

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
 : INFORMATION
 -v- :
 : 13 Cr. _____
 CRAIG L. BERKMAN, :
 :
 Defendant. :

- - - - -x

COUNT ONE

(Securities Fraud)

The United States Attorney charges:

Relevant Persons and Entities

1. At various times relevant to this Information, CRAIG L. BERKMAN, the defendant, controlled a series of limited liability companies ("LLCs"), including Face-Off Acquisitions, LLC ("Face-Off Acquisitions"), Assensus Capital LLC ("Assensus"), and several LLCs with variations of the words "Ventures Trust" in their names ("Ventures LLCs"). Each of the LLCs was organized under the laws of the State of Delaware.

The Scheme to Defraud

2. From in or about October 2010 through in or about March 2013, CRAIG L. BERKMAN, the defendant, fraudulently raised at least \$13.2 million from approximately 120 investors by selling membership interests in these LLCs. Investor funds were transferred to accounts controlled by BERKMAN from bank accounts located within the Southern District of New York and elsewhere.

BERKMAN misrepresented to investors that the LLCs either owned or would acquire pre-initial public offering ("pre-IPO") shares in various private technology companies. In addition, contrary to his representations concerning the use of investor funds, BERKMAN misappropriated for his own use and benefit millions of dollars in investor funds.

3. In furtherance of his scheme to defraud, CRAIG L. BERKMAN, the defendant, made and caused to be made material misrepresentations to investors in connection with offerings in the Ventures LLCs, Face-Off Acquisitions, and Assensus Capital. First, BERKMAN told investors in various Ventures LLCs that their funds would be used to acquire highly coveted, pre-IPO shares of Facebook, Inc. ("Facebook"), LinkedIn, Inc. ("LinkedIn"), Groupon, Inc. ("Groupon"), and Zynga Inc. ("Zynga"). These representations were false and misleading because, as BERKMAN well knew, none of the Ventures LLCs owned pre-IPO LinkedIn, Groupon or Zynga shares, and one of the Ventures LLCs owned far fewer Facebook shares than BERKMAN represented. And, contrary to his representations to investors about acquiring further pre-IPO shares in these companies, BERKMAN misappropriated most of the investors' funds for his own use and benefit.

4. Second, in another offering, CRAIG L. BERKMAN, the defendant, told investors in Face-Off Acquisitions that their money would be used either to purchase pre-IPO shares of Facebook

or to acquire a company that held pre-IPO Facebook shares. These representations were false. Rather than acquiring such pre-IPO shares, BERKMAN misappropriated the investors' funds for his own use and benefit.

5. In a third offering, CRAIG L. BERKMAN, the defendant, told investors in Assensus Capital that he would use their money to fund various ventures, including technology, medical device, and energy companies. Contrary to these representations, BERKMAN misappropriated all of the funds invested in Assensus Capital for his own use and benefit.

6. Contrary to his representations to investors in the Venture LLCs, Face-Off Acquisitions, and Assensus Capital about the use of their funds, CRAIG L. BERKMAN, the defendant, misappropriated millions of dollars in investor funds for his own use and benefit. For example, other than a \$600,000 investment in a fund that held Facebook shares, the offering proceeds were not used to make any investments in pre-IPO shares in Facebook, LinkedIn, Groupon or Zynga. Instead, BERKMAN transferred approximately \$5.1 million of investor funds to his personal bank account. BERKMAN used most of that \$5.1 million, plus a \$925,000 direct transfer from a Ventures LLC account, to pay creditors in his own personal bankruptcy proceeding and a related bankruptcy proceeding. BERKMAN used the remaining money that he had transferred to his personal account (approximately \$600,000) and

another approximately \$1 million taken directly from the Ventures LLC accounts to make large cash withdrawals, pay his personal legal fees, fund his own travel and other personal expenses, and make numerous other payments unrelated to the purported business of the Ventures LLCs, Face-Off Acquisitions or Assensus Capital.

7. Furthermore, CRAIG L. BERKMAN, the defendant, used approximately \$4.8 million of investor money to make payments to earlier investors in the pre-IPO scheme or, in some cases, to investors who had made earlier investments with BERKMAN. For example, in 2010 and 2011, BERKMAN transferred \$400,000 from a Ventures LLC account to two individuals to whom BERKMAN owed money from investments they had made in unrelated ventures in approximately 2004.

STATUTORY ALLEGATION

8. From in or about October 2010 up to and including in or about March 2013, 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, and of the mails, and of facilities of national securities exchanges, in connection with the purchase and sale of securities, used and employed manipulative and deceptive devices and contrivances 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 fact 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 purchasers of membership interests in the Ventures LLCs, Face-Off Acquisitions, and Assensus Capital.

(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)

The United States Attorney further charges:

9. The allegations contained in paragraphs 1 through 7 of this Information are repeated and realleged as if fully set forth herein.

10. From at least in or about October 2010 up to and including in or about March 2013, 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 wit, BERKMAN caused investors to wire money, including from accounts in New York, New York, to accounts controlled by BERKMAN based on the false representations described in this Information.

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

FORFEITURE ALLEGATION

11. As a result of committing the foregoing securities fraud offense, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2, as alleged in Count One of this Information, and wire fraud offense, in violation of Title 18, United States Code, Sections 1343 and 2, as alleged in Count Two of this Information, CRAIG L. BERKMAN, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the fraud offenses, including but not limited to the following:

- a. Approximately \$13,239,006 in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the charged securities and wire fraud offenses.

Substitute Asset Provision

12. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value;
or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

(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, Sections 1343 and 2; and Title 21, United States Code, Section 853(p).)


PREET BHARARA 
United States Attorney