 12, 2016 for an order pursuant to CPLR 3212, directing entry of Partial Summary Judgment against Defendants Frank Mazzola ("Mazzola"), Emilio DiSanluciano ("DiSanluciano"), William Barkow ("Barkow") (together, the "Guarantors") and John Bivona ("Bivona") on its cause of action for breach of guarantees of the performance obligations owed to Plaintiff by primary obligor FB Management Associates, Inc. ("FB Management") (Dkt. Nos. 94-113);

Defendants DiSanluciano and Barkow having filed their opposition to Plaintiff's Partial Summary Judgment motion on August 9, 2016 (Dkt. Nos. 117-135); Defendant Bivona having filed his opposition to Plaintiff's Partial Summary Judgment motion on August 31, 2016 (Dkt. Nos. 149-156); and Defendant Mazzola having failed to oppose;

Plaintiff having filed its reply in further support of its motion for Partial Summary Judgment against defendants DiSanluciano and Barkow on August 26, 2016 (Dkt. Nos. 140-

148); and Plaintiff having filed its reply in further support of its motion for Partial Summary Judgment against Defendant Bivona on September 9, 2016 (Dkt. Nos. 157-165);

The Court having reviewed the papers that were submitted thereof; and a hearing on such motion being held on November 14, 2016; said motion for Partial Summary Judgment being severed and stayed against Defendant Bivona pending resolution of his personal bankruptcy proceedings (Dkt. No. 168); and said motion for Partial Summary Judgment against the Guarantors being granted in its entirety and the matter being referred to a Special Referee to hear and report the computation of the total sum to be awarded to Plaintiff, including damages and attorneys' fees by Order and Memorandum Decision of the Honorable Charles E. Ramos dated March 24, 2017 and March 15, 2017, respectively; and such Order and Memorandum Decision being entered in the office of the Clerk of Court on April 13, 2017;

The hearing before Special Referee Jeffrey A. Helewitz being held on May 25, 2017; and the Special Referee issuing an Order directing entry of judgment in favor of Plaintiff and against the Guarantors in the amount of $5,529,364.25, the total amount of the underlying judgment against FB Management entered by this Court on January 9, 2017 in *Progresso Ventures, LLC v. FB Management Associates, Inc.*, No. 650614/2015 (Sup. Ct. N.Y. Cnty.) (Dkt. No. 350); $650,000 in agreed attorneys' fees and costs; and prejudgment interest at the statutory rate, running from January 9, 2017 (Dkt. No. 172);

NOW, on motion of Holwell Shuster & Goldberg LLP, attorneys for Plaintiff, it is hereby

ADJUDGED that Plaintiff Progresso Ventures, LLC, with offices located at 13621 Deering Bay Drive, Apartment #402, Coral Gables, FL 33158, have judgment against Defendants Frank Mazzola, residing at 27 Dogwood Hill Road, Upper Saddle River, NJ 07458; Emilio DiSanluciano, residing at 1565 85th Street, Brooklyn, NY 11228; and William Barkow, residing

at 52 Sneider Road, Warren, NJ 07059, in the amount of $5,529,364.25, the total amount of the underlying judgment against FB Management, and $650,000 in agreed attorneys' fees and costs; for a total sum of $6,179,364.25, plus prejudgment interest at the statutory rate, running from January 9, 2017, and that the Plaintiff have execution therefor.

of $260,549.08, for a Total of $6,439,913.33,

M.A.T.

CLERK

FILED
JUN 29 2017
COUNTY CLERK'S OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PROGRESSO VENTURES, LLC,	:	
Plaintiff,	:	Index No. 652730/2015 Commercial Part 53
-against-	:	
	:	Justice Charles E. Ramos
FRANK MAZZOLA, EMILIO DISANLUCIANO, JOHN BIVONA, WILLIAM BARKOW, FB MANAGEMENT ASSOCIATES, LLC, PIPIO MANAGEMENT ASSOCIATES, LLC, PROFESSIO MANAGEMENT ASSOCIATES, LLC, FELIX VENTURE PARTNERS QWIKI MANAGEMENT ASSOCIATES, LLC, FACIE LIBRE MANAGEMENT ASSOCIATES, LLC, AND FELIX INVESTMENTS LLC	:	
Defendants.		

