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20 Progresso Ventures, LLC

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN FRANCISCO DIVISION

24 SECURITIES AND EXCHANGE COMMISSION,

25 Plaintiff,

26 v.

27 JOHN V. BIVONA; SADDLE RIVER  
28 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

**INTERESTED PARTY PROGRESSO  
VENTURES, LLC'S RESPONSES AND  
OBJECTIONS TO SEC AND  
RECEIVER'S PROPOSED AMENDMENT  
TO THE JOINT DISTRIBUTION PLAN**

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

1                   **RESPONSES AND OBJECTIONS TO COMPETING DISTRIBUTION PLANS**

2                   Interested party Progresso Ventures, LLC (“Progresso”) hereby submits its responses and  
3 objections to the Proposed Amendment to the Joint Distribution Plan of the Securities and  
4 Exchange Commission (“SEC”) and the court-appointed receiver (“Receiver”) (“Proposed  
5 Amended Joint Plan”), filed with the Court on November 21, 2018.

6                   **I. Responses and Objections to the Proposed Amended Joint Plan**

7                   Progresso objects to the Proposed Amended Joint Plan for all of the reasons set forth in its  
8 Responses and Objections to Competing Distribution Plans (D.E. 408), filed on September 28, 2018.<sup>1</sup>  
9 The Proposed Amended Joint Plan, like its predecessor, eviscerates the well-settled requirement that  
10 Progresso’s claim, which is based on a prior state court judgment, receives full faith and credit, and  
11 it does not prioritize creditor claims, contrary to the general equitable principles of insolvency law.

12                   First, it is well-settled that the full faith and credit clause of the United States Constitution  
13 requires federal courts to enforce judgments entered by state courts. Nevertheless, as drafted, the  
14 Proposed Amended Joint Plan disregards the vast majority of Progresso’s judgment and enforces only  
15 those portions that the SEC and Receiver believe should be given recognition—roughly \$1.5M. The  
16 remaining 70 percent of Progresso’s \$5.5M judgment would be “subordinated.” Thus, the SEC picks  
17 apart Progresso’s judgment, completely eliminating its award of attorney’s fees and contractual  
18 interest, and significantly reducing the approximately \$3.17M in outstanding principal the New York  
19 court determined Progresso was owed. The SEC’s submissions do not include a single case in which  
20 a receivership (or bankruptcy) court has deconstructed a prior judgment in this manner, let alone held  
21 that such a judgment was not entitled to full faith and credit. Not one.

22                   And not only does the Proposed Amended Joint Plan *not* give full faith and credit to  
23 Progresso’s entire judgment, but even as to the portions sought to be subordinated, it does not require

24 \_\_\_\_\_  
25 <sup>1</sup> While this submission summarizes Progresso’s objections to the Proposed Amended Joint Plan,  
26 Progresso stands on its prior objections, which covered Progresso’s arguments in greater depth. *See*  
27 Responses and Objections to Competing Distribution Plans (D.E. 408); *see also* Supplemental Brief  
28 re: Classification of its Investor and Creditor Claims (D.E. 384). In an effort to avoid burdening the  
Court with duplicative submissions, Progresso does not repeat all of its arguments and case law  
support here, but respectfully refers the Court back to its prior submissions for a fuller discussion of  
the issues.

1 payment of such portions at all, even if the receivership marshals enough assets to do so. Rather, in  
2 the event that there are sufficient funds for a Third Distribution, the Receiver or SEC Staff is required  
3 only to “*make a recommendation* with respect to payment of some or all of the Subordinated Claims.”  
4 Tellingly, this requirement is de-emphasized in the Proposed Amended Joint Plan, as it appears buried  
5 at the end of a three-paragraph explanation of a potential Third Distribution. In sharp contrast, the  
6 Proposed Amended Joint Plan provides that in the event of a Third Distribution investors “*will be*  
7 *paid* a distribution pro rata based on the amount of securities they purported to have purchased less  
8 the principal repayment they received in the First or Second Distributions.” (emphasis added).

9 Even setting aside the requirement of full faith and credit, without question such treatment is  
10 not equitable. Progresso is one of the first in a long line of entities and individuals that fell victim to  
11 the Ponzi scheme perpetrated by the Defendants. Indeed, absent the Defendants’ misappropriation of  
12 Progresso’s funds, this receivership would hold far fewer pre-IPO shares in Palantir Technologies,  
13 which are highly valued by the claimants. As this Court recognized in the context of a prior iteration  
14 of the Proposed Amended Joint Plan, the SEC’s proposed treatment of Progresso is “troubling.” Tr.  
15 of July 16, 2018 Hearing at 70:19-72:5. Declaration of Karen Sebaski (“Sebaski Decl.”), Ex. A  
16 (Excerpt of July 16, 2018 Hearing Transcript).

17 With respect to creditor priority, this Court determined in its July 30, 2018 Order that  
18 Progresso “may recover only as a money judgment creditor.” Order (D.E. 385) at p. 17. As a result,  
19 because creditor claims usually are prioritized in bankruptcy and receivership proceedings alike,  
20 Progresso’s claim should receive priority treatment. *See CFTC v. Lake Shore Asset Mgmt. Ltd.*, 646  
21 F.3d 401, 407 (7th Cir. 2011). Although there is no principled reason to depart from this general rule,  
22 the Proposed Amended Joint Plan does not prioritize creditor claims over investor claims. Priority is  
23 especially justified here where Progresso sought to be treated as an investor, but that application was  
24 denied. Having been denied the right to participate in any gains as an investor, Progresso’s treatment  
25 as a creditor ought to come with the one benefit creditors have over equity interest holders – priority.

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1 **II. Conclusion**

2 For the reasons stated herein and in Progresso's Responses and Objections to Competing  
3 Distribution Plans (D.E. 408), filed on September 28, 2018, and in its Supplemental Brief re:  
4 Classification of its Investor and Creditor Claims (D.E. 384), filed on July 24, 2018, Progresso objects  
5 to the Proposed Amended Joint Plan, which does not prioritize creditor claims or adhere to well-  
6 established principles of fair faith and credit. Progresso proposes to remedy these deficiencies by  
7 prioritizing all Unsecured Creditor Claims and excluding claims by money judgment creditors from  
8 the definition of Subordinated Claims. Progresso therefore respectfully submits as Exhibit B a redline  
9 with modest revisions to the Proposed Amended Joint Plan. Sebaski Decl., Ex. B (Redline). With  
10 these straightforward amendments, Progresso would fully support this Court's adoption of the  
11 Proposed Amended Joint Plan submitted by the SEC and the Receiver.

12  
13 Dated: December 6, 2018

VALLE MAKOFF LLP  
HOLWELL SHUSTER & GOLDBERG LLP

14  
15 By: /s/ Avi B. Israeli  
16 Avi B. Israeli  
17 Attorneys for Interested Party  
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