

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: \_\_\_\_\_

JAMES D. SALLAH, not individually  
but solely in his capacity as Corporate Monitor for  
OM GLOBAL INVESTMENT FUND LLC and  
OM GLOBAL LP,

Plaintiff,

v.

FAHRENHEIT VENTURE FUND LLC,

Defendant.

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**COMPLAINT**

James D. Sallah, not individually but solely in his capacity as the court-appointed Corporate Monitor (the “Corporate Monitor”) for OM Global Investment Fund LLC and OM Global LP (collectively, “OM Global”), hereby sues Defendant Fahrenheit Venture Fund LLC (“Fahrenheit Venture”), and alleges:

**Description of the Action**

1. This action is brought pursuant to the Agreed Order Granting Plaintiff’s Unopposed Motion for Appointment of Corporate Monitor dated May 29, 2013 and the Agreed Order Granting the Corporate Monitor’s Emergency Motion to Expand Corporate Monitorship over OM Global LP dated August 17, 2013 (collectively, the “Appointment Orders”), issued by the Honorable Daryl E. Trawick in the Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida, in *Chirag Amin v. Gignesh Movalia and OM Global Investment*

*Fund LLC*, Case No. 13-18620 CA 13 (the “Investor Action”), which, among other things, appointed the Corporate Monitor to marshal OM Global’s assets for the benefit of its investors who are currently owed money. Copies of the Appointment Orders are attached as Composite Exhibit A.

2. Pursuant to the Appointment Order dated May 29, 2013, the Corporate Monitor seeks to obtain a money judgment against Fahrenheit Venture for fraudulent transfer, unjust enrichment and conversion.

### **Subject Matter Jurisdiction**

3. Jurisdiction is proper in this Court because: (1) the Corporate Monitor sues to accomplish the ends sought in the Investor Action (*i.e.*, the marshaling of assets of investors) wherein his appointment was made and such an action is ancillary<sup>1</sup>; (2) the Corporate Monitor files this ancillary action in the same Court wherein he was appointed; (3) the Corporate Monitor is obligated by the Appointment Orders entered in the Investor Action to take custody, control, and possession of OM Global’s assets by investigating and instituting actions (if necessary) against individuals or entities with possession of such assets; (4) the Corporate Monitor’s claims against Fahrenheit Venture seek to recover such assets, pursuant to the Appointment Order dated May 29, 2013 entered in the Investor Action; and (5) the claims raised in this Complaint are so related to the claims involved in the Investor Action that they form part of the same case or

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<sup>1</sup> If an action is filed by a receiver (or corporate monitor) in the Court in which the receiver (or corporate monitor) had been appointed, no independent jurisdictional grounds need be shown. *Baker v. Heller*, 571 F. Supp. 419 (S.D. Fla. 1983). “When an action is commenced by a receiver . . . to accomplish the ends sought and directed by the suit in which the appointment was made, such action or suit is regarded as ancillary . . . and . . . jurisdiction of these subordinate actions or suits is to be attributed to the jurisdiction upon which the main suit rested.” *Pope v. Louisville, New Albany & Chicago Ry. Co.*, 173 U.S. 573 (1899).

controversy.

4. Pursuant to the Appointment Orders, the Corporate Monitor is obligated to take immediate possession of all of OM Global's property, assets and estate, and all other property of OM Global of every kind whatsoever and wheresoever located. In addition, the Corporate Monitor is authorized to sue third parties, such as Fahrenheit Venture, on behalf of OM Global.

5. The Appointment Orders empower the Corporate Monitor to file actions and legal proceedings as the Corporate Monitor deems necessary against any individuals or entities with respect to transfers of monies or other proceeds directly or indirectly traceable from funds of OM Global. Such rights of action, as well as title to all property, real or personal of OM Global, wherever located within or without this State, are vested by operation of law in the Corporate Monitor.