AFFIRMATION OF KAREN SEBASKI

KAREN SEBASKI hereby affirms the following under penalties of perjury, pursuant to C.P.L.R. § 2106:

1. I am an attorney duly admitted to practice law before this Court and am an associate at the law firm of Holwell Shuster & Goldberg LLP, attorneys for Plaintiff Progresso Ventures, LLC ("Progresso") in the above-captioned matter.

2. Progresso submits the accompanying proposed judgment in the above-captioned matter. Progresso seeks entry of said judgment in the amount requested therein, which includes the costs and disbursements awarded to Progresso in this Action. Progresso does not intend to submit a bill of costs in addition to the costs and disbursements provided in the proposed judgment.

Dated: June 19, 2017
New York, New York

Karen A. Sebaski

INDEX NUMBER 652730/2015
SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK
PROGRESSO VENTURES, LLC, Plaintiff, v. FRANK MAZZOLA, et al. Defendants.
JUDGMENT
HOLWELL SHUSTER & GOLDBERG LLP Daniel P. Goldberg dgoldberg@hsgllp.com Avi Israeli aisraeli@hsgllp.com Hannah Sholl hsholl@hsgllp.com Zachary A. Kerner zkerner@hsgllp.com 750 Seventh Avenue, 26th floor New York, NY 10019 (646)837-5151 *Attorneys for Plaintiff*

1-3

FILED AND DOCKETED
JUN 29 2017
AT 2:31 PM
N.Y., CO. CLK'S OFFICE

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PROGRESSO VENTURES, LLC Plaintiff, - against - FB MANAGEMENT ASSOCIATES, LLC, Defendant.	Index No. 650614/2015 CEF Case **AFFIDAVIT OF FRANK MAZZOLA IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF THE CROSS-MOTION TO COMPEL THE DEPOSITION OF EDUARDO SAVERIN.**

FRANK MAZZOLA, being duly sworn, affirms the following under penalty of perjury:

1. I am a member of FB Management Associates, LLC ("FB Management"), the defendant in this matter. I make this affidavit based on my personal knowledge, my review of records, and my understanding and the facts and circumstances of Mr. Eduardo Saverin's investment in Facie Libre Associates II, LLC ("Facie Libre").

2. In early 2011, Mr. Saverin was approached about investing in a fund such as Facie Libre which contracted the right to purchase Facebook, Inc. shares from shareholders in anticipation of Facebook, Inc.'s inevitable public offering. Mr. Saverin was a natural investor in such funds because he already held a substantial number of options to purchase Facebook, Inc. shares due to his co-founding of Facebook, Inc. I believe that much of Mr. Saverin's personal fortune rested on the success of Facebook, Inc.'s impending initial public offering. I also know Mr. Saverin to be a sophisticated investor in the technology sector.

3. FB Management believed that Mr. Saverin wished to acquire additional interests in Facebook, Inc. through Facie Libre because it would allow him to realize additional gains from the inevitable public offering of Facebook, Inc. shares. Facie Libre did the leg work for Mr. Saverin of sourcing and acquiring shares of Facebook, Inc. prior to the public offering. Like

all investors in Facie Libre, Mr. Saverin was gambling that Facie Libre would be able to acquire shares of Facebook, Inc. below the unknown public offering price and realize a profit once Facebook, Inc. shares were sold to the public.

4. Mr. Saverin indicated that he wished to make his investment in 2012. He also stated that he wished to do so in the form of a note and purchase agreement. We treated his investment as we did every other investment and complied with the regulations surrounding investment instruments which are not registered with the Securities and Exchange Commission. The Note and Purchase Agreement that we eventually entered into with Mr. Saverin includes language in numerous places indicating that the investment is unregistered. Mr. Saverin was also required to be an accredited investor.

5. The Purchase Agreement required FB Management to use the funds that Mr. Saverin invested to purchase shares of Facie Libre.

6. In the Purchase Agreement we also included the right to inspect the books of FB Management Associates, LLC, as a standard part of agreements with investors for this type of transaction.

