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Approved: _____
JOHN J. O'DONNELL
MATTHEW L. SCHWARTZ
Assistant United States Attorneys

Before: HONORABLE RONALD L. ELLIS
United States Magistrate Judge
Southern District of New York

UNITED STATES OF AMERICA	:	SEALED COMPLAINT
- v. -	:	Violations of 15 U.S.C. §§ 78j(b) and 78ff; 17 C.F.R. § 240.10b-5; and 18 U.S.C. §§ 1343 and 2.
CRAIG L. BERKMAN,	:	
Defendant.	:	COUNTY OF OFFENSE: NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

SCOTT F. ROMONOWSKI, being duly sworn, deposes and says that he is a Criminal Investigator with the United States Attorney's Office for the Southern District of New York, and charges as follows:

COUNT ONE
(Securities Fraud - Ventures Trust II)

1. From at least in or about December 2010 up to and including the present, in the Southern District of New York and elsewhere, CRAIG L. BERKMAN, the defendant, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, did use and employ, in connection with the purchase and sale of securities, to wit, interests in Ventures Trust II, LLC, as set forth in the subscription agreement, manipulative and deceptive devices and contrivances, as set forth above, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud, (b) making untrue statements of material facts and omitting 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, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons,

namely purchasers of interests in Ventures Trust II, LLC.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; Title 18 United States Code, Section 2.)

COUNT TWO
(Wire Fraud - Ventures Trust II)

2. From at least in or about December 2010 up to and including the present, in the Southern District of New York and elsewhere, CRAIG L. BERKMAN, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, and sounds for the purpose of executing such scheme and artifice to defraud, to wit, on or about December 10, 2010, a wire transfer of $216,000 was sent to an account in the name of Ventures Trust II, LLC, from an account in New York, New York, based on BERKMAN's false representations that the money would be used to purchase interests in a special purpose entity that held interests in stock of Facebook, Inc.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT THREE
(Securities Fraud - Face Off Acquisitions)

3. From at least in or about March 2012, up to and including the present, in the Southern District of New York and elsewhere, CRAIG L. BERKMAN, the defendant, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, did use and employ, in connection with the purchase and sale of securities, to wit, interests in Face-Off Acquisitions, LLC, as set forth in the subscription agreement, manipulative and deceptive devices and contrivances, as set forth above, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud, (b) making untrue statements of material facts and omitting 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, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons,

namely purchasers of interests in Face Off Acquisitions, LLC.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; Title 18 United States Code, Section 2.)

COUNT FOUR
(Wire Fraud - Face Off Acquisitions)

4. From at least in or about March 2012, up to and including the present, in the Southern District of New York and elsewhere, CRAIG L. BERKMAN, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, and sounds for the purpose of executing such scheme and artifice to defraud, to wit, on or about April 19, 2012, a wire transfer of $500,000 was sent to an account in the name of Face Off Acquisitions, whose principal place of business was in Manhattan, based on BERKMAN's false representations that the money would be used to purchase another Manhattan-based special purpose entity that held interests in stock of Facebook, Inc.

(Title 18, United States Code, Sections 1343 and 2.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

5. I am a Criminal Investigator with the United States Attorney's Office for the Southern District of New York ("USAO") and I have been personally involved in the investigation of this matter. I have been a Criminal Investigator with the USAO since 2007, where I am currently assigned to the Securities and Commodities Fraud Task Force. During this time, my responsibilities have included the investigation of violations of the federal wire fraud, securities fraud, and money laundering statutes, among others, and I have participated in numerous investigations of offenses involving such violations. Before that, I was a criminal investigator for the New Jersey Attorney General's Office, assigned to a financial crimes unit.

6. This affidavit is based on my conversations with others, including representatives of the U.S. Securities and Exchange Commission ("SEC"). It is also based on my review of numerous documents, including, but not limited to, bank records,

offering memoranda, subscription agreements, text messages, and email messages. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all of the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

Relevant Individuals and Entities

7. Facebook, Inc. ("Facebook"), is a Delaware corporation with its principal place of business in Menlo Park, California. Facebook states that its mission is to make the world more open and connected, which it does through a well-known social networking platform. Facebook completed its initial public offering ("IPO") on or about May 18, 2012, and its Class A common stock is listed on the Nasdaq Global Select Market under the symbol "FB."

8. At all times relevant to the Complaint, Ventures Trust II, LLC ("Ventures Trust II"), was a Delaware private equity investment limited liability company that, according to its offering materials, had offices in Tampa, Florida, and Los Angeles, California.[1] At all times relevant to the complaint, Ventures Trust II Asset Management ("VTAM"), was the managing member of Ventures Trust II, and was responsible for the sourcing, selection, structuring, and oversight of portfolio investments. Ventures Trust II claimed in its September 2010 and February 2012 offering memoranda to have "created a unique opportunity to purchase discounted shares in Facebook, Inc., a company that has established world-wide brand awareness and market share."

