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Attorneys for the SRA Funds Investor Group

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JOHN V. BIVONA; SADDLE RIVER ADVISORS, LLC; SRA MANAGEMENT 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 ELIZABETH C. PRITZKER IN SUPPORT OF THE SRA FUNDS INVESTOR GROUP'S CONSOLIDATED RESPONSE TO: (1) INTERESTED PARTY PROGRESSO VENTURES, LLC'S CLAIM FILING; (2) INTERESTED PARTY GLOBAL GENERATION GROUP, LLC'S CLAIM FILING; AND (3) PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR ORDER ESTABLISHING SHORTFALLS

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

I, Elizabeth C. Pritzker, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am a partner in the firm of Pritzker Levine LLP, counsel for the SRA Funds Investor Group (the "Investor Group"). I submit this declaration in support of the Investor Group's consolidated response to several matters scheduled to be heard by the Court on July 16, 2018, including: (1) interested party Progresso Ventures, LLC's ("Progresso") filing regarding the classification of its claim (Dkt. No. 360); (2) interested party Global Generation Group, LLC's ("Global Generation") filing regarding the classification of its claim (Dkt. No. 359); and (3) plaintiff Securities and Exchange Commission's ("SEC") motion for an order establishing shortfalls (Dkt. Nos. 353-356).I have personal knowledge of the facts stated herein and, if called upon to do so, could and would testify completely thereto.

2. Attached as **Exhibit A** hereto is a true and correct copy of the Statement of Undisputed Material Facts in Support of Progresso Ventures, LLC's Motion for Summary Judgment filed in New York State Supreme Court in the action entitled *Progresso Ventures, LLC v. FB Management Associates, LLC*, Index No. 50614/2015.

3. Attached as **Exhibit B** hereto is a true and correct copy of the Complaint filed in New York State Supreme Court in the action entitled *Progresso Ventures, LLC v. FB Management Associates, LLC*, Index No. 50614/2015.

4. Attached as **Exhibit C** hereto is a true and correct copy of the Reply Affirmation of Eduardo Saverin in Further Support of Progresso Ventures, LLC's Motion for Summary Judgment filed in New York State Supreme Court in the action entitled *Progresso Ventures, LLC v. FB Management Associates, LLC*, Index No. 50614/2015.

5. Attached as **Exhibit D** hereto is a true and correct copy of the Reply Memorandum of Law in Support of Progresso Ventures, LLC's Motion for Summary Judgment filed in New York State Supreme Court in the action entitled *Progresso Ventures, LLC v. FB Management Associates, LLC*, Index No. 50614/2015.

6. Attached as **Exhibit E** hereto is a true and correct copy of the Memorandum of Law in Support of Progresso Ventures, LLC's Motion for Summary Judgment filed in New York State Supreme Court in the action entitled *Progresso Ventures, LLC v. FB Management Associates, LLC*, Index No. 50614/2015.

7. Attached as **Exhibit F** hereto is a true and correct copy of the Affirmation of Eduardo Saverin in Support of Progresso Ventures, LLC's Motion for Summary Judgment filed in New York State Supreme Court in the action entitled *Progresso Ventures, LLC v. FB Management Associates, LLC*, Index No. 50614/2015.

8. Attached as **Exhibit G** hereto is a true and correct copy of the proof of claim (without exhibits) filed in this action on January 31, 2018 by Progresso Ventures, LLC.

9. Attached as **Exhibit H** hereto is a true and correct copy of the Complaint filed in the United States District Court for the Eastern District of Michigan in the action entitled *Global Generation Group, LLC, et al. v. Frank Mazzola, et al.*, Case No. 13-cv-14979-JEL-MJH.

10. Attached as **Exhibit I** hereto is a true and correct copy of the Final Arbitration Award filed in the United States District Court for the Eastern District of Michigan in the action entitled *Global Generation Group, LLC, et al. v. Frank Mazzola, et al.*, Case No. 13-cv-14979-JEL-MJH.

11. Attached as **Exhibit J** hereto is a true and correct copy of the Judgment filed in the United States District Court for the Eastern District of Michigan in the action entitled *Global Generation Group, LLC, et al. v. Frank Mazzola, et al.*, Case No. 13-cv-14979-JEL-MJH.

I declare under penalty of perjury and under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed on this 6th day of July, 2018 at Oakland, California.

By: */s/ Elizabeth C. Pritzker*

Elizabeth C. Pritzker

Counsel for the SRA Funds Investor Group

EXHIBIT A

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

PROGRESSO VENTURES, LLC,	:	
Plaintiff,	:	Index No. 650614/2015
	:	Commercial Part 53
-against-	:	
	:	Justice Charles E. Ramos
FB MANAGEMENT ASSOCIATES, LLC,	:	Motion Seq. 002
Defendant.	:	

STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PROGRESSO VENTURES, LLC'S MOTION FOR SUMMARY JUDGMENT

HOLWELL SHUSTER & GOLDBERG LLP
750 SEVENTH AVENUE, 26TH FLOOR
NEW YORK, NEW YORK 10019
(646) 837-5151

Attorneys for Plaintiff Progresso Ventures, LLC

Pursuant to CPLR 3212 and Rule 19-a of the Unified Rules for New York State Trial Courts, Plaintiff Progresso Ventures, LLC ("Progresso") hereby submits the following Statement of Undisputed Material Facts in support of its Motion for Summary Judgment against Defendant FB Management Associates, LLC ("FB Management").

1. On or about February 16, 2011, FB Management and Eduardo Saverin entered into a Note Purchase Agreement (the "Note Purchase Agreement"). (Aff. of Eduardo Saverin, dated Jan. 13, 2016 ("Saverin Aff."), ¶ 2 & Ex. 1; Aff. of Zachary Kerner ("Kerner Aff."), dated Jan. 13, 2016, Ex. 1 (Tr. at 3–4); Answer of Def. FB Management ("Answer"), dated Aug. 25, 2015, Doc. # 30, ¶ 5.)

2. The Note Purchase Agreement provided that FB Management would use the proceeds of a certain promissory note (the "Note") to invest in a new series of membership interests in Facie Libre Associates II, LLC ("Facie Libre"), a Delaware limited liability company expressly formed to invest in, acquire, hold, or sell securities of Facebook, Inc. ("Facebook"), which at the time was a privately held Delaware corporation. (Saverin Aff. ¶ 3 & Ex. 1 (Note Purchase Agreement, Recitals); Kerner Aff., Ex. 1 (Tr. at 3–4); Answer ¶ 6.)

3. Pursuant to the Note Purchase Agreement, on or about February 16, 2011, Saverin lent FB Management $4,000,000, and, in exchange, FB Management executed and delivered to Saverin the Note, which accrues interest at the rate of 15% to the date of final payment. (Saverin Aff. ¶ 4; Kerner Aff. Ex. 1 (Tr. at 6); Answer ¶ 7.)

4. On or about March 20, 2011, with the written consent of FB Management, Mr. Saverin assigned all of his right, title, and interest in the Note Purchase Agreement, the Note, and

other related documents to Progresso (the "Progresso Assignment"). (Saverin Aff. ¶ 5 & Ex. 2; Answer ¶¶ 15 & 26.)[1]

5. By June 2011, a Liquidity Event occurred when FB Management sold 18,012 of its Facie Libre Series S shares at a share price of $31.00. By July 22, 2011, FB Management sold 100% of its 149,724 Series S shares at a share price of $31.00. (Saverin Aff. ¶ 6 & Ex. 3 (p. 30); Kerner Aff., Ex. 1 (Tr. at 7 & 13).)

6. The proceeds of the sales of Series S shares were received into FB Management's bank account. (Saverin Aff., Ex. 3 (pp. 28–29); Answer ¶ 17).[2]

7. FB Management did not make any payments owed to Progresso within thirty days of the Liquidity Event, causing an Event of Default under the Note. (Saverin Aff. ¶ 7 & Ex. 1 (Note § 1(a); Note Purchase Agreement § 6.01(a)).)

8. Progresso notified FB Management in writing that it was in default under the Note and demanded that all amounts due under the Note be paid. (Saverin Aff. ¶¶ 8–10 & Exs. 4–6.)

9. FB Management never contested that an Event of Default had occurred. (Saverin Aff. ¶ 11.)

---

[1] FB Management denies "knowledge or information sufficient to form a belief as to" whether it consented to the Progresso Assignment. Because FB Management ought to know this fact first-hand, it cannot hide behind a denial "upon information and belief." The Court should therefore deem this fact admitted. See Practice Commentary CPLR 3018:3 ("If the fact alleged is something the court feels the defendant must know first-hand, one way or the other, a denial upon information and belief will not do. … [T]he allegation purportedly denied may be deemed admitted.") (citing Gilberg v. Lennon, 193 A.D.2d 646, 646 (2d Dep't 1993) ("To the extent the portions of the answer constitute improper denials, they may be deemed admissions.")).

[2] FB Management denies "knowledge or information sufficient to form a belief as to" whether the proceeds of sales of the Series S shares were received into its bank account. Because FB Management ought to know this fact first-hand, the Court should deem this fact admitted. See supra note 1.

10. FB Management has acknowledged that it is in default under the Note. (Saverin Aff. ¶ 11 & Ex. 7; Kerner Aff., Ex. 1 (Tr. at 8).)

11. On or about May 25, 2012, FB Management began making partial payments due under the Note. The last such partial payment was made on or about July 12, 2012, bringing the total amount repaid to $2,939,008. (Saverin Aff. ¶ 12; Kerner Aff., Ex. 1 (Tr. at 8).)

12. Despite Progresso's repeated and explicit demands, FB Management has refused to pay the balance due under the Note. (Saverin Aff. ¶ 13.)

13. Progresso is not in default under the Note and has satisfied all of its obligations thereunder. (Saverin Aff. ¶ 14.)

14. As of January 13, 2016, the balance of sums owed under the Note is $3,969,653.15, which includes:

a. $2,387,863.46 in principal;

b. $195,722 as Additional Return; and

c. $1,386,067.69 in accrued interest (on principal and the Additional Return)

(Saverin Aff. ¶ 15 & Ex. 8.)

Dated: New York, New York
January 13, 2016

HOLWELL SHUSTER & GOLDBERG LLP

By: /s/ Daniel P. Goldberg
Daniel P. Goldberg
Zachary A. Kerner

750 Seventh Avenue, 26th Floor
New York, New York 10019
(646) 837-5151
dgoldberg@hsgllp.com

EXHIBIT B

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

PROGRESSO VENTURES, LLC,	:	
Plaintiff,	:	Index No. 650614/2015 Commercial Part 53
-against-	:	
FB MANAGEMENT ASSOCIATES, LLC,	:	Justice Charles E. Ramos Motion Seq. 002
Defendant.	:	**AFFIRMATION OF ZACHARY A. KERNER IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

ZACHARY A. KERNER hereby affirms as follows:

1. I am an attorney duly admitted to practice law before this Court and am an associate of the law firm of Holwell Shuster & Goldberg LLP, attorneys for Plaintiff Progresso Ventures, LLC, in the above-captioned matter. I make this affirmation in support of Plaintiff's motion for summary judgment under CPLR 3212.

2. Attached hereto as Exhibit 1 is a true and correct copy of the oral argument transcript of Plaintiff's motion for summary judgment in lieu of complaint under CPLR 3213, dated June 23, 2015.

3. Attached hereto as Exhibit 2 is a true and correct copy of the complaint.

4. Attached hereto as Exhibit 3 is a true and correct copy of defendant's answer.

Dated: New York, New York
January 13, 2016

ZACHARY A. KERNER

EXHIBIT 1

In The Matter Of:

PROGRESSO VENTURES, LLC v.
FB MANAGEMENT ASSOCIATIES, LLC

MOTION
June 23, 2015

Eric Allen
Official Court Reporter
60 Centre Street
New York, New York 10007
646-386-3060

Original File 062315PROGRESSO.TXT
Min-U-Script® with Word Index

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART: 53

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PROGRESSO VENTURES, LLC,

Plaintiff(s),

-against-

INDEX NO.
650614/15

FB MANAGEMENT ASSOCIATES, LLC.,

Defendant(s).

----------X

60 Centre Street
New York, New York 10007
June 23, 2015

B E F O R E:

THE HONORABLE CHARLES E. RAMOS,

J U S T I C E

A P P E A R A N C E S:

HOLWELL SHUSTER & GOLDBERG, LLP
Attorneys for Plaintiff
125 Broad Street - 39th Floor
New York, New York 10004
BY: DANIEL P. GOLDBERG, ESQ.

STRAUSS LAW, PLLC
Attorneys for Defendants
305 Broadway
New York, New York 10007
BY: JESSE STRAUSS, ESQ.

THE COURT: Plaintiff, this is your motion for summary judgment in lieu of complaint?

MR. GOLDBERG: Yes, sir.

THE COURT: There's the podium.

MR. GOLDBERG: Your Honor, my name is Daniel Goldberg of the law firm of Holwell, Shuster & Goldberg on behalf of the plaintiff.

This is not a particularly complicated case.

Eduardo Saverin, one of the co-founders of Facebook, made a loan to the defendant of $4 million. The purpose of the loan was the defendant was going to take the money, make an investment in an entity that itself was going to invest in Facebook stock. This was all pre IPO of Facebook.

He made the loan. There is a note. Defendant did not repay the loan. It's really that simple and that's why we are here on a 3213 motion.

The defendant, as far as we can glean from their papers, basically comes up with four or five arguments as to why summary judgment should not be granted. I am going to walk through them, but I will note, as is the case with every 3213 motion, this is summary judgment.

THE COURT: I'll tell you what: Since your motion is fairly simple; you say you have got a note. Let's deal with the defenses and then come back to you.

MR. GOLDBERG: Okay.

THE COURT: Why shouldn't we grant summary judgment?

MR. STRAUSS: Let me count the ways.

Good morning. My name is Jesse Strauss. I represent FB Asset Management Associates, L.L.C. FB Asset Management Associates L.L.C. is an investment entity. What they do is they take money from investors, such as Mr. Saverin, and they put it into various funds that then purchase Facebook shares from the owners of those shares prior to the IPO.

THE COURT: So these were Facebook shares owned by people at Facebook before the public offering.

MR. STRAUSS: Exactly.

THE COURT: They were restricted stock. They couldn't be sold.

MR. STRAUSS: Exactly.

So FB Asset Management and the funds in control make agreements to purchase these shares and then sell portion -- and then put them into funds and then they sell portions of those funds to investors.

So, Mr. Saverin, for all intents and purposes, although he did something slightly clever with his investments -- and we'll go into that in a moment -- for all intents and purposes he paid $4 million for

about 90 percent of one of these funds which is the Facie Libre 2 fund, which is Facebook in Italian or Latin. That entitled him to -- the fund was going to be 175,000 shares and he bought $4 million worth of it at $25 per share about, and it's about 90 percent of the fund and 10 percent of the fund would be owned by someone else.

Mr. Saverin, for reasons that only became apparent, I think, when my client got this motion, structured his investment as a loan. He loaned money to FB Management, which then, as Mr. Goldberg correctly stated, which then purchased shares in this fund, the Facie Libre 2.

He asked for it to be structured that way, but to ensure that the proceeds of this loan were actually used to purchase the shares and that he would then receive an upside when the shares were eventually sold when the fund was liquidated, he put in there that he got an additional return.

THE COURT: Is that in the note or in the agreement?

MR. STRAUSS: It's in the purchase agreement. There is a note and the note in the purchase agreement are intertwined with each other. They contain several clauses that say they are to be read together.

The purchase agreement entitles Mr. Saverin to a certain percentage of additional return based on the amount that the fund is liquidated for.

THE COURT: The purchase of this Facie Libre fund, I don't recall, did the purchase agreement specify how long FB was to hold the interest in that fund?

MR. STRAUSS: It did not.

THE COURT: So it was up to FB's discretion to do --

MR. STRAUSS: Yes. When the sale was made -- and the sale had to be made before a certain date. So, the sale had to be made before four years from the -- sorry, 36 months.

THE COURT: Now I am getting confused.

You have the Facebook stock. We haven't had an IPO yet so it's not a publicly traded security.

MR. STRAUSS: Yes.

THE COURT: And there is no time limit on that. It's whenever Facebook decides to go public.

MR. STRAUSS: Yes.

THE COURT: Now, this investment, there is a note for $4 million and the investment document, the agreement which says you are going to purchase a chunk of this fund --

MR. STRAUSS: Yes.

THE COURT: -- are there restrictions in the fund in terms of timing or are there restrictions in the purchase agreement with regard to the timing?

MR. STRAUSS: As far as I know, neither.

To be more precise, the money, the $4 million with interest was to be returned to Mr. Saverin within 36 months, so by February 16th of 2014. Everyone knew that Facebook would be going public prior to that date and, therefore, there would be an event which --

THE COURT: There would be a liquidation event.

MR. STRAUSS: The shares would move from the person who made the agreement with Facie Libre into Facie Libre. Facie Libre would then release them to the investors and the investors would, at that point, hopefully realize the difference between what the market price was and the price that Facie Libre was able to acquire the shares for.

THE COURT: Would the Facie Libre fund then dissolve?

MR. STRAUSS: I believe so, although I have to check with my client as to the exact legal -- but those funds are not in perpetuity.

THE COURT: So now what happened? I know Facebook went public and I think it went public for

better than the price --

MR. STRAUSS: For better than $25 but not much.

THE COURT: What happened?

MR. STRAUSS: In other words -- well, the history here --

THE COURT: There should have been a profit here.

MR. STRAUSS: There should have been. That is where this -- that is one of the primary reasons why this is not appropriate for a 3213 disposition.

THE COURT: I'm not suggesting it is or isn't. I'm just kind of curious.

MR. STRAUSS: I do not know what happened.

What happened to Mr. Saverin's money is that they sold their interest in Facie Libre --

THE COURT: Who is "they"?

MR. STRAUSS: My client, FB Asset Management.

THE COURT: But wasn't FB required to hold on to this?

MR. STRAUSS: No, that wasn't -- they weren't required to hold onto it. They were required to return the money upon a sale.

So, what they did is they sold it early and then they repaid Mr. Saverin about $2.9 million.

THE COURT: That takes all the fun out of it.

MR. STRAUSS: Right. And I think from Mr. Saverin's point of view it took the fun out of it as well because we believe the reason why he was interested in investing in this was to prime the pump on the eventual IPO, to create a speculative frenzy --

THE COURT: He was one of the founders of Facebook. I take it he had a certain amount of stock.

MR. STRAUSS: Yes.

THE COURT: But he couldn't sell it. He couldn't sell it until the IPO and the restriction period --

MR. STRAUSS: I don't know the history of this with relation to my clients. I don't know why he didn't just didn't put his shares into one of these funds but rather structured it as this type of investment. I am not --

THE COURT: So for reasons that we don't know quite yet, your client sold the fund and made a distribution to the plaintiff.

MR. STRAUSS: Yes. But the distribution was not of the full $4 million. We were about $1.1 million short.

THE COURT: So the plaintiff says look, I have a note for $4 million. It says it's due either on the sale or within 36 months.

MR. STRAUSS: Right.

THE COURT: As of today, both have occurred so this $4 million is due; no?

MR. STRAUSS: Well, we paid 2.9 million. That's undisputed.

THE COURT: So you get credit for that.

MR. STRAUSS: There is a series of defenses that we have at this point, one of which would be obvious, that we put in, which is laches. Another words, why is it that he is not here money months ago and rather let the interest run all this time on that 1.1 million.

The more pertinent defense with respect to the 3213 motion we're dealing with here is that Mr. Saverin is also asking for his additional return and the additional return is not something you compute from the face of the note. The additional return, which is about 300,000 --

THE COURT: Now we go to the agreement.

MR. STRAUSS: The additional return would go to the agreement and the amount for which my client sold the shares for in 2011. So, the shares were sold in July of 2011 -- the fund was liquidated in 2011. The amount of additional return that he is owed is tied to that so it is tied to that sale. He is asking for it -- when I look at this note and it's not -- you

know, that's $300,000 but there is also interest on it, I believe, so it's not a small amount of money and that is one of the reasons why we need discovery to figure out exactly how much these things were sold for and also why it is that Mr. Saverin believe s that he structured the investment in this way that entitles him to something that no other investor would have gotten, which is his full investment back even though the fund did not make money, as far as we know.

So, those are our defenses.

We also have, for good measure, a champerty defense here. Mr. Saverin is not the plaintiff here. It's an entity called Progresso Ventures, L.L.C. We know very little about it. My client consented to the assignment of the note. Mr. Saverin, subsequently after the assignment, expatriated Singapore. The press reports, although we have no discovery on this, indicated that he did it for tax purposes to avoid certain types of U.S. taxes. We think that it might have been based on the timing; that the assignment might have been for the purposes of bringing this litigation because Mr. Saverin, for reasons related to taxes or something, we don't quite know yet, would not have wanted to bring the litigation itself and that would be champerty because absent that, this litigation

probably would not have been brought.

THE COURT: Plaintiff, how do I deal with the fact that you are seeking relief other than the face amount of the note?

MR. GOLDBERG: It is on the face of the note. With all due respect to counsel, the additional return --

THE COURT: If I have to make a computation, I should be able to look at the note and say, okay, you are entitled to $4 million, you get a credit for 2.9 or whatever it was and I can enter a judgment. That's easy. But you are asking me to make a computation based upon other events. It sounds like you have got summary judgment, 3212 summary judgment, which is a little premature but you can certainly make the motion, but 3213 is a very special statute.

MR. GOLDBERG: Your Honor, we have cited cases -- and I invite your Honor and your clerks to read them.

Let me take a step back, if your Honor will indulge me.

Counsel did not completely accurately characterize the nature of the transaction.

This is an out and out loan from the plaintiff to the defendant. The loan was made for the purpose of

the defendant to invest in Facebook stock but when the defendant says he doesn't understand why the transaction was done this way, with respect, that's not really relevant. What is agreed upon is this was a loan with a promissory note signed by the defendant. On the face of the note, it says there is an absolute maturity date, 36 months from the date of the loan.

THE COURT: Right, that's easy.

MR. GOLDBERG: There is interest at the rate of 15 percent.

THE COURT: Right.

MR. GOLDBERG: And there is something that they characterize as additional return, which I am going to address.

THE COURT: That's what I am concerned about.

MR. GOLDBERG: Understood.

The note matures on one of two events, is relevant here. It's actually more than two, but as relevant here. One is on the ultimate maturity, 36 months out.

THE COURT: Which is passed. So that's easy.

MR. GOLDBERG: I understand. Well, their papers actually take issue with it because their papers say the note is not an instrument for payments of money only because there is no maturity date. That's what

they argue in their opposition and I need to dispel that because it's right on the face of the note that there is a maturity date.

THE COURT: Defendant, am I misreading the note? Doesn't it say it is due 36 months from the date?

MR. STRAUSS: Your Honor, that's not the motion they brought. They brought the motion based on a default because the note matured when we sold shares but we didn't pay within 30 days.

THE COURT: That was a liquidity event; right?

MR. STRAUSS: Yes, but that triggered -- under the note, that triggered payment as well as the time lapsed.

THE COURT: That puzzled me when I read your papers. I was really scratching my head. I was saying why doesn't he rely on the 36 months.

MR. GOLDBERG: Because this loan, like many other loans, has an acceleration provision. It happens every day. Banks, institutions, people lend money. You have an ultimate maturity date but you have events that have acceleration --

THE COURT: But the acceleration provision here requires me to go off the face of the note and figure out if there were circumstances that would entitle you to acceleration.

MR. GOLDBERG: It doesn't. It's right on the note, your Honor. It's not in the loan purchase agreement. It's on the face of the note.

THE COURT: Section 1, payment, and then prepayment, but we're talking here about payment, that first paragraph, 1(a), it says it's due 30 days after the maturity date. "As used herein" --

MR. GOLDBERG: Yes, but "maturity date" has two different definitions.

THE COURT: "As used herein, liquidity date shall mean either the interest by the company or a distribution to the company of cash or stock of Facebook."

MR. GOLDBERG: And that's what's happened.

THE COURT: That's nice but that's not evident on the face of the note. A note that gets entered under 3213 says I borrowed $4 million, I am going to pay it back on a certain date and here is the interest. Boom. Period. That's it.

MR. GOLDBERG: No. Your Honor, there are circumstances where --

THE COURT: I know, I know, but this requires me to determine was there a sale of the interest by the company?

MR. GOLDBERG: There was. And --

THE COURT: That's nice.

MR. GOLDBERG: But that's no different -- that is qualitatively no different than if the borrower declared bankruptcy and that was an event of default; if the borrower had a change of control and that was an event of default; if the borrower failed to make a payment, that's an event of default that would trigger acceleration.

THE COURT: How do I make a determination without going off the face of the note?

MR. GOLDBERG: On a 3213 context, the cases are clear: The court can make that determination. This is summary judgment. If the defendant contends there was no breach, it must -- not can -- it must come forward with evidence in admissible form to claim that there was no breach, just like every other summary judgment motion.

THE COURT: But they don't say there was a breach. They said, yeah, we sold the stock of Facie Libre.

MR. GOLDBERG: The breach occurred when after making that sale, that creates a liquidity event. Just like a change of control. Take a scenario where Bank A --

THE COURT: What Appellate Division authority

are you relying on here? I am very concerned about --

MR. GOLDBERG: If your Honor looks at Page --

THE COURT: Your reply memo?

MR. GOLDBERG: Yes, our reply brief on Pages 4 -- actually starts on Page 3 but carries over to Page4.

THE COURT: Seaman against Wright?

MR. GOLDBERG: Yes, and Kornfeld and Hogan and Dell'; these were all cases where there was some event that caused an acceleration of the loan and the courts held uniformly that that is appropriate. That's all that this is. When they define -- when a liquidity event happens, the loan is accelerated and matures early. That's what happens.

And the defendant --

THE COURT: Hang on.

MR. GOLDBERG: Sure.

(Brief pause.)

THE COURT: In those cases, the court was able to conclude -- for example, the fraud defenses were untenable. Here, we have the defendant saying, wait a minute. This wasn't just a straight note. This was a deal where we read the note purchase agreement and the note together. This was an investment; not a straight note.

Now, how am I going to make a determination that this was a straight note and not an investment on a 3213 motion?

MR. GOLDBERG: Because the documents don't -- first of all, I'm not sure exactly what it means to say it's an investment and not a note because notes are investments; right? You lend money, you buy bonds, those are investments.

THE COURT: No, no, no, no. What he is saying is you were buying -- and I think you are even seeking in this motion -- the profits. Profits. Not interest; profits that were earned or were supposed to be earned by the purchase of the Facie Libre; right?

MR. STRAUSS: That's correct.

THE COURT: Sounds like an investment to me.

MR. GOLDBERG: Well, that's not how the deal is structured and that's not what the documents say.

Again, your Honor, summary judgment; that's not what the defendant says. I have submitted evidence, it's unrebutted --

THE COURT: But you are seeking in this motion -- you are proving his case because you are seeking something other than just the face amount of the note.

MR. GOLDBERG: There is nothing in any 3213

jurisprudence that says all you are entitled to is principal. The note has principal plus interest plus an additional payment called the additional return. There is nothing --

THE COURT: Do you have a case where there is additional return -- I know you are entitled to interest -- but this additional return?

MR. GOLDBERG: I don't have a case that specifically says --

THE COURT: That's why I am denying the motion under 3213. I can't. I think you have a great motion for 3212 and you can make that motion --

MR. GOLDBERG: If you deny my 3213 --

THE COURT: That's what you will do.