7. Payment to Mr. Saverin of funds realized by his investment was tied to when FB Management sold its interest in Facie Libre. When the sale occurred, Mr. Saverin was to be paid 50% of the net proceeds of FB Management investment in Facie Libre, as well as principal and interest on the Note. The Note and Purchase Agreement were structured that way because we would only have the funds to pay Mr. Saverin on his investment when we sold FB Management shares in Facie Libre Associates. We also needed to pay Mr. Saverin on his investment if no sale was made before February 2014. We thought that this was highly unlikely and, if it came about, we would be able to plan for it and find the funds.

8. In March 2011 I consented to an assignment of the Note and Purchase agreement to an entity known as Progresso Ventures, LLC, which I am now told is suing FB Management. Mr. Saverin did not provide any explanation regarding why he wished to assign the note to this new entity. I do not know who owns Progresso Ventures, LLC, or why it was formed. I have, however, learned that Mr. Saverin gave up his U.S. citizenship for tax purposes and now lives in Singapore.

9. I am very sure that at the time he made his investment, Mr. Saverin, like the rest of the investment community, was aware that Facebook, Inc. would become a public company imminently.

10. Due to the maturity of the Note, Mr. Saverin had about $5,500,000 in a management company. I contacted Mr. Saverin several times starting in May 2011 about reinvesting the proceeds of the Note in funds similar to Facie Libre that also consisted of interests in non-public technology companies. In June 2011, Mr. Saverin told me he was interested in working together on future deals similar to the Facie Libre deal. In September and October 2011 I told Mr. Saverin about several other investments opportunities in which he could invest the $5,500,00 in in a management company. Some of these conversations were by email, but others were oral. My colleague at Felix Investments, LLC, Emillo DiSanluciano, also contacted Mr. Saverin about similar investments.

11. In November 2011 Mr. Saverin asked me to reinvest part of the proceeds of the Note in funds containing interests in Palantir Technologies, Inc., another pre-IPO technology company. We found additional interests in Palantir shares to accommodate Mr. Saverin's request. Those interests were placed into a fund, and Mr. Saverin invested in that fund.

12. Mr. Saverin requested that some of the proceeds of the Note be repaid in cash. Through July 2012, FB Management paid Mr. Saverin $2,939,008 on his investment in response to his request. The balance was invested in funds consisting of interests in Palantir Technologies, Inc.

13. Until this matter was filed in March 2015, I had thought that Mr. Saverin was happy with his investments in the Palantir Technologies, Inc. funds. I suspect that Mr. Saverin is seeking a way to liquidate his investment in the funds because of recent news that Palantir Technologies, Inc. may not be publically traded for some time. Mr. Saverin is, therefore, seeking a backhanded method of obtaining the money he asked us to invest before the investment matures.

FRANK MAZZOLA

Notary Public

JOHN V. BIVONA
Notary Public, State of New York
No. 31-4970258
Qualified in New York County
Commission Expires August 6, 20 18

TIMOTHY A. MILLER (SBN 154744)
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Attorneys for Interested Party
Progresso Ventures, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

SRA I LLC; SRA II LLC; SRA III LLC; FELIX INVESTMENTS, LLC; MICHELE J. MAZZOLA; ANNE BIVONA; CLEAR SAILING GROUP IV LLC; CLEAR SAILING GROUP V LLC,

Relief Defendants.

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

(1) INTERESTED PARTY PROGRESSO VENTURES, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES RE: CLASSIFICATION OF ITS INVESTOR AND CREDITOR CLAIMS;

(2) DECLARATION OF KAREN A. SEBASKI AND EXHIBITS; AND (filed under separate cover)

(3) [PROPOSED] ORDER (filed under separate cover)

Date: July 16, 2018
Time: 1:30 pm
Courtroom: 5
Judge: Edward M. Chen

MEMORANDUM OF POINTS AND AUTHORITIES

Interested party Progresso Ventures, LLC ("Progresso") hereby submits this memorandum of points and authorities in support of a determination by this Court that Progresso shall be classified as a creditor up to the amount of its $5,529,364.25 judgment and as an investor to the extent a liquidating event generates an amount that, based on the 719,520 Palantir shares of Palantir Technologies, Inc. owed to Progresso, exceeds the amount distributed to Progresso as a result of its creditor claim. Classifying Progresso in this manner is equitable under the circumstances and will best serve to "promote orderly and efficient administration of the estate." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986).