9. At all relevant times, VTAM and, by extension, Ventures Trust II, was controlled by CRAIG L. BERKMAN, the defendant, and another individual ("Individual-1").[2] At all

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[1] I have also reviewed a Form D (Notice of Exempt Offering of Securities) filed with the SEC on behalf of Ventures Trust II. Contrary to the Ventures Trust II offering material, that form lists Ventures Trust II's principal place of business as BERKMAN's home address, in Odessa, Florida.

[2] I have reviewed several different versions of the Ventures Trust II offering materials, some of which are inconsistent with one another. For example, some versions list

times relevant to the Complaint, BERKMAN exercised day-to-day management decisions of VTAM and Ventures Trust II. BERKMAN was described in the Ventures Trust II offering memoranda as a person with "extensive experience as a company organizer, director, operating executive, angel investor, and venture capital fund manager." In 2005, as disclosed in the offering memoranda, investors in prior funds managed by BERKMAN initiated civil litigation against BERKMAN and others. In July 2008, a civil jury found that BERKMAN had financial liability.[3] In 2009, the plaintiffs in the civil case filed an involuntary bankruptcy petition against BERKMAN and an entity that he controlled.

10. At all times relevant to this Complaint, Face Off Acquisitions LLC ("Face Off") was a Delaware private equity investment limited liability company, having offices in New York, New York. At all times relevant to the Complaint, Face Off Acquisitions Management LLC ("FOAM") was the managing member of Face Off. At all relevant times, FOAM and, by extension, Face Off, was controlled by BERKMAN, and three other people, including Individual-1. At all relevant times to the Complaint, BERKMAN exercised day-to-day management decisions of FOAM and Face Off. Face Off claimed in its April 2012 offering memorandum that all investment proceeds would be "used to acquire up to 1,012,500 pre IPO Facebook shares." The Face Off offering materials, like the Ventures Trust II offering materials, described BERKMAN's 2005 investor lawsuit, 2008 judgment, and 2009 involuntary bankruptcy.

The Ventures Trust II Scheme

11. CRAIG L. BERKMAN, the defendant, offered investors the chance to invest in a special purpose entity - Ventures Trust II - which he falsely represented owned shares in the stock of private technology companies such as Facebook. Ownership of stock in these private companies was particularly attractive because, as BERKMAN and others represented, there was an expectation that an IPO would soon occur, thereby increasing the value of the shares. But, in truth and in fact, and as BERKMAN

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only Individual-1 as the managing member of VTAM, and other versions list other managing members, in addition to BERKMAN and Individual-1. The different versions of the Ventures Trust II offering materials have other discrepancies, as well.

[3] I know from reviewing documents filed in connection with the prior lawsuit that, in that case, BERKMAN was accused of fraud in connection with an earlier investment vehicle, known as Synectic Asset Management and related entities.

well knew, Ventures Trust II did not hold such stock.

12. Based on BERKMAN's misrepresentations, more than 50 investors sent over $4.6 million into a bank account maintained by Ventures Trust II (the "8271 Account").[4] BERKMAN told investors that their money would be used to purchase pre-IPO shares of Facebook stock. Contrary to that representation, BERKMAN caused the vast majority of the investor money to be transferred to other accounts that he controlled and misappropriated millions of dollars of investor money for his own personal benefit.

13. I know the following from reviewing documents produced by an investor in Ventures Trust II ("Investor-1") to the SEC and from discussions with the SEC staff about their interview with Investor-1:

a. In or about 2010, Investor-1, together with other potential investors, met with BERKMAN and Individual-1 in Northern California. At the meeting, BERKMAN and Individual-1 gave a presentation that lasted approximately 2 hours. In the presentation, BERKMAN and Individual-1 stated, in substance and in part, that they had access to Facebook employees who wanted to sell their Facebook shares prior to Facebook's IPO; that an LLC (*i.e.*, a special purpose investment vehicle) would be formed to buy the pre-IPO Facebook shares from the Facebook employees; that the shares would be held by the LLC; and that each investor would be a shareholder of the LLC and would indirectly own a percentage of the pre-IPO Facebook shares owned by the LLC. Neither BERKMAN nor Individual-1 disclosed that the investment proceeds would be used for any purpose other than obtaining shares of Facebook stock.

b. Following the meeting, on or about December 20, 2010, Investor-I invested $200,000 by wire transfer of $216,000 (consisting of the $200,000 investment plus $16,000 in fees) into the 8271 Account from a bank account located in New York, New York.