MR. GOLDBERG: Your Honor, another factor I would like to point out to you in the record -- if it doesn't change your Honor's mind, it doesn't change your Honor's mind but I feel compelled to say that if you look at Exhibit 8 --

THE COURT: I have Exhibit 7.

MR. GOLDBERG: Exhibit 8 would be from the reply affirmation from Zachary Kerner. Mr. Kerner is with me. He is my associate.

This is correspondence between the parties' lawyers, neither of whom are in the room; prior counsel

for both sides.

There was an inquiry from the plaintiff's lawyer to the defendant's lawyer about what happened with the shares in the Facie Libre and the status of repaying the loan and the response comes on Page 3 of Exhibit 8. It's a letter to William Reckler and it is coming from Howard Jacobs. Howard Jacobs is at the law firm of Katten Muchin Rosenman, who was representing the defendants.

If you see on that letter, if you go to the fifth bullet point --

THE COURT: This is an e-mail?

MR. GOLDBERG: There is an E hail attaching the letter, correct. So the e-mail should look like this, the covering e-mail (indicating).

THE COURT: I don't have that.

I have this (indicating), the first page of Exhibit 8.

MR. GOLDBERG: Yes. Yours is not redacted. We publicly filed redactions.

Then if you go to the third page at the top, it says, "Via e-mail." That is the one.

MR. GOLDBERG: So if you look at the bullet point at the bottom --

THE COURT: Proof of sale?

MR. GOLDBERG: Correct.

The first sentence is the question coming from the plaintiff's lawyer: "Proof of sale of shares of Facie Libre, on what date and what price did FB Management sell the shares and to whom?"

This is now defendant's answer: "We are informed that Joe Dempsey previously delivered this information to you last summer. Notwithstanding that, attached, please find a schedule showing the sales of the Series S" -- "Series S" refers to the Facebook stock -- "but with the names of the investors blacked out. We have also attached the Signature Bank statement showing the funds received from the sales, Exhibit C."

And then the very last line of this letter he writes --

THE COURT: I have a question. How does this resolve my issue of whether or not this is a straight sum of money? It sounds to me like you are going into great detail off the face of the note to determine how much is owed, which is certainly legitimate under the documents that I have seen. The only question -- and I know it's technical but, you know, that's what the law is like -- how does it fit in to 3213? That's why I am going to deny the motion.

You are going to serve a formal summons and complaint. They are going to answer and you are going is to hit them with an immediate motion for summary judgment.

MR. GOLDBERG: Your Honor, under 3213, we submitted an affidavit from Mr. Saverin that I think can serve as the complaint. With leave of your Honor, can we use that so as not to lose the time to have to serve a new complaint?

THE COURT: Which is this?

MR. GOLDBERG: The affidavit that went with the motion.

THE COURT: Oh, this is with the moving papers.

MR. GOLDBERG: Correct. Affirmation in support of motion for summary judgment in lieu of complaint.

THE COURT: No, I want a formal complaint.

MR. GOLDBERG: I understand but I believe under the law this affirmation would then serve as the complaint.

THE COURT: By the way, you can serve document demands at any time. You can get going with discovery. You say you want discovery.

If you are going to come in and oppose the motion for summary judgment because you say you haven't had a chance for discovery, your chance for discovery

started when you got a summons and complaint and you are going to get a summons and complaint --

MR. STRAUSS: When we answer, we'll serve our document demands --

THE COURT: When you are served with the summons and complaint you will serve your document demands. You can serve them before you serve your answer.

MR. STRAUSS: Before we serve the answer?

THE COURT: Yes. Document demands. Read the CPLR. Hey, they didn't make me a judge for nothing you know.

MR. STRAUSS: Your Honor, I understand that. It's just that when we put the answer together, documents generally follow based on what we are denying or admitting.

THE COURT: You just learned something today. You can beat him to the punch.

Thank you very much everybody.

MR. GOLDBERG: Thank you, your Honor.

THE COURT: We'll see you soon.

****

CERTIFIED THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC MINUTES IN THIS CASE.

ERIC ALLEN

SENIOR COURT REPORTER

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EXHIBIT 2

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

PROGRESSO VENTURES, LLC,	:	
Plaintiff,	:	Index No. 650614/2015
-against-	:	**COMPLAINT**
FB MANAGEMENT ASSOCIATES, LLC,	:	
Defendant.	:	

Plaintiff Progresso Ventures, LLC ("Progresso"), by and through its counsel, Holwell Shuster & Goldberg LLP, as and for its complaint against FB Management Associates, LLC ("FB Management"), states and alleges as follows:

Nature of Action

1. Progresso has a secured promissory note from FB Management on which money is due (the "Note"). Under the terms of the Note, Progresso is entitled to (*i*) $4,000,000 in original principal, (*ii*) $195,722 as an "additional return" (defined below), and (*iii*) interest accruing at 15% on the unpaid principal and "additional return." FB Management admits and acknowledges it is in default under the Note yet has not paid Progresso what is owed. FB Management has no viable defense for its nonpayment. Accordingly, judgment should be entered in Progresso's favor, ordering FB Management to pay the balance of sums owed under the Note – which, as of July 30, 2015, is $3,758,447.99.

The Parties

2. Progresso is a Delaware limited liability company with offices located in Coral Cables, Florida.

3. Upon information and belief, FB Management is a Delaware limited liability company with offices located in New York, New York.

Jurisdiction

4. The Court has jurisdiction over this proceeding pursuant to CPLR §§ 301 and 302 because FB Management is a foreign corporation with its principal office within New York State. Additionally, FB Management entered into the relevant agreements in New York State, and the agreements are expressly governed by New York choice-of-law clauses. Moreover, FB Management already has appeared in this action and did not object to jurisdiction; accordingly, it has consented thereto.

Factual Allegations

A. The Note Purchase Agreement

5. On or about February 16, 2011, FB Management and Eduardo Saverin entered into a Note Purchase Agreement (the "Note Purchase Agreement").

6. The Note Purchase Agreement provided that FB Management would use the proceeds of the Note to invest in a new series of membership interests in Facie Libre Associates II, LLC ("Facie Libre"), a Delaware limited liability company expressly formed to invest in, acquire, hold, or sell securities of Facebook, Inc. ("Facebook"), which at the time was a privately held Delaware corporation. (Note Purchase Agreement, Recitals.)

7. Pursuant to the Note Purchase Agreement, FB Management executed and delivered to Mr. Saverin the Note, which had an original principal balance of $4,000,000 and accrues interest at the rate of fifteen percent (15%) per annum. The Note further specifies that interest shall be compounded annually, computed on the basis of the actual number of days

elapsed and a year of 365 days from the date of the Note until the principal amount and all interest accrued thereon are paid. (Note § 2.)

8. The Note became due on the "Maturity Date," which is defined as the earlier of: (*i*) thirty-six months from the date of the Note (*i.e.*, February 16, 2014) or (*ii*) thirty days following the occurrence of a Liquidity Event.[1] A "Liquidity Event" is defined as either (*i*) the sale by FB Management of its membership interests in Facie Libre or (*ii*) a distribution to FB Management of cash or stock of Facebook with respect to FB Management's investment in Facie Libre. (Note § 1(a).)

9. Upon the occurrence of a Liquidity Event, the noteholder is also entitled to receive 50% of the net proceeds received by FB Management from that Liquidity Event in excess of the aggregate outstanding principal amount of the Note, plus all accrued but unpaid interest thereon. This is referred to in the Note as the "Additional Return." (Note § 3.)

10. The Note Purchase Agreement defines an Event of Default as, *inter alia*, a "default in the payment when due of any principal or interest under the Note." (Note Purchase Agreement § 6.01.) When an Event of Default occurs, and is continuing, "then upon demand by [Progresso] . . . the entire outstanding principal amount, plus accrued and unpaid interest thereon, of this Note shall become *immediately due and payable* in the manner and with the effect provided in the Purchase Agreement and this Note." (Note Purchase Agreement § 4) (emphasis added). Under these circumstances, all outstanding debt under the Note became "forthwith due and payable," and FB Management expressly waived any right to "presentment, demand, [or] protest of any kind." (Note Purchase Agreement § 4.)

---

[1] In the event a Maturity Event occurs prior to the six month anniversary of the Note, as it did here, the interest to be paid shall be at least equal to six months' worth of interest. (Promissory Note § 1(b).)

11. As security for the payment and performance of the obligations under the Note, FB Management granted Progresso certain collateral under a Collateral Assignment of Back-End Interest (the "Collateral Assignment"): namely, (*i*) a first priority security interest in all of FB Management's membership interests in Facie Libre; (*ii*) a first priority security interest in all of Felix Investments, LLC's right, title, and interest in and to warrants to purchase certain shares of Jumio Inc. stock (the "Jumio Warrants"); and (*iii*) a collateral assignment of unrealized back-ends payable according to the operating agreements of six specified companies affiliated with FB Management (the "FB Affiliates"[2]). (Note § 5.)

12. FB Management agreed that neither it nor the FB Affiliates would remove or transfer any of the collateral prior to Mr. Saverin being repaid the pledged amount. (Note Purchase Agreement § 7.02.) And upon an Event of Default, FB Management and the FB Affiliates agreed to pay "directly to [Mr. Saverin]" all payments or distributions they receive pursuant to the operating agreements of the FB Affiliates or under the Jumio Warrants (not to exceed two times the principal amount then outstanding under the Note plus all accrued and unpaid interest thereon).

13. Also pursuant to the Note Purchase Agreement, the members of FB Management – William Barkow, John Bivona, Emilio DiSanluciano, and Frank Mazolla (collectively, the "Guarantors") – each delivered a guaranty to Mr. Saverin as inducement to consummate the transactions contemplated by the Note (the "Guaranties"). (Note Purchase Agreement § 5.01(e).) The Guaranties further provide that they are "intended for and shall inure to the benefit of Saverin, his successors and assigns."

[2] The FB Affiliates are Pipio Management Associates, LLC, Professio Management Associates, LLC, Felix Venture Partners Qwiki Management Associates, LLC, Facie Libre Management Associates, LLC, and Felix Investments LLC.

14. The Note Purchase Agreement and the Note also entitle the Note's holder to attorneys' fees, costs, and expenses incurred in connection with, among others, enforcing those documents and agreements. (Note § 6; Note Purchase Agreement §§ 7.05, 7.10.)

B. The Assignment to Progresso

15. On or about March 20, 2011, in accordance with the express terms of § 7.06 of Note Purchase Agreement, with the written consent of FB Management, the FB Affiliates, and the Guarantors, Mr. Saverin assigned all of his right, title, and interest in the Note Purchase Agreement, the Note, the Guaranties, and the Collateral Assignment to Progresso, the Plaintiff here (the "Progresso Assignment").

C. FB Management's Default

16. By June 2011, a Liquidity Event occurred when FB Management sold 18,012 of its Facie Libre Series S shares at a price of $31.00. By July 22, 2011, FB Management sold 100% of its 149,724 Series S shares at that price.

17. The proceeds of the sales of the Series S shares were received into FB Management's bank account in care of Felix Investments, LLC.

18. Under the Note, after thirty days, all amounts outstanding and unpaid under the Note became due and payable (Note § 1(b)), yet FB Management failed to make any payments owed to Progresso. As a result, an Event of Default occurred and is continuing.

19. On June 24, 2011, FB Management, Frank Mazzola, and Emilio DiSanluciano, all were advised that due to FB Management's sale of its interests in Facie Libre, a Liquidity Event occurred, the Note matured, and the amounts due thereunder were due.

20. By letter dated April 10, 2012, Progresso further advised FB Management, through Frank Mazzola, its Manager, that a Liquidity Event had occurred due to the sale of Facie

Libre shares and requested that the final calculation of the amount owed under the Note – namely, $4,479,689 – be immediately paid.

21. On or about April 26, 2012, Progresso again wrote to FB Management, declared a formal Event of Default, and again demanded that all amounts due under the Note be paid.

22. FB Management never has contested that an Event of Default occurred. To the contrary, FB Management has acknowledged in writing that it is in default under the Note. Moreover, beginning on or about May 25, 2011, FB Management began making partial payments due under the Note, thereby further admitting is obligations thereunder. The last such partial payment was made on July 12, 2012, bringing the total amount repaid to $2,939,008.

23. As of July 30, 2015, the balance of sums owed under the Note is $3,758,447.99, which includes (*i*) $2,387,863.46 in principal, plus (*ii*) $195,722 as Additional Return, plus (*iii*) $1,174,862.53 in accrued interest. Interest continues to accrue at the contractual rate, and under the express terms of the Note, FB Management also is liable for the costs in pursuing this action, including attorneys' fees.

As And For A First Cause of Action
(Breach of Contract)

24. Progresso incorporates by reference the allegations set forth in paragraphs 1 through 23 above, as if fully set forth herein.

25. Under the terms of the Note, FB Management promised to pay Mr. Saverin (*i*) $4,000,000 in original principal, (*ii*) the Additional Return, and (*iii*) interest accruing at 15%.

26. On March 20, 2011, with FB Management's written consent, Mr. Saverin assigned all of his right, title, and interest in the Note to Progresso.

27. All amounts under the Note became due thirty days following the Liquidity Event, which occurred in June 2011, when FB Management sold its Series S shares in Facie Libre.

28. FB Management has defaulted under the Note and failed to cure its defaults by failing to pay the amounts due.

29. Progresso is entitled to recover the full amount of all outstanding principal and the Additional Return, plus interest accruing at 15%.

30. Under the express terms of the Note, Progresso is entitled to recover the costs, including attorneys' fees, incurred in bringing this action.

Prayer for Relief

WHEREFORE, judgment should be entered in favor of Progresso and against FB Management as follows:

(a) On the First Cause of Action, damages in an amount to be determined at trial, but not less than $3,758,447.99;

(b) Prejudgment interest at the contractual rate of 15%;

(c) Attorneys' fees and costs in an amount to be determined; and

(d) Such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 30, 2015

HOLWELL SHUSTER & GOLDBERG LLP

By: /s/ Daniel P. Goldberg
Daniel P. Goldberg
Zachary A. Kerner
125 Broad Street, 39th Floor
New York, New York 10004
(646) 837-5151

Attorneys for Plaintiff

EXHIBIT 3

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 **ANSWER**

FB MANAGEMENT ASSOCIATES, LLC by its attorney, Jesse Strauss, hereby answers the Plaintiff's Complaint as follows:

NATURE OF ACTION

1. Deny that Defendant has no viable defense to non-payment, deny knowledge or information sufficient to form a belief as to the allegations regarding amounts due except state that Defendant has already paid Plaintiff $2,939,008 and put Plaintiff to its proof regarding alleged additional amounts owed.

THE PARTIES

2. Deny knowledge or information sufficient to form a belief as to the allegations of this paragraph.

3. Admit the allegations of this paragraph.

JURISDICTION

4. The allegations of this paragraph call for a legal conclusion and cannot be admitted or denied.

FACTUAL ALLEGATIONS

5. Neither admit nor deny the allegations of this paragraph but refer to terms of the documents referenced in this paragraph which speak for themselves.

6. Neither admit nor deny the allegations of this paragraph but refer to terms of the documents referenced in this paragraph which speak for themselves.

7. Neither admit nor deny the allegations of this paragraph but refer to terms of the documents referenced in this paragraph which speak for themselves.

8. Neither admit nor deny the allegations of this paragraph but refer to terms of the documents referenced in this paragraph which speak for themselves.

9. Neither admit nor deny the allegations of this paragraph but refer to terms of the documents referenced in this paragraph which speak for themselves.

10. Neither admit nor deny the allegations of this paragraph but refer to terms of the documents referenced in this paragraph which speak for themselves.

11. Neither admit nor deny the allegations of this paragraph but refer to terms of the documents referenced in this paragraph which speak for themselves.

12. Neither admit nor deny the allegations of this paragraph but refer to terms of the documents referenced in this paragraph which speak for themselves.

13. Deny the existence of a valid guaranty and further state that another action is pending against Defendant on the purported guaranty, requiring dismissal of this matter.

14. Neither admit nor deny the allegations of this paragraph but refer to terms of the documents referenced in this paragraph which speak for themselves.

15. Deny knowledge or information sufficient to form a belief as to the allegations of this paragraph.

16. The allegations of this paragraph call for a legal conclusion and cannot be admitted nor denied and otherwise put Plaintiff to its proof regarding the alleged sale of the shares.

17. Deny knowledge or information sufficient to form a belief as to the allegations of this paragraph.

18. Refer to terms of the documents referenced in this paragraph which speak for themselves but otherwise deny the allegations of this paragraph and state that Defendant paid $2,939,008 to Plaintiff.

19. Admit that Plaintiff advised the individuals mentioned of a purported liquidity event, and otherwise deny the allegations of this paragraph.

20. Admit that Plaintiff advised the individuals mentioned of a purported liquidity event, and otherwise deny the allegations of this paragraph.

21. Admit that Plaintiff advised the Defendant mentioned of a purported liquidity event, and otherwise deny the allegations of this paragraph.

22. Admit that Defendant paid Plaintiff $2,939,008 but otherwise deny the allegations of this paragraph.

23. Deny knowledge or information sufficient to form a belief as to the allegations regarding amounts due except state that Defendant has already paid Plaintiff $2,939,008 and put Plaintiff to its proof regarding alleged additional amounts owed.

COUNT I

24. Repeats and reiterates each and every response made in paragraphs 1 through 23 hereinabove in response to this paragraph.

25. Neither admit nor deny the allegations of this paragraph but refer to terms of the documents referenced in this paragraph which speak for themselves.

26. Deny knowledge or information sufficient to form a belief as to the allegations of this paragraph.

27. Neither admit nor deny the allegations of this paragraph but refer to terms of the documents referenced in this paragraph which speak for themselves and otherwise deny the allegations of this paragraph.

28. The allegations of this paragraph call for a legal conclusion and cannot be admitted or denied.

29. The allegations of this paragraph call for a legal conclusion and cannot be admitted or denied.

30. The allegations of this paragraph call for a legal conclusion and cannot be admitted or denied.

AFFIRMATIVE DEFENSES

As and For a First Affirmative Defense

31. The purported obligation has been satisfied, in part, or in whole.

As and For the Second Affirmative Defense

32. This claim is barred by CPLR § 3211(a)(4) because there is another action pending between the same parties for the same cause of action. *See Progresso Ventures, LLC v. Frank Mazzola and FB Management Associates, LLC et al.*, Index No. 652730/2015.

WHEREFORE, Defendant respectfully requests that this Court:

(1) Enter judgment in favor of Defendant;

(2) Award attorneys' fees, costs and disbursements in this action; and

(3) Award such other and further relief as this Court may deem just and proper.

Dated: New York, New York
August 25, 2015

Respectfully submitted,

STRAUSS LAW PLLC

/s/ Jesse Strauss
Jesse Strauss
STRAUSS LAW PLLC
305 Broadway, 7th Floor
New York, NY 10007
212-822-1496

EXHIBIT C

PROGRESSO VENTURES, LLC,	:	
Plaintiff,	:	Index No. 650614/2015 Commercial Part 53
-against-	:	
FB MANAGEMENT ASSOCIATES, LLC,	:	Justice Charles E. Ramos Motion Seq. No. 002
Defendant.	:	

REPLY AFFIRMATION OF EDUARDO SAVERIN IN FURTHER SUPPORT OF PROGRESSO VENTURES, LLC'S MOTION FOR SUMMARY JUDGMENT

EDUARDO SAVERIN hereby affirms as follows:

1. I make this reply affirmation in further support of Progresso's[1] motion for summary judgment to collect the balance of sums owed by Defendant FB Management under the Note, as well as attorneys' fees and costs. I have personal knowledge of the matters hereinafter stated, except where otherwise noted.

2. Progresso is organized under the laws of Delaware and has its principal office in Coral Gables, Florida. I formed Progresso for the sole purpose of acquiring and holding the Note and Note Purchase Agreement.

3. The reason I assigned my interests in the Note and Note Purchase Agreement to Progresso was for privacy purposes, to keep my name off of the required UCC filings. The assignment had nothing to do with my citizenship status or with bringing a future lawsuit in the event that FB Management would default under the Note. Attached hereto as Exhibit 9 is an email dated March 18, 2011, from former counsel to the members of FB Management, which

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in Progresso's moving papers.

Management, which explicitly states that the reason for the assignment is so my name would not be on the UCC filings.

4. Progresso has never leased or owned properties in New York or maintained an office in New York. Progresso has never had a telephone listing or kept files in New York. Progresso has never had employees based in New York. Progresso has never advertised in New York. Progresso has never been registered to do business in New York. Progresso has never had a bank account in New York or drawn checks from a New York bank. Progresso has never filed, nor has it been required to file, taxes in New York. Progresso does not maintain an agent for service of process in New York. Progresso has never conducted any business based out of New York.

5. In Paragraph 11 of Frank Mazzola's affidavit in opposition to Progresso's motion for summary judgment, he claims that I asked him "to reinvest part of the proceeds of the Note in funds containing interests in Palantir Technologies, Inc." He states further that he and other unnamed individuals "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."

6. The claims made by Mr. Mazzola in Paragraph 11 of his affidavit are simply lies. I never asked Mr. Mazzola or anyone else affiliated with FB Management or Felix Investments LLC to reinvest the proceeds of the Note into any other fund, including a fund related to Palantir. Nor did I ever agree to any such investment.

7. Despite the various emails and letters leading up to the filing of this lawsuit in which I requested payment of the money owed to Progresso under the Note, FB Management and its lawyers never responded with a claim that we agreed to modify the terms of the Note or its repayment.

8. The $2,939,008 that FB Management paid from May 25, 2012 to July 12, 2012 was in no way made pursuant to the terms of any other agreement besides the Note and Note Purchase Agreement, oral or otherwise.

I affirm this 4th day of MARCH, 2016, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Eduardo Saverin

EDUARDO SAVERIN

EXHIBIT D

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

PROGRESSO VENTURES, LLC,	:	
Plaintiff,	:	Index No. 650614/2015 Commercial Part 53
-against-	:	Justice Charles E. Ramos
FB MANAGEMENT ASSOCIATES, LLC,	:	Motion Seq. 002
Defendant.	:	

REPLY MEMORANDUM OF LAW IN SUPPORT OF PROGRESSO VENTURES, LLC'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO FB MANAGEMENT'S CROSS-MOTIONS TO DISMISS AND TO COMPEL

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ARGUMENT[1]

I. FB MANAGEMENT CONCEDES PROGRESSO'S PRIMA FACIE ENTITLEMENT TO SUMMARY JUDGMENT UNDER CPLR 3212 AND ATTORNEYS' FEES UNDER THE NOTE

FB Management's opposition concedes the following: (*i*) it is the maker of the Note (CSMF ¶ 1[2]); (*ii*) the Note and Note Purchase Agreement were assigned to Progresso with the written consent of FB Management, its affiliates, and the individual Guarantors (id. ¶ 4); (*iii*) a Liquidity Event occurred when FB Management sold its interests in Facie Libre, but FB Management failed to make repayment by the Maturity Date, causing the Note to default (id. ¶ 5; Opp. at 15[3]); (*iv*) under the Note, FB Management owes Progresso principal, interest, and an "Additional Return" (CSMF ¶¶ 3, 14); and (*v*) FB Management made two payments to Mr. Saverin in an effort to pay off part of its debt under the Note (id. ¶ 11). This is sufficient to establish a prima facie case of breach of a promissory note. See Eastbank, N.A. v. Phoenix Garden Restaurant, Inc., 216 A.D.2d 152, 152 (1st Dep't 1995) (plaintiff must demonstrate the existence of a note executed by the defendant, the unconditional terms of payment, and default by the defendant). Further, FB Management does not respond to Progresso's argument regarding its entitlement to attorneys' fees and costs under the Note (Mov. at 8-9[4]), and thus concedes its validity. See Weldon v. Rivera, 301 A.D.2d 934, 935 (3d Dep't 2003) (plaintiff conceded

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in Progresso's moving papers.

[2] "CSMF" refers to Defendant's Counter-Statement of Material Facts dated February 16, 2016.

[3] "Opp." refers to FB Management's Memorandum of Law in Opposition to Progresso's Motion for Summary Judgment and in Support of its Cross-Motions to Compel and Dismiss dated February 16, 2016.

[4] "Mov." refers to Progresso's Memorandum of Law in Support of its Motion for Summary Judgment dated January 13, 2016.

argument she failed to address); Corrado v. Metro. Transit Auth., 45 Misc.3d 1203(A), 2014 WL 4915214, at *22 (Sup. Ct. N.Y. Cnty. 2014) (same).

II. FB MANAGEMENT HAS NOT SUBMITTED EVIDENTIARY PROOF SUFFICIENT TO RAISE A MATERIAL ISSUE OF FACT

Once the party moving for summary judgment makes a prima facie showing that it is entitled to judgment as a matter of law, as Progresso has done here, the burden then shifts to the party opposing the motion not only to "rebut that prima facie showing," Bethlehem Steel Corp. v. Solow, 51 N.Y.2d 870, 872 (1980), but to produce "evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action," Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986); Eastbank, 216 A.D.2d at 152 (defendant must "submit evidentiary proof sufficient to raise a triable issue with respect to [any] asserted defenses"). "Unsupported conclusions and assertions, conjecture and accusations are insufficient to defeat a summary judgment motion." Nomad Mezz Lending LLC v. Moha, No. 650324/2010, 2012 WL 10021593, at *3 (Sup. Ct. N.Y. Cnty. Aug. 20, 2012) (citing Alvarez, 68 N.Y.2d at 562); Kornfeld v. NRX Techs., Inc., 93 A.D.2d 772, 773 (1st Dep't 1983), aff'd, 62 N.Y.2d 686 (1984) ("A bona fide triable issue must be established and reliance upon mere suspicion or surmise is insufficient for this purpose. Similarly, the issue must be shown to be real, not feigned since a sham or frivolous issue will not preclude summary relief.") (citations omitted).

Further, it is well-established that "[a] grant of summary judgment cannot be avoided by a claimed need for discovery, unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence." Bailey v. New York City Transit Authority, 270 A.D.2d 156, 157 (1st Dep't 2000); CPLR 3212(f). In addition, "[t]o avail oneself of CPLR 3212(f) to defeat or delay summary judgment, a party must demonstrate that [1] the needed proof is within the exclusive knowledge of the moving party, [2] that the claims in opposition are supported by

something other than mere hope or conjecture, and [3] that the party has at least made some attempt to discover facts at variance with the moving party's proof." Voluto Ventures, LLC v. Jenkens & Gilchrist Parker Chapin LLP, 44 A.D.3d 557, 557 (1st Dep't 2007).

Contrary to FB Management's claim (Opp. at 12-13), courts routinely grant summary judgment without discovery where the non-moving party is unable to meet the standard of CPLR 3212(f). See Cruz v. City of New York, 135 A.D.3d 644, 644 (1st Dep't 2016) (grant of summary judgment affirmed where motion was made before producing a witness for deposition); DaSilva v. Haks Engineers, Architects and Land Surveyors, P.C., 125 A.D.3d 480, 482 (1st Dep't 2015) (summary judgment motion "not premature although discovery was incomplete" where non-moving party "only expresses a mere hope or speculation that discovery must turn up some evidence giving rise to a triable issue of fact."); Duane Morris LLP v. Astor Holdings Inc., 61 A.D.3d 418, 418 (1st Dep't 2009) ("no need for discovery" where purported issue was "within defendants' knowledge"); The CIT Group/Commercial Servs., Inc. v. Ganglani, 33 A.D.3d 370, 371 (1st Dep't 2006) ("defendant's vague and conclusory claims" were "properly rejected" and insufficient to warrant discovery).