#### **Venue, Parties, and Personal Jurisdiction**

6. Venue is proper in this Court because, as set forth more fully below, (1) Fahrenheit Venture was the recipient of a transfer from Florida; (2) the agency relationship and subsequent business venture/scheme specifically giving rise to the Corporate Monitor's claims was created and continuously operated in and out of Florida; (3) the Investor Action, to which this suit is ancillary, is pending in this Court; (4) trying this ancillary action and the Investor Action before the same Court will avoid redundancy and preserve scarce judicial resources because this Court is already familiar with the general facts of the Investor Action; and (5) trying this action in this Court would not be so gravely difficult and inconvenient that Fahrenheit Venture would, for all practical purposes, be deprived of its day in court.

7. OM Global Investment Fund LLC is a Florida limited liability company which had its principal place of business in Florida. Pursuant to the Appointment Order dated May 29,

2013, OM Global Investment Fund LLC was placed into corporate monitorship and the Corporate Monitor was appointed to marshal its assets for the benefit of all of its investors.

8. OM Global LP is a Delaware limited partnership which had its principal place of business in Florida. OM Global LP was the continuation of OM Global Investment Fund LLC and was likewise placed into corporate monitorship. Therefore, the Corporate Monitor was appointed to marshal OM Global LP's assets for the benefit of all of its investors.

9. Defendant Fahrenheit Venture is a limited liability company with its principal place of business in Algonquin, Illinois.

10. Fahrenheit Venture is an investment fund which seeks to capitalize on attractive investment opportunities. Fahrenheit Venture was an investor in OM Global Investment Fund LLC, which improperly received a redemption from OM Global Investment Fund LLC that comprised monies belonging to OM Global Investment Fund LLC's other investors.

11. This Court has personal jurisdiction over Fahrenheit Venture pursuant to not only the Appointment Order, but also Florida Statute § 48.193(1)(a) because Fahrenheit Venture damaged OM Global Investment Fund LLC in Florida.

### **The Appointment Orders**

12. The Court appointed the Corporate Monitor to, among other things, take immediate possession of all of OM Global's property wherever situated.

13. The Appointment Orders granted the Corporate Monitor various powers, including, but not limited to, the specific power to institute such actions and legal proceedings as the Corporate Monitor deems necessary in respect of transfers of monies or other proceeds directly or indirectly traceable from investors in OM Global.

14. The claims alleged herein all seek to recover money and property directly or

indirectly traceable from investors in OM Global Investment Fund LLC, pursuant to the Appointment Order dated May 29, 2013. The claims alleged herein are also specifically contemplated by the Appointment Order.

### **Overview of OM Global Investment Fund LLC**

15. OM Global Investment Fund LLC was a hedge fund operated by OM Investment Management, a privately-held investment and wealth management firm. OM Investment Management represented itself to investors as a registered investment advisor with the United States Securities and Exchange Commission (the “SEC”).

16. On April 1, 2010, OM Global Investment Fund LLC was launched as a new hedge fund of OM Investment Management. At all material times, Gignesh Movalia was the portfolio manager of OM Global Investment Fund LLC, and the founder and chairman of OM Investment Management. OM Global’s investors reside in, among other places, Florida, including Miami-Dade County.

17. Investor contributions in OM Global Investment Fund LLC were approximately \$21.3 million and redemptions were approximately \$6.7 million.

18. In addition, investor funds were commingled.

19. OM Global Investment Fund LLC suffered significant trading losses in Facebook (“FB”) and Proshares Ultra VIX Short-Term Futures ETF (“UVXY”). Preliminary analysis indicates the trading losses from UVXY trades exceeded \$5.2 million and FB trading losses were approximately \$7.1 million. However, when accounting for all investment activity in OM Global Investment Fund LLC beyond the FB and UVXY losses, the fund’s total trading losses were approximately \$8.9 million.