14. I know the following from reviewing documents produced by another investor in Ventures Trust II ("Investor-2") to the SEC and from discussions with the SEC staff about their interview with the Trustee for Investor-2 ("Trustee-2"):

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[4] As set forth below, an additional $955,464 in what appears to be Ventures Trust II investor funds was deposited into a separate account.

a. By e-mail dated July 19, 2011, and titled "Facebook Investment Documents and Wire Instructions," Individual-1 sent Trustee-2, who was acting on behalf of Investor-2, four "deal documents" related to Ventures Trust II, LLC: a "deal overview," an "operating agreement," a "private placement memorandum," and a "subscription agreement." Individual-1's e-mail also provided wiring instructions to the 8271 Account. I have reviewed the attachments to this e-mail. Among other things, the "deal overview" provided that "[i]nvestment is solely allocated to the purchase of Facebook stock at $35 per share." The Operating Agreement for Ventures Trust II likewise stated that its "purpose . . . is to acquire Facebook stock, and to engage in all activities reasonably necessary and incidental thereto. Any change in the purpose or activities outside of the purpose shall require the approval of 90% of the members' investment interests." It likewise listed BERKMAN and Individual-1 as "Manager[s]" for the company. Finally, a document titled "Ventures Trust II, LLC Offering Memorandum," provides, among other things, that "[i]nvestment proceeds will be used to purchase Facebook shares," at $35 per share. The Offering Memorandum also touts BERKMAN and Individual-1's credentials as part of the "Management Team."

b. Trustee-2, an attorney located in New York, New York, subsequently made a $40,000 investment in Ventures Trust II on behalf of Investor-2 by wire transfer on or about July 20, 2011, from a bank in New York, New York, to the 8271 Account. On the same date, July 20, 2011, Investor-2 also directly wired $68,000 (in two payments, one of $40,000 and the other of $18,000) to the 8271 Account, for a total payment of $108,000 — or a $100,000 investment, plus $8,000 in management fees. By letter dated August 30, 2011, and signed by BERKMAN and Individual-1, Trustee-2 was told that Investor-2's money "was used to purchase 1493 shares of Facebook stock at a cost basis of $33.50 per share."

c. In February 2012, Trustee-2 e-mailed Individual-1 asking, "[n]ow that it appears that a Facebook public offering is imminent," how Investor-2 would be able to "sell the 1,493 shares of Facebook" reflected in Investor-2's interest in Ventures Trust II. In an e-mail dated February 3, 2012, Individual-1 responded that Investor-2 could not sell "until the lock out period expires which will be 180 days after the first day of public trading of the stock. Facebook will offer shares for public trading around May or June of this year."

15. I know the following from reviewing documents produced by a potential investor in Ventures Trust II ("Investor-

3") to the SEC:

a. A representative of Investor-3 attempted to conduct due diligence of Ventures Trust II. In an e-mail dated February 3, 2012, BERKMAN confirmed that Investor-3 was considering an "initial commitment to the $25.00 FB stock later today, and that you have an interest in acquiring up to $3.8 million. As I explained during our visit . . . we currently have $2 million at $25 per share. I may be able to secure another $1.8 million at $25 per share as long as I have your firm commitment to purchase it."

b. As part of the due diligence process, Investor-3's representative wrote to BERKMAN and asked for copies of "the Facebook stock certificates . . . We just want to make sure they are authentic." In response, in an e-mail dated February 3, 2012, BERKMAN attached a file titled "FB_StockCertificates.pdf."

c. I have reviewed a print-out of that file, which appears to be a series of stock certificates that say "Facebook, Inc." across the top, and say, among other things, "This is to certify that [Fund-1, as defined below] is the registered owner of Twenty Thousand Shares of CLASS B COMMON STOCK of Facebook, Inc." The certificate appears to be signed by the President and Secretary of Facebook, and is dated February 5, 2010. The attachment included similar certificates dated February 23, 2010 (70,200 shares); January 29, 2010 (12,000 shares); March 8, 2010 (14,257 shares); February 4, 2010 (34,000 shares); February 23, 2010 (4,800 shares); and March 8, 2010 (28,513 shares). All of the certificates listed Fund-1, not Ventures Trust II, as the owner of the Facebook shares.

d. Because the Facebook stock certificates listed Fund-1 as the owner of the shares, Investor-3's representative e-mailed BERKMAN asking for the "Ppm for this spv," *i.e.*, private placement memorandum for this special purpose vehicle, and that "[w]e can go ahead if these are direct shares and transferable to new buyers." In an e-mail dated February 6, 2012, BERKMAN provided assurance:

> The FB shares are owned by Ventures Trust II LLC. Ventures Trust II LLC (VT II) will continue to hold the shares until the expected 6 months lock up (after the FB IPO becomes effective) expires and then have the shares issued to our investors.

