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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

**STIPULATION AND ~~PROPOSED~~
ORDER FIXING THE ALLOWED
AMOUNT OF PROGRESSO'S
UNSECURED CREDITOR CLAIM**

Date: June 27, 2019

Time: 1:30 pm

Courtroom: 5

Judge: Edward M. Chen

1 WHEREAS, on February 28, 2019, the Court directed Kathy Bazoian Phelps, solely in her
2 capacity as the court appointed receiver (“Receiver”) in the above-captioned action (the
3 “Receivership Case”), and Progresso Ventures, LLC (“Progresso”) (together, the “Parties”) to
4 negotiate regarding the amount of Progresso’s claim against the Receivership estate, described herein;

5
6 WHEREAS, on March 25, 2016, the Court entered a Temporary Restraining Order (the
7 “TRO”);

8 WHEREAS, pursuant to the TRO, Sherwood Partners was appointed to act as an Independent
9 Monitor. On October 11, 2016, the Court entered a Stipulated Order for Appointment of Receiver,
10 whereby Sherwood Partners was appointed as the temporary receiver over the assets of SRA
11 Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, Clear Sailing Group IV,
12 LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity
13 Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, and
14 NYPA Management Associates, LLC (the “Receivership Entities”); and
15

16 WHEREAS, pursuant to the Revised Order Appointing Receiver entered on February 28,
17 2019, Kathy Bazoian Phelps was appointed as the successor receiver over the Receivership Entities;
18 and

19 WHEREAS, Progresso obtained a Judgment against FB Management Associates, LLC in
20 Case No. 650614/2015 in the Supreme Court of the State of New York, County of New York (“FB
21 Litigation”), in the total amount of \$5,529,364.25 as follows: \$3,171,508.93 principal, \$393,311.31
22 interest; \$363,374.96 as “additional return”; \$1,544,147.10 in legal fees; and \$58,021.95 in
23 disbursements (the “Judgment”). The Judgment was entered on January 9, 2017 and remains unpaid;
24 and
25

26 WHEREAS, on January 31, 2018, Progresso submitted a proof of claim as both an investor in
27 one or more of the Receivership Entities and as a creditor for one or more of the Receivership Entities;
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1 and

2 WHEREAS, the Receiver is advised that \$4,450,000 of Progresso’s funds were used, entirely
 3 or partially, by Clear Sailing to purchase Palantir shares; and

4 WHEREAS, on July 30, 2018, the Court determined that Progresso is limited to recovery on
 5 its creditor claim, which is based on its \$5,529,364.25 judgment in the FB Litigation; and

6
 7 WHEREAS, the Court has retained discretion to approve downward adjustments to the total
 8 value of Progresso’s creditor claim under principles of equity and directed Progresso and the Receiver
 9 to negotiate the appropriate dollar amount of Progresso’s claim that should be allowed. The Court has
 10 not yet approved a distribution plan fixing the priority or nature of distribution to be made to creditors
 11 and investors; and

12 WHEREAS, Progresso obtained an attachment order in connection with the FB Litigation,
 13 and the following Receivership Entity bank accounts remain subject to the attachment order at this
 14 time:
 15

Account	Amount
<u>Account Holder</u>	<u>Account Number</u>
Clear Sailing Group IV LLC	4316039076
NYPA Fund I, LLC	4321047543
NYPA Fund II, LLC	4321047551
SRA I, LLC	4316038804
SRA II, LLC	4316038797
SRA III, LLC	4316038789
Saddle River General Account LLC	4316038846
SRA Management Associates LLC	4316038771

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 28 (the “Attached Receivership Entity Funds”); and

1 WHEREAS, Progresso obtained an attachment order in connection with the FB Litigation,
2 and the following bank accounts remain subject to the attachment order at this time:
3

4 John V. Bivona Esq./Nina Dazzo 4312716785
5 John V. Bivona Esq./Nina Dazzo 4312716793

6 (the “JVB, Esq. Funds”); and

7 WHEREAS, the Receiver asserts an interest in the JVB, Esq. Funds; and

8 WHEREAS, the Parties wish to fix the amount of Progresso’s claim against the Receivership
9 estate and to resolve claims to the Attached Receivership Entity Funds and JVB, Esq. Funds; and
10