20. Moreover, OM Global Investment Fund LLC suffered from corporate

mismanagement, such as the failure to operate the fund at all material times in compliance with regulations required by the SEC, including failing to timely file the necessary records registering OM Global Investment Fund LLC with the SEC.

21. As a result of the above, and with the agreement of Movalia, on May 29, 2013, the Corporate Monitor was appointed by the Court to serve as Corporate Monitor for OM Global Investment Fund LLC.

### **The SEC Sues Movalia for Securities Violations**

22. On September 27, 2013, the SEC sued Movalia in the case styled *Securities and Exchange Commission v. OM Investment Management LLC, Gignesh Movalia and Edwin V. Gaw*, Case No. 13-cv-23486-MARTINEZ, pending in the Southern District of Florida. A copy of the SEC's Complaint is attached as Exhibit B.

23. The SEC alleged Movalia violated federal securities laws, including violations of the Securities Act of 1933, Rule 10b-5 of the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Investment Company Act of 1940. In essence, Movalia was running a Ponzi scheme through OM Global Investment Fund LLC.

24. Movalia has consented to the entry of a permanent injunction restraining him from violating federal securities laws, an order directing him to pay disgorgement (amount to be determined), an order directing him to pay a civil monetary penalty (amount to be determined), and an order freezing his assets.

### **Fahrenheit Venture Receives an Improper Redemption of \$841,333.29**

25. Fahrenheit Venture made an initial investment of \$300,000, a second investment of \$309,021, and a third investment of \$241,150 in OM Global Investment Fund LLC, for a total investment amount of \$850,171. The purpose of the investment was to invest in FB, whose

stock went public in May 2012.

26. However, as of November 2012, Movalia had liquidated all FB stock which had been purchased for the benefit of investors (including Fahrenheit Venture).

27. In January 2013, Fahrenheit Venture ultimately received a total of \$841,333.29 as its redemption from OM Global Investment Fund LLC for its FB stock (which, again, no longer existed as of November 2012). Therefore, it received approximately a 99% return of its principal investment in FB.

28. As of January 2013 (the month of Fahrenheit Venture's redemption), the commingled fund – at the hands of Movalia – had suffered severe trading losses. For example, the commingled fund had suffered over 50% losses. Because the fund was comprised of commingled investor money, Fahrenheit Venture, therefore, had no right to the 99% redemption it received and, therefore, received an overpayment of at least 50% of its principal investment.

29. Moreover, as of January 2013 (the month of Fahrenheit Venture's redemption), Movalia had already liquidated all FB stock, so there were no more FB shares for the benefit of investors (including Fahrenheit Venture). Therefore, there was no actual redemption of FB stock by Fahrenheit Venture.

30. Most investors never received any redemption from the fund. Specifically, over 70% of investors never received one penny as a redemption. The Corporate Monitor recently made a first distribution to investors with allowed claims in the amount of approximately 14% of each investor's principal investment amount. As stated above, Fahrenheit Venture previously received 99% of its investment (or seven times the first distribution amount).

31. Fahrenheit Venture made its redemption because it knew or should have known that Movalia was running a Ponzi scheme. Fahrenheit Venture made its redemption of purported

FB stock and received funds on January 28, 2013. However, Fahrenheit Venture immediately re-invested back into FB stock in its own controlled account (as opposed to Movalia's controlled account). It did so at a higher price and thus lost additional money.

32. In other words, Fahrenheit Venture still wanted an investment in FB, but out of Movalia's control. Fahrenheit Venture took the additional loss in order to get its investment away from Movalia because it knew or should have known that Movalia was running a Ponzi scheme, or, at a minimum, had doubts about the ways in which Movalia was conducting the fund. After all, Fahrenheit Venture is an investment fund itself and, therefore, is a sophisticated investor which knows when there are "red flags" for a fund. Its redemption should come as no surprise.

33. As such, Fahrenheit Venture is not an innocent investor and did not accept its redemption with a good faith belief that OM Global was a legitimate investment fund.