A. FB Management Has Waived Its Unpleaded Affirmative Defenses

Notwithstanding the well-established rule that a defendant waives unpleaded affirmative defenses, Munson v. New York Seed Imp. Co-op., Inc., 64 N.Y.2d 985, 986, 478 N.E.2d 180, 181 (1985) (failure to plead affirmative defense results in waiver even where plaintiff could not claim surprise); Sec. Pac. Nat. Bank v. Evans, 31 A.D.3d 278, 280 (1st Dep't 2006), FB Management did not assert in its answer – and thus has waived – the affirmative defenses of oral modification, champerty, lack of standing, and lack of notice.[5] See, e.g., Dermot Co. v. 200

[5] These are properly considered affirmative defenses because they are "matters which if not pleaded would be likely to take the adverse party by surprise or would raise issues of fact not appearing on the face" of the Complaint.

Haven Co., 58 A.D.3d 497, 497 (1st Dep't 2009) ("Defendant LLC waived any objection to the standing of plaintiff, the proposed purchaser, by failing to raise that affirmative defense in its answer or in a pre-answer motion to dismiss.").

B. FB Management's Claim Of Oral Modification Is Barred By The "No Oral Modification" Clause And, In Any Event, Is Based On Unreliable Evidence

FB Management argues – for the first time – that at some point in November 2011 (several months after FB Management's default) the parties agreed to an "oral modification" of the Note. (Opp. at 15.) In support of this claim – which, to put it charitably, is a total fabrication – FB Management offers the sworn affidavit of Mr. Mazzola, who claims that he, at Mr. Saverin's request, reinvested the money owed to Progresso into another fund with interests in a company called Palantir. (Mazzola Aff. ¶ 11.[6]) This claim fails for several reasons.

First, the Note Purchase Agreement contains an enforceable "no oral modification" clause, which expressly precludes the very type of modification that FB Management seeks to rely on here. See Gen. Obligations Law § 15-301(1); Chemical Bank v. Wasserman, 37 N.Y.2d 249, 252, 333 N.E.2d 187, 188 (1975) (alleged oral agreement cannot operate to terminate defendants' obligation and does not create a triable issue of fact). Section 7.03 of the Note Purchase Agreement provides: "The Purchase Documents may be amended, and any term or provision of the Purchase Documents may be waived … upon the written consent of [FB Management] and [Mr. Saverin]." (Saverin Aff. Ex. 1.) Although courts have disregarded "no oral modification" clauses in limited circumstances where the opposing party shows that it

CPLR § 3018(b). Neither of the affirmative defenses FB Management actually asserted in its Answer – that "[t]he purported obligation has been satisfied, in part, or in whole" and that "[t]his claim is barred by CPLR § 3211(a)(4) because there is another action pending" – covers the affirmative defenses FB Management raises in its opposition.

[6] "Mazzola Aff." refers to the undated Affidavit of Frank Mazzola in Opposition to the Motion for Summary Judgment and in Support of the Cross-Motion filed on February 16, 2016.

partially performed an alleged oral modification and that this partial performance was "unequivocally referable" to the modification, see Rose v. Spa Realty Associates, 42 N.Y.2d 338, 345, 366 N.E.2d 1279, 1284 (1977), FB Management falls far short of making this showing.

To satisfy the "unequivocally referable" requirement, the partial performance "must be inconsistent with any other explanation" besides the alleged oral modification. Richardson & Lucas, Inc. v. N.Y. Athletic Club, 304 A.D.2d 462, 463 (1st Dep't 2003); accord Carlin v. Jemal, 68 A.D.3d 655, 656 (1st Dep't 2009) (act not unequivocally referable if "there may have been other explanations for such" act); MacMillan, Inc. v. Kahn, 195 A.D.2d 372, 372 (1st Dep't 1993) (oral modification must be "the only reasonable explanation" for the act). FB Management claims that it "performed the oral agreement by repaying $2,939,008 in cash by July 2012 and reinvesting the balance … in the Palantir Funds in November 2011" and that this payment was unequivocally referable to the oral modification. (Opp. at 16.) Putting aside that the amount of the reinvestment could not have been "the balance" of what remained after the cash repayment, given that it allegedly occurred *before* the cash repayment, the alleged oral modification is by no means "the only reasonable explanation" for FB Management's conduct. The cash repayment merely reflects FB Management repaying the loan it took, consistent with the written terms of the Note. See, e.g., Bank of Smithtown v. 264 W. 124 LLC, 105 A.D.3d 468, 469 (1st Dep't 2013) (payment "reasonably explained" by preexisting "obligation to make those payments").[7] Moreover, any alleged investment of funds by FB Management in Palantir

[7] The cases cited by FB Management are distinguishable. See Irakoze v. Sambuco, 126 A.D.3d 1333, 1334 (4th Dep't. 2015) (oral agreement to conduct renovations on property established with "objective evidence" that defendant "completed extensive renovations and improvements to the property"); Aircraft Servs. Resales LLC v. Oceanic Capital Co., 2013 WL 4400453 (S.D.N.Y. Aug. 14, 2013) (oral agreement to sell two additional helicopters evidenced by plaintiff's deposits and by fact that defendant kept helicopters off the market). The cases City National Bank v. Morelli Ratner, P.C., 129 A.D.3d 425 (1st Dep't. 2015), and Latin Events, LLC v. Doley, 120 A.D.3d 501 (2nd Dep't. 2014), merely state the rule on partial performance without applying it to the cases' facts. The transcript of the trial court proceeding in City National, however, makes clear that the judge relied on contemporaneous emails between the parties in finding that payment was made pursuant to an oral forbearance agreement. (Kerner Reply Aff.

merely indicates that FB Management, an entity set up for purposes of making investments, invested funds. There are numerous reasons why such funds might have been invested (assuming they were), and FB Management has made absolutely no showing that the alleged oral modification is the "only explanation" for such claimed conduct.

Second, even if the Note Purchase Agreement contained no clause preventing oral modifications (though of course, it does), the unsubstantiated, and indeed contradicted, assertions in Mr. Mazzola's affidavit are insufficient to defeat summary judgment. Tellingly, Mr. Mazzola's most recent affidavit is in sharp contrast with the other sworn affidavit he submitted in this action, in which he did not state that FB Management satisfied its debt or contest the testimony that FB Management has not repaid the loan. (Kerner Reply Aff. Ex. 4.[8]) Even now, Mr. Mazzola does not provide any documentation of Mr. Saverin's request or that the alleged investment was made on Mr. Saverin's behalf. Mr. Mazzola can provide no support for his self-serving claim of an oral modification because, as unequivocally stated in Mr. Saverin's affirmation,[9] nothing about the claim is true. (Saverin Reply Aff. ¶ 6.[10]) FB Management's unsubstantiated and conclusory assertions of an "oral modification," which are made only in Mr. Mazzola's self-serving affidavit, are insufficient to raise a triable issue of fact. See Quadrant

Ex. 6). With regard to Latin Events, our research has not uncovered a definitive basis for the court's conclusion of oral modification, as the underlying trial court order does not refer to the oral modification argument.

[8] "Kerner Aff." refers to the Affirmation of Zachary Kerner in Support of Progresso's Motion for Summary Judgment dated January 13, 2016. "Kerner Reply Aff." refers to the Reply Affirmation of Zachary Kerner in Further Support of Progresso's Motion for Summary Judgment and in Opposition to FB Management's Cross-Motions dated March 1, 2016.

[9] Despite FB Management's constant refrain that Mr. Saverin's affirmation is "unsworn" (Opp. at 1, 2, 14), his affirmation here and attached to the moving brief are expressly made "under the penalties of perjury under the law of New York," as required by CPLR 2106.

[10] "Saverin Reply Aff." refers to the Reply Affirmation of Eduardo Saverin in Further Support of Progresso's Motion for Summary Judgment and in Opposition to FB Management's Cross-Motions dated March 1, 2016.

Management, Inc. v. Hecker, 102 A.D.3d 410, 410-11 (1st Dep't. 2013) ("unsubstantiated and conclusory" assertions in "self-serving affidavit" insufficient to defeat summary judgment).

Third, one need look no further than the current record in this case, to dismiss the convenient assertions included in Mazzola's most recent affidavit. Though it had several opportunities to do so – most notably in its opposition to Progresso's CPLR 3213 motion and in its Answer[11] – FB Management has not made its "oral modification" argument until now and offers no explanation for why it was not made earlier. Notably, during argument on Progresso's CPLR 3213 motion, when responding to the Court's question about FB Management's payments to Progresso under the Note, counsel for FB Management stated: "[T]he distribution was not of the full $4 million. We were about $1.1 million short." (Kerner Aff. Ex. 1.) Counsel said *nothing* about an oral modification.

Fourth, the contemporaneous communications between the parties belie the claim that there was ever an oral modification. FB Management points to emails submitted by Progresso with its motion to suggest that there is a factual dispute as to which "version of events is more credible." (Opp. at 15.) In those emails Mr. Mazzola and Mr. DiSanluciano are soliciting Mr. Saverin to invest in funds related to Twitter and Groupon, but nothing about Palantir. Moreover, there is no evidence that Mr. Saverin ever responded to these solicitations. To the contrary, subsequent to these solicitations, Mr. Saverin and Progresso both wrote to FB Management and demanded the Note be repaid in cash (Saverin Aff. Exs. 5 and 6),[12] further belying any notion that there was an agreement to invest the proceeds anywhere, much less into the unnamed

[11] For example, in response to Paragraph 22 of the Complaint, which alleges that "FB Management never has contested that an Event of Default occurred … and ma[de] partial payments due under the Note, thereby further admitting its obligations thereunder," FB Management stated only: "Admit that Defendant paid Plaintiff $2,939,008 but otherwise deny the allegations of this paragraph." Answer ¶ 22. Compare CSMF ¶¶ 9-10.

[12] Unsurprisingly, FB Management has proferred no emails whereby it rejects Mr. Saverin's demand for repayment based on its newly conjured "oral modification" theory.

Palantir vehicle FB Management now advances for the first time, ever, in response to a summary judgment motion. Nor was the claim of oral modification ever mentioned during the failed settlement talks leading up to action. Indeed, there is no mention of it in a February 13, 2013 memorandum from FB Management's former counsel, which purported to calculate in detail the amount it owed to Progresso under the Note. (Kerner Reply Aff. Ex. 5.)[13]

Finally, FB Management has presented no basis to suggest that Mr. Saverin's deposition may lead to relevant evidence regarding the alleged oral modification: not only is FB Management's claim supported only by vague and conclusory assertions, but the "needed proof" of establishing the existence of an oral agreement and the reinvestment clearly resides with Mr. Mazzola. See Duane Morris, 61 A.D.3d at 418 ("no need for discovery" under CPLR 3212(f) into enforceability of agreement to pay plaintiff a sum of money where purported issue was "within defendants' knowledge"); CIT Group, 33 A.D.3d at 371 ("defendant's vague and conclusory claims" that it did not owe money under a guaranty were "properly rejected" and insufficient to warrant discovery under CPLR 3212(f)).

C. FB Management's Champerty Argument Is Frivolous

FB Management attempts to excuse its nonpayment by suggesting – without a hint of factual support or an appeal to common sense – that Mr. Saverin engaged in an intricate tax-evasion strategy, which made the Progresso Assignment champertous. (Opp. at 18-21.) FB Management bases this claim on nothing more than rank speculation and offers no actual evidence linking this alleged conduct to the Progresso Assignment. Even assuming Mr. Saverin's citizenship status were related to the Progresso Assignment – it is not (Saverin Reply

[13] Progresso rejects the calculations reached in this memorandum as erroneous and does not adopt as its own the factual assertions stated therein.

Aff. ¶ 3) – FB Management does not adequately allege the affirmative defense of champerty as a matter of law, let alone show the existence of material issues of fact which would require a trial.

Judiciary Law Section 489, which governs a claim of champerty, only prohibits "the purchase of claims with the intent and for the purpose of bringing an action" and is concerned with claims that are brought only "in [an] effort to secure costs." Trust for the Certificate Holders of Merrill Lynch Mortg. Investors v. Love Funding Corp., 13 N.Y.3d 190, 201 (2009). The high standard applied by courts on a claim of champerty reflects the precise harm that the Legislature sought to avoid: "[t]he 'mere intent to bring a suit on a claim purchased does not constitute the offense; the purchase must be made for the sole purpose of bringing the suit, which implies an exclusion of any other purpose." TAP Holdings, LLC v. ORIX Fin. Corp., 45 Misc.3d 1217[A], 2014 WL 5900923, at *5 (Sup. Ct. N.Y. Cnty. Nov. 7, 2014) (Ramos, J.). As such, Section 489 does not apply where the assignee actually acquires the underlying instrument, as opposed to acquires solely the right to litigate a claim. Justinian Capital SPC v. WestLB AG, N.Y. Branch, 43 Misc. 3d 598, 606 (Sup. Ct. N.Y. Cnty. 2014) ("It is not champerty to sue on behalf of debt that you buy for yourself, but it is champerty to sue, on behalf of another and for a fee, for debt that is not really your own.").

Here, given the following undisputed facts, it is entirely implausible to conclude that Mr. Saverin assigned his interests in the Note to Progresso with champertous intent:

- The assignment occurred several months *before* FB Management was in default;
- FB Management, its affiliates, and the individual Guarantors *expressly agreed* to the assignment;
- Mr. Saverin wrote numerous letters trying to resolve the matter *without* court intervention, which were somewhat successful in that they prompted FB Management to make at least partial payment; and
- The Note itself was transferred, not merely the right to sue, which courts uniformly hold takes the transfer out of the champerty analysis completely.

Notably, FB Management's claim that Mr. Saverin had the intention of bringing this lawsuit back in 2011 is directly contradicted by its other claim – made in the context of its oral modification argument – that Progresso commenced this litigation in 2015 "to prematurely liquidate [Mr. Saverin's] holdings of the Palantir Funds now that it appears that Palantir is resisting becoming publically traded." (Opp. at 2.)

Of course, FB Management cites no case in which a claim for champerty was allowed to proceed under similar facts, and the cases it does cite are readily distinguishable.[14] Nor was it able to cite to any authority for the proposition that a claim of champerty could excuse non-payment of a promissory note. FB Management's unsubstantiated, and entirely implausible, suspicion about Mr. Saverin's intent in making the assignment – based solely on Mr. Saverin's citizenship status – is a red-herring and is insufficient to serve as the basis for denying Progresso's motion summary judgment or requiring Mr. Saverin to sit for a deposition. See DaSilva, 125 A.D.3d at 482 (summary judgment motion "not premature although discovery was incomplete" where non-moving party "only expresses a mere hope or speculation that discovery must turn up some evidence giving rise to a triable issue of fact."); Steinberg v. Schnapp, 73 A.D.3d 171, 177 (1st Dep't 2010) (request for additional discovery rejected where non-moving party "has offered nothing but speculative and conclusory averments"); see also Orix Credit Alliance v. Hable Co., 256 A.D.2d 114, 116 (1st Dep't 1998) ("[D]efendants should not be

[14] See Justinian Capital, 37 Misc.3d at 527 (burden of proof on champerty defense satisfied by submitting plaintiff's own business plan, which was to "commence litigation to recover the loss on the investment" by "partner[ing] with specific law firms… to conduct the litigation"); BSC Assocs. v. Leidos, Inc., 91 F. Supp.3d 319, 326 (N.D.N.Y. 2015) (plaintiff conceded that it acquired "only a naked transfer of the causes of actions" belonging to the assignor); Shareholder Rep. Servs. LLC v. Sandoz, Inc., 46 Misc.3d 1228(A), 2015 WL 1209358, at *3 (Sup. Ct. N.Y. Cnty. 2015) (assignment agreement specifically stated that assignment was to plaintiff "for the purposes of collection"); TAP Holdings, 2014 WL 5900923, at *7 (under assignment agreement, plaintiff "acquired the Noteholders' claims (not the Notes themselves) to 'prosecute the Claims' at its sole cost and expense'"); Aubrey Equities v. SMH 73rd Assocs., 212 A.D. 2d 397, 398 (1st Dep't 1995) (evidence that principal of assignor was also a partner of assignee, coupled with fact that assignment took place after assignor's default, was sufficient to raise fact issue as to whether assignee purchased the mortgage with the primary objective of commencing the underlying foreclosure action).

allowed to use pre-trial discovery as a fishing expedition when they cannot set forth a reliable factual basis for their suspicions.").[15]

D. Section 802(a) Of N.Y. Limited Liability Company Law Does Not Apply

FB Management next argues that summary judgment should be denied because it needs discovery into whether Progresso has complied with Limited Liability Company Law § 802 ("LLC Law"), which requires a foreign limited liability company to submit an application to the New York Department of State before "doing business" in New York. (Opp. at 21-22.) Such a company may not maintain a lawsuit in New York unless it obtains such certificate of authority. LLC Law § 808(a). However, as FB Management acknowledges (Opp. at 22), this statutory barrier does not apply if the company is not "doing business" in New York. Indeed, "there is a presumption that a plaintiff does business in its State of incorporation rather than New York." Intesec Group LLC v. Madah-Com, Inc., No. 60208/2011, 2003 WL 25573936 (Sup. Ct., N.Y. Cnty. Aug. 4, 2003) (quoting Alicanto, S.A. v. Woolverton, 129 A.D.2d 601, 602 (2d Dep't 1987)). As such, FB Management "bears the burden of proving that [Progresso's] business activities in New York were not just casual or occasional, but so systematic and regular as to manifest continuity of activity in the jurisdiction." Id.

There is not a shred of evidence in the record that Progresso is "doing business" in New York. As alleged in the Complaint, Progresso is organized as a Delaware limited liability company and has its office in Coral Gables, Florida. (Compl. ¶ 2.) Moreover, Progresso was established for the sole purpose of acquiring the Note and Note Purchase Agreement and, aside

[15] Moreover, this argument appears to be academic. The Note either belongs to Progresso, of which Mr. Saverin is the sole member and on whose behalf he has full authority to act (Saverin Aff. ¶ 12), or, if the Progresso Assignment is voided on champerty grounds, the Note belongs to Mr. Saverin, who can sue in his individual capacity. Neither circumstance excuses FB Management's failure to repay the loan.

from this lawsuit, Progresso has no contacts with New York. (Saverin Reply Aff. ¶ 4.) Progresso need not do more to establish its lack of connections to New York. See FIA Card Servs., N.A. v. DiLorenzo, 22 Misc.3d 1127(A), 2009 WL 483822, at *4 (Sup. Ct. Nassau Cnty. Feb. 20, 2009) (to rebut claim of non-compliance with LLC Law § 808(a) a company "must plead facts establishing that it is not doing business in New York").

To defeat summary judgment, FB Management must do more than cite its own uncertainty; it has the burden to produce "evidentiary proof … sufficient to establish the existence of material issues of fact" as to whether Progresso is doing business in New York. See Alvarez, 68 N.Y.2d at 324. If Progresso's business activities were "so systematic and regular as to manifest continuity of activity" in New York, then surely FB Management would be able to present *some* evidence of this. Instead, FB Management wants to take Mr. Saverin's deposition to merely "verify the amount of business that Progresso does in New York" (Opp. at 22), effectively conceding that it lacks the evidentiary basis needed to invoke CPLR 3212(f).

E. FB Management's Claim That Damages Are Uncertain Is Belied By The Record And Insufficient To Defeat Summary Judgment

FB Management's claim that summary judgment should be denied because it needs discovery regarding the damages it owes under the Note is incorrect. (Opp. at 17-18.) FB Management offers no evidentiary proof to dispute the amount of principal that remains, the rate at which interest accrues, or the components of the Additional Return. Even if there were a discrepancy as to the final amounts owed, that would not be a basis to deny summary judgment.[16] See Cmty. Capital Bank v. 'Til The Phat Lady Sings LLC, 6 Misc. 3d 1009(A), at *2 (Sup. Ct. Kings Cnty. 2005) ("[A]ny purported dispute as to the exact amount remaining due

[16] FB Management's comment about a discrepancy on the spreadsheet attached as Exhibit 8 to Saverin's Affirmation is unintelligible. Nowhere on that spreadsheet did Mr. Saverin claim to be owed $4,479,689 as of April 16, 2012. (Opp. at 18.)

under the notes has no bearing on the plaintiff's prima facie case"; "[calculating] damages could take place during an inquest."); cf. Bank of Am. v. Solow, 19 Misc. 3d 1123(A), 2008 WL 1821877 at *7 (Sup. Ct. N.Y. Cnty. April 17, 2008) (granting CPLR 3213 motion and directing questions as to the amount of interest to a referee). There is certainly no need to depose Mr. Saverin to calculate the amount due under the Note, as this information is equally available to FB Management. See Voluto, 44 A.D.3d at 557.

III. FB MANAGEMENT'S CROSS-MOTION TO DISMISS UNDER CPLR 3211(a)(1) SHOULD BE DENIED ON PROCEDURAL AND SUBSTANTIVE GROUNDS

FB Management cross-moves for an order dismissing the Complaint pursuant to CPLR 3211(a)(1) on the ground that Progresso failed to give FB Management notice of its default. As an initial matter, this motion is procedurally improper, as FB Management cannot move for dismissal under CPLR 3211 after having served its Answer. See Bowes v. Healy, 40 A.D.3d 566, 566 (2d Dep't 2007) (motion to dismiss under CPLR 3211(a) was untimely because not made before service of responsive pleading); Miller v. Weyerhaeuser Co., 179 Misc.2d 471, 474 (Sup. Ct., N.Y. Cnty. 1999) ("CPLR 3211(e) provides that a motion under CPLR 3211(a) *must* be made before service of a responsive pleading is required.") (emphasis in original). In addition, FB Management has waived its right to move for dismissal under CPLR 3211(a)(1) by failing to include lack of notice of default in its answer. See CPLR 3211(e) ("Any objection or defense based upon a ground set forth in paragraph[] one … of subdivision (a) is waived unless raised either by [a pre-answer] motion or in the responsive pleading.").

Even if this Court overlooks those deficiencies, FB Management's argument should be denied on the merits. FB Management claims that it need not repay the money it borrowed because Progresso's demand letters failed to constitute a "written request" of repayment under Section 6.01 of the Note Purchase Agreement. (Opp. at 22.) Section 6.01 provides that, if an

Event of Default has occurred and is continuing, then "upon written request of [Mr. Saverin] to the [FB Management], [Mr. Saverin] may declare the entire unpaid principal amount of the Note, all interest accrued and unpaid thereon and all other amounts payable under the Note to be forthwith due and payable, without presentment, demand, [or] protest of any kind, all of which are waived by the Company …." (Saverin Aff. Ex. 1.) By its plain terms, all that Section 6.01 requires is a "written request"; it need not have a particular format or contain any magic words.[17]

As FB Management concedes, Progresso provided written notice on April 10 and 26, 2012. (Opp. at 23.) Under any reasonable interpretation of the term, FB Management received "written notice." In particular, the April 26, 2012 letter was expressly sent on behalf of Progresso, specifically referenced FB Management's default under the Note, and demanded repayment, providing the wiring instructions to do so. In any event, given that FB Management concedes it received actual notice of default and does not claim it was prejudiced by the form of the letters, FB Management cannot successfully claim that notice of default was defective. TLI Investments, LLC v. C-III Asset Management LLC, 2013 WL 6778094, at *4 (Sup. Ct. N.Y. Cnty. Dec. 23, 2013) ("[I]t has been repeatedly held that strict compliance with contract notice provisions is not required in commercial contracts when the contracting party receives actual notice and suffers no detriment or prejudice by the deviation.") (citations omitted).

Finally, per the plain terms of Section 6.01, FB Management expressly waived any right to "presentment, demand, [or] protest of any kind" regarding the notice due, rendering its argument futile. See Cnty. Of Greene v. Chalifoux, 127 A.D.3d 1316, 1318 (3d Dep't 2015) (similar provision waived argument that notice of default was deficient).

[17] While Section 7.07 of the Note Purchase Agreement sets forth certain delivery requirements for notices, these requirements were in fact complied with, and FB Management does not contend otherwise. Indeed, FB Management does not point to a single provision in the Note or Note Purchase Agreement that suggests the notice it received was ineffective.

IV. FB MANAGEMENT'S CROSS-MOTION TO COMPEL SHOULD BE DENIED ON PROCEDURAL AND SUBSTANTIVE GROUNDS

FB Management's cross-motion to compel was filed without an affirmation of good faith and without first contacting the court to arrange a conference, in violation of 22 NYCRR § 202.7 and Rule 12(a) of this Part's Practice Rules. Counsel for Progresso conveyed to counsel for FB Management, that the Court's November 16 directive did not require Mr. Saverin's deposition until after defendants served an answer in Progresso II and further stated that "[w]e are willing to meet and confer at your convenience regarding the issues discussed herein." (Strauss Aff. Ex. G.[18]) Nevertheless, FB Management did not follow up and did not confer in an effort to resolve any perceived discovery dispute before filing its cross-motion. (Kerner Reply Aff. ¶ 2.)

In any event, there is no basis to compel Mr. Saverin's deposition. The Court made clear at argument on Progresso's CPLR 3213 motion that summary judgment under CPLR 3212 would not be held up "because you [FB Management] say you haven't had a chance for discovery." (Kerner Aff. Ex. 1 (Tr. 21).) Moreover, this cross-motion should be denied because, as discussed above, FB Management has failed to satisfy CPLR 3212(f) as to any of its purported defenses. See Bailey, 270 A.D.2d at 157; Eastbank, 216 A.D.2d at 152.

CONCLUSION

For the foregoing reasons, Progresso's motion for summary judgment should be granted.

Dated: New York, New York
March 4, 2016

HOLWELL SHUSTER & GOLDBERG LLP
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[18] "Strauss Aff." refers to the undated Affirmation of Jesse Strauss in Opposition to Progresso's Motion for Summary Judgment filed on February 16, 2016.

EXHIBIT E

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

PROGRESSO VENTURES, LLC,	:	
Plaintiff,	:	Index No. 650614/2015 Commercial Part 53
-against-	:	
FB MANAGEMENT ASSOCIATES, LLC,	:	Justice Charles E. Ramos Motion Seq. 002
Defendant.	:	

MEMORANDUM OF LAW IN SUPPORT OF PROGRESSO VENTURES, LLC'S MOTION FOR SUMMARY JUDGMENT

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Attorneys for Plaintiff Progresso Ventures, LLC

Plaintiff Progresso Ventures, LLC ("Progresso") submits this memorandum of law in support of its motion, pursuant to CPLR 3212, for summary judgment against Defendant FB Management Associates, LLC ("FB Management").

PRELIMINARY STATEMENT

This case is simple and straightforward: Progresso has a secured promissory note on which money is due (the "Note"). FB Management admits and acknowledges it is in default under the Note yet has not paid Progresso what it is owed. FB Management has no viable defense for its nonpayment. In fact, as the Court noted during oral argument on Progresso's motion for summary judgment in lieu of complaint, judgment may already have been entered but for the fact that the Note calls for an "Additional Return" (defined below), which the Court believes takes it out of the sphere of an instrument for the payment of money only. Because there are no triable issues of fact with respect to the amounts owed by FB Management under the Note, or its default thereunder, summary judgment should be granted now.

STATEMENT OF UNDISPUTED FACTS

A. The Note Purchase Agreement[1]

On or about February 16, 2011, FB Management and Eduardo Saverin entered into a Note Purchase Agreement (the "Note Purchase Agreement"). (Statement of Undisputed Material Facts in Support of Plaintiff's Motion for Summary Judgment, dated Jan. 13, 2016 ("SUF"), ¶ 1.)