16. I know the following from reviewing documents

produced to the SEC by a law firm ("Law Firm-1") that represents Fund-1, an investment fund that was actually created to obtain pre-IPO shares of Facebook, and from discussions with the SEC staff about their interview with Law Firm-1 personnel:

a. In or about November 2010, BERKMAN, on behalf of Ventures Trust II, purchased an approximately $354,000 interest in series A shares of Fund-1. In or about January 2011, BERKMAN, on behalf of Ventures Trust II, purchased an additional approximately $159,000 interest in series B shares of Fund-1.

b. In September 2011, a lawyer purporting to act on behalf of Ventures Trust II LLC (the "Ventures Trust Lawyer"), e-mailed a lawyer at Law Firm-1. The Ventures Trust Lawyer wrote that "[t]he documents I have reflect that in January 2011 Ventures Trust II received 3.1899% of the Series A shares of Facebook, Inc., held by [Fund-1]. . . . If you can confirm that your client . . . still holds the Facebook interest that it represented in January 2011, and shows the appropriate interest of Ventures Trust II in these shares it would be much appreciated." In response, the Law Firm-1 lawyer clarified that "Ventures Trust II LLC owns 3.1899% of the Series A interests of [Fund-1]," and that "[Fund-1] still holds the interests in Facebook it represented in January." The Ventures Trust Lawyer thanked the Law Firm-1 lawyer and asked him to send this information in a letter addressed to BERKMAN and Individual-1 as Managing Directors of Ventures Trust II LLC, at an address in Manhattan.

c. By e-mail dated October 19, 2011, the Law Firm-1 lawyer e-mailed the Ventures Trust Lawyer a copy of the letter, which the Law Firm-1 lawyer represented was simultaneously mailed to Individual-1 and BERKMAN at the Manhattan address.[5] The letter, which is on Law Firm-1 letterhead, states that "Ventures Trust II LLC ('Ventures Trust') currently holds 3.1899% of the Series A interests in the Fund [*i.e.*, Fund-1]," and "the Fund currently holds the shares of Facebook, Inc. represented to Ventures Trust at the time of its subscription to the Fund."

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[5] I know from reviewing Law Firm-1's production to the SEC that the letter to BERKMAN and Individual-1 was returned to the firm marked "RETURN TO SENDER / ATTEMPTED - NOT KNOWN / UNABLE TO FORWARD." The Law Firm-1 lawyer subsequently reported that, according to the Ventures Trust Lawyer, the electronic copy was sufficient.

d. By e-mail dated February 27, 2012, Individual-1 forwarded a letter to a potential investor ("Investor-4"). The text of the e-mail stated that "[t]he attached letter is confidential and should not be shared with anyone not covered under the executed NDA [*i.e.*, non-disclosure agreement]." Investor-4 then forwarded Individual-1's e-mail to a representative of Fund-1, who in turn forwarded it to a lawyer at Law Firm-1. The attached letter, dated February 22, 2012, was on Law Firm-1 letterhead and addressed to BERKMAN and Individual-1 as Managing Directors of Ventures Trust II, at the same Manhattan address provided by the Ventures Trust Lawyer. Unlike the actual letter sent from Law Firm-1 — which reported that Ventures Trust II had an interest in Fund-1, which in turn had an interest in Facebook — the letter attached to Individual-1's e-mail stated that "Ventures Trust II LLC ('Ventures Trust') currently holds 3.1899% of the Series A interests in the Fund," and that "the Fund *holds and has allocated 497,625 shares of Facebook, Inc. in Ventures Trust II LLC capital account.*" (Emphasis supplied).

e. According to Law Firm-1, the February 22, 2012, letter attached to Individual-1's e-mail was a fake. It was not drafted or signed by anyone at Law Firm-1. On or about March 1, 2012, Law Firm-1 wrote to BERKMAN and Individual-1, stating the following: (1) Fund-1 terminated Ventures Trust II's membership in Fund-1; (2) the February 22, 2012 letter materially overstated Ventures Trust II's interest in Fund-1 and was an unlawful and unauthorized use of Law Firm-1's name and letterhead, and contained a forged signature of an attorney at Law Firm-1; (3) Fund-1 intended to place $600,000.39 (the aggregate of Ventures Trust II's investments in Fund-1) in a segregated account to be held against potential future claims by third parties whom Ventures Trust II had contacted, as well as legal fees and expenses incurred by Fund-1.

f. On or about March 9, 2012, the Ventures Trust Lawyer wrote to Law Firm-1 and stated, in substance, that Ventures Trust II was "the victim of some other party's fabrication of the letter" and claimed that Ventures Trust II's managers had no role in the creation or authorship of the letter, the misuse of Law Firm-1's letterhead, or the forging of the signature of a lawyer from law Firm-1.

g. On or about March 12, 2012, a lawyer at Law Firm-1 spoke with the Ventures Trust Lawyer to confirm that, notwithstanding the March 9th letter, Ventures Trust II's interest in Fund-1 had been cancelled.