PRELIMINARY STATEMENT

Progresso is one of nearly one thousand entities and individuals that fell victim to the Ponzi scheme perpetrated by the Defendants. As a result, it is not surprising that Progresso has been unable to recover a dime of its $5,529,364.25 judgment. Progresso seeks redress through the receivership and has submitted a creditor claim for the full amount of its judgment. In contrast to the convoluted web of facts that underlie the fraud perpetrated by defendants, the facts germane to Progresso's claims are relatively straightforward. In short, FB Management (one of Mazzola and Bivona's investment vehicles) owed Progresso $4.45 million under a note. Instead of paying Progresso the money owed, Mazzola and Bivona transferred the money to FMOF II, which then diverted the money to Clear Sailing. As a result, FB Management was left unable to pay Progresso the money it owed, which forced Progresso to initiate actions against FB Management, Mazzola, Bivona and others in New York State Supreme Court. After expending much time and money litigating, Progresso ultimately was successful in obtaining judgment in the New York actions. Because Progresso's money was diverted from FB Management to Clear Sailing, however, FB Management does not have funds available to pay Progresso's judgment. Likewise, Progresso has been unable to collect on its judgment from any of the other defendants. Progresso thus seeks recovery here. Precluding Progresso from recovering the value of its judgment would not only

prevent Progresso from receiving the benefit of its bargain, it also would have the perverse effect of rewarding the Receivership Entities for improperly taking Progresso's money. It would also run afoul of the principle that "all victims of the fraud should be treated equally." *SEC v. Bivona*, 16-CV-01386-EMC, 2017 WL 4022485, at *6 (N.D. Cal. Sept. 13, 2017). Such an unjust result should not be permitted. Thus, at a minimum, Progresso's creditor claim should entitle it to recover the full amount of its judgment.

At the same time, no one disputes that $4.45 million of Progresso's funds due under the note were diverted to Clear Sailing on November 10, 2011 and were used to purchase Palantir shares a few days later. Indeed, the purchased Palantir shares are directly traceable to the note proceeds, which the SEC concedes were not comingled with other funds (D.E. 317 at 4), so there is no question regarding whether Progresso's money was used to invest in Palantir. In the New York litigation, Mr. Mazzola filed an affidavit stating that he had "found additional interest in Palantir shares" for Progresso and reinvested Progresso's money in funds containing interests in Palantir. *See* Declaration of Karen Sebaski ("Sebaski Decl."), Ex. D. As a result, Progresso should also be characterized as an investor under the Proposed Amended Plan, to the extent its *pro rata* share of any Second Distribution, based on the 719,520 shares of Palantir stock owed to Progresso, exceeds $5,529,364.25, the amount of its creditor claim.

I. Progresso Should Be Classified As A Palantir Shareholder

A. Progresso Submitted A Timely Investor Claim

No one disputes that $4.45 million of Progresso's funds were diverted to Clear Sailing Group IV, LLC on November 10, 2011 and were used to purchase Palantir shares. According to the SEC, Progresso's money was used to purchase 3.1 million shares of Palantir stock on November 14 and 15, 2011. (D.E. 197 at 5-6.) Under the SEC's Proposed Joint Plan of Distribution, investor claims are defined as "the principal amount invested in or through Clear Sailing or related entities in securities for which there has been no distribution." (D.E. 317-1, Amended Plan at 10:4-5.) Accordingly, the January 31, 2018 claim form submitted by Progresso included a timely and valid

investor claim for $4.45 million worth of Palantir shares (to be reduced by amounts distributed to Progresso). Between February and July 2012, Progresso was paid $2,939,007.50 of the $4.45 million worth of Palantir shares it was owed:

Progresso Investment in Palantir	**$4,450,000**
Repayments	
February 16, 2012	($1,100,000)
May 25, 2012	($1,354,167.50)
June 15, 2012	($272,000)
July 2, 2012	($47,840)
July 2, 2012	($165,000)
Grand Total Repaid	**$2,939,007.50**

(*See* Sebaski Decl., Ex. B. (Calculation of Principal and Interest Thereon Due Under Promissory Note, Dkt. No. 346 in 650614/2015 (Sup. Ct. N.Y. Cnty.)) Neither Defendants nor their affiliated entities distributed any Palantir stock to Progresso or paid any additional outstanding amounts. As a result, Progresso is owed $1,510,992.50 worth of the Palantir investment made with its funds.