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[1] FB Management does not deny *any* of the Complaint's allegations concerning the terms of the Note or the Note Purchase Agreement and FB Management's obligations thereunder, including those pertaining to: (*i*) the contractual interest rate (Answer of Def. FB Management ("Answer"), dated Aug. 25, 2015, Doc. # 30, ¶ 7); (*ii*) the Maturity Date (id. ¶ 8), (*iii*) a Liquidity Event (id. ¶¶ 8 & 9); (*iv*) the Additional Return (id. ¶ 9); (*v*) an Event of Default (id. ¶ 10); (*vi*) waiver of objections to demand of payment (id.); (*vii*) the Collateral Assignment (id. ¶¶ 11 & 12); and (*viii*) attorneys' fees and costs (id. ¶ 14).

The Note Purchase Agreement provides that FB Management shall use the proceeds of the Note to invest in a new series of membership interests in Facie Libre Associates II, LLC ("Facie Libre"), a Delaware limited liability company expressly formed to invest in, acquire, hold, or sell securities of Facebook, Inc. ("Facebook"), which at the time was a privately held Delaware corporation. (SUF ¶ 2.) Pursuant to the Note Purchase Agreement, on or about February 16, 2011, Saverin lent FB Management $4,000,000, and, in exchange, FB Management executed and delivered to Saverin the Note, which accrues interest at the rate of 15% per annum. (SUF ¶ 3; Aff. of Eduardo Saverin, dated Jan. 13, 2016 ("Saverin Aff."), Ex. 1 (Note § 2).)[2]

The Note became due on the "Maturity Date," which is defined as the earlier of: (*i*) thirty-six months from the date of the Note (*i.e.*, February 16, 2014) or (*ii*) thirty days following the occurrence of a Liquidity Event. (Saverin Aff., Ex. 1 (Note § 1(a)).)[3] A "Liquidity Event" is defined as either (*i*) the sale by FB Management of its membership interests in Facie Libre or (*ii*) a distribution to FB Management of cash or stock of Facebook with respect to FB Management's investment in Facie Libre. (Id.) Upon the occurrence of a Liquidity Event, Progresso is entitled to receive 50% of the net proceeds received by FB Management from that Liquidity Event in excess of the aggregate outstanding principal amount of the Note, plus all accrued but unpaid interest thereon. This is referred to in the Note as the "Additional Return." (Id. Ex. 1 (Note § 3).)

The Note Purchase Agreement defines an Event of Default as, *inter alia*, a "default in the payment when due of any principal or interest under the Note[.]" (Id. Ex. 1 (Note Purchase

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[2] The Note further specifies that interest shall be compounded annually, computed on the basis of the actual number of days elapsed and a year of 365 days from the date of the Note until the principal amount and all interest accrued thereon are paid. (Saverin Aff., Ex.1 (Note § 2).)

[3] In the event a Maturity Event occurs prior to the six month anniversary of the Note, as it did here, the interest to be paid shall be at least equal to six months' worth of interest. (Saverin Aff., Ex. 1 (Note § 1(b)).)

Agreement § 6.01).) When an Event of Default occurs, and is continuing, "then upon demand by the Holder [Progresso] . . . the entire outstanding principal amount, plus accrued and unpaid interest thereon, of this Note shall become *immediately due and payable* in the manner and with the effect provided in the Purchase Agreement and this Note." (Id. Ex. 1 (Note § 4) (emphasis added).) Under these circumstances, all outstanding debt under the Note became "forthwith due and payable," and FB Management expressly waived any right to "presentment, demand, [or] protest of any kind." (Id. Ex. 1 (Note Purchase Agreement § 6.01).)

Finally, the Note and the Note Purchase Agreement entitle the Note's holder to attorneys' fees, costs, and expenses incurred in connection with, among others, enforcing those documents and agreements. (Id. Ex. 1 (Note § 6); Ex. 1 (Note Purchase Agreement §§ 7.05, 7.10).)

B. The Assignment To Progresso

On or about March 20, 2011, with the written consent of FB Management, Saverin assigned all of his right, title, and interest in the Note Purchase Agreement and the Note to Progresso (the "Progresso Assignment"). (SUF ¶ 4; Saverin Aff., Ex. 2)[4] Notably, the assignment occurred within two months of the execution of the Note Purchase Agreement and the Note, five months before there was a default, and three years before this litigation was commenced. (Saverin Aff., Ex. 2) The entirety of the Note, Note Purchase Agreement, and all instruments and rights related thereto were assigned. (Id.)

[4] As explained in the Complaint, the Progresso Assignment included an assignment of two related agreements, a collateral assignment and personal guaranties, each of which was executed in connection with the Note Purchase Agreement. (Saverin Aff., Ex. 2; Compl. ¶¶ 11–13, 15.) The signatories to those agreements also consented to the Progresso Assignment. (Id.) Those signatories are defendants in a related action in this Court brought by Progresso to enforce the collateral assignment and personal guaranties. See Compl., Progresso Ventures, LLC v. Mazzola, Index No. 652730/2015 (filed Aug. 5, 2015) (Ramos, J.).

C. FB Management's Default

By June 2011, a Liquidity Event occurred when FB Management sold 18,012 of its Facie Libre Series S shares at a share price of $31.00. (SUF ¶ 5.) By July 22, 2011, FB Management sold 100% of its 149,724 Series S shares at a share price of $31.00. (Id.) The proceeds of the sales of the Series S shares were received into FB Management's bank account. (Id. ¶ 6.)

Thirty days after the Liquidity Event, all amounts outstanding and unpaid under the Note became due and payable, including the Additional Return, whose amount is based on the formula set forth in the Note. (Saverin Aff., Ex. 1 (Note § 1(b)).)[5] FB Management refused, however, to make any payments owed to Progresso at this time, causing an Event of Default under the Note. (SUF ¶ 7.)

By e-mail dated June 24, 2011, Saverin provided Frank Mazzola, Emilio DiSanluciano, and Joe Dempsey, all managers and/or employees of FB Management and Felix Investments – an entity affiliated with FB Management and a party to the Collateral Assignment – with his bank account and routing numbers and requested that payments under the Note be made to said account as soon as possible. (SUF ¶ 8; Saverin Aff. ¶ 8 & Ex. 4.)

By letter dated April 10, 2012, Progresso further advised FB Management, through Mazzola, that a Liquidity Event had occurred due to the sale of Facie Libre shares and requested that the final calculation of the amount owed under the Note – namely, $4,479,689 – be

[5] As noted above, the Additional Return is calculated as 50% of the net proceeds received by FB Management from the sale of the Series S shares in excess of the aggregate outstanding principal amount of the Note, plus all accrued and unpaid interest thereon. The net proceeds of the sale were $4,641,444 (149,724 shares sold at $31.00), and $4,250,000 was the amount of outstanding principal and interest, leaving an excess of $391,444, 50% of which is $195,722. (Saverin Aff., Ex. 8.) Accrued interest on the Additional Return at the contractual rate of 15% is $171,444.52, bringing the aggregate amount of the Additional Return as of January 13, 2016 to $367,166.52. (Id.)

immediately paid. (SUF ¶ 8; Saverin Aff. ¶ 9 & Ex. 5.) On or about April 26, 2012, Progresso again wrote to FB Management, declared a formal Event of Default, and again demanded that all amounts due under the Note be paid. (SUF ¶ 8; Saverin Aff. ¶ 10 & Ex. 6.)

FB Management never contested that an Event of Default had occurred. (SUF ¶ 9.) To the contrary, FB Management has acknowledged in writing that it is in default under the Note. (SUF ¶ 9; Saverin Aff., Ex. 7.) For example, in his May 2011 email, Mazzola wrote to Saverin: "[W]e are going to repay the loan you made to FB Management Associates LLC in the next few days including the interest on the loan and the profits based on the sale of membership interest in the Facie Libre II Fund." (Saverin Aff., Ex. 7.)

Moreover, beginning on or about May 25, 2011, FB Management began making partial payments due under the Note, thereby further admitting its obligations thereunder. (SUF ¶ 11.) The last such partial payment was made on July 12, 2012, bringing the total amount repaid to $2,939,008. (Id.) Even Defendant's counsel admitted that FB Management's "distribution" to Progresso "was not of the full $4 million" but was "about $1.1 million short." (Kerner Aff., Ex. 1 (Tr. at 8).) Together with the Additional Return, as of January 13, 2016, the balance of sums owed under the Note is $3,969,653.15. (SUF ¶ 14; Saverin Aff. ¶ 15 & Ex. 8.) Despite Progresso's repeated and explicit demands, FB Management has refused to pay the balance due under the Note. (SUF ¶ 12.)

D. Progresso Commences This Action To Enforce The Note

Having exhausted its efforts to resolve these uncontested issues out of court, on March 2, 2015, Progresso filed a motion for summary judgment in lieu of complaint under CPLR 3213 against FB Management, arguing that the Note is an instrument for the payment of money only and that FB Management has no bona fide defense to nonpayment. See Memo. of Law in Supp.

of Mot. for Summ. J. in Lieu of Compl., Doc. #4. At oral argument, the Court noted that Progresso has a "great motion for [summary judgment under] 3212" but concluded that the amount of the Additional Return could not be proved based only on the face of the Note. (Kerner Aff., Ex. 1 (Tr. at 17–18).) As a result, the Court concluded the Note was not an instrument for the payment of money only, denied the motion under CPLR 3213, and directed Progresso to file a complaint, which it did on July 30, 2015, and thereafter move for summary judgment under CPLR 3212. FB Management answered on August 25, 2015.

ARGUMENT

PROGRESSO IS ENTITLED TO SUMMARY JUDGMENT

On a motion for summary judgment, the movant has the initial burden to produce affidavits and documentary evidence sufficient "to warrant the court as a matter of law in directing judgment in [its] favor." CPLR 3212(b); see Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986). Once the movant establishes its prima facie entitlement to judgment, the burden shifts to the opposing party to "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action …." Zuckerman v. City of New York, 49 N.Y.2d 557, 560 (1980); see CPLR 3212(b). The opposing party "must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim …." Id. at 562. "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." Id.

To establish a prima facie case of breach of a promissory note, a plaintiff must demonstrate the existence of a note executed by the defendant, the unconditional terms of payment, and default by the defendant. Eastbank, N.A. v. Phoenix Garden Restaurant, Inc., 216 A.D.2d 152, 152 (1st Dep't 1995); Boston Deposit & Trust Co. v. Hoffman, 177 A.D.2d 368,

368 (1st Dep't 1991); Citibank, N.A. v. Furlong, 81 A.D.2d 803, 803 (1st Dep't 1981). Once the plaintiff has made this showing, the defendant must "submit evidentiary proof sufficient to raise a triable issue with respect to [any] asserted defenses." Eastbank, 216 A.D.2d at 152.

A. Progresso Has Established Its Prima Facie Entitlement To Judgment As A Matter Of Law

Here, there is no dispute that FB Management executed and is in breach of an unequivocal and unconditional obligation to repay Progresso in accordance with the Note's terms. The following facts are not genuinely disputed: (*i*) FB Management is the maker of the Note, which provides for unconditional terms of payment (SUF ¶ 3); (*ii*) a Liquidity Event occurred when FB Management sold its interests in Facie Libre, but FB Management failed to make repayment by the Maturity Date, causing the Note to default (SUF ¶¶ 5, 7); and (*iii*) FB Management has refused to cure its defaults under the Note (SUF ¶ 12). Further, Progresso is not in default under the Note, and has satisfied all of its obligations thereunder. (SUF ¶ 13.)

At no point has FB Management identified any admissible evidence disputing that it remains in default under the Note. Remarkably, at oral argument on Progresso's CPLR 3213 motion, FB Management's lawyer effectively conceded each element of *Progresso's* prima facie case, acknowledging that:

- "$4 million with interest was to be returned to Mr. Saverin within 36 months." (Kerner Aff., Ex. 9 (Tr. at 6);
- FB Management "sold their interest in Facie Libre," which "required [them] to return the money" to Progresso. Id. (Tr. at 7); and
- "[T]he distribution [to Progresso] was not of the full $4 million. We were about $1.1 million short." Id. (Tr. at 8).

Progresso therefore has met its initial burden "to warrant the court as a matter of law in directing judgment in [its] favor" on FB Management's liability under the Note. See CPLR 3212(b); see

also Boston Deposit & Trust Co., 177 A.D.2d at 368 ("Defendants do not deny that they executed the note sued upon and made a payment toward principal, nor that the note is in default and remains unpaid."); Furlong, 81 A.D.2d at 803 ("Examination of defendant Furlong's papers discloses that she does not deny executing the two promissory notes in question and making a payment on one of them, or dispute that the notes are in default and unpaid.").

B. FB Management Has No Bona Fide Defense To Nonpayment

FB Management effectively admits that it is default under the Note and, to date, has not offered any bona fide defense. In its opposition to Progresso's CPLR 3213 motion, FB Management tried to excuse its nonpayment by making frivolous arguments about champerty and its notice of the default. These arguments were refuted in Progresso's reply brief. See Reply Mem. of Law in Further Supp. of Mot. for Summ. J. in Lieu of Compl., Doc. # 23, pp. 9–15. FB Management has not raised these purported defenses in its subsequent answer.

C. Progresso Is Entitled To Recover Its Costs, Including Attorneys' Fees, In Bringing This Action

The Note clearly spells out Progresso's right to recover its costs, including attorneys' fees, in having to sue to recover:

> Costs of Enforcement. The Company [FB Management] agrees to pay on demand all costs and expenses of the Purchaser [Progresso], and all reasonable fees and disbursements of one counsel to Purchaser, in connection with: (i) the protection or preservation of the Purchaser's rights under this Note, whether by judicial proceeding or otherwise; [and] (ii) the enforcement or attempted enforcement of, and preservation of any rights under, this Note[.]

(Saverin Aff. Ex. 1 (Note § 6).) Additionally, the Note Purchase Agreement provides:

> The Company [FB Management] shall indemnify … the Purchaser [Progresso] … from and against … any and all liability, loss, cost, damage, charge, reasonable attorneys' and accountants' fees and expenses … court costs and other out-of-pocket expenses (including costs of enforcement) incurred in connection with or arising from claims, actions, suits, judgments, proceedings or similar claims by any person or entity (other than the Company) associated or relating to … the

> breach by the Company of its representations, warranties, covenants or agreements set forth herein. This indemnification provision shall be in addition to the rights of the Purchaser to bring an action against the Company for any other breach of any term of this Agreement or the Note in accordance with applicable law.

(Id. Ex. 1 (Note Purchase Agreement § 7.05); see also § 7.10).)

In its opposition to Progresso's CPLR 3213 motion, FB Management ignored Progresso's argument regarding its entitlement to attorneys' fees and costs under the Note and thus conceded its correctness. See Weldon v. Rivera, 301 A.D.2d 934, 935 (3d Dep't 2003) (plaintiff conceded argument she failed to address); Corrado v. Metro. Transit Auth., 45 Misc. 3d 1203(A), at *22 (Sup. Ct. N.Y. Cnty. 2014) (same).[6]

CONCLUSION

For the foregoing reasons, Progresso's motion for summary judgment should be granted in its entirety for $3,969,653.15 (calculated as of January 13, 2016), accruing interest at the contractual rate of 15% to the date of entry of judgment, together with attorneys' fees and costs, to be determined on a schedule to be set by the Court.

Dated: New York, New York
January 13, 2016

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[6] As noted (supra note 1), FB Management did not deny that the Note Purchase Agreement and Note entitle Progresso to attorneys' fees and costs. (Answer ¶ 14.)

EXHIBIT F

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

PROGRESSO VENTURES, LLC,	:	
Plaintiff,	:	Index No. 650614/2015
	:	Commercial Part 53
-against-	:	
	:	Justice Charles E. Ramos
FB MANAGEMENT ASSOCIATES, LLC,	:	Motion Seq. No. 002
Defendant.	:	

AFFIRMATION OF EDUARDO SAVERIN IN SUPPORT OF PROGRESSO VENTURES, LLC'S MOTION FOR SUMMARY JUDGMENT

EDUARDO SAVERIN hereby affirms as follows:

1. I am the sole member of Progresso Ventures, LLC ("Progresso"), Plaintiff herein, and I have full authority to act on its behalf. I make this affirmation in support of Progresso's motion for summary judgment to collect the balance of sums owed by Defendant FB Management Associates, LLC ("FB Management") under a secured Promissory Note dated February 16, 2011, as well as attorneys' fees and costs. I have personal knowledge of the matters hereinafter stated, except where otherwise noted.

2. On or about February 16, 2011, FB Management and I entered into a Note Purchase Agreement (the "Note Purchase Agreement"). A true copy of the Note Purchase Agreement is annexed hereto as Exhibit 1.

3. The Note Purchase Agreement provided that FB Management would use the Note proceeds to invest in a new series of membership interests in Facie Libre Associates II, LLC ("Facie Libre"), a Delaware limited liability company expressly formed to invest in, acquire, hold, or sell securities of Facebook, Inc. ("Facebook"), which at the time was a privately held Delaware corporation. (Ex. 1 (Note Purchase Agreement, Recitals).)

4. Pursuant to the Note Purchase Agreement, on or about February 16, 2011, I lent FB Management $4,000,000, and, in exchange, FB Management executed and delivered to me the Note, which accrues interest at the rate of 15% to the date of final payment. A true copy of the Note is included as an exhibit to the Note Purchase Agreement annexed hereto as Exhibit 1.

5. On or about March 20, 2011, as expressly permitted by the Note Purchase Agreement, with the written consent of FB Management and all other relevant parties, I assigned all of my right, title, and interest in the Note Purchase Agreement, the Note, and other related documents to Progresso (the "Progresso Assignment"). Section 7.06 of the Note Purchase Agreement provides that "the rights and obligations of [FB Management] and [Saverin] shall be binding upon and benefit their respective permitted … assigns." The preamble to the Note further states that FB Management "promises to pay to Eduardo Saverin or his registered assigns" the amounts owed under the Note. A true copy of the Progresso Assignment is annexed hereto as Exhibit 2.

6. By June 2011, a Liquidity Event under the Note occurred when FB Management sold 18,012 of its Facie Libre Series S shares at a share price of $31.00. By July 22, 2011, FB Management sold 100% of its 149,724 Series S shares at a share price of $31.00. FB Management's former counsel sent a summary of the sales of Series S shares to my former counsel. A true copy of this summary is annexed hereto as Exhibit 3 (see page 30).

7. Because FB Management did not make any payments owed to Progresso after thirty days of the Liquidity Event, an Event of Default under the Note Purchase Agreement occurred and is continuing.

8. By e-mail dated June 24, 2011, I provided Frank Mazzola, Emilio DiSanluciano, and Joe Dempsey, all managers and/or employees of FB Management and Felix Investments,

with my bank account and routing numbers and requested that payments under the Note be made as soon as possible. A true copy of the June 24, 2011 email is annexed hereto as Exhibit 4.

9. By letter dated April 10, 2012, on behalf of Progresso, I advised FB Management, through Mazzola, that a Liquidity Event had occurred due to the sale of Facie Libre shares and requested that the final calculation of the amount owed under the Note – which was $4,479,689 – be immediately paid. A true copy of the April 10, 2012 letter is annexed hereto as Exhibit 5.

10. On or about April 26, 2012, I again wrote to Mr. Mazzola requesting that all amounts owed to Progresso under the Note be repaid. I noted that FB Management's default had resulted in an on-going Event of Default under the Note, and I additionally requested payment of the collateral as specified in the Collateral Agreement. A true copy of the Collateral Agreement is included as an exhibit to the Note Purchase Agreement annexed hereto as Exhibit 1. A true copy of the April 26, 2012 letter is annexed hereto as Exhibit 6.

11. FB Management never contested that an Event of Default had occurred. To the contrary, FB Management has acknowledged in writing that it is in default under the Note. A true copy of certain of these acknowledgments in annexed hereto as Exhibit 7.

12. Moreover, beginning on or about May 25, 2012, FB Management began making partial payments due under the Note. The last such partial payment was made on July 12, 2012, bringing the total amount repaid to $2,939,008.

13. Despite Progresso's repeated and explicit demands, FB Management has refused to pay the balance due under the Note.

14. Progresso is not in default under the Note and has satisfied all of its obligations thereunder.

15. As of January 13, 2016, Progresso is owed a total of $3,969,653.15 under the Note. Annexed hereto as Exhibit 8 is a spreadsheet showing these calculations, as of January 13, 2016.

I affirm this 13 day of January, 2015, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

EDUARDO SAVERIN

EXHIBIT 1

NOTE PURCHASE AGREEMENT

THIS NOTE PURCHASE AGREEMENT (this "Agreement") dated as of February 16, 2011, is made by and among (i) FB Management Associates, LLC, a Delaware limited liability company (the "Company"), and (ii) Eduardo Saverin (the "Purchaser").

RECITALS

WHEREAS, the Company has authorized the issue and sale of a promissory note in the form attached hereto as **Exhibit A** (a "Note") for a purchase price of up to $4,000,000 (the "Loan") on the terms and conditions set forth herein;

WHEREAS, Facie Libre Associates II, LLC, a Delaware limited liability company ("Facie Libre"), is a company formed to invest in, acquire, hold or sell securities of Facebook, Inc., a privately held Delaware corporation ("Facebook"), including direct purchases from existing Facebook shareholders and purchases of entities the sole holdings of which are Facebook securities;

WHEREAS, the Company will use the proceeds from the Note to invest in a new series of membership interests in Facie Libre, to be a separate series which shall consist of up to 175,000 shares of Facebook at a purchase price of $25.38 per share;

WHEREAS, a limited liability certificate of Facie Libre representing the new series of membership interests purchased by the Company shall be issued to the Company and the Company shall be permitted to file a UCC (as defined below) financing statement filing on such limited liability certificate as collateral for and to secure the interests of the Purchaser;

WHEREAS, the Company desires to sell and issue to the Purchaser, and the Purchaser desires to purchase the Note from the Company; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I

DEFINITIONS

1.01 Certain Defined Terms.

As used in this Agreement and to the extent not otherwise defined herein, the following terms shall have the following meanings:

"Affiliate" means with respect to any Purchaser that is partnership, corporation, trust, joint venture, unincorporated organization or other entity, any partnership, corporation, trust, joint venture, unincorporated organization or other entity that is an "accredited investor" within the meaning of Rule 501 promulgated under the Securities Act and that directly or indirectly controls, is controlled by or is under common control with such Purchaser, and the term "control" shall mean, with respect to such Purchaser, the possession, direct or indirect, of the

power to direct or cause the direction of the management and policies of such Purchaser, whether through ownership of voting securities, by contract or otherwise.

"Bankruptcy Law" means Title 11, U.S. Code, as amended, or any similar federal, state or foreign law for the relief of debtors.

"Lien" means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the UCC (or equivalent statutes) of any jurisdiction.

"Purchase Documents" means this Agreement and the Note.

"Securities Act" means the Securities Act of 1933, as amended.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York.

ARTICLE II

PURCHASE AND SALE OF PROMISSORY NOTE

2.01 Purchase and Sale of Promissory Note to the Purchaser. Subject to and upon the terms and conditions set forth in the Purchase Documents, and in reliance on the representations and warranties of the Purchaser set forth herein, the Company agrees to issue and sell to the Purchaser, and the Purchaser agrees to purchase from the Company, at the Closing (as defined below), a Note in favor of the Purchaser in the principal amount indicated by such Purchaser to the Company.

2.02 Closings; Delivery.

(a) The Company shall issue a Note to the Purchaser on the date hereof (the "Closing") at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 666 Third Avenue, New York, NY, 10017 (or remotely via the exchange of documents and signatures), or at such other date and time as the Company and the Purchaser mutually agree upon, orally or in writing.

(b) At the Closing, subject to the terms and conditions hereof, (i) the Company will execute and deliver to the Purchaser a Note in an amount equal to the principal amount indicated by such Purchaser to the Company, and (ii) the Purchaser shall deliver to the Company payment in full of the Purchaser's purchase price.

2.03 Use of Proceeds. The proceeds from the sale of the Note shall be used by the Company solely for the purchase of a new series of membership interests (the "Interests") in Facie Libre, created solely for the purpose of holding up to 175,000 shares of Facebook.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to the Purchaser that the following representations are true, correct and complete as of the date hereof:

3.01 Organization, Good Standing and Qualification. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to carry on its business as currently conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure so to qualify would have a material adverse effect on the Company.

3.02 Subsidiaries. The Company does not currently own or control, directly or indirectly, any interest in any other corporation, association, or other business entity. The Company is not a participant in any joint venture, partnership or similar arrangement.

3.03 Authorization. All limited liability company action required to be taken by the Company in order to authorize the Company to enter into and deliver the Purchase Documents, to sell, issue and deliver the Note and to perform all of the other obligations of the Company under the Purchase Documents, has been taken. The Purchase Documents, when executed and delivered by the Company, shall constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, or (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

3.04 Authorization and Compliance. Neither the execution and delivery of the Purchase Documents nor the performance by the Company of its Obligations (as such term is defined in the Note) under the Purchase Documents (including, without limitation, the sale, issuance and delivery of the Note) will: (i) violate any provisions of the organizational documents, as currently in effect, of the Company; (ii) with or without the giving of notice or the passage of time, or both, violate, or be in conflict with, or constitute a default under, or cause or permit the termination or the acceleration of the maturity of, any debt or obligation of the Company; or (iii) violate any material statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority to which the Company or its properties is bound or subject.

3.05 Compliance with Other Instruments and Laws; Permits. The Company is not in material violation or default of any provision of its organizational documents. The Company is not in violation of any provision of any material federal, state or local statute, rule or governmental regulation. The Company has all material franchises, permits, licenses and any similar authority necessary for the conduct of its business. The Company is not in default in any material respect under any of such franchises, permits, licenses or other similar authority.

3.06 Title to Assets. The Company has good and marketable title to all of its property and assets that it purports to own, free and clear of all mortgages, liens, loans and encumbrances, except such encumbrances and liens which arise in the ordinary course of business and do not individually or in the aggregate materially impair the Company's ownership or use of such property and assets. With respect to the property and assets it leases, the Company is in material compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances.

3.07 Tax Matters. The Company has filed all tax returns as required by law. These returns are true and correct in all material respects. The Company has paid all taxes and other assessments due other than those being contested in good faith and in respect of which a reasonable reserve has been established. None of the Company's tax returns have ever been audited by any governmental authorities.

3.08 Fund Assets. The Company represents and warrants to the Purchasers that the Funds (as defined below) or their managers, as applicable, are lawfully entitled recipients of the amounts set forth opposite their names under the column "Unrealized Back-Ends" as set forth on **Exhibit B** hereto. For purposes of this Agreement, "Funds" shall mean Facie Libre, Facie Libre Associates I, LLC, Pipio Associates I, LLC, Pipio Associates II, LLC, Professio Associates I, LLC, and Felix Venture Partners Qwiki, LLC. In addition, Felix Investments, LLC is the holder of warrants to purchase 136,800 shares of Series A Preferred Stock of Jumio Inc. dated September 7, 2010 and is expecting to receive warrants to purchase additional shares of the capital stock of Jumio Inc. in the future (collectively the "Jumio Warrants").

3.09 Collateral Assignment; No Liens. The Company and its Affiliates have, pursuant to the operating agreements of each of the Funds and their managers, full power and authority to cause the "Unrealized Back-Ends" in the Funds owed to the Company or its Affiliates or its or their managers, as applicable, and the Jumio Warrant to be pledged and collaterally assigned to the Purchaser. To the knowledge of the Company, the "back-end interest" in the Funds that will be assigned to the Purchaser, and the Jumio Warrant, are, as of the date hereof, free and clear of any and all liens and encumbrances.