17. I know the following from reviewing documents produced by Facebook and its recordkeeping transfer agents to the SEC:

a. Prior to its IPO in May 2012, Facebook's stock ledger reflected the record holder (although not necessarily beneficial owner) of all outstanding shares of Facebook stock. Prior to its IPO, Facebook maintained a contractual right of first refusal on transfers of its stock. As a result, all proposed valid transactions in Facebook stock were submitted to Facebook, and were supposed to be reflected on the company's stock ledger.

b. At no time between December 1, 2010, and June 20, 2012, were any of Ventures Trust II LLC (or several variations of the Ventures Trust name), or BERKMAN or Individual-1, a record holder of Facebook stock.

18. Based upon my review of documents produced to the SEC, I know the following:

a. On or about August 1, 2012 — after Facebook's IPO but before the expiration of the lock-up period — the Ventures Trust Lawyer sent a memorandum via e-mail to the Ventures Trust II investors (the "August 1 Letter"). In the August 1 Letter, the Ventures Trust lawyer stated, in substance and in part, that (1) Ventures Trust II had used two separate counterparties in securing the investments in privately held Facebook stock; (2) in the first case, involving 20% of Ventures Trust II's investment capital, the counterparty [*i.e.*, Fund-1], and its counsel have repeatedly affirmed that it has the requisite shares and reconfirmed that Ventures Trust II had the securities interests to which it subscribed, but the counterparty was engaged in litigation with the SEC; (3) Ventures Trust II was trying to transfer its interest from the second counterparty, which held approximately 80% of Ventures Trust II's Facebook stock, to its own account; (4) neither counterparty had materially breached its agreement with Ventures Trust II, and Ventures Trust II had not declared either counterparty to be in default; (5) Ventures Trust II was subject to "non-disclosure agreements" with the counterparties which prevented management from disclosing their identities to the investors; and (6) Ventures Trust II is "not a Ponzi scheme." The August 1 Letter did not disclose, as described above and among other things, that Fund-1 had sent a notice terminating Ventures Trust II's interest in Fund-1 as of March 2012 and had set aside funds reflecting that interest in a segregated account.

b. In or about November 2012, the lock-up period preventing investors from selling pre-IPO shares of Facebook expired. Numerous investors requested that Ventures Trust II sell their interests in the Facebook shares and redeem their investment. BERKMAN and Individual-1 told investors that, for a variety of reasons, they could not accommodate these requests.

c. In or about December 2012, BERKMAN and Individual-1 notified the investors in Ventures Trust II that they were going to wind-down the operations of Ventures Trust II and that they were finalizing a liquidation plan. Investors were given three options: (1) a return of principal plus 5% plus a refund of unearned management fee; (2) sale of shares and refund of unearned management fee; or (3) delivery of shares and refund of unearned management fee.

d. On or about December 31, 2012, BERKMAN and Individual-1 notified the investors that more time was necessary to complete the liquidation of Ventures Trust II.

e. In or about January 2013, BERKMAN and Individual-1 sent an email to investors stating that the party that Ventures Trust II used to purchase Facebook shares was subject to an SEC inquiry and that Ventures Trust II is also involved in an SEC inquiry. BERKMAN and Individual-1 told investors that these ongoing inquiries are causing delays in Ventures Trust II wind up and Facebook distribution process.

f. In or about February 2013, BERKMAN and Individual-1 sent an e-mail to ventures Trust II investors stating that they understood that some investors have initiated or will initiate "some adversarial initiatives" with respect to the Ventures Trust funds. BERKMAN and Individual-1 stated that, having discussed the matter with counsel, they have decided that the funds should retain a third party for the purposes of completing the Ventures Trust Funds distributions.

The Face-Off Acquisitions Scheme

19. Beginning in approximately March 2012, CRAIG L. BERKMAN, the defendant, solicited investors interested in pre-IPO shares of Facebook through a second special purpose entity - Face Off - which he falsely represented at various times was in the process of acquiring, or had already acquired, another special purpose entity ("Fund-2") whose sole assets were 1,012,500 pre-IPO share of Facebook. Although BERKMAN at various times had preliminary discussions with principals of Fund-2 (which is located in New York, New York) about acquiring Fund-2, in truth

and in fact, Face Off never acquired Fund-2 and never held pre-IPO Facebook stock.

20. Based on BERKMAN's misrepresentations, at least 14 investors sent over $2.5 million into a bank account maintained by Face Off (the "5630 Account"). BERKMAN told investors that their money would be used to purchase Fund-2, and therefore Fund-2's allocation of pre-IPO shares of Facebook stock. Contrary to that representation, BERKMAN caused virtually all of the investor money to be transferred to other accounts that he controlled and misappropriated that investor money for his own personal benefit.

21. I know the following from reviewing documents produced by an investor in Face Off ("Investor-5") to the SEC and the USAO, and from speaking with Investor-5:

a. In early 2012, Investor-5 met with BERKMAN, in Georgia, to discuss a potential investment in Face Off. BERKMAN explained that while pre-IPO shares in Facebook were not themselves freely transferable, BERKMAN had an opportunity to acquire an entity, Fund-2, that already possessed more than a million Facebook shares. BERKMAN explained that acquiring Fund-2 would require BERKMAN to raise approximately $40-$50 million from investors, and that BERKMAN was already in discussions with a well-known billionaire investor (the "billionaire investor") to invest the majority of the required funds.

b. In an e-mail from Investor-5 to BERKMAN on April 19, 2012, Investor-5 asked, "What did [the billionaire investor] decide?" That same day, BERKMAN replied, "He and his group are in! Great news for us."

c. Also on or about April 19, 2012, Investor-5 invested $500,000 by wire transfer into the 5630 account. (Investor-5 wired an additional $10,000 to the 5630 account on or about June 15, 2012, representing BERKMAN's management fee).

d. In an e-mail from BERKMAN to Investor-5 on May 15, 2012, BERKMAN wrote: "In NY for the closing. We have agreed on a $35.00 per hare [*sic*] price. Will check in with you when the deal is done."

e. The following day, May 16, 2012, Investor-5 asked via e-mail, "Can you give me status?" BERKMAN replied the following morning, May 17, 2012, "Scheduled to close at 11:00 AM this morning. Will advise when completed." In an e-mail sent at approximately 4:13 PM that same afternoon, in response to Investor-5's question, "WE closed yet?", BERKMAN responded "Yes!"

Investor-5 replied, "Awesome. Is price per share still 35$," to which BERKMAN answered, "Yes. I am taking bets that the stock closes over $60.00 per tomorrow."

22. I have spoken with a lawyer who represents the billionaire investor. After consulting with his client, he confirmed that his client was not an investor in Face Off and had never heard of Face Off.

23. I know the following from reviewing documents produced by an investor in Face Off ("Investor-6") to the SEC and the USAO, and from discussions with the SEC staff about their interview of Investor-6:

a. Investor-6 met with BERKMAN in Georgia to discuss a potential investment in Face Off. After that meeting — at which BERKMAN explained that Investor-6's money would be pooled with other investments, with all funds being used to purchase pre-IPO shares of Facebook — on or about April 20, 2012, Investor-6 made a $350,000 investment in Face Off by wire transfer to the 5630 Account. (Investor-6 later wired an additional $7,500 to the 5630 Account, representing BERKMAN's management fees).

b. By letter dated April 27, 2012 — on Face Off letterhead, and signed by BERKMAN — BERKMAN wrote, "Enclosed is your Face Off Acquisitions LLC unit certificate #103 acknowledging receipt of your $350,000.00 on April 20, 2012 and representing one and four tenths units that Face Off Acquisitions LLC has invested for the purpose of purchasing ten thousand Facebook Series B common Rule 144 shares at a cost basis of $35.00 per share." That letter attached a stock certificate, also bearing BERKMAN's signature, which stated that Investor-6 "is the registered holder of one and four tenths units invested in four thousand Facebook, Inc. Series B Common Shares transferable only on the books of the Company."

c. On or about May 31, 2012 — after Facebook's IPO — BERKMAN wrote and signed another letter to Investor-6. It stated, "During the negotiation to purchase [Fund-2], Face Off Acquisitions added a five day post Facebook IPO trading hedge that was designed to reduce Face Off Acquisitions cost basis in the event that Facebook shares did not reach $50.00 per share. Since Facebook shares did not trade at $50.00 per share during the five day trading period, the Face Off Acquisition cost basis has been reduced from $35.00 to $25.00 per share. Enclosed is Face Off Unit Certificate #113 reflecting the additional four thousand Rule 144 Facebook shares that have been allocated to

your Face Off Acquisitions Capital Account."

24. I know the following from reviewing e-mails and documents produced by Fund-2 to the SEC, and from discussions with the SEC staff about their interview of representatives of Fund-2:

a. Fund-2 is a Delaware limited liability corporation, with its principal place of business in New York, New York. Prior to May 18, 2012 — the date of Facebook's IPO — Fund-2's sole assets were cash and pre-IPO shares of Facebook stock.

b. In mid-2011, BERKMAN approached representatives of Fund-2 about the possibility of acquiring Fund-2. BERKMAN claimed to represent a group of investors, including, at different times, a Swiss bank and an English diplomat. At various times between then and May 18, 2012, BERKMAN periodically discussed a possible deal to acquire Fund-2, at times discussing possible prices. For example, in an April 7, 2011 e-mail, a representative of Fund-2 wrote to BERKMAN, "we would agree to a sale of [Fund-2], which currently owns 1,012,500 shares of Series B Common Stock of Facebook, Inc. and has no other assets other than its cash to a qualified purchaser at a net price per share of $28.50 if the transaction could be closed quickly."

c. At various times, the Ventures Trust Lawyer also communicated with representatives of Fund-2 on BERKMAN's behalf. For example, in an April 13, 2011 e-mail, the Ventures Trust Lawyer requested various documents from Fund-2, including copies of Fund-2's operating agreement and information about Facebook's rights of first refusal with respect to any potential sale. In another e-mail the same day, the Ventures Trust Lawyer indicated that BERKMAN and another individual "would like to be able to put a Binding LOI [*i.e.*, Letter of Intent] on your desk this Friday, with terms describing the availability of funds and a closing to be held on or about April 29th."

d. Over the next several months, BERKMAN continued to periodically express interest in acquiring Fund-2. For example, on December 20, 2011, the Ventures Trust Lawyer e-mailed a representative of Fund-2 to ask whether it was "still in play." On February 2, 2012, BERKMAN e-mailed the representative of Fund-2 that "At long last, I have secured the funding to purchase [Fund-2]." And on May 17, 2012 — a day prior to the Facebook IPO — the Ventures Trust Lawyer wrote the same representative of Fund-2 to say, "I am meeting with Craig Berkman

and [another person] right now and Craig has a proposal for you for [Fund-2]."

e. At no point, however, did BERKMAN or Face Off ever actually acquire either Fund-2 or any shares of Facebook possessed by Fund-2.

26. As with Ventures Trust II, CRAIG L. BERKMAN, the defendant, attempted to stall the Face Off investors after the Facebook IPO. I know the following from reviewing documents produced by Face Off investors to the SEC, and from speaking to Investor-5:

a. BERKMAN told Investor-5 that Face Off could not sell or transfer its shares of Facebook until after the six month lock-up period ended, on November 14 or 15, 2012. According to BERKMAN, upon expiration of the lock-up period, the Face Off investors could either maintain their Facebook shares in Face Off, or have them transferred to the investors' personal brokerage accounts.

b. After the expiration of the lock-up period in mid-November 2012, Investor-5 asked BERKMAN to have the Facebook shares transferred to Investor-5's personal account. BERKMAN explained that he was working on having the shares transferred. For example, in an e-mail dated November 26, 2012, BERKMAN wrote that "we are in the process of getting the restrictive legends removed" from the Facebook stock certificates. On December 19, 2012, BERKMAN wrote to Investor-5 that "Counsel is working on the [stock transfer] agreement we discussed." And on January 2, 2013, BERKMAN wrote to Investor-5, "Will have the agreement ready for your review early next week. Will forward counsel's name tomorrow."[6]

c. Notwithstanding these representations, BERKMAN never forwarded any stock transfer agreement to Investor-5, or transferred any shares of Facebook stock to Investor-5.

BERKMAN's Misappropriation of Investor Funds

20. I know the following from reviewing bank records for accounts held by various Ventures Trust entities, Face Off, BERKMAN, and Individual-1, along with summaries and schedules

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[6] BERKMAN ultimately identified his counsel to Investor-5 as a lawyer who was representing BERKMAN in the SEC's investigation of Ventures Trust II and Face Off.

reflecting the data in those records:

a. According to records for the 8271 Account (*i.e.*, the Ventures Trust II account into which most investors were instructed to transfer funds, and which was held jointly by BERKMAN and Individual-1), Ventures Trust II received deposits from what appear to be investors totaling approximately $4.5 million between December 2010 and, most recently, May 2012. For example, on May 18, 2012 — the very day of Facebook's IPO — someone wired $108,000 into the Ventures Trust account.

b. The vast majority of this money — more than $3.6 million — was transferred in turn to another Ventures Trust account at a different financial institution (the "6231 Account"). BERKMAN had sole control over the 6231 Account. The majority of the remaining money in the 8271 Account, approximately $740,000, was withdrawn in cash or certified checks by Individual-1.

c. I have reviewed the bank records for the Ventures Trust II 6231 Account controlled by BERKMAN alone. That account had significant deposits from bank accounts in the names of various other special purpose vehicles bearing the Ventures Trust name. Based upon my review of documents and conversations with the SEC staff, I know that these other Ventures Trust entities — like Ventures Trust II — were created so that BERKMAN could solicit investors to participate in funds that would acquire pre-IPO shares of various technology companies, including LinkedIn, Zynga, and Groupon. Many of the same investors who put money into Ventures Trust II also invested in these others Ventures Trust entities. Among other thing, the 6231 Account received deposits from bank accounts in the names of the following special purpose vehicles, on top of the approximately $3.6 million that came from the Ventures Trust II 8271 Account: (1) Ventures Trust III, LLC - $1,321,000; (2) Ventures Trust VI - $989,000; and (3) Ventures Trust IV - $469,500. In addition, I identified another $955,464 in deposits into the 6231 Account that appear to have come from investors. I believe these were also investments in Ventures Trust II that, for whatever reason, did not go through the 8271 Account. For example, some of these direct transfers into the 6231 Account bear notations like "Facebook shares" and "Facebook opportunity."

d. I have reviewed the withdrawals from the Ventures Trust II 6231 Account controlled solely by BERKMAN. Based upon my review of the withdrawals, I have identified a number of withdrawals that appear to have been made to BERKMAN personally or for his personal benefit. These withdrawals

include: (1) $2,709,306 transferred to a personal account in BERKMAN's name at a different financial institution (the "3496 Account"); (2) $925,000 in transfers to the attorneys representing BERKMAN in his bankruptcy; and (3) $25,000 in checks to BERKMAN. In addition, I identified approximately $58,000 in ATM cash withdrawals and approximately $253,000 in checks, internet check card, and POS purchases.

e. Meanwhile, according to records for the Face Off 5630 Account, Face Off received deposits from what appear to be at least 14 investors totaling approximately $2,573,000 between March 2012 and June 2012. (The post-Facebook IPO payments appear to all represent management fees, and not new principal investments).

f. Virtually all of this money – approximately $2,457,100 – was transferred directly from the Face Off 5620 Account to BERKMAN's personal 3496 Account.

g. Between transfers from the Ventures Trust 6231 Account and the Face Off 5630 Account, therefore, BERKMAN's personal 3496 Account appears to have received more than $5.1 million in investor funds. Between January 2011 and May 2012, approximately $4.7 million, in turn, was transferred from BERKMAN's personal 3496 Account to a law firm that, according to the public docket, was representing BERKMAN in connection with his personal bankruptcy. In addition, as noted above in subparagraph (d), an additional $925,000 was transferred directly from the Ventures Trust II 6231 Account to the bankruptcy lawyers, for a total of at least approximately $5.625 million.

21. Finally, I know from reviewing documents filed in BERKMAN's bankruptcy and the related bankruptcy of a previous BERKMAN-controlled investment vehicle[7] that, in early 2011, he agreed to pay $4,750,000 to settle various claims with the bankruptcy trustee for the benefit of, principally, the victims of his prior fraud, as discussed in paragraph 9, above. According to the publicly-filed settlement agreement, one of the conditions of the settlement is that the settlement funds come from BERKMAN's own funds, and "not from an investment fund which is managed for the benefit of third parties"; that BERKMAN provide notice to the "funding source" for the settlement and that his lawyers certify to the court that such notice was given;

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[7] See In re Craig L. Berkman, No. 09-bk-05169-CED (Bank. M.D. Fla.), and In re Synectic Asset Management, Inc., No. 09-bk-05172-CED (Bank. M.D. Fla.).

and that BERKMAN "seek and obtain a finding from the Bankruptcy Court that Mr. Berkman's fund-raising transaction that is the source of the Settlement Funds is a good faith transaction duly arising post-petition." It appears from other documents filed in the bankruptcy proceedings that BERKMAN at several points defaulted on his payment obligations under the settlement agreement, causing additional funds to be due and owing to consummate the settlement and release.

WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of CRAIG L. BERKMAN, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.

SCOTT F. ROMONOWSKI
Criminal Investigator
United States Attorney's Office

Sworn to before me this
15th day of March, 2013

HON. RONALD L. ELLIS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

CR 12 (Rev. 5/03)

WARRANT FOR ARREST

United States District Court	DISTRICT: SOUTHERN DISTRICT OF NEW YORK
UNITED STATES OF AMERICA V. **CRAIG L. BERKMAN**	DOCKET NO. MAGISTRATE'S CASE NO.: 13 MAG 0732
	NAME AND ADDRESS OF INDIVIDUAL TO BE ARRESTED: **CRAIG L. BERKMAN**
WARRANT ISSUED ON THE BASIS OF: ☐ Order of Court ☐ Indictment ☐ Information X Complaint	DISTRICT OF ARREST
TO: UNITED STATES MARSHAL OR ANY OTHER AUTHORIZED OFFICER	CITY

YOU ARE HEREBY COMMANDED to arrest the above-named person and bring that person before the United States District Court to answer to the charge(s) listed below.

DESCRIPTION OF CHARGES

Securities fraud; wire fraud

IN VIOLATION OF	UNITED STATES CODE TITLE	SECTION
	15 18	78j(b) and 78ff; and 17 C.F.R. § 240.20b-5; 1343 and 2

BAIL	OTHER CONDITIONS OF RELEASE	
ORDERED BY: RONALD L. ELLIS, United States Magistrate Judge, Southern District of New York	SIGNATURE (FEDERAL JUDGE/U.S. MAGISTRATE): /s/ Ronald L. Ellis	DATE ORDERED: MAR 15 2013
CLERK OF COURT	(BY) DEPUTY CLERK	DATE ISSUED

RETURN

This warrant was received and executed with the arrest of the above-named person.

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE EXECUTED		

Note: The arresting officer is directed to serve the attached copy of the charge on the defendant at the time this warrant is executed.