B. Investor Treatment Is Consistent With The Case Law

Courts have broad discretion when classifying claims in receivership proceedings. A "district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad." *Hardy*, 803 F.2d at 1037. In classifying claims, "the fundamental principle which emerges from case law is that any distribution

should be done equitably and fairly, with similarly situated investors or customers treated alike."[1] *SEC v. Homeland Commc'ns Corp.*, No. 07-80802 CIV, 2010 WL 2035326, at *2 (S.D. Fla. May 24, 2010) (citation omitted). Therefore, to "implement an effective pro rata distribution, district courts supervising receiverships have the power to classify claims sensibly." *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 333 (7th Cir. 2010) (citations omitted). In *Wealth Management*, for example, the Seventh Circuit endorsed "the idea that all investors should be treated equally, without regard to whether an investor had attempted to redeem his equity investment" and, as a result, convert the equity interest into corporate debt. *Id.* at 333 & n.6. "Specifically, the court held that the claims of redeeming and non-redeeming shareholders were identical in substance—all were defrauded investors whose claims derived from equity interests in Wealth Management." *Id.*

Here too, Progresso's investor claim is identical in substance to its fellow victims. During the course of the New York litigation, defendant Mazzola filed an affidavit stating that he had "found additional interest in Palantir shares" for Progresso and reinvested Progresso's money in funds containing interests in Palantir. (Sebaski Decl., Ex. D.) In fact, $4.45 million of Progresso's funds due under the note were diverted to Clear Sailing on November 10, 2011 and were used to purchase Palantir shares a few days later. As a result, it is anticipated that the vast majority of assets available for distribution (*i.e.*, proceeds from a sale of Palantir shares) will have resulted from

[1] Like Global Generation, Progresso was one of the earliest and largest investors in Palantir and the investment of its $4.45 million can be easily and directly traced to purchase of Palantir shares—indeed, the SEC's current analysis does not recognize a Palantir shortfall until April 2013, well after investment of Progresso's funds in November 2011. (Ip Declaration, Ex. 1.) Thus, although Progresso and Global Generation are similarly situated, because their funds are traceable, they have distinct claims as compared to the SRA Investor Group. However, as this Court recognized, if "a particular investor who is able to 'trace' his or her investment is permitted to do so, other victims will end up receiving a smaller portion of whatever remains." *Bivona*, 2017 WL 4022485, at *7. Mindful of this Court's prior holding, Progresso is not arguing that it should be permitted to trace its "investment to a discrete portion of the remaining assets and claim that amount." *Id. See also U.S. v. Wilson*, 659 F.3d 947, 956 (9th Cir. 2011) ("courts generally will not indulge in tracing when doing so would allow one fraud victim to recover all of his losses at the expense of other victims"). That said, while Progresso's investment is not entitled to *preferential* treatment, the traceability of its shares certainly bolsters Progresso's argument for *equal* treatment with other investors.

investments by early victims, primarily Progresso and Global Generation.

The ultimate objective of a receivership is to maximize recovery for the defrauded. Consequently, courts widely recognize that they "should consider the facts of the case and the underlying merits of victims' claims, not technicalities or legal gamesmanship." *SEC v. Amerindo Inv. Advisors Inc.*, 05-CV-5231, 2014 WL 2112032, at *16 (S.D.N.Y. May 6, 2014). Progresso is a fraud victim and should be treated like the SRA Investor Group or any other defrauded investor. The fact that Progresso obtained judgments in the New York actions does nothing to change this. To date, no part of the judgments has been paid to Progresso. Progresso should not be penalized for pursuing its remedies and trying to right the wrong defendants have inflicted on it and others. Progresso stood to share in any loss attributable to the Palantir investment; it should equally be entitled to share in any gains.

To be sure, allocating shares to Progresso will increase the potential Palantir shortfall, but that problem is entirely of Defendants' own making. Progresso should not be required to forfeit its shares because Defendants overcommitted them. The early investments by Progresso (and Global Generation) are the reason why *any* pre-IPO shares in Palantir are available to potentially repay later-in-time victims. As a result, allocating Progresso its pro rata share based on the sum of its outstanding investment is the most equitable result under the circumstances.