34. Upon information and belief, Movalia had professional and social relationships with members of Fahrenheit Venture. Thus, it is not surprising that Movalia sent 99% of Fahrenheit Venture's investment back.

35. In fact, in marketing materials, Movalia listed himself as one of Fahrenheit's board members and listed Fahrenheit's members as members of OM Global's management team and advisory board.

36. Moreover, Movalia transferred the funds to Fahrenheit Venture at or near the time that the SEC contacted Movalia about investigating OM Global. Soon thereafter, Movalia decided that he would be ultimately shutting down the fund and ultimately agreed to the appointment of the Corporate Monitor.

37. Fahrenheit Venture's principal investments were commingled with other



investors' funds.

38. Fahrenheit Venture's principal investment funds were lost, in part, by Movalia's trading and Movalia's payments of redemptions to other investors.

39. When investors, such as Fahrenheit Venture, received redemptions, Movalia, in furtherance of the scheme, intentionally and wrongfully caused OM Global Investment Fund LLC to pay investors sums of money equivalent to more than, all of and/or part of the principal invested by those investors.

40. The redemptions, which Movalia caused OM Global Investment Fund LLC to make, were paid from the fruits of the scheme, further dissipated the assets of OM Global Investment Fund LLC, were not distributions of actual gains or of the recipients' principal investments and thus injured OM Global Investment Fund LLC (and its investors). In other words, Fahrenheit Venture did not actually receive its principal funds; it received commingled funds of other investors.

41. At the time of the transfer to Fahrenheit Venture, Movalia had the actual intent to hinder, delay, or defraud creditors and made the transfer to Fahrenheit Venture to hinder, delay or defraud creditors, including the Corporate Monitor and/or OM Global Investment Fund LLC.

42. Moreover, Fahrenheit Venture did not provide fair value in exchange for the transfer because the redemption to Fahrenheit Venture further dissipated the assets of OM Global Investment Fund LLC and further rendered it insolvent. And OM Global Investment Fund LLC was insolvent from its inception because Movalia used it to perpetuate a Ponzi scheme.

43. Given the foregoing, it is inequitable for Fahrenheit Venture to reap the benefit of funds derived from OM Global Investment Fund LLC's investors for its own benefit, without

fair value returned.

44. The Corporate Monitor has served a demand on Fahrenheit Venture for return of the funds, but Fahrenheit Venture has not returned any funds as of this filing.

**Count I**  
**Fraudulent Transfer under § 726.105(1)(a)**

45. The Corporate Monitor realleges and reincorporates paragraphs 1 through 44 above as if fully set forth herein.

46. Fahrenheit Venture received and/or benefitted from a return of \$841,333.29.

47. As of January 2013 (the month of Fahrenheit Venture's redemption), the commingled fund had suffered severe trading losses. For example, the commingled fund had suffered over 50% losses. Because the fund was comprised of commingled investor money, Fahrenheit Venture, therefore, had no right to the 99% redemption it received and, therefore, received an overpayment of over 50% of its principal investment.

48. At the time of the transfer, Movalia was violating federal securities laws, including violations of the Securities Act of 1933, Rule 10b-5 of the Securities Exchange Act of 1934, the Investment Advisers Act of 1940 and the Investment Company Act of 1940. In essence, Movalia was running a Ponzi scheme through OM Global Investment Fund LLC.

49. As such, Movalia had the actual intent to delay, hinder or defraud creditors and made a transfer, from which Fahrenheit Venture ultimately benefitted, to delay, hinder or defraud creditors, including the Corporate Monitor and/or OM Global Investment Fund LLC. In addition, because Movalia was violating federal securities laws, defrauding investors and running a Ponzi scheme, OM Global Investment Fund LLC was *de facto* insolvent.

50. As a direct and proximate result of the transfer of duped victim funds, the OM

Global corporate monitorship has been diminished. The remaining assets of OM Global Investment Fund LLC are insufficient to pay OM Global Investment Fund LLC's liabilities.

51. The transfer to Fahrenheit Venture was to an insider; was made in contemplation of potential litigation; consisted of substantial assets; rendered OM Global Investment Fund LLC further insolvent; and was not made in exchange for fair value.

52. Fahrenheit Venture made its redemption because it knew or should have known that Movalia was running a Ponzi scheme or, at a minimum, had doubts about Movalia's operation. Fahrenheit Venture made its redemption out of purported FB stock and received funds on January 28, 2013. However, Fahrenheit Venture immediately invested back into FB stock again in its own controlled account (as opposed to Movalia's controlled account) and at a higher price in which it took an additional loss.

53. In other words, Fahrenheit Venture wanted to get its FB investment out of Movalia's control and under its own control because it knew or should have known that Movalia was running a Ponzi scheme or, at a minimum, had "red flags" of a Ponzi scheme. After all, Fahrenheit Venture is an investment fund itself and is, therefore, a sophisticated investor.

54. Accordingly, the transfer to Fahrenheit Venture is avoidable to the extent of its overpayment, pursuant to Chapter 726, Florida Statutes.

### **Count II** **Conversion**

55. The Corporate Monitor realleges and reincorporates paragraphs 1 through 44 above as if fully set forth herein.

56. This is a claim for conversion against Fahrenheit Venture.

57. OM Global Investment Fund LLC owns the duped victim funds that Fahrenheit

Venture received and/or from which it benefitted.

58. Fahrenheit Venture wrongfully exercised dominion and control over the funds to the detriment of, and inconsistent with, OM Global Investment Fund LLC's ownership rights thereto, when Fahrenheit Venture received and/or used the funds for its own benefit.

59. Fahrenheit Venture was not authorized by OM Global Investment Fund LLC to assert any control over, manage, or dispose of the funds and, notwithstanding, Fahrenheit Venture has wrongfully and permanently deprived OM Global Investment Fund LLC of its property.

**Count III**  
**Unjust Enrichment**

60. The Corporate Monitor realleges and reincorporates paragraphs 1 through 44 above as if fully set forth herein.

61. This is an equitable claim of unjust enrichment against Fahrenheit Venture.

62. OM Global Investment Fund LLC, directly or indirectly, conferred a substantial direct benefit on Fahrenheit Venture, namely it received and/or benefitted from duped victim funds for its own use.

63. Fahrenheit Venture requested the benefit it obtained and knew or should have known that it wrongfully and unjustifiably received and/or benefitted from duped victim funds for its own use.

64. Notwithstanding, Fahrenheit Venture voluntarily accepted and retained the funds transferred to it.

65. In receiving and utilizing the funds, Fahrenheit Venture has unjustly retained a benefit to the detriment of the OM Global corporate monitorship and other investors.

66. It is inherently unjust, unfair, and inequitable that Fahrenheit Venture be able to retain the benefit of receiving duped victim funds for its own use, under the above alleged circumstances.

67. Based on the above alleged circumstances, equity dictates that Fahrenheit Venture return to the corporate monitorship, at least, the excessive amount of duped victim funds it received.

68. As a direct and proximate result of Fahrenheit Venture's retention and use of the duped victim funds, the corporate monitorship has been diminished.

**WHEREFORE**, James D. Sallah, not individually but solely in his capacity as the court-appointed Corporate Monitor for OM Global Investment Fund LLC and OM Global LP, demands judgment as follows:

A. Setting aside the transfer to Fahrenheit Venture, directly or indirectly, in the amount of, at least, the overpaid funds;

B. Entering a money judgment against Fahrenheit Venture in the amount of, at least, the overpaid funds, together with interest thereon from the date of the transfer; and

C. Providing such other and further relief as the Court deems just and appropriate.

Dated: May 6, 2014.

Respectfully submitted,

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