ARTICLE IV

REPRESENTATION AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Company that the following representations are true, correct and complete as of the Closing:

4.01 Authorization. The Purchaser has full power and authority to enter into the Purchase Documents to which the Purchaser is a party. The Purchase Documents to which the Purchaser is a party, when executed and delivered by the Purchaser, will constitute valid and legally binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or any other laws of general application relating to or affecting enforcement of creditors' rights generally, or (b) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

4.02 Restrictions. The Purchaser is purchasing the Note for its own account, for investment and not with a view to the distribution thereof, nor with any present intention of distributing the same. The Purchaser understands that the issuance of the Note has not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Purchaser's representations as expressed herein. The Purchaser understands that the Note is a "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Purchaser must hold the Note indefinitely unless it is registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Purchaser acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Note, and on requirements relating to the Company which are outside of the Purchaser's control, and which the Company is under no obligation and may not be able to satisfy.

4.03 Legend. The Purchaser understands that all certificates evidencing the Note, whether upon initial issuance or upon any permitted transfer thereof, shall bear a legend, prominently stamped or printed thereon, reading substantially as follows:

> "THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH TRANSFER MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT."

4.04 Information. The Purchaser has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the issuance of the Note with the Company's management. The foregoing, however, does not limit or modify the representations and warranties of the Company in Article III of this Agreement or the rights of the Purchasers to rely thereon.

4.05 Accredited Investor; Qualified Purchaser. The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act and is a qualified purchaser as defined in Section 2 of the Investment Company Act of 1940, as amended.

ARTICLE V

CONDITIONS

5.01 Conditions of Purchaser's Obligations at the Closing. The obligations of the Purchaser at the Closing are subject to the satisfaction, at or prior to the Closing, of the following conditions, unless otherwise waived in writing by the Purchaser:

(a) Representations and Warranties True. The representations and warranties made by the Company in Article III hereof shall be true and correct in all material respects as of the date of the Closing.

(b) Compliance with Covenants. The Company shall have performed and complied in all material respects with all covenants applicable to it under the Purchase Documents through the date of the Closing.

(c) Delivery of the Note. The Company shall have delivered the Note to the Purchaser against payment of the purchase price therefor.

(d) No Event of Default. No event shall have occurred and be continuing or would result from the consummation of the borrowing hereunder that would constitute an Event of Default (as defined below).

(e) Guarantees. Each of the members of the Company shall have delivered a Guarantee in favor of the Purchaser, in substantially the form attached hereto as **Exhibit C**.

(f) Collateral Assignment. The Company shall have delivered a fully executed Collateral Assignment of Back-End Interests in substantially the form attached hereto as **Exhibit D**.

5.02 Conditions of Obligations of the Company at Each Closing. The obligations of the Company to the Purchaser at the Closing are subject to the satisfaction, at or prior to the Closing, of the following conditions, unless otherwise waived in writing by the Company:

(a) Representations and Warranties True. The representations and warranties in Article IV made by the Purchaser shall be true and correct in all material respects as of such Closing.

(b) Purchase Price Delivery. The Company shall have received from the Purchaser in immediately available funds the principal amount of the Purchaser's Note.

ARTICLE VI

EVENTS OF DEFAULT

6.01 Events of Default. If any of the following events (each, an "Event of Default") shall occur and be continuing:

(a) default in the payment when due of any principal or interest under the Note;

(b) any breach of any of the representations or warranties by the Company contained in the Purchase Documents;

(c) final judgments against the Company aggregating in excess of $500,000 (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for

in writing), which judgments are not paid, discharged or stayed for a period of 60 days or more after such judgment becomes final;

(d) the Company, pursuant to or within the meaning of any Bankruptcy Law:

(i) commences proceedings to be adjudicated bankrupt or insolvent;

(ii) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking an arrangement of debt, reorganization, dissolution, winding up or relief under applicable Bankruptcy Law;

(iii) consents to the appointment of a receiver, interim receiver, receiver and manager, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(iv) makes a general assignment for the benefit of its creditors; or

(v) generally is not paying its debts as they become due; or

(e) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Company in a proceeding in which the Company is to be adjudicated bankrupt or insolvent;

(ii) appoints a receiver, interim receiver, receiver and manager, liquidator, assignee, trustee, sequestrator or other similar official of the Company, or for all or substantially all of the property of the Company; or

(iii) orders the liquidation, dissolution or winding up of the Company;

and the order or decree remains unstayed and in effect for 60 consecutive days;

then, and in any such event, upon written request of the Purchaser to the Company, the Purchaser may declare the entire unpaid principal amount of the Note, all interest accrued and unpaid thereon and all other amounts payable under the Note to be forthwith due and payable, without presentment, demand, protest of any kind, all of which are waived by the Company, whereupon the Note, all such accrued interest and all such amounts shall become and be forthwith due and payable. Notwithstanding the foregoing, in case an Event of Default under clauses (d) or (e) occurs and is continuing, all interest accrued and unpaid thereon and all other amounts payable under such Note shall become and be immediately due and payable without any declaration or other act on the part of the holders of the Note.

ARTICLE VII

MISCELLANEOUS

7.01 Financial Statements and Other Information. The Company shall provide to the Purchaser upon reasonable request, true and correct copies of all documents, reports, financial data and other information as the Purchaser may reasonably request regarding the financial and tax reporting of the Company. Additionally, the Company shall permit any authorized representatives designated by the Purchaser to inspect the books of account of the Company, and to discuss its and their affairs, finances and accounts with its and their officers, all at such times as such Purchaser may reasonably request.

7.02 Collateral Assignment; No Removal. Simultaneous with the Closing, the Company will, and will cause its Affiliates to, pursuant to the Collateral Assignment of Back-End Interest attached hereto as **Exhibit D**, collaterally assign to the Purchaser, for an amount not to exceed two-times (2x) the principal amount then outstanding pursuant to the Note plus all accrued and unpaid interest thereon (the "Pledged Amount"), the amounts set forth opposite each entities' name under the column "Unrealized Back-Ends" as set forth on **Exhibit B** hereto and the Jumio Warrants, payable to Affiliates of the Company pursuant to the distribution sections of the operating agreements of each of the Funds or their managers. The Company shall not, and shall cause its Affiliates to not, remove, transfer, encumber or place a lien on, any assets of the Funds prior to the repayment to the Purchaser of the Pledged Amount.

7.03 Amendments and Waivers. The Purchase Documents may be amended, and any term or provision of the Purchase Documents may be waived (either generally or in a particular instance and either retroactively or prospectively) upon the written consent of the Company and the Purchaser.

7.04 No Member Rights. Nothing contained in the Purchase Documents shall be construed as conferring upon the Purchaser any additional right to vote or to consent or to receive notice as a member of the Company in respect of meetings of members or a vote on any matters or any rights whatsoever as a member of the Company.

7.05 Indemnification.

(a) The Company shall indemnify, save and hold harmless the Purchaser, its directors, officers, employees, partners, representatives, Affiliates and agents, as applicable, from and against (and shall promptly reimburse such indemnified persons for) any and all liability, loss, cost, damage, charge, reasonable attorneys' and accountants' fees and expenses, any broker or placement agent fees, court costs and all other out-of-pocket expenses (including costs of enforcement) incurred in connection with or arising from claims, actions, suits, judgments, proceedings or similar claims by any person or entity (other than the Company) associated or relating to (i) the execution, delivery and performance of this Agreement, the Note or the transactions contemplated hereby or thereby and (ii) the breach by the Company of its representations, warranties, covenants or agreements set forth herein. This indemnification provision shall be in addition to the rights of the Purchaser to bring an action against the

Company for any other breach of any term of this Agreement or the Note in accordance with applicable law.

(b) Notwithstanding Sections 7.05(a) above, the Purchaser shall not be entitled to indemnification pursuant to this Section 7.05 if the liability, loss, cost or damage for which indemnification is requested hereunder arose out of, in whole or in part, the gross negligence or willful misconduct of the Purchaser.

(c) The representations and warranties made by the parties hereunder and under the Note shall survive the Closing.

(d) The right to indemnification hereunder, or other remedy provided by this Agreement, based on a representation, warranty, covenant or obligation will not be affected by any investigation conducted by the party to or for whom such representation, warranty, covenant or obligation is made, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant, or obligation.

7.06 Successors and Assigns. The Company shall not assign its rights and obligations hereunder without the prior written consent of the Purchaser. This Agreement may not be assigned, conveyed or transferred without the prior written consent of the Company; provided, however, a Purchaser that is partnership, corporation, trust, joint venture, unincorporated organization or other entity may transfer this Agreement to an Affiliate without the prior written consent of the Company. Subject to the foregoing, the rights and obligations of the Company and the Purchaser shall be binding upon and benefit their respective permitted successors, assigns, heirs, administrators and transferees. The terms and provisions of this Agreement are for the sole benefit of the parties hereto and their respective permitted successors and assigns, and are not intended to confer any third-party benefit on any other person.

7.07 Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made: (i) if delivered by hand, when received, (ii) if sent by a nationally recognized courier service, one (1) business day after delivery to such courier service, (iii) if transmitted by facsimile or e-mail, at the time such transmission is confirmed to the sender, (iv) if sent by certified mail, four (4) business days after delivery to the postal system, in each case addressed as follows in the case of the Company and the Purchasers or to such other address as may be hereafter notified by the respective parties hereto and any future holders of the Note pursuant to this Section 7.07:

Company:	FB Management Associates, LLC 17 State Street 5th Floor New York, NY 10004 Fax: (212) 208-4429 E-mail: fmazzola@felixinvestments.com Attn: Frank Mazzola
With a copy to:	Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC 666 Third Avenue New York, New York 10017 Fax: (212) 983-3115 E-mail:didewolf@mintz.com Attn: Daniel I. DeWolf, Esq. (which copy shall not constitute notice)
Purchaser:	To the address indicated on the signature page hereto

7.08 Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Purchaser, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

7.09 Public Announcements. The Purchaser and the Company shall consult with each other before issuing any press release or making any other public statement with respect to this Agreement or the transactions contemplated hereby and shall not issue any such press release or make any such other public statement without the consent of the other party, except as such release or announcement may be required by applicable law.

7.10 Payment of Fees, Expenses. The Company shall be responsible for the payment of its own costs and expenses, including attorney's fees, as well as the reasonable costs and expenses, including attorney's fees, of the Purchaser incurred in connection with the transactions contemplated hereunder.

7.11 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

7.12 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any

such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

7.13 Integration and Paramountcy. This Agreement and the other Purchase Documents represent the entire agreement of the Company and the Purchaser with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Purchaser relative to the subject matter hereof and thereof not expressly set forth or referred to herein or in the other Purchase Documents. In the event of any conflict, inconsistency, ambiguity or difference between this Agreement and the other Purchase Documents, the provisions of this Agreement shall govern and be paramount, and any such provisions in the other Purchase Documents shall be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

7.14 Governing Law. This Agreement shall be governed by and construed under the laws of the State of New York as applied to agreements among residents of the State of New York entered into and to be performed entirely within the State of New York and without regard to conflict of law principles thereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Note Purchase Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

FB MANAGEMENT ASSOCIATES LLC

By: _____
Name: Frank Mazzola
Title: manager

_____
Eduardo Saverin

[ADDITIONAL COUNTERPART SIGNATURE PAGES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Note Purchase Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

FB MANAGEMENT ASSOCIATES LLC

By: _____
Name:
Title:

Eduardo Saverin

Eduardo Saverin

[redacted]

[ADDITIONAL COUNTERPART SIGNATURE PAGES BEGIN ON NEXT PAGE]

EXHIBIT A

FORM OF PROMISSORY NOTE

EXHIBIT B

UNREALIZED BACK ENDS

EXHIBIT C

FORM OF GUARANTEE

EXHIBIT D

COLLATERAL ASSIGNMENT OF BACK-END INTEREST

Exhibit A

PROMISSORY NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH TRANSFER MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT.

FB MANAGEMENT ASSOCIATES, LLC

PROMISSORY NOTE

US$ 4,000,000 **Issue Date: February 16, 2011**

FB Management Associates, LLC, a limited liability company duly formed under the laws of the State of Delaware (the "Company"), for value received, hereby promises to pay to Eduardo Saverin or his registered assigns (the "Holder") the principal sum of $4,000,000, together with accrued and unpaid interest thereon, in the manner provided herein. This Promissory Note (this "Note") is issued pursuant to that certain Note Purchase Agreement dated February 16, 2011, by and between the Company and the Purchaser (as defined therein) (the "Purchase Agreement"), and the Holder is entitled to the benefits of the Purchase Agreement. Except as to those terms otherwise defined in this Note, all capitalized terms used in this Note shall have the respective meanings ascribed to them in the Purchase Agreement.

1. **Payment; Pre-Payment.**

(a) Payment. Unless earlier repaid as provided in Section 1(c), all amounts outstanding and unpaid under this Note shall be due and payable on the earliest to occur of: (i) thirty-six (36) months from the date hereof or (ii) thirty (30) days following the occurrence of a Liquidity Event (as hereinafter defined) ("Maturity Date"). As used herein "Liquidity Event" shall mean either (i) the sale of the Interests by the Company or (ii) a distribution to the Company of cash or stock of Facebook, Inc., a Delaware corporation, with respect to the Company's investment in Facie Libre Associates II LLC, a Delaware limited liability company.

(b) Upon the Maturity Date, the Holder shall receive in exchange for the surrender to the Company and cancellation of the Note an amount equal to (i) any unpaid principal amount of such Note, plus (ii) any accrued and unpaid interest thereon, plus (iii) the Additional Return (as defined below), if applicable, provided, however, in the event that the Maturity Date is prior to the six (6) month anniversary hereof, the interest to be paid pursuant to Section 1(b)(ii) shall be at least equal to six (6) months worth of interest.

(c) Pre-Payment. This Note may not be prepaid without the prior written consent of the Holder, provided, however, that in the event the Holder consents to a prepayment of this Note on or prior to the six (6) month anniversary hereof, the Holder shall be entitled to be repaid all principle plus six (6) months worth of interest. Notwithstanding the foregoing, the

Holder is entitled to force the repayment of the Note by the Company at any time following the six (6) month anniversary hereof. Upon such forced repayment, the Holder shall be entitled to receive all unpaid principal hereon, plus any accrued and unpaid interest hereon plus the Additional Return, if applicable (as defined below).

2. Interest. Interest on the unpaid principal amount shall accrue beginning on the Issue Date set forth above at a rate equal to fifteen percent (15.0%) per annum, compounded annually, computed on the basis of the actual number of days elapsed and a year of 365 days from the date of this Note until the principal amount and all interest accrued thereon are paid. Interest shall only be due and payable upon the Maturity Date as set forth in Section 1(b).

3. Additional Return. Upon the occurrence of a Liquidity Event, in addition to the payment by the Company to the Holder of all principal and accrued and unpaid interest on the Notes, the Holder shall be entitled to receive fifty percent (50%) of the net proceeds received by the Company from such Liquidity Event in excess of the aggregate outstanding principal amount of the Notes plus all accrued but unpaid interest thereon (the "Additional Return").

4. Events of Default. In the case an Event of Default shall occur, then upon demand by the Holder (which demand shall not be required in the case of an Event of Default under Section 6.01(d) or (e) of the Purchase Agreement), then the entire outstanding principal amount, plus accrued and unpaid interest thereon, of this Note shall become immediately due and payable in the manner and with the effect provided in the Purchase Agreement and this Note.

5. Security. As security for the payment and performance of the Obligations (as defined below), the Company hereby grants, and shall cause its Affiliates to grant, to the Holder:

(a) a first priority security interest, having priority over all other security interests, in all of the Company's right, title and interest in and to the Interests, free and clear of all Liens (other than Permitted Liens (each as defined below));

(b) a collateral assignment for an amount not to exceed two-times (2x) the principal amount then outstanding pursuant to the Note plus all accrued and unpaid interest thereon (the "Pledged Amount"), of a portion of the amounts set forth opposite each funds name under the column "Unrealized Back-Ends" as set forth on **Exhibit B** to the Note Purchase Agreement equal to the Pledged Amount payable to Affiliates of the Company or its or their managers pursuant to the distribution sections of the operating agreements of Facie Libre, Facie Libre Associates I, LLC, Pipio Associates I, LLC, Pipio Associates II, LLC, Professio Associates I, LLC, and Felix Venture Partners Qwiki, LLC, or the operating agreements of their managers; and

(c) a first priority security interest, having priority over all other security interests, in all of Felix Investments, LLC's right, title and interest in and to warrants to purchase 136,800 shares of Series A Preferred Stock of Jumio Inc. dated September 7, 2010 together with all other warrants to purchase capital stock of Jumio Inc. hereinafter acquired (the "Jumio Warrants"), free and clear of all Liens (other than Permitted Liens (each as defined below)) (collectively with Sections 5(a) and 5(b), the "Collateral").

6. Costs of Enforcement. The Company agrees to pay on demand all costs and expenses of the Purchaser, and all reasonable fees and disbursements of one counsel to Purchaser, in connection with: (i) the protection or preservation of the Purchaser's rights under this Note, whether by judicial proceeding or otherwise; (ii) the enforcement or attempted enforcement of, and preservation of any rights under, this Note; and (iii) any out-of-court workout or other refinancing or restructuring or in any bankruptcy case, including, without limitation, any and all losses, costs and expenses sustained by the Purchaser as a result of any failure by the Company to perform or observe its obligations contained herein.

7. Financing Statements, Etc. The Company hereby authorizes the Holder to file (with a copy thereof to be provided to the Company contemporaneously therewith), at any time and from time to time thereafter, all financing statements, financing statement assignments, continuation financing statements, and UCC filings, in form reasonably satisfactory to the Holder. The Company shall execute and deliver and shall take all other action, as the Holder may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the security interest of the Holder in the Collateral (subject to the terms hereof) and to accomplish the purposes of this Note.

8. Transfer; Successors and Assigns. The Company shall not assign its rights and obligations hereunder without the prior written consent of the Holder. The Holder may not sell, assign, pledge, dispose of or otherwise transfer this Note or any interest herein without the prior written consent of the Company; provided, however, a Holder that is a partnership, corporation, trust, joint venture, unincorporated organization or other entity may transfer this Note to an Affiliate without the prior written consent of the Company. Subject to the preceding sentence, this Note may be transferred only upon surrender of the original Note (or affidavit of loss with any indemnity reasonably requested by the Company) for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Company. Thereupon, a new note for the same principal amount and interest will be issued to, and registered in the name of, the transferee. Interest and principal are payable only to the registered Holder. The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

9. Governing Law. This Note shall be governed by and construed under the laws of the State of New York as applied to agreements among residents of the State of New York entered into and to be performed entirely within the State of New York and without regard to conflict of law principles thereof.

10. Notices. All notices required or permitted hereunder shall be given in accordance with Section 7.07 of the Purchase Agreement.

11. Integration and Paramountcy. The Notes and the Purchase Agreement represent the entire agreement of the Company and the Holders with respect to the subject matter hereof and thereof. In the event of any conflict, inconsistency, ambiguity or difference between this Note and the Purchase Agreement, the provisions of the Purchase Agreement shall govern and be paramount and any such provisions of the Note shall be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

12. Amendments and Waivers. This Note may be amended or modified, and any provision hereof may be waived only in accordance with Section 7.02 of the Purchase Agreement.

13. Headings. The headings in this Note are for purposes of reference only, and shall not limit or otherwise affect the meaning hereof.

14. Certain Definitions.

"**Lien**" means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the UCC (or equivalent statutes) of any jurisdiction.

"**Obligations**" means the indebtedness, liabilities and other obligations of the Company to the Holder under or in connection with the Purchase Documents, including without limitation, the unpaid principal of the Note, all interest accrued thereon, all Additional Interest, all fees and all other amounts payable by the Company to the Holder thereunder or in connection therewith, whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined with respect thereto.

"**Permitted Liens**" mean: (i) Liens in favor of the Holder in respect of the Obligations hereunder; (ii) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings and which are adequately reserved for in accordance with GAAP; (iii) Liens consisting of deposits or pledges to secure the payment of worker's compensation, unemployment insurance or other social security benefits or obligations, or to secure the performance of bids, trade contracts, leases, public or statutory obligations, surety or appeal bonds or other obligations of a like nature incurred in the ordinary course of business; and (v) easements, rights of way, servitudes or zoning or building restrictions and other minor encumbrances on real property and irregularities in the title to such property which do not in the aggregate materially impair the use or value of such property or risk the loss or forfeiture of title thereto.

"**UCC**" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York.

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IN WITNESS WHEREOF, the Company has caused this Note to be duly executed and delivered.

FB MANAGEMENT ASSOCIATES LLC

By: _____
Name: Frank Mazzola
Title: Manager

Exhibit B

Exhibit B

Fund	Amount Invested	Shares Held	Current Share Price	Fund Value	Unrealized Gain	Unrealized Back-End
Facie Libre Associates I, LLC and Facie Libre Associates II, LLC (Facebook)	$ 45,479,857	4,621,000	$ 32.00	$ 147,872,000	$ 102,392,143	$ 8,631,621
Professio Associates I, LLC (LinkedIn)	$ 6,898,158	316,352	$ 30.00	$ 9,490,548	$ 2,592,391	$ 129,620
Felix Venture Partners Qwiki, LLC (Qwiki)	$ 3,999,999	877,333	$ 5.00	$ 4,386,665	$ 386,666	$ 77,333
Liber Argentum Associates, LLC (Jumio)*	$ 1,393,000	1,368,000				
Pipio Associates I, LLC (Twitter)	$ 2,052,129	328,341	$ 35.00	$ 11,491,920	$ 9,439,791	$ 841,373
Pipio Associates II, LLC** (Twitter)	$ 2,000,006	320,001	$ 35.00	$ 11,200,035	$ 9,200,029	$ 410,001
	$ 16,343,291			$ 184,441,168	$ 124,011,019	$ 10,089,948

* The number of Jumio shares held by Liber Argentum will change at the next closing: doubling the number of shares presently held by Liber Argentum and adding the number of shares acquired in second closing. Back-End is in form of 10% warrant coverage.

** Pipio Associates II, LLC was sold to Lilac Tree Investments Partners, LLC and the Manager of Pipio Associates II retained the rights to receive the Unrealized Back-End.

Exhibit C

GUARANTEE

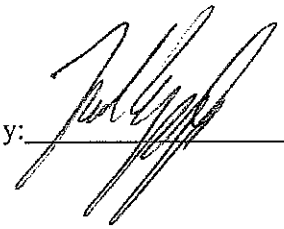
As an inducement for Eduardo Saverin ("**Saverin**"), to consummate the transactions contemplated by that certain Promissory Note dated February 16, 2011, (the "**Promissory Note**") by and between Saverin and FB Management Associates, LLC ("**Borrower**"), the undersigned ("**Guarantor**") hereby guarantees the performance of all performance obligations of Borrower under the Promissory Note, but only on the condition that Borrower shall have first defaulted in the performance of such performance obligations, and Saverin shall have taken appropriate steps in a court of law to compel performance by Borrower of its performance obligations under the Promissory Note, before requiring performance thereof from the Guarantor. I n the event of any bankruptcy proceedings having been initiated by or against Borrower, or in the event that Borrower shall cease to be a limited liability company existing under the laws of the State of Delaware, Saverin may immediately proceed against the Guarantor for performance of Borrower's obligations under the Promissory Note; *provided, however*, in such instance Guarantor shall first have the absolute right to exercise such contractual rights that Borrower would otherwise have under the Promissory Note to dispute and resolve liability for any such obligation.

The terms of this Guarantee shall be governed by and construed and enforced in accordance with the laws of the State of Delaware (exclusive of any rules as to conflicts of laws). The Guarantor hereby submits to the jurisdiction of the federal and state courts of the State of Delaware and irrevocably agrees that, subject to the sole and absolute election of Saverin and to the extent permitted by applicable law, all actions or proceedings relating to the Guarantee shall be litigated in such courts and the Guarantor waives any objection that he may have based on improper venue or non-convenient forum to the conduct of any proceeding in any such court.

This Guarantee is intended for and shall inure to the benefit of Saverin, his successors and assigns.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the Guarantor has caused this Guarantee to be executed and delivered as of the date first written above.

By: 

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GUARANTEE

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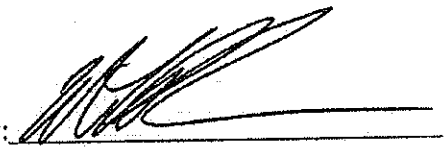
By: 

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This Guarantee is intended for and shall inure to the benefit of Saverin, his successors and assigns.

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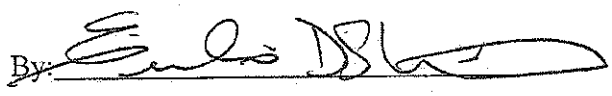
By: 

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GUARANTEE

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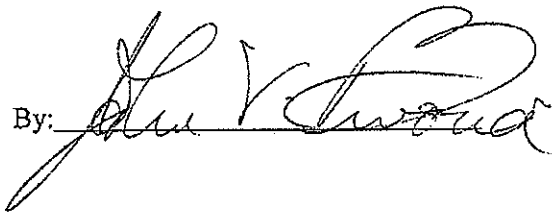
By: 

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Exhibit D

COLLATERAL ASSIGNMENT OF BACK-END INTEREST

THIS COLLATERAL ASSIGNMENT OF BACK-END INTEREST (this "**Assignment**"), dated as of February 16, 2011, is by and among FB Management Associates, LLC, a Delaware limited liability company (the "**Borrower**"), Pipio Management Associates, LLC, a Delaware limited liability company ("**Pipio**"), Professio Management Associates, LLC, a Delaware limited liability company ("**Professio**"), Felix Venture Partners Qwiki Management Associates, LLC, a Delaware limited liability company ("**FVPQ**"), Facie Libre Management Associates, LLC, a Delaware limited liability company ("**Facie Libre**"), Felix Investments LLC ("**Felix**", and jointly and severally with Borrower, Pipio, Professio, FVPQ and Facie Libre, the "**Assignors**" and each, an "**Assignor**"), and Eduardo Saverin (the "**Assignee**").

RECITALS

WHEREAS, Borrower has entered into that certain Note Purchase Agreement dated February 16, 2011 (as amended, supplemented, modified and/or restated from time to time, the "**Purchase Agreement**") with Assignee as the lender thereunder;

WHEREAS, Borrower has executed and delivered to Assignee that certain Promissory Note dated February 16, 2011 (as amended, supplemented, modified and/or restated from time to time, the "**Promissory Note**", and, together with the Purchase Agreement, the "**Loan Documents**");

WHEREAS, Pipio is party to (a) that certain Operating Agreement of Pipio Associates I, LLC dated April 14, 2010 (the "**Pipio I Operating Agreement**") and (b) that certain Membership Interest Purchase and Subscription Agreement dated May 5, 2010 (the "**Pipio II MIPSA**");

WHEREAS, Professio is party to that certain Operating Agreement of Professio Associates I, LLC dated March 19, 2010 (the "**Professio Operating Agreement**");

WHEREAS, Facie Libre is party to (a) that certain Operating Agreement of Facie Libre Associates I, LLC dated February 4, 2010 (the "**Facie Libre I Operating Agreement**") and (b) that certain Operating Agreement of Facie Libre Associates II, LLC dated November 12, 2010 (the "**Facie Libre II Operating Agreement**");

WHEREAS, FVPQ is party to that certain Operating Agreement of Felix Venture Partners Qwiki, LLC dated December 29, 2010 (the "**Qwiki Operating Agreement**");

WHEREAS, Felix is the holder of that certain Series A Preferred Stock Purchase Warrant dated September 7, 2010 exercisable for 136,800 shares of Series A Preferred Stock of Jumio, Inc. (the "**Jumio Warrant**", and together with the Pipio I Operating Agreement, the Pipio II MIPSA, the Professio Operating Agreement, the Facie Libre I Operating Agreement, the Facie Libre II Operating Agreement and the Qwiki Operating Agreement, the "**Fund Documents**"); and

WHEREAS, the principals of the Borrower have guaranteed the repayment of all Obligations under the Loan Documents, and, as additional security for the repayment of such Obligations, have agreed to cause the Borrower execute this Assignment and to cause the Assignors to execute and deliver this Assignment to Assignee.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

AGREEMENT

1. Capitalized terms used and not defined herein or in the recitals of this Assignment shall have the meanings assigned to such terms in the Loan Documents.