II. Progresso's Investment Is Properly Valued At $2.10 Per Share

The SEC has already concluded that Progresso's money (along with the money that Global Generation had previously wired to defendants) was used in November 2011 to purchase "3.1 million Palantir shares for $2.10 per share, rather than the $3.00 per share price represented [to] Global Generation." (D.E. 197 at 5-6.) Defendants never represented to Progresso that they were purchasing its Palantir shares at an inflated price. Accordingly, Progresso's cost basis per share should be measured by the amount paid for its stock. This is consistent with the SEC's description of how returns are to be calculated. As this Court observed: "Investors would receive a return if the 'liquidity event caused the shares to be valued at more than what the *SRA Funds paid* for the pre-

IPO interests, plus expenses.'" *Bivona*, 2017 WL 4022485 at *10 (citing Complaint) (emphasis added).

Here, there is no dispute that the SRA Funds paid $2.10 for Progresso's Palantir shares. As a result, the remaining $1,510,992.50 share value of Progresso's investment translates into 719,520 shares of Palantir stock (i.e., $1,510,992.50/$2.10). To hold otherwise would unjustifiably deprive Progresso of one-third of the value of its investment on a *pro rata* basis, shifting that value to later-in-time investors.

III. At A Minimum, Progresso Should Receive The Value of Its Creditor Claim

Under the SEC's Proposed Joint Plan of Distribution, "Unsecured Creditor Claims" are defined to include Progresso. (D.E. 317-1, Amended Plan at 10:14-15.) Progresso's creditor claim seeks recovery of $5,529,364.25, the total amount that Justice Ramos of the New York State Supreme Court determined was due under the terms of a note purchase agreement and corresponding promissory note issued to Progresso by FB Management Associates, LLC ("FB Management"). (*See* Sebaski Decl., Ex. A.) Because defendant Mazzola and others personally guaranteed the terms of the note, Progresso obtained a corresponding judgment against Mazzola and others individually.[2] (*See* Sebaski Decl., Ex. C.) At a minimum, Progresso should receive the benefit of its underlying bargain and recover amounts due under its note.

[2] Progresso also asserted claims against John Bivona, but those claims were stayed due to Bivona's Chapter 7 bankruptcy filing. *See Progresso Ventures, LLC v. Frank Mazzola, et al.*, No. 652730/2015 (Sup. Ct. N.Y. Cnty.), Dkt. No. 168 at 6.

Had FMOF and Clear Sailing not diverted Progresso's money, those funds would have been available to Progresso, obviating the need for it to file suit in the first place. Progresso's lawsuit was necessitated because FMOF and Clear Sailing drained FB Management's funds leaving it with no way to pay Progresso. Put another way, by unjustifiably diverting Progresso's funds, FMOF and Clear Sailing have tortiously interfered with the terms of the note and note purchase agreement, entitling Progresso to a claim here for all "the profits [it] would have earned had the contract been performed." *In re Tamen*, 22 F.3d 199, 205-06 (9th Cir. 1994) (measure of damages is the same for breach of contract and tortious interference claims). *See also Real Estate Training Int'l, LLC v. Nick Vertucci Cos.*, SACV 14-0546, 2015 WL 12697658, at *4 (C.D. Cal. Apr. 20, 2015) (elements of tortious interference with contract claim).[3]

If the Receivership Defendants can skirt Progresso's judgment, they are being allowed to stymie Progresso's contractual rights with impunity. Such an unjust result should not be permitted. Thus, at a minimum, Progresso should be entitled as a creditor to recover the amount of its judgment.

[3] "Under California law, the elements of a claim for tortious interference with contract are: (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; [(4) actual breach or disruption of the contractual relationship]; and (5) resulting damage." *Id. (citing Pacific Gas & Electric Co. v. Bear Stearns & Co.*, 50 Cal.3d 1118, 1126 (1990)).

CONCLUSION

For the reasons stated herein, Progresso seeks a determination by this Court that Progresso shall be classified as a creditor up to the amount of its $5,529,364.25 judgment and as an investor to the extent a liquidating event generates an amount that, based on the 719,520 shares of Palantir stock owed to Progresso, exceeds the amount distributed to Progresso as a result of its creditor claim.

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