11 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
12 Receiver and Progresso, by and through its counsel and subject to the Court’s approval, that upon
13 approval by this Court of the proposed distribution plan filed by the Receiver on June 6, 2019, or a
14 substantially similar plan that Progresso approves:

- 15
- 16 1. Progresso shall be allowed a unsecured creditor claim against the Receivership estate in the
17 amount of \$4,976,427.83 (the “Progresso General Claim”), which claim shall receive
18 distributions on a *pro rata* basis with other allowed Unsecured Creditor Claims as that term
19 is defined in the proposed distribution plan filed by the Receiver on June 6, 2019.
 - 20 2. Progresso is advised that other Unsecured Creditor Claims may include claims by Global
21 Generation, the previously undisbursed amounts to Square and Flurry investors, and any
22 other claimants who may be allowed an Unsecured Creditor Claim. The Receiver makes no
23 representation or warranty as to the amount that will ultimately be paid on account of the
24 Progresso General Claim.
 - 25 3. The Progresso General Claim shall be reduced by any amounts Progresso obtains from third
26 party sources following the date that this Stipulation is so ordered that reduce the amount
27 owed in connection with the Judgment to an amount less than \$4,976,427.83 after
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1 application of the amounts received first toward satisfaction of the Progresso Subordinated
2 Claim (defined below) and then toward satisfaction of the Progresso General Claim,
3 including but not limited to funds received from FB Management and from the bankruptcy
4 case of John Vincent Bivona, Case No. 16-12961 pending in the Southern District of New
5 York (the “Bivona Bankruptcy Case”) on account of the transactions giving rise to the
6 Progresso General Claim. By way of example, if Progresso received a payment of
7 \$2,000,000, which would reduce the amount owed in connection with Judgment to
8 \$3,529,364.25, then Progresso’s General Claim shall be allowed in the amount of
9 \$3,529,364.25 and Progresso’s Subordinated Claim (defined below) shall be disallowed.
10 For the avoidance of doubt, any payments by third parties that are jointly and severally liable
11 for any portion of Progresso’s now outstanding money judgments awarded on account of the
12 transactions giving rise to the Progresso General Claim, including, but not limited to, the
13 amount owed in that certain New York guarantor action, will not reduce Progresso’s claim
14 against the Receivership estate until the amount owed on account of such money judgments
15 falls below the outstanding portion of Progresso’s claim against the Receivership estate
16 (currently \$5,529,364.25). Once the amount owed on account of such money judgments
17 equals the then-outstanding portion of Progresso’s claim against the Receivership estate, any
18 subsequent payments by any third parties will apply to reduce Progresso’s claim against the
19 Receivership estate, first toward satisfaction of Progresso Subordinated Claim (defined
20 below) and then toward satisfaction of the Progresso General Claim.

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24 4. The amount of \$552,936.43 shall be allowed as a subordinated claim (the “Progresso
25 Subordinated Claim”), which shall be paid after all senior classes of claims, including
26 administrative, priority, and unsecured creditor claims have been paid. The Progresso
27 Subordinated Claim may share on a *pro rata* basis with investor subordinated deficiency
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1 claims and other allowed subordinated claims; however, the Receiver makes no
2 representation or warranty as to the amount that will ultimately be paid on account of the
3 Progresso Subordinated Claim. Subject to the same exception addressed in Paragraph 3
4 regarding payments from any third parties, the Progresso Subordinated Claim shall be
5 reduced by any amounts Progresso obtains from third party sources following the date that
6 this Stipulation is so ordered that reduce the amount owed in connection with the Judgment
7 to an amount less than \$5,529,364.25, including but not limited to funds received from FB
8 Management and the Bivona Bankruptcy Case on account of the transactions giving rise to
9 the Progresso General or Subordinated Claim.
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11 5. Progresso shall release any and all claims to the Attached Receivership Entity Funds and
12 Progresso shall file all papers in the FB Litigation and that certain New York guarantor
13 action, and/or submit all papers to TD Bank necessary to obtain the release of the
14 garnishment on the Attached Receivership Entity Funds. Progresso shall collect its Progresso
15 General Claim as set forth herein and as set forth in the proposed distribution plan filed by
16 the Receiver on June 6, 2019, or a substantially similar plan that Progresso approves.
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18 6. Progresso shall not seek to collect any judgment or the Progresso General Claim specifically
19 through the JVB Esq. Funds. Progresso expressly agrees not to assert a direct interest in the
20 JVB Esq Funds either as against the Receiver's asserted interest in those funds or any interest
21 asserted by the trustee of the Bivona Bankruptcy case (the "Bivona Trustee"). Progresso
22 shall collect its Progresso General Claim as set forth herein and as set forth in the proposed
23 distribution plan filed by the Receiver on June 6, 2019. For the avoidance of doubt, nothing
24 herein precludes Progresso from recovering funds from the JVB Esq. Funds, so long as such
25 recovery is obtained through the Bivona Bankruptcy or the Receivership estate as payment
26 on account of its claim in either proceeding.
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- 1 7. No Assignment of the Settled Claims. The Parties, and each of them, represent and warrant
2 to the other that each Party is the sole and lawful owner of all right, title and interest in and
3 to each of the claims settled herein and has not heretofore assigned or transferred, or
4 purported to assign or transfer, to any individual, partnership, corporation, firm, estate or
5 entity, any of the claims settled herein.
6
- 7 8. The Parties acknowledge that the Receiver is acting solely in her capacity as the receiver for
8 SRA Management Associates, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, SRA
9 Management Associates, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix
10 Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management
11 Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC, and NYPA Management
12 Associates, LLC and their subsidiaries and affiliates, and that she has no personal liability
13 whatsoever with respect to this Agreement or the transactions described herein.
14
- 15 9. Except as otherwise specifically provided for herein, nothing contained in this Agreement
16 shall create any rights, remedies or defenses in favor of any party in interest that is not a
17 party to this Agreement.
- 18 10. Each Party submits to the jurisdiction of the Court for any action, suit or proceeding to
19 enforce this Agreement, and agrees that any such action, suit or proceeding shall be brought
20 solely in the Court. Each Party irrevocably waives, to the fullest extent permitted by law,
21 any objection that it may now or hereafter have to venue of any such action, suit or
22 proceeding brought in the Court. The Parties agree that the Court shall retain exclusive
23 jurisdiction to enforce the terms of this Agreement.
24
- 25 11. Each Party hereto agrees to bear its/her own legal and other costs and expenses incurred in
26 connection with the negotiation and preparation of this Agreement.
- 27 12. Nothing in this Stipulation shall be deemed to be an admission of liability by Progresso or
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1 the Receiver. Neither this Stipulation nor any action taken to comply with this Stipulation
2 shall be construed as, or used as, an admission of any fault, wrongdoing, responsibility or
3 liability whatsoever in this or any other matter.

4 13. This Agreement may be executed in counterparts, in which case all such counterparts shall
5 constitute one and the same Agreement. Furthermore, the executed signature pages may be
6 transmitted by facsimile or pdf, and such signatures shall be deemed original and sufficient
7 to bind the Parties hereto.
8

9 Dated: June 7, 2019

Respectfully submitted,

10 /s/ Avi Israeli

11 Avi Israeli
12 HOLWELL SHUSTER & GOLDBERG LLP
13 425 Lexington Avenue
14 New York, NY 10017
15 Telephone: (646) 837-5151
16 aisraeli@hsgllp.com

Counsel for Interested Party Progresso Ventures, LLC

17 /s/ Kathy Bazoian Phelps

18 Kathy Bazoian Phelps, solely in her capacity as
19 Receiver

20 **ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1**

21 I, Avi Israeli, attest that concurrence in the filing this document has been obtained from the
22 other signatory. I declare under penalty of perjury under the laws of the United States of America
23 that the foregoing is true and correct. Executed this 7th day of June 2019, at New York, New York.

24 By: /s/ Avi Israeli

25 Avi Israeli

26 **SO ORDERED:**

27 Dated: June 27, 2019

28 

Hon. Edward M. Chen
United States District Judge