2. As collateral security for all debts, liabilities, or obligations of the Borrower now existing or hereafter arising under the Loan Documents, including, without limitation, the Obligations, the respective Assignor hereby assigns, transfers and sets over to Assignee a continuing security interest in and to:

(a) all of Pipio's rights to receive carried interest distributions under Sections 4.2(a)(ii) and (iii) of the Pipio I Operating Agreement;

(b) all of Pipio's rights to receive contingent consideration distributions under Sections 1(c), (d) and (e) and (iii) of the Pipio II MIPSA;

(c) all of Professio's rights to receive carried interest distributions under Sections 4.2(a)(ii) and (iii) of the Professio Operating Agreement;

(d) all of Facie Libre's rights to receive carried interest distributions under Sections 4.2(a)(ii) and (iii) of the Facie Libre I Operating Agreement;

(e) all of Facie Libre's rights to receive carried interest distributions under Sections 4.2(a)(ii) and (iii) of the Facie Libre II Operating Agreement;

(f) all of FVPQ's rights to receive carried interest distributions under Section 5.1(b) of the Qwiki Operating Agreement; and

(g) all of Felix's rights and benefits, but not its obligations, under the Jumio Warrant, and any rights and benefits, but not obligations, of any other stock purchase warrants issued by Jumio, Inc. to Felix subsequent to the date hereof (such subsequent stock purchase warrants, if any, to be included in the definition of "Fund Documents").

The rights and interests set forth in this Section 2 are herein referred to as the "**Collateral**".

3. Upon an Event of Default, each Assignor covenants and agrees to cause all of the payments made to it or securities distributed to it pursuant to the Fund Documents to be made or distributed, as the case may be, directly to Assignee. Notwithstanding the foregoing, the Assignee shall not be entitled to receive Collateral in excess of two times (2x) the principal amount then outstanding pursuant to the Promissory Note plus all accrued and unpaid interest thereon.

4. Upon payment in full of all of the Obligations, this Assignment shall terminate and be void and of no further effect.

5. Each Assignor covenants and agrees with Assignee that it will not amend the respective Fund Documents in any way that would interfere with the assignment of, reduce or otherwise impair the Collateral.

6. Assignee shall have no obligation or duty to perform any of the Obligations of any of the Assignors under the Fund Documents, all of which shall remain the sole and exclusive duty and obligation of the respective Assignor. In addition, the exercise or failure to exercise any of Assignee's rights hereunder shall in no way release, relieve or impact any of the Assignors' respective obligations under the Fund Documents.

7. Notwithstanding anything to the contrary contained herein or in the Loan Documents, upon the occurrence of and during the continuation of an Event of Default beyond any applicable notice and cure periods (a) the Collateral received by Assignee may be applied by Assignee to any principal, interest and other amounts owing by Borrower under the Promissory Note in such order and priority as Assignee shall determine in his reasonable discretion, and (b) Assignee shall be entitled to exercise all remedies (i) provided in the Uniform Commercial Code as adopted in the State of New York (the "**UCC**"), (ii) as are otherwise available under applicable law or in equity, and (iii) provided in the Loan Documents with respect to the security interest being granted herein.

8. Each Assignor further covenants and agrees with Assignee that it will at any time and from time to time, upon the written request of Assignee, and at the sole expense of the Assignors, promptly and duly execute and deliver such further reasonable instruments and documents and take such further action as Assignee may reasonably request for the purpose of obtaining or preserving the full benefits of this Assignment and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the UCC. An electronic or other reproduction of this Assignment shall be sufficient as a financing statement for filing in any jurisdiction.

9. The rights assigned hereunder include, and are not limited to, any and all rights and rights of enforcement regarding warranties, representations, covenants and indemnities made under the Fund Documents including, but not limited to, all rights granted to each Assignor pursuant to any exhibits and schedules to the foregoing, and all rights, claims or causes of action for any breach or violation of the provisions of the Fund Documents. Assignee shall have the right to institute action and seek redress directly under the Fund Documents, for any such breach or violation; provided, however, that so long as there exists no Event of Default under the Loan Documents, any Assignor may enforce all of the rights, claims or causes of action which such Assignor may have under the Fund Documents, but only to the extent such enforcement is not inconsistent with Assignee's interests under this Assignment or any of the Loan Documents, and provided that any proceeds received by an Assignor from such enforcement are applied to the Obligations to the extent required by the Loan Documents.

10. Upon the occurrence and during the continuance of an Event of Default under the Loan Documents, Assignee may enforce, either in his own name or in the name of an Assignor, all rights of the an Assignor under the Fund Documents, including, without limitation, to (a) bring suit to enforce the rights described above in Section 2 under the respective Fund Documents, (b) compromise or settle any disputed claims as to rights under the Fund Documents, (c) give releases or acquittances of rights under the Fund Documents, and/or (d) do any and all things necessary, convenient, desirable or proper to fully and completely effectuate the collateral assignment of the rights under the Fund Documents pursuant hereto. Each Assignor hereby constitutes and appoints the Assignee or the Assignee's designee as such Assignor's attorney-in-fact with full power in such Assignor's name, place and stead to do or accomplish any of the aforementioned undertakings and to execute such documents or instruments in the name or stead of such Assignor as may be necessary, convenient, desirable or proper in the Assignee's reasonable discretion. The aforementioned power of attorney shall be a power of attorney coupled with an interest and irrevocable. In the event any action is brought by the Assignee to enforce its assigned rights to the Collateral under the Fund Documents, each Assignor agrees to fully cooperate with and assist the Assignee in the prosecution thereof. It is expressly understood and agreed, however, that Assignee shall not be required or obligated in any manner to make any demand or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any other action to collect or enforce the payment of any amounts which may have been assigned to Assignee or to which Assignee may be entitled hereunder at any time or times.

11. THIS COLLATERAL ASSIGNMENT OF BACK-END INTEREST SHALL BE INTERPRETED AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH APPLICABLE FEDERAL LAW AND THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW PRINCIPLES. EACH ASSIGNOR AND ASSIGNEE EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS ASSIGNMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.

12. The parties agree that, in addition to any other remedies Assignee may have hereunder, Assignee shall be entitled to equitable relief including specific performance and injunctive relief to enforce its rights under this Assignment.

13. This Assignment shall be binding upon each Assignor and each Assignor's successors and assigns and shall benefit the Assignee and the Assignee's executors, heirs and assigns, provided that (a) no Assignor may assign or transfer its rights or obligations under this Assignment or any interest herein or delegate its duties hereunder, and (b) Assignee shall have the right to assign its rights hereunder and under the Fund Documents.

14. Any notice, demand, request or other communication given hereunder or in connection herewith (hereinafter "**Notices**") shall be deemed sufficient if in writing and sent (a) by registered or certified mail, postage prepaid, return receipt requested, or (b) by e-mail or facsimile, with acknowledgment of receipt by the intended party, addressed to the party to receive such Notice at such address as each party has provided to the other, or at such other address as such party may hereafter designate by Notice given in like fashion. Notice shall be deemed given when mailed, or in the event of facsimile or e-mail, upon acknowledgement of receipt from the intended recipient.

15. Any term or provision of this Agreement may be amended only by a writing signed by each party. The observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only by a writing signed the party waiving its right. The waiver by a party of any breach or default shall not be deemed to constitute a waiver of any other breach or default. The failure of any party to enforce any provision hereof shall not be construed as or constitute a waiver of the right of such party thereafter to enforce such provision.

16. This Assignment constitutes the final and entire agreement with respect to the collateral assignment of back-end interest rights under the Fund Documents from the Assignors to the Assignee and any term, covenant or provision not set forth herein shall not be considered a part of this Assignment.

17. In case any one or more of the provisions contained in this Assignment are, or shall for any reason be held to be, invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included.

18. This Assignment may be executed by facsimile or portable document format (PDF) in one or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, each of the parties has duly executed this Assignment as of the date first written above.

BORROWER:

FB MANAGEMENT ASSOCIATES, LLC

By:_____
Name:_____
Title:_____

ASSIGNORS:

PIPIO MANAGEMENT ASSOCIATES, LLC

By:_____
Name:_____
Title:_____

PROFESSIO MANAGEMENT ASSOCIATES, LLC

By:_____
Name:_____
Title:_____

FELIX VENTURE PARTNERS QWIKI MANAGEMENT ASSOCIATES, LLC

By:_____
Name:_____
Title:_____

FACIE LIBRE MANAGEMENT ASSOCIATES, LLC

By:_____
Name:_____
Title:_____

FELIX INVESTMENTS LLC

By:_____
Name:_____
Title:_____

ASSIGNEE:

EDUARDO SAVERIN

Eduardo Saverin

IN WITNESS WHEREOF, each of the parties has duly executed this Assignment as of the date first written above.

BORROWER:

FB MANAGEMENT ASSOCIATES, LLC

By: _____
Name: Frank Mazzola
Title: Manager

ASSIGNORS:

PIPIO MANAGEMENT ASSOCIATES, LLC

By: _____
Name: Frank Mazzola
Title: Manager

PROFESSIO MANAGEMENT ASSOCIATES, LLC

By: _____
Name: Frank Mazzola
Title: Manager

FELIX VENTURE PARTNERS QWIKI MANAGEMENT ASSOCIATES, LLC

By: _____
Name: Frank Mazzola
Title: Manager

FACIE LIBRE MANAGEMENT ASSOCIATES, LLC

By: _____
Name: Frank Mazzola
Title: Manager

FELIX INVESTMENTS LLC

By: _____
Name: Frank Mazzola
Title: Manager

ASSIGNEE:

EDUARDO SAVERIN

_____

EXHIBIT 2

ASSIGNMENT AND ACCEPTANCE

This Assignment and Acceptance (this "Assignment") is made as of March 30, 2011, by Eduardo Saverin ("Assignor"), in favor of Progresso Ventures, LLC, a Delaware limited liability company ("Assignee") and is acknowledged and consented to by (i) FB Management Associates, LLC, a Delaware limited liability company ("Borrower"), (ii) Pipio Management Associates, LLC, a Delaware limited liability company ("Pipio"), Professio Management Associates, LLC, a Delaware limited liability company ("Professio"), Felix Venture Partners Qwiki Management Associates, LLC, a Delaware limited liability company ("FVPQ"), Facie Libre Management Associates, LLC, a Delaware limited liability company ("Facie Libre") and Felix Investments LLC ("Felix" and together with Pipio, Professio, FVPQ and Facie Libre, each a "Company" and collectively, the "Companies") and (iii) Emilio DiSanluciano, John Bivona, Frank Mazolla and William Barkow (each a "Guarantor" and collectively, the "Guarantors").

WHEREAS, Assignor and Borrower have entered into that certain Note Purchase Agreement dated February 16, 2011 (the "Purchase Agreement") with Assignor as the lender thereunder;

WHEREAS, in connection with the Purchase Agreement, Assignor is the holder of a certain promissory note, dated February 16, 2011, in the outstanding principal amount of $4,000,000, issued by Borrower (the "Note");

WHEREAS, each Company has secured the obligations of the Borrower under the Note and the Purchase Agreement by collaterally assigning certain rights held thereby to the Assignor pursuant to that certain Collateral Assignment of Back-End Interest, dated February 16, 2011, by and among the Borrower, the Companies and Assignor (the "Collateral Assignment") and each Guarantor has guaranteed the performance of the obligations of the Borrower under the Note by the execution of a Guarantee (collectively, the "Guarantees");

WHEREAS, the Assignor now desires to assign all of its right, title and interest in and to the Purchase Agreement, the Note, the Guarantees and the Collateral Assignment (the "Loan Documents") to Assignee and Assignee desires to accept such assignment; and

WHEREAS, the Borrower, the Companies and the Guarantors wish to consent to such assignment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby irrevocably sells, assigns and transfers to Assignee, without recourse, representation or warranty, all of Assignor's right, title and interest in and to the Loan Documents and Assignee accepts such sale, assignment and transfer of the Loan Documents.

2. By signing below, the Borrower, the Companies and the Guarantors consent to the assignment of the Loan Documents by the Assignor to the Assignee.

3. This Assignment shall be construed under the laws of the State of New York, without giving effect to its internal conflict of laws rules.

4. This Assignment is binding upon and inures to the benefit of the heirs, executors, administrators and permitted assigns of the parties hereto.

5. This Assignment may be executed in any number of counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, each of the parties has duly executed this Assignment as of the date first written above.

ASSIGNOR:

Eduardo Saverin

Eduardo Saverin

ASSIGNEE:

PROGRESSO VENTURES, LLC

By: Eduardo Saverin

Name: Eduardo Saverin

Title: Manager

Acknowledged and consented to by:

COMPANIES:

FB MANAGEMENT ASSOCIATES, LLC

By: _____
Name: Emilio DiSanluciano
Title: manager

PIPIO MANAGEMENT ASSOCIATES, LLC

By: _____
Name: Frank Mazzola
Title: manager

PROFESSIO MANAGEMENT ASSOCIATES, LLC

By: _____
Name: Frank Mazzola
Title: Manager

FELIX VENTURE PARTNERS QWIKI MANAGEMENT ASSOCIATES, LLC

By: _____
Name: Emilio DiSanluciano
Title: MANAGER

FACIE LIBRE MANAGEMENT ASSOCIATES, LLC

By: _____
Name: Frank Mazzola
Title: Manager

FELIX INVESTMENTS LLC

By: _____
Name: Emilio DiSanluciano
Title: principal

GUARANTORS:

_____
Emilio DiSanluciano

_____
Frank Mazzola

_____
William Barkow

_____
John Bivona

EXHIBIT 3

Subject: FW: Saverin

Date: April 30, 2012 at 10:01:41 PM GMT+2

From: <William.Reckler@lw.com>

To: <eduardo[redacted], <alex[redacted]

Cc: <Betsy.Marks@lw.com>, <Aaron.Jaroff@lw.com>

Eduardo and Alex,

[redacted]

Will

William O. Reckler

LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022-4834
Direct Dial: +1.212.906.1803
Fax: +1.212.751.4864
Email: william.reckler@lw.com
http://www.lw.com

From: Jacobs, Howard S. [mailto:howard.jacobs@kattenlaw.com]
Sent: Monday, April 30, 2012 3:09 PM
To: Reckler, William (NY)
Cc: jdempsey; jvbivona; Resnik, Scott A.
Subject: Saverin

Will -- as per your request.If you want to discuss, please contact me.

HOWARD S. JACOBS
Partner

Katten Muchin Rosenman LLP
575 Madison Avenue / New York, NY 10022-2585
p / (212) 940-8505 f / (212) 894-5505
howard.jacobs@kattenlaw.com / www.kattenlaw.com

From: Colon, Arleen
Sent: Monday, April 30, 2012 3:02 PM
To: Jacobs, Howard S.
Subject:

==========

CIRCULAR 230 DISCLOSURE: Pursuant to Regulations Governing Practice Before the Internal Revenue

Service, any tax advice contained herein is not intended or written to be used and cannot be used by a taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

==========

CONFIDENTIALITY NOTICE:

This electronic mail message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction. Please notify the sender, by electronic mail or telephone, of any unintended recipients and delete the original message without making any copies.

==========

NOTIFICATION: Katten Muchin Rosenman LLP is an Illinois limited liability partnership that has elected to be governed by the Illinois Uniform Partnership Act (1997).

==========

Via Email

William O. Reckler, Esq.
Latham & Watkins LLP
888 Third Avenue
New York, NY 10022-4834
Email: william.reckler@lw.com

Will:

As per your email dated April 27, 2012 requesting certain information from FB Management Associates, LLC ("FB Management") regarding the transaction with Eduardo Saverin please be advised of the following:

- Quarterly and annual reports, and tax filings for FB Management and Facie Libre Associates II, LLC ("FLA II"). Attached hereto is the 2010 audit for FLA II (Exhibit A). The 2011 audit is in process of being prepared and will probably be available in 2-3 weeks.

- Proof of purchase of FB shares – On what dates and at what prices did Facie Libre buy the shares in FB, and from whom? The shares underlying Series S were purchased in February 2011. The Series S was purchased at $25.38 per equivalent underlying share.

- Did the seller(s) have any affiliation with Felix-related entities/funds or Felix' principals? No, all purchases have been from former Facebook employees.

- Proof of purchase of Facie Libre interests shares – On what date and at what price did FB Management buy the shares in Facie Libre, and from whom? FB Management was the sole member of Series S. See the attached "FLA II 2011 Activity Report." (Exhibit B) It shows the specific allocation of shares from certificates that comprised Series S (as well as all series created in FLA II in 2011.) Copies of the Facebook, Inc. certificates are attached to Exhibit B.

- Proof of sale of shares of Facie Libre – On what date and what price did FB Management sell the shares, and to whom? We are informed that Joe Dempsey previously delivered this information to you last summer. Notwithstanding that, attached please find a schedule showing the sales of the Series S, but with the names of the investors blacked out. We have also attached the Signature Bank statement showing the funds received from the sales. (Exhibit C)

- Record of all fees/commissions earned by any Felix entity in connection with FB Management or Facie Libre. There was a 5% placement fee when FBMA made its investment in the Series S. The placement fee is disclosed in the FLA II offering documents.

- Record of any fee sharing arrangements with respect to FB shares. We are not sure what you are referring to here.

We respect to the Professio Associates I, LLC ("Professio") transaction:

When will the auditors' report be available for Professio? We indicated to you previously that it should be completed in the 2-3 weeks at which time we will forward it to you.

Please provide the auditors' documentation of the calculation of amounts owed to Mr. Saverin. Attached as Exhibit D is a spreadsheet prepared by the auditors which indicates the calculation of the amounts due Mr. Saverin.

There were no emails notifying Mr. Saverin of the sale before it was executed and the Operating Agreement does not provide for such notification to be given to an investor before the execution of a sale.

We can discuss the amount of interest due Mr. Saverin in connection with the FB transaction.

Exhibit C

Statement Period
From June 01, 2011
To June 30, 2011
Page 2 of 2

PRIVATE CLIENT GROUP 222
261 MADISON AVENUE
NEW YORK, NY 10016

FB MANAGEMENT ASSOCIATES LLC
C/O FELIX INVESTMENTS
17 STATE STREET, 5TH FLOOR
NEW YORK NY 10004

8-222

See Back for Important Information

Primary Account: 1501593229 0

MONOGRAM CHECKING 1501593229

Summary

Previous Balance as of June 01, 2011		.00
1 Credits		553,456.01
Ending Balance as of June 30, 2011		553,456.01

Deposits and Other Credits

Jun 30	TRANSFER CR	TRANSFER CR	553,456.01

Daily Balances

May 31	.00	Jun 30	553,456.01

Rates for this statement period - Overdraft
Jun 01, 2011 13.000000 %

Signature SIGNATURE BANK

Online Banking

Logoff Home Contact Us Privacy Policy Terms and Conditions Browser Support

- Account Summary
- Stop Payment
  - Stop Payment List
  - Add Stop Payment
- My Details
  - Change User Preferences
  - Change Password
- Customer Service
  - Contact History
  - Comments/Inquiries
- My Bills
- My eStatements
- Remote Deposit

Transaction History

Page Help

FACIE LIBRE I/II- OPERATING (IB VIEW O - ******3229

Last Refreshed: Monday, July 25, 2011 10:43:30 AM CDT

Search Criteria

Enter the search criteria to display your desired transaction list.

Transaction Type :	All Transactions
* Date Range - From :	7/1/11
* To :	7/29/11
Amount Range - From :	
To :	
Credit/Debit Indicator :	All Transactions

Search

MEMBER FDIC EQUAL HOUSING LENDER

Quicken Download Now

Actions	Date	Pending	Check#	Description	Debit(-)	Credit(+)	Balance
	[redacted]			[redacted]			[redacted]
	7/22/11			TRANSFER CR		3,076,079.12	4,607,133.27
	7/22/11			INCOMING WIRE: REF# 20110722B6B7261F00040707221437FT03 [redacted]		445,147.69	1,531,054.15
	7/20/11			TRANSFER CR		232,308.07	1,085,906.46
	7/15/11			INCOMING WIRE: REF# 20110715B6B7261F00048507151508FT03 [redacted]		46,171.78	853,598.39
	7/14/11			TRANSFER CR		46,171.78	807,426.61
	7/13/11			TRANSFER CR		93,343.55	761,254.83
	7/6/11			TRANSFER CR		69,757.67	667,911.28
	7/1/11			INCOMING WIRE: REF# 20110701B6B7261F00066407011426FT03 [redacted]		44,697.60	598,153.61

C:\Users\Joe Dempsey\Documents\FBMA\Summary of Sales of Series S

Series S Shares		149,724
Share Price	$	31.00

Date	Buyer	Pct Purchased	Shares Acquired	To Seller	Back End
6/30/2011	[redacted]	12.03%	18,012	$ 553,456.01	$ 3,857.93
7/1/2011		0.99%	1,482	$ 44,697.66	$ 317.97
7/6/2011		1.54%	2,306	$ 69,757.67	$ 492.33
7/13/2011		2.05%	3,069	$ 93,343.55	$ 656.45
7/14/2011		1.02%	1,527	$ 46,171.78	$ 328.22
7/15/2011		1.02%	1,527	$ 46,171.78	$ 328.22
7/20/2011		5.06%	7,576	$ 232,308.07	$ 1,623.37
7/22/2011		66.79%	100,001	$ 3,076,079.12	$ 21,420.88
7/22/2011		9.50%	14,224	$ 445,147.69	$ 3,046.91
		100.00%	149,724	$ 4,607,133.33	$ 32,072.28

EXHIBIT 4

Gmail by Google

Eduardo Saverin [redacted]

Confidential: Re: Felix

Eduardo Saverin <[redacted] Fri, Jun 24, 2011 at 8:02 AM
To: Frank Mazzola <fmazzola@felixinvestments.com>, Emilio DiSanluciano <edisanluciano@felixinvestments.com>, Joe Dempsey <jdempsey@felixinvestments.com>
Cc: "William.Reckler@lw.com" <William.Reckler@lw.com>, "Philip.Rossetti@lw.com" <Philip.Rossetti@lw.com>, Daniel DeWolf <DlDeWolf@mintz.com>

Frank,

As I have previously communicated to you, I disagree with your decision to sell either the interests in Facie Libre Associates II, LLC contemplated by our February 16, 2011 Note Purchase Agreement or the underlying shares of Facebook stock. I understand that you may have either already completed such a sale or are about to do so, and that you have triggered a Liquidity Event under the terms of the February 16, 2011 Promissory Note that you executed in my favor on behalf of FB Management Associates LLC. I believe the sale you are contemplating (or have already completed) is contrary to the terms of my loan and also our intent when we put that transaction together. I would appreciate your providing me with a full accounting of any sale of the interests / Facebook shares and the amounts owed to me. Please make payment of those amounts as soon as possible. I of course reserve all of my rights (and those of Progresso Ventures, LLC) with respect to our February 16, 2011 loan transaction and your disposition of the underlying collateral.

Pay	[redacted]
Citibank Address	[redacted]
Citibank ABA#	[redacted]
For Credit to	[redacted]
Account #	[redacted]
In Line 1 of Detail	[redacted]

Although I have decided that your proposal for an additional $28 million+ loan does not fit my current portfolio needs, I hope to continue our business relationship and potentially work together on many future deals. To o many great things ahead to do in this space.

Thanks and best wishes,

Speak soon,

Eduardo

Eduardo Saverin

Facebook Co-Founder & Investor

[redacted]

EXHIBIT 5

Eduardo Saverin
[redacted]

April 10, 2012

Frank Mazzola
Felix Investments LLC
17 State Street, 5th Floor
New York, NY 10004

Dear Mr. Mazzola:

I am writing regarding (i) my loan to FB Management Associates, LLC, the proceeds of which were used to purchase shares in Facie Libre Associates II, LLC ("Facie Libre"); and (ii) my investment in LinkedIn stock through Professio Associates I, LLC ("Professio").

Based on communications with your firm and your counsel at Katten Muchin Rosenman LLP, I understand that you have sold the shares in Facie Libre and the shares of LinkedIn stock underlying my investment in Professio. On July 22, 2011, Joe Dempsey provided a calculation of the amount you believe is owed to me in connection with the sale of the Facie Libre shares: $4,479,689. On April 2, 2012, your counsel provided a calculation of the amount you believe is owed to me in connection with my Professio investment:[1] $6,864,130.30. Please wire the funds owed to me by the close of business on Wednesday, April 11, 2012. The wire instructions are as follows:

Destination Bank: [redacted]
Bank ABA: [redacted]
Account Name: [redacted]
Account Number: [redacted]
Bank Address: [redacted]
For Further Credit to: [redacted]

As you know, I do not believe that either the Facie Libre shares or the LinkedIn shares should have been sold. Neither this request for payment nor my receipt of any funds constitutes an agreement that you had a right to sell those shares or that you have properly calculated the amounts owed to me as a result of the sales. While I truly hope that we can resolve our disagreements regarding these matters amicably, neither this request nor my receipt of any funds should be construed as a settlement, release, or waiver of any kind with respect to claims that I may have for damages in excess of what

[1] I note that this calculation included a 5% commission that was not disclosed to me and was wholly improper in its amount. It is unclear whether your calculation of the amount owed to me for the sale of Facie Libre shares is similarly flawed.

you actually wire to me.

Sincerely,

Eduardo Saverin

Eduardo Saverin

Cc: Joseph Dempsey

EXHIBIT 6

Eduardo Saverin
[redacted]

April 26, 2012

VIA EMAIL, FACSIMILE AND CERTIFIED MAIL

FB Management Associates, LLC
Pipio Management Associates, LLC
Professio Management Associates, LLC
Felix Venture Partners Qwiki Managements Associates, LLC
Facie Libre Management Associates
Felix Investments LLC
17 State Street, 5th Floor
New York, NY 10004
Facsimile: (212) 208-4429
E-mail: fmazzola@felixinvestments.com
Attention: Frank Mazzola

Dear Mr. Mazzola:

I am writing regarding the Promissory Note issued on February 16, 2011 by FB Management Associates, LLC (the "Promissory Note,,) pursuant to the Note Purchase Agreement dated February 16, 2011 between the Company and me (the "Note Purchase Agreement,,), the proceeds of which were used to purchase shares in Facie Libre Associates II, LLC ("Facie Libre,,). As you know, you entered into a related Collateral Assignment of Back-End Interest also dated February 16, 2011 (the "Collateral Assignment,,), and acknowledged and consented to my assignment of all rights, title, and interest in the Promissory Note, the Purchase Agreement, and the Collateral Assignment to Progresso Ventures, LLC ("Progresso,,). I am the sole member of Progresso Ventures and have full authority to act on its behalf.

In June 2011, a Liquidity Event occurred under Section 1(a) of the Promissory Note when the Company sold its interests in Facie Libre. Under Section 1(a), all amounts outstanding and unpaid were due and payable thirty days following the occurrence of that Liquidity Event. The Company has not yet paid any of the amounts owed.

Because the Company has defaulted in its payment obligations under the Promissory Note, there is an on-going Event of Default, as that term is defined by Section 6.01(a) of the Note Purchase Agreement. Accordingly, under the Collateral Assignment of Back-End Interest (the "Assignment,,), you must now cause all of the payments or securities specified in Paragraph 2 of the Assignment to be distributed to Progresso.

Payments specified by Paragraph 2(a) – 2(f) of the Assignment should be wired immediately, pursuant to the following wire instructions:

Destination Bank [redacted]
Bank ABA [redacted]
Account Name [redacted]
Account Number [redacted]
Bank Address [redacted]
For Further Credit to [redacted]

The Jumio Warrants specified by Paragraph 2(g) of the Assignment should also be transferred to me immediately.

Sincerely,

Eduardo Saverin
Progresso Ventures, LLC

CC:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC (attn.: Daniel I. DeWolf, Esq.)
Joseph Dempsey

EXHIBIT 7

From: Frank Mazzola <fmazzola@felixinvestments.com>
Subject: Good news
Date: May 25, 2011 3:14:53 PM EDT
To: Eduardo Saverin [redacted]
Cc: Emilio DiSanluciano <edisanluciano@felixinvestments.com>, "DeWolf, Daniel" <DlDeWolf@mintz.com>

1 Attachment, 2 KB

Eduardo - I hope all is well with you. The good news keeps coming - we are going to repay the loan you made to FB Management Associates LLC in the next few days including the interest on the loan and the profits based on the sale of the membership interest in the Facie Libre II fund. Please let me know when you have a few minutes to discuss the repayment of the loan as well as a couple of other things we would like to speak with you about. We would like to thank you again for your continued support and friendship and we are thrilled by the performance of your investments with us to date.

All the best,

Frank

Frank G. Mazzola

FelixInvestments LLC
Member FINRA/SIPC

17 State Street 5th Fl.
New York, NY 10004
Tel: 646-597-4301
Mobile: 917-921-9249
fmazzola@felixinvestments.com

New Email/Exchange

From: Emilio DiSanluciano <edisanluciano@felixinvestments.com>
Subject: Urgent
Date: September 14, 2011 11:39:30 AM EDT
To: Eduardo Saverin [redacted]

1 Attachment, 2 KB

Hey Ed—

Had a great meeting with Daniel last night; I am actually taking him to the airport this afternoon he will be in the valley today through part of next week. Jumio is doing well.

I do want to reconnect with you and address a few things, particularly working with you again. Ed – in the past you expressed interest in Twitter. We have an entity that just got on the cap table ($7.2MM @ $19.11 per share) and I want to use your $5.5MM towards this stock. We can do it as another loan if you like or you can control the entity outright. Eduardo, this is a great opportunity and I would like to hear a YES or no from you. Please try to get back to me as soon as your able, so I can get any docs you require in front of you.

Your friend,
Emilio

Emilio DiSanluciano

FelixInvestments
Member: FINRA/SIPC

17 State Street 5th Fl.
New York, NY 10004
Tel: 646-597-4305
Mobile: 631-877-1112
Fax: 212-208-4429
edisanluciano@felixinvestments.com

http://www.felixinvestments.com
@edisanluciano on Twitter

New Email/Exchange

From: Frank Mazzola <fmazzola@felixinvestments.com>
Subject: FW: Groupon
Date: September 20, 2011 12:56:43 PM EDT
To: "eduard[redacted]

1 Attachment, 2 KB

Eduardo - We have been dead on with the recommendations we have made to you - you should be all over this. You have over $5 million sitting here doing nothing - let us continue to make you money and put the cash you have with us into Groupon?

Best Frank

I hope this email finds you well.

I failed to mention yesterday that the Groupon we have AT $47.90 is NOT subject to an underwriters lock up as of today. We have not been given an underwriters lock to sign and the employees have been told that if they were going to be locked up they would have already been given a lockup agreement. It turns out that employees hold only 4% of the stock and most of that is not even vested yet so there is no need to lock them up. This would mean that we can potentially sell day one and if Groupon gets the LinkedIn effect which I strongly believe it will this may turn out to be one of the greatest trade/investment opportunities I have ever been associated with and I would suspect the same would hold true for you! Please let me know when you have a few minutes to discuss this opportunity before it is fully allocated.

Best,

Frank

From: Frank Mazzola
Sent: Monday, September 19, 2011 2:03 PM
Subject: Groupon
Importance: High

We have a block of Groupon stock available through our Felix Multi Opportunity Fund at $47.90 = $14.3 billion valuation. Everything we are hearing and reading is that Groupon is targeting the ladder half of October for the pricing of its IPO and the initial price talk is $30 billion! Much like LinkedIn I believe the pricing range will be substantially higher after they complete their road show!

Also, I believe Facebook will announce a partnership with Groupon later this week at the f8 developers conference creating a new daily deal platform replacing the one Facebook shut down 3 weeks ago!

Let me know if you would like to discuss this opportunity in greater detail or if you would like to invest.

http://dealbook.nytimes.com/2011/09/14/groupon-back-on-track-for-its-i-p-o/

http://techcrunch.com/2011/09/19/expect-this-years-f8-to-be-huge-%e2%80%94-the-biggest-since-facebook-platform-launched/

Best,

Frank

Frank G. Mazzola

FelixInvestments
Member FINRA/SIPC

17 State Street 5th Fl.
New York, NY 10004
Tel: 646-597-4301
Mobile: 917-921-9249
fmazzola@felixinvestments.com

New Email/Exchange

From: Frank Mazzola <fmazzola@felixinvestments.com>
Subject: Tremendous Opportunity
Date: October 3, 2011 2:18:22 PM EDT
To: "eduard[redacted]
Cc: 'Fred Bronstein' <[redacted]>, Emilio DiSanluciano <edisanluciano@felixinvestments.com>

1 Attachment, 2 KB

Eduardo,
As you are aware, Groupon appears intent on moving forward with its IPO, notwithstanding the barrage of negative publicity it has weathered. Groupon has told its employees they have until October 10th to complete any sales prior to the IPO, after which they will not effect transfers. This is creating an opportunity with some sellers.
As you know, we are holding a considerable sum of your money in escrow awaiting your instructions. If you would like to use those funds to take advantage of the buying opportunity we should speak ASAP. You can tell us the price you would consider and we will show it to sellers. You never know, but certainly the ability to close quickly works to your advantage.
Let me know and I hope all is well.
Frank

Frank G. Mazzola

FelixInvestments
Member FINRA/SIPC

17 State Street 5th Fl.
New York, NY 10004
Tel: 646-597-4301
Mobile: 917-921-9249
fmazzola@felixinvestments.com

EXHIBIT 8

Loan Date	2/16/2011
Loan Amount	$4,000,000
Rate	15%

Calculation Date	1/13/2016
Loan Principal	$ 2,387,863.46
Loan Accrued	$ 1,214,623.17
Additional Return w/ accrued interest	$ 367,166.52
Total	**$ 3,969,653.15**

Loan Calculation

Start Date	End Date	Accural Dauys	Beginning Principal	Beginning Accrued	Period Accrual	Payment	Remaining Principal	Remaining Accrued	Notes
2/16/2011	7/15/2011	149.00	$ 4,000,000	0	$ 244,931.51	**$ -**	$ 4,000,000.00	$ 244,931.51	Note Matures
7/15/2011	2/16/2012	216.00	$ 4,000,000	$ 244,931.51	$ 355,068.49	**$ -**	$ 4,600,000.00	$ -	Interest Capitalizes Yearly
2/16/2012	5/25/2012	99.00	$ 4,600,000	$ -	$ 187,150.68	**$ 1,100,000**	$ 3,687,150.68	$ -	Payment
5/25/2012	6/15/2012	21.00	$ 3,687,151	$ -	$ 31,820.62	**$ 1,354,168**	$ 2,364,803.80	$ -	Payment
6/15/2012	7/2/2012	17.00	$ 2,364,803.80	$ -	$ 16,521.23	**$ 272,000**	$ 2,109,325.03	$ -	Payment
7/2/2012	7/2/2012	-	$ 2,109,325.03	$ -	$ -	**$ 47,840**	$ 2,061,485.03	$ -	Payment
7/2/2012	7/12/2012	10.00	$ 2,061,485.03	$ -	$ 8,471.86	**$ 165,000**	$ 1,904,956.89	$ -	Payment
7/12/2012	2/16/2013	219.00	$ 1,904,956.89	$ -	$ 171,446.12	**$ -**	$ 2,076,403.01	$ 171,446.12	Interest Capitalizes Yearly
2/16/2013	2/16/2014	365.00	$ 2,076,403.01	$ 171,446.12	$ 311,460.45	**$ -**	$ 2,387,863.46	$ 482,906.57	Interest Capitalizes Yearly
2/16/2014	2/16/2015	365.00	$ 2,387,863.46	$ 482,906.57	$ 358,179.52	**$ -**	$ 2,746,042.98	$ 841,086.09	Interest Capitalizes Yearly
2/16/2015	1/13/2016	331.00	$ 2,746,042.98	$ 841,086.09	$ 373,537.08	**$ -**	$ 2,746,042.98	$ 1,214,623.17	
						$ 2,939,008			

Additional Return

Shares		149,724
Purchase Price	$	25.38
Sale Price	$	31.00
Net Proceeds	$	4,641,444
FLMA Participat	$	-
Interest Liabilit	$	250,000
Excess Net Proceeds	$	391,444
Proceed Date		7/15/2011

Progresso Add'l Return	$	195,722.00
With Accrued Interes	$	367,166.52

EXHIBIT G

Securities and Exchange Commission v. Bivona et al., Case No. 3:16-cv-1386 (N.D. Cal.)

If you invested money with SRA Management, LLC, managed by John Bivona, or any of the entities below, you may be entitled to relief if you complete and submit this claim form by January 31, 2018.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- This case involves an action for securities fraud initiated by the Securities and Exchange Commission. The Court has placed all assets belonging to the following entities under the control of a Court-appointed Receiver:

Receivership Defendants[1]	Affiliated Entities
Saddle River Advisors, LLC	Felix Multi-Opportunity Fund I, LLC
SRA Management, LLC	Felix Multi-Opportunity Fund II, LLC
SRA I, LLC	Felix Management Associates, LLC
SRA II, LLC	NYPA Fund I, LLC
SRA III, LLC	NYPA Fund II, LLC
Clear Sailing Group IV, LLC	NYPA Management Associates, LLC
Clear Sailing Group V, LLC	

- The assets include the following pre-IPO securities interests and funds within SRA:
  - Addepar, Inc.
  - Airbnb, Inc.
  - Badgeville, Inc.
  - Bloom Energy, Inc.
  - Box
  - Candi Controls, Inc.
  - Check
  - Cloudera, Inc.
  - Dropbox, Inc.
  - Evernote, Inc.
  - Flurry, Inc.
  - Glam, Inc.
  - Jawbone, Inc.
  - Lookout, Inc.
  - Lyft, Inc.
  - Mongo DB, Inc.
  - oDesk
  - Palantir, Inc.
  - Pinterest
  - Practice Fusion, Inc.
  - Snap, Inc.
  - Square, Inc.
  - Twitter, Inc.
  - Uber, Inc.
  - Virtual Instruments
  - ZocDoc
  - Big Ten
  - Series X

- The Court must determine a fair and equitable means to distribute the assets above to investors in the aforementioned entities, as well as any potential creditors. The purpose of this claim form is to identify all potential investors and creditors with valid claims against Saddle River Advisors, LLC, SRA Management, LLC, SRA I, LLC, SRA II, LLC, SRA III, LLC, Clear Sailing Group IV, LLC, Clear Sailing Group V, LLC, Felix Multi-Opportunity Fund I, LLC, Felix Multi-Opportunity Fund II, LLC, Felix Management Associates, LLC, NYPA Fund I, LLC, NYPA Fund II, LLC and NYPA Management Associates, LLC (collectively, the "Receivership Entities").

[1] Felix Investments, LLC is also a defendant in this action, but not within the Receivership.

- **If you invested money with any of the entities above, or are a creditor, you must complete and submit this form to the Court-appointed Receiver or its claims agent, JND Corporate Restructuring, by January 31, 2018.** Completed claims should be delivered to:

  Sherwood Partners, Inc.
  c/o JND Corporate Restructuring
  8269 E. 23rd Avenue, Suite 275
  Denver, CO 80238
  E-mail: SRAClaimsProcessing@JNDLA.com

If you have any questions, a representative of the Receiver can be contacted at Sherwood Partners, Inc., (650) 329–9996.

PROOF OF CLAIM

This is an important legal document that will affect your legal rights if you have an interest in one or more of the Receivership Entities as an investor or creditor. If you have an interest in one or more of the Receivership Entities as an investor or creditor, you must submit this Proof of Claim Form to the Receiver or its claims agent on or before January 31, 2018. Failure to do so could result in the forfeiture of your claim.

The Court has not yet determined how the assets of the Receivership Entities will be managed or distributed or how claims against the Receivership Entities will be paid. However, when the Court makes this determination, the information provided in this Proof of Claim Form will be used to calculate your interest in the Receivership Entities and your entitlement, if any, to participate in any distribution from the Receivership.

The Receiver has the right to dispute and/or verify any information you have provided in order to determine the proper distribution amount, if any, to which you may be entitled. The Receiver additionally reserves the right to request additional documentation supporting your claim at a later date. All original documentation should be preserved as it may be requested at a future date. If you are an investor, the Receiver has the right to correct for administrative, or computational error, any information you may have provided as to your Net Investment Amount. The Receiver does not waive any right to (1) deny, contest the validity of, or otherwise object to a claim, or (2) if warranted, amend the provided Net Investment Amount.

IMPORTANT INFORMATION TO READ PRIOR TO SUBMITTING THIS FORM:

ANY PERSON OR ENTITY SUBMITTING THIS PROOF OF CLAIM FORM, EXCEPT FOR STATE AND LOCAL GOVERNMENT ENTITIES, SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AS TO ANY CLAIMS, OBJECTIONS, DEFENSES, OR COUNTERCLAIMS THAT COULD BE OR HAVE BEEN ASSERTED BY THE RECEIVER AGAINST SUCH CLAIMANT OR THE HOLDER OF SUCH CLAIM IN CONNECTION WITH THIS RECEIVERSHIP, INCLUDING THOSE ARISING OUT OF (1) ANY DEALING OR BUSINESS TRANSACTED BY OR WITH ANY RECEIVERSHIP ENTITY OR (2) ANY DEALING OR BUSINESS TRANSACTED THAT RELATES IN ANY WAY TO ANY RECEIVERSHIP PROPERTY.

YOU MUST SUBMIT THIS COMPLETED FORM, SIGNED UNDER PENALTY OF PERJURY, TO THE RECEIVER BY NO LATER THAN JANUARY 31, 2018. SEND YOUR FORM TO:

Sherwood Partners, Inc.
c/o JND Corporate Restructuring
8269 E. 23rd Avenue, Suite 275
Denver, CO 80238

YOU CAN ALSO EMAIL YOUR COMPLETED FORM TO THE AGENT OF THE RECEIVER AT: SRAClaimsProcessing@JNDLA.com

IF YOU DO NOT SUBMIT YOUR COMPLETED CLAIM FORM BY JANUARY 31, 2018, YOU WILL BE FOREVER BARRED FROM ASSERTING ANY CLAIM AGAINST THE RECEIVERSHIP ENTITIES' ASSETS AND YOU WILL NOT BE ELIGIBLE TO RECEIVE ANY DISTRIBUTIONS FROM THE RECEIVER.

Contact Information

Please check all that apply:

X I am (we are/my firm is) an investor in one or more of the above Receivership Entities.

X I am (we are/my firm is) a creditor for one or more of the above Receivership Entities.

My contact information is as follows:

Name(s): Eduardo Saverin Progresso Ventures, LLC

Address: c/o Avi Israeli, Halwell Shuster & Goldberg LLP
750 Seventh Ave, 26th Floor, NY, NY 10019

Telephone: 646-837-5157

E-mail: aisraeli@hsgllp.com

Fax: 646-837-5150

Investor Claim

Records provided by the Receivership Entities indicated that you invested the following amount(s) into one or more of the Receivership Entities on the date(s) as follow(s) for the pledged numbers of shares or units. Please review this information carefully to ensure that it is accurate and consistent with your records. If any of the information set forth below is inaccurate, please provide the correct information and supporting documentation.

Date:	November 10, 2011
Intended Fund (e.g., SRA I, LLC):	Clear Sailing Group IV, LLC
Intended Investment (e.g., Bloom Energy):	Palantir
Net Investment Amount (s):	$4.45 million
Shares/Units Purchased	See attached
Management Fee	
Carried Interest Fee	

Date: _____

Intended Fund (e.g., SRA I, LLC): _____

Intended Investment (e.g., Bloom Energy): _____

Net Investment Amount (s): _____

Shares/Units Purchased _____

Management Fee _____

Carried Interest Fee _____

Supporting Documents: Please attach copies of any documents that support the investment, such as cancelled checks, Welcome Letters, statements or subscription agreements. DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain below:

See attached

Disbursements Received

Please check only one box:

I *have* received cash or stock due from one of the investments identified above.

X I have *not* received any cash or stock due from the investments identified above.

If you have received cash or stock, please provide information about the cash or stock you have already received below. Please list each disbursement separately. Use as many pages as necessary to enter all disbursements received. Include copies of any bank/broker statement, copy of certificates, or acknowledgment of receipt.

Fund Invested (e.g., SRA I, LLC): _____

Pre- IPO Investment (e.g., Bloom Energy): _____

Original Amount Invested: _____

Amount of shares
or Cash Received: _____

Date Received: _____

Amount of shares or Cash Outstanding: _____

Creditor Claim

If you are a creditor of one or more of the Receivership Entities, please list any loans, fees for service, unpaid wages separately and the entity for which you are a creditor. Use as many pages as necessary to list all of your claims.

Date debt was incurred: November 10, 2011

Amount of Claim (as of the date of the Receivership, October 11, 2016): $ 5,529,364.25

Check box if all or part of claim is secured.

X Check box if claim includes interest or other charges in addition to the principal amount

Principal amount of the claim: $ 3,171,505.93

Interest or other charges: $ 2,357,855.32

Please attach a statement that itemizes all interest or other charges.

Basis for Claim: (check one)

Goods sold	Services performed
Money loaned	Equipment leased
Taxes	Equity Interest (Not investments)

X Other (Describe briefly):
See attached

If a court judgment exists, what date was the judgment obtained and what is the amount of the judgment:
See attached

Supporting Documents: Please attach copies of any documents that support your creditor claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, attach copies of documents providing evidence of perfection of a security interest. DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain below:

Attestation

I have enclosed copies of my subscription(s), cancelled check(s) or other acknowledgment of my investment or claim, as well as the most recent correspondence and/or information I received from Saddle River Advisors, et. al., including a copy of my most recent statement form to support the above claim. I acknowledge that I have read, understood, and agreed to all of the requirements above.

I declare under penalty of perjury that all the foregoing information is true and correct.

Executed in SINGAPORE on JAN 31, 2018.

Signature: Eduardo Saverin

Print Name: EDUARDO SAVERIN

ATTACHMENT A

As set forth in further detail in the Receiver's motion in support of the joint distribution plan [Ex. A, Dkt. No. 196] and the Securities and Exchange Commission's joint motion for approval of the proposed joint distribution plan [Ex. B, Dkt. No. 197], and the Declaration of Eduardo Saverin filed by the SEC in support of the joint motion [Ex. C, Dkt. No. 199], Progresso Ventures, LLC ("Progresso") is owed $5,529,364.25 (plus interest) in connection with a secured promissory note issued on February 16, 2011 by FB Management Associates, LLC ("FB Management"), which was one of the entities under the management of, *inter alia*, Defendants Frank Mazzola and John Bivona and insider Emilio DiSanluciano.

On March 2, 2015 and August 5, 2015, respectively, Progresso filed complaints in the New York Supreme Court for the County of New York against FB Management to enforce the note, and against Frank Mazzola, John Bivona, and others, to collect on guarantees under the note. During the course of these lawsuits, Mr. Mazzola filed an affidavit stating that he had reinvested part of the note proceeds in funds containing interests in Palantir. (Ex. D). According to the joint motion, despite the fact that the note proceeds were owed to Progresso, "FMOF Management, Mazzola and John Bivona diverted $4.45 million of Progresso Venture's money to Clear Sailing" on November 10, 2011. Ex. B, Dkt. No. 197 at 6. To the extent the representations made in Mr. Mazzola's affidavit and the joint motion are accurate, Progresso is entitled to the return of its funds as well as any return on investment with respect to such funds. Attached as Exhibit E is a bank statement evidencing the $4.45 million wire transfer of Progresso's money from FB Management to Clear Sailing.

On January 9, 2017, Justice Ramos entered an order in Progresso Ventures, LLC v. FB Management Associates, LLC, No. 650614/2015 (Sup. Ct. N.Y. Cnty) determining that the total

amount due to Progresso under the promissory note is $5,529,364.25, comprised of $3,171,508.93 in outstanding principal; $392,311.31 in accrued interest; $363,374.96 as "additional return"; $1,544,147.10 in legal fees and $58,021.95 in disbursements (Ex. F). Progresso therefore files this claim for return of the funds Mazzola states FB Management used to purchase shares of Palantir, as well as any return on such investment.

EXHIBIT H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT COURT MICHIGAN

GLOBAL GENERATION GROUP, LLC,
a Michigan limited liability company, and
BENCHMARK CAPITAL, LLC
a Michigan limited liability company,

Plaintiffs,

v.

FRANK MAZZOLA, an individual,
EMILIO DISANLUCIANO, an individual,
FB MANAGEMENT ASSOCIATES II, LLC,
a Delaware limited liability company,
PIPIO MANAGEMENT ASSOCIATES, LLC,
a Delaware limited liability company,
FELIX VENTURE PARTNERS QWIKI MANAGEMENT ASSOCIATES, LLC,
a Delaware limited liability company,
FACIE LIBRE MANAGEMENT ASSOCIATES, LLC
a Delaware limited liability company, and
FMOF MANAGEMENT ASSOCIATES, LLC
a Delaware limited liability company,

Defendants.

Civil Case No.
Hon.

HOWARD & HOWARD ATTORNEYS PLLC
Michael J. Beals (P39835)
Michael F. Wais (P45482)
Attorneys for Plaintiffs
450 West Fourth Street
Royal Oak, MI 48067-2557
(248) 645-1483
mbeals@howardandhoward.com
mwais@howardandhoward.com

COMPLAINT AND JURY DEMAND

NOW COME, Plaintiffs Global Generation Group, LLC and Benchmark Capital, LLC (collectively "Plaintiffs"), and for their Complaint against

Defendants Frank Mazzola, Emilio DiSanluciano, FB Management Associates II, LLC, Pipio Management Associates, LLC, Felix Venture Partners Qwiki Management Associates, LLC, Facie Libre Management Associates, LLC, and FMOF Management Associates, LLC, state as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this suit after Defendants fraudulently misrepresented and deceived Plaintiff into investing over $6.3 Million Dollars in a sham corporation, Felix Multi-Opportunity Fund II, LLC ("FMOF II") that was established and operated by Defendants. FMOF II was designed by Defendants as a way to pool investments for shares of Facebook, Inc. ("Facebook"), Palantir Technologies, Inc. ("Palantir") and Groupon, Inc. ("Groupon"). Defendants fraudulently induced Plaintiffs into purchasing interest or "Series" in FMOF II, which in turn held Facebook, Palantir and Groupon shares. Defendants grossly overstated the value of the Facebook and Palantir shares[1] which allowed Defendants to charge a higher rate for the Series Plaintiffs were purchasing when investing in FMOF II. When Plaintiffs requested liquidity and exercised their Put Right that allowed them to cash out their Series and collect on value of their Facebook and Palantir Shares, Defendants unlawfully refused and continued to

[1] Plaintiffs' Groupon shares are not at issue in this lawsuit.

hold on to the Shares. To date, Defendants have sold Plaintiff Global's Palantir shares but have refused to pay Plaintiff Global the value of the shares. Defendants wrongfully retained money on the sale of both Plaintiffs Facebook shares after failing to pay the Put timely. Plaintiffs are left with no other option but to file this lawsuit.

JURISDICTION AND VENUE

2. Plaintiff Global Generation Group, LLC ("Global") is a Michigan Limited Liability Company whose members are all residents of the State of Michigan. All of Global's actions in this matter occurred within the State of Michigan. John Syron ("Syron") is the managing member of Global.

3. Plaintiff Benchmark Capital, LLC ("Benchmark") is a Michigan Limited Liability Company whose members are all residents of the State of Michigan. All of Benchmark's actions in this matter occurred within the State of Michigan. Syron is the managing member of Benchmark as well.

4. Defendant Frank Mazzola ("Mazzola") is a resident of New York.

5. Defendant Emilio DiSanluciano ("DiSanluciano") is a resident of California.

6. Defendant FB Management Associates II, LLC ("FB Management") is a Delaware Limited Liability Company whose Registered Agent is Harvard

Business Services, Inc., located at 16192 Coastal Highway, Lewes, Delaware 19985. Upon information and belief, there are no Michigan residents who are members of FB Management.

7. Defendant Pipio Management Associates, LLC ("Pipio Management") is a Delaware Limited Liability Company whose Registered Agent is National Corporate Research LTD, located at 615 S. Dupont Highway, Dover, Delaware 19901. Upon information and belief, there are no Michigan residents who are members of Pipio Management.

8. Defendant Felix Venture Partners Qwiki Management Associates, LLC ("Felix Venture Partners") is a Delaware Limited Liability Company whose Registered Agent is National Corporate Research LTD, located at 615 S. Dupont Highway, Dover, Delaware 19901. Upon information and belief, there are no Michigan residents who are members of Felix Venture Partners.

9. Defendant Facie Libre Management Associates, LLC ("Facie Libre Management") is a Delaware Limited Liability Company whose Registered Agent is National Corporate Research LTD, located at 615 S. Dupont Highway, Dover, Delaware 19901. Upon information and belief, there are no Michigan residents who are members of Facie Libre Management.

10. Defendant FMOF Management Associates, LLC ("FMOF Management") is a Delaware Limited Liability Company whose Registered Agent is National Corporate Research LTD, located at 615 S. Dupont Highway, Dover, Delaware 19901. Upon information and belief, there are no Michigan residents who are members of FMOF Management.

11. Jurisdiction is proper in this Court as there is complete diversity of citizenship and the amount in controversy easily exceeds $75,000 exclusive of interest, costs and fees. *See* 28 USC 1332.

12. Jurisdiction is also appropriate in this Court as there are federal questions at issue arising under federal law. *See* 28 USC 1331. Venue is proper in this Court as, inter alia, events giving rise to this lawsuit occurred in this district and as one or more of the Defendants are subject to personal jurisdiction in this district.

THE PARTIES

Mazzola* & *DiSanluciano

13. Mazzola is a Manager of FMOF Management and Facie Libre Management and, upon information and belief, is also a Manger of FB Management, Pipo Management and Felix Venture Partners as well.

14. Upon information and belief, DiSanluciano is a Manager of Defendants FMOF Management, Facie Libre Management, FB Management, Pipio Management, and Felix Venture Partners.

15. Mazzola and DiSanluciano are also individual Guarantors of Defendant FMOF Management's payment obligations to Plaintiffs Benchmark and Global. The payments obligations include all amounts that Defendant FMOF Management may be required to pay to Plaintiffs Benchmark and Global related to the Put Rights under Section III of the December 7, 2011 FMOF II Agreement ("FMOF II Agreement") attached hereto as **Exhibit A**. *See* **Exhibit B**, Guaranty paragraph 2(b) & (c). This guaranty also includes payment of Benchmark and Global's costs of collection, including reasonable attorneys fees actually incurred in enforcing the obligations of FMOF Management and Guarantors. *See* **Exhibit B**, paragraph 2(d).

FB Management* & *Pipio Management* & *Felix Venture Partners

16. FB Management, Pipio Management and Felix Venture Partners are also individual Guarantors of Defendant FMOF Management payment obligations of to Plaintiffs Benchmark and Global. These payment obligations include all amounts that Defendant FMOF Management may be required to pay to Plaintiffs Benchmark and Global related to the Put Rights under Section III of the FMOF II

Agreement attached hereto as **Exhibit A**. *See* **Exhibit B**, Guaranty paragraph 2(a). This guaranty also includes payment of Benchmark and Global's costs of collection, including reasonable attorneys fees actually incurred in enforcing the obligations of FMOF Management and Guarantors. *See* **Exhibit B**, paragraph 2(d).

Facie Libre Management

17. Facie Libre Management is a Manager of FMOF II which held 108,349 shares of Class B common stock of Facebook, Inc that Facie Libre Management represented were owned by Plaintiffs as set forth in **Exhibit A** hereto.

18. Facie Libre Management is also an individual Guarantor of the payment obligations of Defendant FMOF Management to Plaintiffs Benchmark and Global with respect to payment of all amounts that Defendant FMOF Management may be required to pay to Plaintiffs Benchmark and Global related to the Put Rights under Section III of the FMOF II Agreement attached hereto as **Exhibit A**. *See* **Exhibit B**, Guaranty paragraph 2(a). This guaranty also includes payment of Benchmark and Global's costs of collection, including reasonable attorneys fees actually incurred in enforcing the obligations of FMOF Management and Guarantors. *See* **Exhibit B**, paragraph 2(d).

FMOF Management

19. FMOF Management is also a Manager of FMOF II. FMOF Management also made specific representations as reflected in **Exhibit A** that included that Plaintiffs Global and Benchmark owned 933,334 shares of Palantir Technologies, Inc. and 108,349 shares of Class B common stock of Facebook, Inc.

20. FMOF Management is also an individual Guarantor of its payment obligations to Plaintiffs Benchmark and Global with respect to payment of all amounts that it may be required to pay to Plaintiffs Benchmark and Global related to the Put Rights under Section III of the December 7, 2011 Agreement attached hereto as **Exhibit A**. *See* **Exhibit B**, Guaranty paragraph 2(a). This guaranty also includes payment of Benchmark and Global's costs of collection, including reasonable attorneys fees actually incurred in enforcing the obligations of FMOF Management and Guarantors. *See* **Exhibit B**, paragraph 2(d).

BACKGROUND

21. This action arises out of a series of contractual breaches, fraudulent misrepresentations and other deceptive and tortious actions by Defendants in connection with Plaintiffs' investments in FMOF II. In the course of enticing Plaintiffs to invest in FMOF II, Defendants created, marketed, managed,

misrepresented, guaranteed obligations and acted in a tortious manner related to FMOF II.

22. Defendants misled Plaintiffs and overstated the purchase price of the shares Plaintiffs purchased when investing in FMOF II. The purchase price of the shares, as stated by Defendants, far exceeded the actual market price of the shares further exemplifying Defendants' undisclosed self-dealing.

23. Defendants also breached their contractual obligations and otherwise engaged in additional tortious activities, with respect to the shares of Facebook, Inc. ("Facebook") and Palantir Technologies, Inc. ("Palantir") that was owned by Plaintiffs.

24. For example, Plaintiffs "put" their Facebook shares to Defendant, FMOF Management, pursuant to the terms of Section III of the parties December 7, 2011 agreement. **Exhibit A.**

25. Despite Defendants' contractual obligation to sell and pay Plaintiffs for their shares within 45 days of the Put Notice (as defined in Section III of **Exhibit A** hereto), Defendants failed to sell the shares as requested, failed to deliver the payment to Plaintiffs as required, and failed to honor their guarantees of the obligation as set forth in **Exhibit B** hereto.

26. Defendants misrepresented to Plaintiffs, again and again, that they would be selling the shares shortly. **Exhibit L**

27. After Defendants' representations proved, again and again, to be untrue, Plaintiff Global sent clear and unequivocal instructions to cease all efforts to sell the shares and to tender the shares to Plaintiff. **Exhibit M**

28. Defendants ignored the instruction not to sell, and, instead, sold Plaintiff Global's Palantir shares without any authority whatsoever to do so.

29. Upon information and belief, Defendants held onto the shares, for approximately one year, while the value of the shares significantly increased.

30. Furthermore, after Defendants did finally sell the shares, Plaintiffs were not paid the actual selling price of the shares, and were also not paid interest, costs or attorney's fees, leaving Defendants to reap all or at least the vast majority of the extra benefits of wrongfully holding Plaintiffs shares long past the date the shares were required to be sold.

31. Defendants thus pocketed millions of dollars of unjustified gains during the time they wrongfully retained Plaintiffs' Facebook shares. Defendants' unlawful retention also prevented Plaintiffs from selling their shares at a profit as the share price rose, despite Plaintiffs being the true owners of the shares.

32. Defendants engaged in a similar scheme with respect to Plaintiff Global's shareholding interests in Palantir Technologies, Inc. ("Palantir") shares where Defendants again unlawfully held onto the Palantir shares past the 45 day mark and unjustifiably retained the profits as the share price climbed (past the 45 day mark).

33. Furthermore, Defendants have only paid $500,000 of the $2,800,000 owed to Plaintiff Global (as of the 45 day mark) for the Palantir shares, further compounding their deceit.

34. Defendants Mazzola, Felix Investments, and Facie Libre Management have previously been sued in courts throughout the United States for similar fraudulent actions, including, but not limited to, a lawsuit brought by the United States Securities and Exchange Commission ("SEC") in the Northern District of California. **Exhibit H.**

SUMMARY OF THE ACTION

35. On numerous occasions in 2011, Defendants contacted John Syron in Michigan in order to induce Syron to invest in FMOF II which was operated by some or all of the Defendants.

36. As a result of Defendants representations, marketing, and solicitations of Syron, Syron, as managing member of Global and Benchmark, invested in FMOF II.

A. The Investments

37. Specifically, as it relates to the investments at issue in this Lawsuit, Global paid $800,000 on August 11, 2011 which allegedly represented a 100% membership interest in Series F-9.2.11(B) of FMOF II. Allegedly, FMOF II owned an interest in Facie Libre Associates II, LLC representing the equivalent of 22,857 of Class B Common Stock in Facebook, Inc. *See* **Exhibit C**, October 4, 2011 letter signed by Defendants Mazzola and DiSanluciano, both as Managers of Defendant FMOF Management.

38. In addition, Global paid $1,204,990.88 on September 2, 2011 which allegedly represented a 78.4149% membership interest in Series F-9.2.11(A) of FMOF II. Allegedly, FMOF II owned an interest in Facie Libre Associates II, LLC representing the equivalent of 48,021 of Class B Common Stock in Facebook, Inc. *See* **Exhibit D**, October 4, 2011 letter signed by Defendants Mazzola and DiSanluciano, both as Managers of Defendant FMOF Management.

39. The remaining 21.59% interest in Series F-9.211(A) was purchased by Benchmark for $331,695.66 on September 2, 2011. *See* **Exhibit E**, October 4,

2011 letter signed by Defendants Mazzola and DiSanluciano, both as Managers of Defendant FMOF Management.

40. In addition, Global paid $1,218,750.88 on October 24, 2011 which allegedly represented a 100% membership interest in Series F-10.5 of FMOF II. Allegedly, FMOF II owned an interest in Facie Libre Associates II, LLC representing the equivalent of 37,500 shares of Class B Common Stock in Facebook, Inc. *See* **Exhibit F**, October 24, 2011 letter signed by Defendants Mazzola and DiSanluciano, both as Managers of Defendant FMOF Management.

41. Finally, with payments on October 6, 24 and 31 of 2011, Global paid a total of amount of $2,800,000 for a 100% membership interest in Series E-2(B) of FMOF II. Allegedly, FMOF II owned 933,333 Class A Common Stock in Palantir Technologies, Inc. *See* **Exhibit G**, December 12, 2011 letter signed by Defendants Mazzola and DiSanluciano, both as Managers of Defendant FMOF Management.

42. As a result of the investments identified in this Section of the Complaint, Global and Benchmark owned a total of 108,349 shares of Class B Common Stock of Facebook and Global owned 933,334 shares of Palantir (*See* **Exhibit A**, Section I, paragraph 11).

43. Defendants Mazzola and DiSanluciano signed **Exhibits C – G** of this Complaint as Managers of Defendant FMOF. The Agreements set forth in **Exhibits C – G** of this Complaint are binding according to their terms.

B. Documentation of the Purchases

44. In addition to the letters attached as **Exhibits C – G**, the FMOF II investment at issue in this litigation were documented in **Exhibit A,** a 7 page letter agreement dated December 7, 2011 (the "2011 Letter Agreement") that specifically applied to the prior purchases by Plaintiffs as reflected above. (*See* **Exhibit A**, 1st paragraph). Indeed, the 2011 Letter Agreement specifically confirms that Plaintiffs owned 108,349 shares of Class B Common Stock of Facebook (*See* **Exhibit A**, Section II, paragraph 5) and 933,334 shares of Palantir (*See* **Exhibit A**, Section I, paragraph 11).

45. The 2011 Letter Agreement contains a "put right" that entitles the Purchasers to require the Manager of FMOF II to redeem (or purchase) all or any portion of the "investments" held by Purchaser pursuant to the terms of Section III of the 2011 Letter Agreement. (*See* **Exhibit A**, Section III, paragraph 1).

46. The "investments" referenced in paragraph 43 of this Complaint includes Plaintiffs' interests in Facebook and Palantir.

47. Several of the Defendants (as stated in the Jurisdiction and Venue Section of this Complaint) executed a Guarantee and Collateral Assignment Agreement (the "Guarantee). By signing the Guarantee, the Defendants "absolutely, unconditionally and irrevocably" guaranteed the payments the Manager of FMOF II was to make to Plaintiffs as purchasers, and pursuant to the purchasers' put rights. . *See* **Exhibit B**, paragraph 2.

48. The 2011 Letter Agreement was signed by FMOF II, Defendant FMOF, Defendant Facie Libre Management and by their Manager Defendant Mazzola.

49. The 2011 Letter Agreement bound FMOF II, Defendant FMOF, Defendant Facie Libre Management and Defendant Mazzola to the terms as set forth in the 2011 Letter Agreement.

50. The following individuals and entities signed the Guarantee and are bound to the terms set forth in the Guarantee: (a) Mazzola, individually; (b) DiSanluciano, individually; (c) FB Management; (d) Pipio Management; (e) Felix Venture Partners; (f) Facie Libre Management; and (g) FMOF Management.

C. The Initial Misrepresentations and Failures to Disclose

51. Paragraphs 28 – 40 of **Exhibit H,** the SEC Complaint against Mazzola, Felix Investments LLC and Facie Libre Management, identifies many

misrepresentations and omissions of material facts in connection with the sale of interests in Facie Libre investment funds. A copy of the Complaint is attached hereto as **Exhibit H** and paragraphs 28 – 40 thereof are incorporated herein by reference as if set forth herein in full.

52. The Facebook shares purchased by Plaintiffs were investments in shares held by Facie Libre investment funds.

53. In connection with the sale of the Facebook shares to Plaintiffs, Defendants failed to disclose and omitted to disclose to Plaintiffs all of the facts set forth in paragraphs 28 – 40 of the SEC Complaint.

54. In addition, Defendants failed to disclose self-dealing amongst one or more of the Defendants that increased the price charged to Plaintiffs for the investments referenced above. These undisclosed transactions between some or all of the Defendants led to significantly overstating the purchase price of the investments in order to cause Plaintiffs to pay far more than the actual market price of the shares.

55. For example, Defendants represented that their purchase price for the Palantir shares was just under $3.00 per share, when, in reality, shares were being sold between $1.30 and $1.70 per share at the time of Global's purchase of the Palantir shares. As Global owned 933,334 shares of Palantir, a misrepresentation

of $1.00 per share in the purchase price would result in Global either overpaying by $933,334 dollars or Global having purchased approximately 311,112 more shares than Defendants assigned to Global

56. All of the misrepresentations and omissions set forth above were materially false and misleading. In addition, these misrepresentations and omissions fraudulently induced Plaintiffs into making the investments referenced above.

57. In addition, charging Plaintiffs additional amounts over and above the actual purchase price for their shares is a breach of paragraphs 5, 6 and 7 of the 2011 Letter Agreement. *See* **Exhibit A**.

D. The Fraud, Misrepresentations and Contractual Breaches Regarding Plaintiffs' Put Rights in the Facebook and Palantir Shares.

58. After fraudulently inducing Plaintiffs to enter into the investments in FMOF II, Defendants continued to defraud, misrepresent and breach their contractual agreements with Plaintiffs as it relates to Plaintiffs put rights in Plaintiffs' Facebook and Palantir Shares.

59. As it relates to the Facebook shares, Plaintiffs put their shares on August 14, 2012. *See* **Exhibit I**.

60. The August 14, 2012 letter attached as **Exhibit I** was a valid put notice under the 2011 Letter Agreement with respect to Plaintiffs Facebook shares.

61. Pursuant to Section III of the 2011 Letter Agreement, **Exhibit A,** the Manager of FMOF II was required to pay the Purchasers the price initially paid for the Facebook shares within 45 days of the August 14, 2012 put notice. Upon receipt of payment, Plaintiffs were required to then immediately tender the Facebook shares.

62. Defendants also guaranteed the payment of the monies owed to Plaintiffs upon the exercise of their put rights.

63. In breach of the parties agreements, Defendants failed to pay Plaintiffs the put price for the Facebook shares within 45 days of the August 14, 2012 put notice – i.e., on or before October 28, 2012.

64. Instead, Defendants retained Plaintiffs Facebook shares until May 9, 2013, when the shares were finally sold for $27.52 per share. *See* **Exhibit J**.

65. As it's related to the Palantir shares, Plaintiff Global put its shares on or about October 9, 2012. *See* **Exhibit K.**

63. Plaintiffs had numerous conversations and e-mails thereafter regarding the Put of the Palantir shares. While there may be an issue as to when and if the Palantir shares were Put as provided in the 2011 Letter Agreement, Defendants still sold the Palantir shares and failed to pay Plaintiff Global.

64. Defendants had no right to sell the Palantir or Facebook shares without paying the Put Price as provided in the 2011 Letter Agreement.

65. Defendants had no right to sell the Palantir or Facebook shares without simultaneously paying Plaintiffs for their shares, with the payment to Plaintiffs being due within 45 days after the date of the Put.

66. Defendants sold Plaintiff Global's shares of Palantir without simultaneously paying Plaintiff Global for their shares.

67. Defendants sold Plaintiffs shares of Facebook without simultaneously paying Plaintiffs for their shares.

68. Defendants sold Plaintiffs shares of Palantir more than 45 days after Defendants were requested to sell the shares.

69. Defendants sold Plaintiffs shares of Facebook more than 45 days after the Put notice for the Facebook shares.

COUNT I – SECURITIES FRAUD – SECTION 10(b) (5)

70. Plaintiffs hereby incorporate the allegations in the paragraphs above as if fully stated herein.

71. The sale of the Series to Plaintiffs, as described above, were the sale of securities as defined in the Securities Act of 1933 and the Securities Exchange Act of 1934.

72. Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange in connection with the transactions, acts and events set forth in this Complaint.

73. By engaging in the conduct described above, Defendants directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or the mails, with scienter, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

74. By reason of the foregoing, Defendants have violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) there under [17 C.F.R. § 240.10b-5(b)].

COUNT II – SECURITIES FRAUD, SECTION 17(a)

75. Plaintiffs hereby incorporate the allegations in the paragraphs above as if fully stated herein.

76. By engaging in the acts and conduct alleged above, Defendants directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use

of the mails: (a) with scienter employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or by omitting to state a material fact necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers.

77. By reason of the foregoing, Defendants have violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

COUNT III – BREACH OF CONTRACT- 2011 LETTER AGREEMENT
(Defendants Mazzola, FMOF II, FMOF Management, and Facie Libre)

78. Plaintiffs hereby incorporate the allegations in the paragraphs above as if fully stated herein.

79. Plaintiffs entered into the 2011 Letter Agreement with above referenced Defendants on December 7, 2011 , **Exhibit A.**

80. Defendants breached the terms and conditions of the 2011 Letter Agreement as set forth above, including by failing to sell the Facebook and Palantir shares as required, failing to pay Plaintiffs for the Facebook and Palantir shares when they were finally sold, and failing to pay Plaintiffs all other amounts owed to Plaintiffs under the 2011 Letter Agreement. .

81. Defendants have breached the terms and obligations of the 2011 Letter Agreement and as a result, Plaintiffs have suffered damages.

COUNT IV –BREACH OF CONTRACT –GUARANTEE
(All Defendants)

82. Plaintiffs hereby incorporate the allegations in the paragraphs above as if fully stated herein.

83. Plaintiffs entered into the Guarantee with all Defendants on December 7, 2011. **Exhibit B.**

84. Defendants breached the terms and conditions of the Guarantee by failing to pay the amounts owed to Plaintiffs with respect to the sale of the Palantir and Facebook shares. Defendants have breached the terms and conditions of the Guarantee and as a result, Plaintiffs have suffered damages.

COUNT V – FRAUD/MISREPRESENTATION
(All Defendants)

85. Plaintiffs hereby incorporate the allegations in the paragraphs above as if fully stated herein.

86. Defendants made various misrepresentations to Plaintiffs as set forth above, including but not limited to those misrepresentations made in order to induce them to make the investments referenced above, in order to induce them to enter into the 2011 Letter Agreement and Guarantee, and with respect to the

putting and selling of their shares, Defendants made the misrepresentations with the intent that Plaintiffs would rely upon the misrepresentations and/or the misrepresentations were made recklessly.

87. Plaintiffs justifiably relied on Defendants misrepresentations.

88. As a result of Plaintiffs reliance on the material misrepresentations of Defendants, Plaintiffs have suffered damages.

COUNT VI – INNOCENT MISREPRESENTATION
(All Defendants)

89. Plaintiffs hereby incorporate the allegations in the paragraphs above as if fully stated herein.

90. Defendants made various misrepresentations to Plaintiffs as set forth above, including but not limited to those misrepresentations made in order to induce them to make the investments referenced above, in order to induce them to enter into the 2011 Letter Agreement and Guarantee, and with respect to the putting and selling of their shares, Defendants made the misrepresentations with the intent that Plaintiffs would rely upon the misrepresentations and/or the misrepresentations were made recklessly.

91. Plaintiffs justifiably relied on Defendants misrepresentations.

92. As a result of Plaintiffs reliance on the material misrepresentations of Defendants, Plaintiffs have suffered damages.

93. Plaintiffs' damages have inured to the benefit of Defendants as Defendants were able to retain the increased value in the Facebook and Palantir shares, profit that lawfully belongs to Plaintiffs.

COUNT VII – UNJUST ENRICHMENT
(All Defendants)

94. Plaintiffs hereby incorporate the allegations in the paragraphs above as if fully stated herein.

95. Defendants wrongfully received extra benefits from Plaintiffs' sales of its investments as set forth above received a benefit It would be unjust to allow Defendants to retain the extra benefits and other profits from the Facebook and Palantir shares in a greater amount than was originally agreed upon between the parties per the 2011 Letter Agreement.

COUNT VII – UNLAWFUL CONVERSION
(Defendants Mazzola, FMOF II, FMOF Management, and Facie Libre)

96. Plaintiffs hereby incorporate the allegations in the paragraphs above as if fully stated herein.

97. The 2011 Letter Agreement provided Plaintiffs with a right to cash out its Series and collect on the Facebook and Palantir Shares, including profits derived there from.

98. Defendants have unlawfully and substantially interfered with Plaintiffs' right to the Facebook and Palantir shares and profits derived there from.

99. Defendants have unlawfully exerted dominion and control over Plaintiffs' Facebook and Palantir shares and profits derived there from.

100. Defendants have acted intentionally by withholding such shares and profits despite Plaintiffs' request to liquidate such.

101. Defendants' interference is so substantial that it warrants Defendants to pay for the highest market price between the time of conversion and the expiration of a reasonable time in which the Plaintiffs could have purchased other shares in the market.

REQUEST FOR RELIEF

WHEREFORE**,** Plaintiffs are entitled to judgment against Defendants in an amount that exceeds three million dollars ($3,000,000), as well as accrued interest, attorney's fees, costs and all other appropriate relief.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: December 9, 2013

By: */s/ Michael F. Wais*

Michael J. Beals (P39835)
Michael F. Wais (P45482)
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DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand trial by jury in this matter.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: December 9, 2013

By: */s/ Michael F. Wais*

Michael J. Beals (P39835)
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EXHIBIT I

EXHIBIT 3

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

GLOBAL GENERATION GROUP, LLC, A MICHIGAN LIMITED LIABILITY COMPANY, AND BENCHMARK CAPITAL, LLC, A MICHIGAN LIMITED LIABILITY COMPANY,

Claimants,

- against -

FRANK MAZZOLA, EMILIO DISANLUCIANO, FB MANAGEMENT ASSOCIATES II, LLC, PIPIO MANAGEMENT ASSOCIATES LLC, FELIX VENTURE PARTNERS QUICKI MANAGEMENT ASSOCIATES, LLC, FACIE LIBRE MANAGEMENT ASSOCIATES, LLC., FMOF MANAGEMENT ASSOCIATES,LLC,

Respondents.

Case No. 01-14-0000-9411

FINAL AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement contained in the Operating Agreement dated March 21, 2011 ("Operating Agreement"), together with a Guarantee Agreement dated December 7, 2011 ("Guarantee Agreement"), the Guarantee Agreement granting Claimants certain put right, and the Opinion and Order Granting a Motion to Compel Arbitration of the United States District for Court for the Eastern District of Michigan, Southern Division, among the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, and the parties having requested a standard form of award do hereby **AWARD** as follows.

Within thirty days of the date of this AWARD, Respondents jointly and severally shall pay to Claimants for breach of contract:

1. $1,700,000;
2. Interest thereon from December 1, 2012 through June 15, 2015 at 5.75% pursuant to Delaware law -- totaling $244,241.10;
3. Interest for delayed repayment in respect of Palantir put $59,012.33;
4. Interest for delayed repayment in respect of Facebook put $104,179.17.

In addition, Respondents shall jointly and severally pay to Claimants:

5. Attorney's fees in the amount of $66,624.43, which we find to be reasonable together with $5,378.93 in expenses;
6. The administrative fees and expenses of the American Arbitration Association, totaling $14,450.00, and the compensation and expenses of the Arbitrators, totaling $38,385.00. Therefore, Respondents shall jointly and severally pay to Claimants an amount of $48,135.00, representing that portion of said fees and expenses in excess of the apportioned costs previously paid by Claimants.

We find Respondent FMOF MANAGEMENT ASSOCIATES, LLC, committed fraud upon Claimants.

This Final Award is in full satisfaction of all claims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

This Final Award may be executed by the Arbitrators in counterparts.

July 9, 2015
DATE

WILLIAM L.D. BARRETT, CHAIRMAN

I, **WILLIAM L.D. BARRETT**, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my **FINAL AWARD**.

7/9/15
DATE

WILLIAM L.D. BARRETT, CHAIRMAN

State of New York
County of New York
SS:

On this 9 day of July, 2015, before me personally came and appeared **WILLIAM L.D. BARRETT**, to me known and known to me to be the individual described in and who executed this **FINAL AWARD** and acknowledged to me that he executed the same.

7/9/15
DATE

NOTARY PUBLIC

DENNISE ARAYA
Notary Public, State of New York
No. 01AR6218522
Qualified in New York County
Commission Expires 3/5/18

7/9/15
DATE

ARTHUR D. FELSENFELD, ARBITRATOR

I, **ARTHUR D. FELSENFELD**, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my **FINAL AWARD.**

7/9/15
DATE

ARTHUR D. FELSENFELD, ARBITRATOR

State of New York
County of New York
} SS:

On this 9th day of July, 2015, before me personally came and appeared **ARTHUR D. FELSENFELD**, to me known and known to me to be the individual described in and who executed this **FINAL AWARD** and acknowledged to me that he executed the same.

7/9/15
DATE

NOTARY PUBLIC

LISA LEAVITT
Notary Public, State of New York
No. 01LE6153458
Qualified in New York County
Commission Expires October 2, 2018

July 9 2015

DATE

NICHOLAS J. COONEY, ARBITRATOR

I, **NICHOLAS J. COONEY**, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my **FINAL AWARD**.

July 9, 2015

DATE

NICHOLAS J. COONEY, ARBITRATOR

State of New York
County of New York } SS:

On this 9th day of July, 2015, before me personally came and appeared **NICHOLAS J. COONEY**, to me known and known to me to be the individual described in and who executed this **FINAL AWARD** and acknowledged to me that he executed the same.

July 9 2015

DATE

NOTARY PUBLIC

JASMINE LAUREL BRITTON
Notary Public - State of New York
NO. 01BR6307300
Qualified in Kings County
My Commission Expires Jul 7, 2018

EXHIBIT J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Global Generation Group, LLC and Benchmark Capital, LLC,

Plaintiffs,

Case No. 13-cv-14979
Hon. Judith E. Levy
Mag. Judge Michael J. Hluchaniuk

v.

Frank Mazzola, Emilio DiSanluciano, FB Management Associates II, LLC, Pipio Management Associates, LLC, Felix Venture Partners Qwiki Management Associates, LLC, Facie Libre Management Associates, LLC, and FMOF Management Associates, LLC,

Defendants.

_____/

JUDGMENT

The award of arbitrators William L.D. Barrett, Aurthur D. Felsenfield and Nicholar J. Cooney, dated July 9, 2015, having been confirmed by this Court on September 9, 2015 (Dkt. 32), and this Court having made and caused its statement of decision to be filed in this case,

IT IS ADJUDGED that Plaintiffs are to recover from Defendants Frank Mazzola, Emilio Disanluciano, FB Management Associates II, LLC, Pipio Management Associtates, LLC, Felix Venture Partners Qwiki Management Associates, LLC, Facie Libre Management Associates, LLC and FMOF Management Associates, LLC, jointly and severally,

1. $1,700,000.00;
2. Interest thereon from December 1, 2012 through June 15, 2015 at 5.75% pursuant to Deleware law – totalling $244,241.10;
3. Interest for delayed repayment in respect of Palantir put $59,012.33;
4. Interest for delayed repayment in respect of Facebook put $104,179.17;
5. Attorneys fees in the amount of $66,624.43, which we find to be reasonable together with $5,378.93 in expenses;
6. The administrative fees and expenses of the American Arbitrator Association, totalling $14,450.00, and the compensation and expenses of the Arbitrators, totalling $38,385.00. Therefore, Respondents shall jointly and severally pay to petitioners an

amount of $48,135.00, representing that portion of said fees and expenses in excess of the apportioned costs previously paid by Petitioners.

IT IS FURTHER ADJUDGED that Defendant FMOF MANAGEMENT ASSOCIATES, LLC committed fraud upon Petitioners.

DAVID J. WEAVER
CLERK OF THE COURT

By: s/Felicia M. Moses
DEPUTY COURT CLERK

APPROVED:

s/Judith E. Levy
JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE