

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

MELODY BUSINESS FINANCE, LLC,

Plaintiff,

-against-

PHILIP A. FALCONE; LISA M. FALCONE; EIGHTH STREET LLC; CROXTON 2 LLC; FIRST STREET LLC; LA BRAVA FARM LLC; VXA, LLC; WILD ORCHID FARM LLC; HARBINGER CAPITAL PARTNERS GP, L.L.C.; HARBINGER CAPITAL PARTNERS SPECIAL SITUATIONS GP, L.L.C.; CREDIT DISTRESSED BLUE LINE GP, L.L.C.; GLOBAL OPPORTUNITIES BREAKAWAY MM, L.L.C.; and THREE-HUNDREDTH STREET LLC,

Defendants.

Index No. \_\_\_\_\_

**SUMMONS**

Date Index No. Purchased: \_\_\_\_\_

**TO THE ABOVE NAMED DEFENDANT(S):**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis for venue is CPLR 503(a) as defendants are New York residents served in the State; and, alternatively, the claims set forth in the complaint arise from each defendants'

transaction of business within the state, and each defendant was properly served here; and, alternatively, defendants consented to venue in this County.

DATED: New York, New York  
February 21, 2020

HOLWELL SHUSTER & GOLDBERG LLP

By: /s/ Scott M. Danner

Daniel P. Goldberg  
Scott M. Danner

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*Counsel for Plaintiff*

Defendants' address:

Philip A. Falcone and Lisa Maria Falcone

Eighth Street LLC

(c/o Philip A. Falcone)

Croxtton 2 LLC

(c/o Philip A. Falcone)

First Street LLC

(c/o Eighth Street LLC and Croxtton 2 LLC)

La Brava Farm LLC

(c/o Eighth Street LLC and Croxtton 2 LLC)

VXA, LLC

(c/o Eighth Street LLC and Croxtton 2 LLC)

Wild Orchid Farm LLC

(c/o Eighth Street LLC and Croxtton 2 LLC)

Harbinger Capital Partners GP, L.L.C.

(c/o Eighth Street LLC and Croxtton 2 LLC)

Harbinger Capital Partners Special Situations GP, L.L.C.

(c/o Eighth Street LLC and Croxtton 2 LLC)

Credit Distressed Blue Line GP, L.L.C.

(c/o Eighth Street LLC and Croxtton 2 LLC)

Global Opportunities Breakaway MM, L.L.C.  
(c/o Eighth Street LLC and Croxton 2 LLC)  
Three-Hundredth Street LLC  
(ATTN: Philip A. Falcone & Lisa Maria Falcone)  
22 East 67th Street  
New York, New York 10065  
pfalcone@harbingercapital.com

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

MELODY BUSINESS FINANCE LLC,

Plaintiff,

-against-

PHILIP A. FALCONE; LISA M.  
FALCONE; EIGHTH STREET LLC;  
CROXTON 2 LLC; FIRST STREET LLC;  
LA BRAVA FARM LLC; VXA, LLC;  
WILD ORCHID FARM LLC; HARBINGER  
CAPITAL PARTNERS GP, L.L.C.;  
HARBINGER CAPITAL PARTNERS  
SPECIAL SITUATIONS GP, L.L.C.;  
CREDIT DISTRESSED BLUE LINE GP,  
L.L.C.; GLOBAL OPPORTUNITIES  
BREAKAWAY MM, L.L.C.; and THREE-  
HUNDREDTH STREET LLC,

Defendants.

**COMPLAINT**

Plaintiff Melody Business Finance LLC (“Melody”), by and through its attorneys,  
Holwell Shuster & Goldberg LLP, as and for its Complaint against defendants named herein,  
states and alleges as follows:

**NATURE OF ACTION**

1. Investment funds managed by Melody’s affiliate, Melody Capital Partners, LP,  
loaned tens of millions of dollars to three limited liability companies owned or controlled by  
defendants Philip A. Falcone and Lisa Maria Falcone. In exchange, the borrowers signed  
promissory notes, in which they promised to pay Melody back, with interest. Mr. and Mrs.  
Falcone guaranteed, unconditionally, that if the borrowers did not pay, then the Falcones would.  
The borrowers, the Falcones, and several other entities they own also pledged collateral—

including fine art, jewelry, and equity interests—as security for the borrowers’ promise to repay. Melody acts as administrative and collateral agent under these agreements and is entitled to enforce them.

2. Melody kept its promises. The borrowers, however, did not; they failed to pay back the loans when due. The Falcones, as guarantors, did not keep their promises either; they failed to pay too. By this action, Melody seeks a judgment on the borrowers’ promissory notes and the Falcones’ guarantees.

3. Because the borrowers and the Falcones have refused to pay, Melody is entitled by contract and under the Uniform Commercial Code (“UCC”) to take possession of the pledged collateral, sell it, and apply the proceeds to the loan balances. But rather than selling the collateral in order to repay outstanding loan balances, the defendants have sold collateral without turning over the proceeds from such sales, threatening to deprive Melody of its contractual rights and diminish the security for their loan obligations. Thus, Melody also seeks by this action a judgment directing that the collateral be delivered to Melody, and a declaration that it has the right to sell that collateral free and clear.

### **PARTIES**

4. Plaintiff Melody Business Finance LLC is organized as a limited liability company under Delaware law and headquartered at Four Greenwich Office Park, Greenwich, Connecticut, 06831. For purposes of this action, Melody acts as Collateral Agent under a series of loan agreements described further below and references to “Melody” refer to it in its capacity as such.

5. Upon information and belief, defendants Philip A. Falcone and Lisa Maria Falcone reside at 22 East 67th Street, New York, New York, 10065. As discussed further below, they own and control several entities that either borrowed money from Melody or pledged

collateral to Melody to secure its loans. Mr. and Mrs. Falcone also pledged their own collateral to Melody to secure its loans. They are referred to collectively as the “Falcones” herein.

6. Defendant Eighth Street LLC is a Delaware limited liability company headquartered in New York, and wholly owned by Mr. Falcone. As discussed further below, Eighth Street LLC pledged some of the collateral at issue in this action.

7. Defendant Croxton 2 LLC is a Delaware limited liability company headquartered in New York, and wholly owned by Mr. Falcone. As discussed further below, Croxton 2 LLC pledged some of the collateral at issue in this action.

8. Defendant First Street LLC is a Delaware limited liability company headquartered in New York, and wholly owned by the Falcones. As discussed further below, First Street LLC pledged some of the collateral at issue in this action.

9. Defendant La Brava Farm LLC is a New York limited liability company headquartered in New York; on information and belief, it is wholly owned by the Falcones. As discussed further below, La Brava Farm LLC pledged some of the collateral at issue in this action.

10. Defendant VXA LLC is a New York limited liability company headquartered in New York; on information and belief, it is wholly owned by the Falcones. As discussed further below, VXA LLC pledged some of the collateral at issue in this action.

11. Defendant Wild Orchid Farm LLC is a New York limited liability company headquartered in New York; on information and belief, it is wholly owned by the Falcones. As discussed further below, Wild Orchid Farm LLC pledged some of the collateral at issue in this action.

12. Defendant Harbinger Capital Partners GP, L.L.C. is a limited liability company headquartered in New York, and 99.2% owned by defendant Eighth Street LLC; on information and belief, it is organized under Delaware law. As discussed further below, Harbinger Capital Partners GP, L.L.C. pledged some of the collateral at issue in this action.

13. Defendant Harbinger Capital Partners Special Situations GP, L.L.C. is a limited liability company headquartered in New York, and 99.9% owned by defendant Eighth Street LLC; on information and belief, it is organized under Delaware law. As discussed further below, Harbinger Capital Partners Special Situations GP, L.L.C. pledged some of the collateral at issue in this action.

14. Defendant Credit Distressed Blue Line GP, L.L.C. is a limited liability company headquartered in New York, and 99% owned by defendant Eighth Street LLC; on information and belief, it is organized under Delaware law. As discussed further below, Credit Distressed Blue Line GP, L.L.C. pledged some of the collateral at issue in this action.

15. Defendant Global Opportunities Breakaway MM, L.L.C. is a limited liability company headquartered in New York, and wholly owned by defendant Eighth Street LLC; on information and belief, it is organized under Delaware law. As discussed further below, Global Opportunities Breakaway MM, L.L.C. pledged some of the collateral at issue in this action.

16. Collectively, the defendants identified in paragraphs 6 to 15 are referred to as the “LLC Grantors.”

17. Two of the LLC Grantors—Eighth Street LLC and Croxton 2 LLC—are also the borrowers on some of the defaulted loans at issue in this action.

18. Defendant Three-Hundredth Street LLC is a Delaware limited liability company headquartered in New York, and wholly owned by the Falcons. Three-Hundredth Street LLC is

the borrower on several of the defaulted loans at issue in this action. Three-Hundredth Street LLC, Eighth Street LLC, and Croxton 2 LLC, are referred to collectively as the “Borrowers.”

19. Three-Hundredth Street LLC also entered two bailment agreements in which it agreed, among other things, to hold some of the collateral pledged to Melody. It is referred to in that capacity as the “Bailee.”

### **JURISDICTION AND VENUE**

20. This Court has personal jurisdiction over the defendants for all claims asserted here because they are New York residents served in the State. CPLR 301. Venue is properly laid here for the same reason. CPLR 503(a). To the extent any defendant is determined to be a nonresident of New York, the exercise of jurisdiction is authorized because the claims set forth herein arise from each defendants’ transaction of business within the state, and each defendant was properly served here. CPLR 302(a)(1). Venue is appropriate on this alternative basis as well. CPLR 503(a).

21. Additionally, the parties contractually agreed both to this Court’s exercise of personal jurisdiction over them and to venue being laid in this County. Ex. A at § 9.16(a), (b) (Falcones and LLC Grantors); Ex. L at § 4.2(b) (Three-Hundredth Street LLC).

### **FACTUAL ALLEGATIONS**

#### **A. Melody extends (or acquires) several loans to the Borrowers**

22. This action arises from a number of loans made to the Borrowers beginning in 2013. The loans fall into two groups. *First*, prior lenders extended loans to Eighth Street LLC and Croxton 2 LLC beginning in 2013; Melody bought those loans in 2016, after which the loans were consolidated into a single loan. This loan is referred to as the “Eighth Street Loan.”



23. *Second*, Melody extended three loans to Three-Hundredth Street LLC, one each in 2015, 2016 and 2017. Those loans are referred to the as the “Three-Hundredth Street Loans.” Each set of loans is described in further detail below.

*1. The Eighth Street Loan*

24. On or about June 28, 2013, Eighth Street LLC, Croxton 2 LLC, the Falcones, various lenders, and Fortress Credit Corporation (“Fortress”) as Collateral Agent, among others, entered into a loan agreement (the “Eighth Street Loan Agreement”). A true and correct copy of the Eighth Omnibus Amendment to Loan Documents, which includes the most recent complete version of the Eighth Street Loan Agreement, is attached hereto as Exhibit A, and its terms are incorporated by reference herein.<sup>1</sup> Over the following years, the original lenders extended credit to Eighth Street LLC and Croxton 2 LLC pursuant to the Eighth Street Loan Agreement. *See Ex. A at §§ 2.01, 2.02* (describing the “Loans”).

25. On June 2, 2016, the date of the Eighth Amendment to the Eighth Street Loan Agreement, the original lenders extended a “Convertible Bridge Loan,” and the parties agreed that if the Convertible Bridge Loan was not paid down by September 30, 2016, then on the following day, all prior loans (including the then-“Existing Loans” and the Convertible Bridge Loan) would combine into a single “Converted Term Loan,” which would “replace in its entirety and be in substitution for but not in payment of each of the Existing Loans and the Convertible Bridge Loan.” *Id.* at § 2.02(c).

26. On September 13, 2016, Melody entered two agreements by which it purchased the loans made under the Eighth Street Loan Agreement from the original lenders, and stepped

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<sup>1</sup> The Eighth Street Loan Agreement was subsequently amended in part by Ninth and Tenth Amendments, dated September 13, 2016 and March 17, 2017, respectively; those amendments are attached hereto as Exhibits A1 and A2. In addition, the Eighth Street Loan Agreement was further amended by a forbearance agreement among the parties dated May 17, 2018. The Forbearance Agreement is discussed further below. *See infra* ¶¶ 67–73.

into the prior collateral agent's role as Collateral Agent under that agreement. *First*, the original lenders under the Eighth Street Loan Agreement executed an assignment agreement conveying to Melody all rights of the lenders with respect to the loans and the Eighth Street Loan Agreement. A true and correct copy of the Assignment and Assumption Agreement (the "Assignment Agreement") is attached hereto as Exhibit B, and its terms are incorporated by reference herein. *Second*, Eighth Street LLC and Croxton 2 LLC (as borrowers), the Falcones, the prior collateral agent and Melody entered into an Agent Resignation and Appointment Agreement by which, among other things, Melody succeeded the prior collateral agent as Collateral Agent under the Eighth Street Loan Agreement. A true and correct copy of the Agent Resignation and Appointment Agreement (the "Appointment Agreement") is attached hereto as Exhibit C, and its terms are incorporated by reference herein. Pursuant to the Appointment Agreement, all of Fortress's rights with respect to the loans and the Eighth Street Loan Agreement transferred to and vested in Melody, and references to the "Collateral Agent" in any of the Loan Documents were deemed to refer to Melody. *See* Ex. C at § 1(a), (c). Thus, as of September 13, 2016, Melody became the sole lender and Collateral Agent with respect to the Eighth Street Loan Agreement.

27. On or about the same day, Eighth Street LLC and Croxton 2 LLC also executed a promissory note in favor of Melody, in which they "unconditionally promise[d]" to pay Melody \$36,421,646.04, plus interest (the "Eighth Street Loan Note"). A true and correct copy of the Eighth Street Loan Note is attached hereto as Exhibit D, and its terms are incorporated by reference herein. The Eighth Street Loan Note reflects the then-outstanding debt owed by the borrowers under the Eighth Street Loan Agreement, as assigned to Melody under the Assignment Agreement and Appointment Agreement of the same date. The payment terms for the Eighth

Street Loan Note are determined by reference to the Eighth Street Loan Agreement. *See* Ex. D at 1 (“Article I: Payment Terms”); *see also* Ex. A at §§ 2.03, 2.04, 2.08.

28. Eighth Street LLC and Croxton 2 LLC did not repay the Convertible Bridge Loan before September 30, 2016. As a result, pursuant to the terms of the Eighth Street Loan Agreement, on October 1, 2016, the Converted Term Loan substituted for each of the prior loans. *See* Ex. A at § 2.02(c). The Converted Term Loan is referred to herein as the “Eighth Street Loan.” The final stated maturity for the Eighth Street Loan was February 28, 2019. *See* Ex. A at Appendix A (“Maturity Date,” “Conversion Date,” “Converted Maturity Date”).

2. *The Three-Hundredth Street Loans*

29. The second set of loans at issue in this action consist of three separate loans made by Melody to Three-Hundredth Street LLC, each reflected in a separate promissory note.

30. ***The 2015 Note.*** On September 3, 2015, Three-Hundredth Street LLC executed a Consolidated Amended and Restated Promissory Note, in which it agreed to pay Melody \$35,330,000, plus interest (the “2015 Note”). A true and correct copy of the 2015 Note, as amended, is attached hereto as Exhibit E, and its terms are incorporated by reference herein. The 2015 Note reflected but did not replace indebtedness set forth in earlier notes; the parties agreed that the 2015 Note “shall merely be evidence of the indebtedness heretofore evidenced by the [earlier notes], and that the terms of the [earlier notes] shall be entirely amended and superseded by [the 2015 Note].” Ex. E at p. 1 (Recitals); *see also id.* at § 30. The 2015 Note sets forth the payment terms, including quarterly payment of interest at the contract (or default) interest rate, and payment in full upon the final maturity date (September 3, 2018, unless extended). *Id.* at § 2(b), (e); *see also id.* at § 1(dd), (x) (defining “Payment Date” and “Maturity Date”). The 2015 Note also provides for payment of an “Administrative Agent Fee.” *Id.* at § 31.

31. ***The 2016 Note.*** On July 27, 2016, Three-Hundredth Street LLC executed a second Promissory Note, in which it agreed to pay Melody \$2,500,000, plus interest (the “2016 Note”). A true and correct copy of the 2016 Note, as amended, is attached hereto as Exhibit F, and its terms are incorporated by reference herein. The 2016 Note sets forth the payment terms, including payment of interest (at the contract (or default) interest rate) and principal upon the Amended Maturity Date (September 3, 2018). Ex. F at § 2(b), (e); *see also id.* at § 1(q), (t) (defining “Payment Date” and “Maturity Date”).

32. ***The 2017 Note.*** Finally, on May 8, 2017, Three-Hundredth Street LLC executed a third Promissory Note, in which it agreed to pay Melody \$4,400,000, plus interest (the “2017 Note”). A true and correct copy of the 2017 Note, as amended, is attached hereto as Exhibit G, and its terms are incorporated by reference herein. The 2017 Note sets forth the payment terms, including monthly payment of interest (at the contract (or default) interest rate) and principal upon the Amended Maturity Date (April 30, 2018). Ex. G at § 2(b), (e); *see also id.* at § 1(p), (aa) (defining “Interest Period” and “Maturity Date”).

**B. The Falcones guarantee the Borrowers’ payment obligations under the Notes**

33. In addition to the Borrowers’ promises to repay, Melody also obtained unconditional guarantees from the Falcones that, if the Borrowers did not pay back the Notes, then the Falcones would pay in their stead.

*1. Mr. Falcone guarantees repayment of the Eighth Street Loan*

34. On June 28, 2013—the date of execution of the Eighth Street Loan Agreement, *see* Ex. A—Mr. Falcone entered into a Guarantee and Security Agreement (the “2013 G&S Agreement”). A true and correct copy of the 2013 G&S Agreement is attached hereto as Exhibit H, and its terms are incorporated by reference herein. The 2013 G&S Agreement is among the loan documents original lenders subsequently assigned to Melody.

35. The 2013 G&S Agreement requires Mr. Falcone (defined as a “Personal Guarantor”) to pay Melody the full amount due under the Eighth Street Loan Note if the Borrowers (Eighth Street LLC and Croxton 2 LLC) fail to do so. In particular, under Section 2(a) of the 2013 G&S Agreement:

Each Guarantor unconditionally guarantees the full and punctual payment of each Secured Obligation when due (whether at stated maturity, upon acceleration or otherwise). Each Guarantor agrees that this is a guarantee of payment and not of collection. If the Borrowers fail to pay any Secured Obligation punctually when due, each Guarantor agrees that it will forthwith pay the amount not so paid at the place and in the manner specified in the relevant Secured Agreement.

36. The 2013 G&S Agreement and the Eighth Street Loan Agreement together define “Secured Obligation” to include the debt now owed to Melody as reflected in the Eighth Street Loan Note. And Section 2(h) of the 2013 G&S Agreement states that Mr. Falcone’s guarantee “is a continuing guarantee” and that “[i]f all or part of any Secured Party’s interest in any Secured Obligation is assigned or otherwise transferred, the transferor’s rights under each Secured Guarantee . . . shall automatically be transferred with such obligation.”

37. Moreover, the obligations set forth in the 2013 G&S Agreement are unconditional and absolute. Thus, they are unaffected by, among other things:

- “any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of the Borrowers, any other Guarantor or any other Person under any Secured Agreement, by operation of law or otherwise”;
- “any modification or amendment of or supplement to any Secured Agreement”;
- “the existence of any claim, set-off or other right that such Guarantor may have at any time . . ., whether in connection with the Loan Documents or any unrelated transactions”; or

- “any other act or omission to act or delay of any kind by the Borrowers, any other Guarantor, any other party to any Secured Agreement, any Secured Party or any other Person, or any other circumstance whatsoever that might, but for the provisions of this clause (vii), constitute a legal or equitable discharge of or defense to any obligation of any Guarantor hereunder.” Ex. H at § 2(b).

Mr. Falcone, as Guarantor, also “irrevocably waive[d] acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against the Borrowers, any other Guarantor or any other Person.” *Id.* at § 2(d).

38. Melody is entitled to enforce the 2013 G&S Agreement, both as the assignee of the original lenders and as the successor to Fortress as Collateral Agent under the Eighth Street Loan Agreement.

2. *The Falcones guarantee repayment of the Three-Hundredth Street Loans*

39. Mr. and Mrs. Falcone both guaranteed the payment obligations of Three-Hundredth Street LLC under the separate 2015, 2016, and 2017 Notes, in separate guaranty agreements entered at or about the same time as the corresponding Notes.

40. On September 3, 2015—the same date Three-Hundredth Street LLC executed the 2015 Note—Melody and the Falcones entered into a Guaranty Agreement (the “2015 Guaranty”). A true and correct copy of the 2015 Guaranty is attached hereto as Exhibit I, and its terms are incorporated by reference herein.

41. The 2015 Guaranty requires the Falcones (defined as the “Guarantors”) to pay Melody the full amount due under the 2015 Note if Three-Hundredth Street LLC (defined as the “Borrower”) fails to do so. In particular, under Section 1 of the 2015 Guaranty:

Each Guarantor . . . unconditionally, absolutely and irrevocably guarantees to [Melody] the due and punctual performance of all of the terms, covenants and conditions, and the due and punctual payment, discharge and satisfaction (and not merely the collectability) of all of the obligations contained in the [2015] Note . . . , including, without limitation, the payment of the outstanding principal under the Loan . . . , together with all interest accrued on such principal and any other amounts owed under or in connection with the [2015] Note . . . .

42. Thus, “[i]n the event that Borrower fails to punctually pay or satisfy any Guaranteed Obligation . . . then, upon demand of [Melody], Guarantor shall immediately pay or satisfy such Guaranteed Obligation in the manner required by, and in accordance with, the provisions of the [2015] Note.” *Id.* at § 2.

43. The obligations set forth in the 2015 Guaranty are “absolute and unconditional.” *Id.* at § 5. Thus, they remain in force “irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of Borrower under the [2015] Note . . . , to the fullest extent permitted by applicable law,” and “irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.” *Id.* The parties thus expressed their intent that “the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances.” *Id.*

44. The 2015 Guaranty further specifies that the Falcones’ liability is “primary, direct and immediate,” and thus not conditional on Melody pursuing any other remedies it may have against any other person (including Three-Hundredth Street LLC). *Id.* at § 7. Moreover, because the 2015 Guaranty “constitutes a Guaranty of payment and performance and not of collection,” Melody “may enforce this [2015] Guaranty against either Guarantor for payment of any amount due under the Guaranteed Obligations as they become due and without first making demand or instituting collection or other proceedings against Borrower or any other Guarantor.” *Id.* at § 22.

45. The Falcones entered similar guarantees for Three-Hundredth Street LLC's obligations under the 2016 and 2017 Notes. Thus, on July 27, 2016—the same date Three-Hundredth Street LLC executed the 2016 Note—Melody and the Falcones entered into another Guaranty Agreement (the “2016 Guaranty”). A true and correct copy of the 2016 Guaranty is attached hereto as Exhibit J, and its terms are incorporated by reference herein. The 2016 Guaranty closely resembles the 2015 Guaranty, and requires the Guarantors to pay Melody the full amount due under the 2016 Note if Three-Hundredth Street LLC fails to do so.

46. On May 5, 2017—the same date Three-Hundredth Street LLC executed the 2017 Note—Melody and the Falcones entered into another Guaranty Agreement (the “2017 Guaranty”). A true and correct copy of the 2017 Guaranty is attached hereto as Exhibit K, and its terms are incorporated by reference herein. The 2017 Guaranty closely resembles the 2015 Guaranty (and 2016 Guaranty), and requires the Guarantors to pay Melody the full amount due under the 2017 Note if Three-Hundredth Street LLC fails to do so.

**C. The Falcones and LLC Grantors pledge collateral to secure the loans**

47. The debts reflected in the Eighth Street Loan Note, and the 2015, 2016, and 2017 Notes were also secured by contemporaneous pledges of collateral. The different collateral pledged to the different loans is detailed below, and referred to collectively as the “Collateral” herein.

*1. Collateral for the Eighth Street Loan*

48. As noted, on June 28, 2013, the Falcones and the LLC Grantors entered into the 2013 G&S Agreement. In addition to Mr. Falcones' personal guarantee, the 2013 G&S Agreement also provides Melody a security interest in collateral pledged by the Falcones and the LLC Grantors.



49. The 2013 G&S Agreement pledges two main categories of collateral: (a) works of fine art; and (b) interests in LLCs and LPs owned by the Falcones and the LLC Grantors. Each is described in turn below.

- ***Fine Art Collateral.*** Defendant First Street LLC, one of the LLC Grantors, is the owner of several works of fine art set forth in Schedule 3.04(d) to the Eighth Street Loan Agreement, as subsequently amended. Ex. A at § 3.04(d). In the 2013 G&S Agreement, First Street LLC pledged the Fine Art Collateral, as well as any proceeds of its disposition, to secure the Eighth Street Loan. Ex. H. at § 3(d)(xii), (xiii); *see also id.* at § 1(a) (incorporating definitions of Eighth Street Loan Agreement); Ex. A at Appendix A (defining “Fine Art”). These artworks are referred to herein as the “Fine Art Collateral.”
- ***Equity Collateral.*** The Falcones pledged their “Equity Interests” in several entities to secure the Eighth Street Loan, including their interests in SCI East 67th Street, Eighth Street LLC, Croxton 1 LLC, Croxton 2 LLC, Croxton 3 LLC, First Street LLC, Falcone Wild Holdings LLC, La Brava Farm LLC, Wild Orchid Farm LLC, VXA LLC, as well as the proceeds of the disposition of any of those equity interests. Ex. H at § 3(a), (b). The LLC Grantors also pledged equity interests they owned in a variety of additional entities, as well as the proceeds of any of the collateral they pledged. *See id.* at § 3(c) (Eighth Street LLC and Croxton 2 LLC); *id.* at § 3(e) (Harbinger Capital Partners GP, L.L.C.; Harbinger Capital Partners Special Situations GP, L.L.C.; Credit Distressed Blue Line GP, L.L.C.; Global Opportunities Breakaway MM, L.L.C.); *id.* at § 3(d) (remaining LLC Grantors). The pledged equity interests are referred to herein as the “Equity Collateral.”

50. The 2013 G&S Agreement gives Melody the right to enforce against the collateral in several ways. Following an event of default, Melody can sell the collateral at a private or public sale, and apply the proceeds to the amounts owed. *Id.* at § 8(b); *see also id.* at § 9. Melody can also exercise any other remedy available to it under the UCC, *id.*, which includes the right to demand assembly and delivery of the collateral so that it can be marketed and sold, *see* UCC § 9-609.

51. In addition, Melody can “endorse, assign or otherwise transfer to or register in the name of [Melody] or any of its nominees or endorse for negotiation any or all of the Collateral.” Ex. H at § 7(b)(ii). And Melody can exercise voting rights with respect to the pledged Equity Collateral (except for those equity interests for which only economic rights were pledged). *Id.* at § 7(e). Melody is entitled to recover from Eighth Street LLC and Croxton 2 LLC all expenses incurred in connection with the exercise of its right. *Id.* at § 10(a).

52. Melody’s remedies under the 2013 G&S Agreement are not exclusive, but cumulative. *Id.* at § 17. Thus:

No failure by the Collateral Agent or any Secured Party to exercise, and no delay in exercising and no course of dealing with respect to, any right or remedy under any Security Document shall operate as a waiver thereof; nor shall any single or partial exercise by the Collateral Agent or any Secured Party of any right or remedy under any Loan Document preclude any other or further exercise thereof or the exercise of any other right or remedy. *Id.*

53. Finally, the Falcones and LLC Grantors made a number of promises to help Melody enforce its rights with respect to the collateral. They promised to provide Melody with “all information and evidence concerning such [collateral] that [Melody] may reasonably request from time to time to enable it to enforce” the 2013 G&S Agreement. *Id.* at § 5(g). And they also promised to “execute, deliver, file and record any statement, assignment, instrument, document, or agreement or other paper and take any other action that from time to time may be necessary or

desirable, or that [Melody] may request, in order to,” among other things, “enable [Melody] to exercise and enforce any of its rights, powers, and remedies with respect to any of” the collateral. *Id.* at § 5(a)(iv); *see also id.* at § 7(b)(iii).

2. *Collateral for the Three-Hundredth Street Loans*

54. The collateral for the Three-Hundredth Street Loans consists primarily of the Falcones’ pledge of their 100% ownership interests in Three-Hundredth Street LLC, and their pledges of jewelry. Each pledge is described below.

55. ***The Three-Hundredth Street LLC Pledge.*** The pledge of the Falcones’ equity interest in Three-Hundredth Street LLC is reflected in a Pledge and Security Agreement entered into by the Falcones and Melody, and first dated September 3, 2015 (the “Three-Hundredth Street LLC Pledge”). The Three-Hundredth Street LLC Pledge was subsequently amended and restated in its entirety on July 27, 2016, to provide security for the subsequent 2016 Note. A copy of the amended and restated Three-Hundredth Street LLC Pledge is attached hereto as Exhibit L, and its terms are incorporated by reference herein.

56. In the Three-Hundredth Street LLC Pledge, the Falcones pledged, among other things, their “100% membership interests in” Three-Hundredth Street LLC, together with certificates reflecting those interests, as “continuing collateral security” for payment of the debts reflected in the 2015 and 2016 Notes. Ex. L at § 2.1(a); *see also id.* at § 1 (defining “Obligations”).

57. The Three-Hundredth Street LLC Pledge gives Melody the right to enforce against the collateral in several ways. Following an event of default, Melody can exercise all rights available under the UCC, including the right to conduct a public or private sale of the pledged membership interests, and to apply the sale proceeds to the amounts owing. *Id.* at § 3.4(a), (c); *see also id.* at § 3.6. Melody can also “exercise all voting, consensual and other

powers of ownership pertaining to the Pledged Collateral as if Agent were the sole and absolute owner thereof,” and “exercise all membership rights, powers and privileges to the same extent as Pledgor is entitled to exercise such rights, powers and privileges.” *Id.* at § 3.4(a), (d).

58. Melody’s remedies under the Three-Hundredth Street LLC Pledge are not exclusive, but cumulative. *Id.* at § 4.1. Thus:

No failure on the part of Agent or any of its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by Agent or any of its agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. *Id.*

Moreover, by exercising rights under the Three-Hundredth Street LLC Pledge, Melody does not waive any other rights or remedies it may have arising from an event of default with respect to the secured obligations. *Id.* at § 4.7 (“No Election of Remedies”).

59. The Falcones also promised in the Three-Hundredth Street LLC Pledge to help Melody enforce its rights if an event of default occurs and is continuing, including by promising to “give, execute, deliver, file and/or record any financing statement, notice, instrument, document, agreement or other papers that may be necessary (in the reasonable judgment of [Melody]).” *Id.* at § 3.1(d); *see also id.* at § 3.4(a) (Falcones promised “to take all such action as may be appropriate to give effect to” Melody’s right to voting and other powers of ownership with respect to pledged interests).

60. ***The Jewelry Pledges and Bailments.*** The Falcones pledged their interest in jewelry owned by them in two separate Pledge and Security Agreements, entered contemporaneously with the 2016 and 2017 Notes. They are referred to collectively herein as the “2016 and 2017 Jewelry Pledges.” True and correct copies of the 2016 and 2017 Jewelry

Pledges are attached as Exhibits M and N, and their terms are incorporated by reference herein. The terms of each are nearly identical, except that the later agreement pledges additional jewelry.

61. In the 2016 and 2017 Jewelry Pledges, the Falcones pledged, as security for Three-Hundredth Street LLC's debts to Melody, "a first priority security interest in," among other things, "all of [their] right, title and interest, whether now existing or hereafter arising or acquired, in and to any and all items of its personal property described on" an accompanying exhibit. Exs. M and N, at § 1(a), (b). The exhibit describes several pieces of jewelry, which are referred to as the "Jewelry Collateral" herein. *Id.* at Exhibit A. The Falcones also pledged the proceeds of any disposition of the Jewelry Collateral. *Id.* at § 1(a).

62. The 2016 and 2017 Jewelry Pledges give Melody the right to enforce against the collateral in several ways. Following an event of default, Melody can "exercise exclusive control over the [Jewelry] Collateral"; "take possession of the [Jewelry] Collateral"; and otherwise "exercise any and all rights afforded to a secured party under the UCC or other applicable law," including, as noted above, the right to demand assembly and delivery of the Jewelry Collateral. *Id.* at § 10(a)(i), (ii), (iv); *see also* UCC § 9-609(c). Melody is also entitled to sell the Jewelry Collateral at a private or public sale and apply the proceeds to the amounts owed to Melody. Exs. M and N at § 10(a)(iii), (c).

63. Melody's rights under the 2016 and 2017 Jewelry Pledge are cumulative; thus, "[a]ny single or partial exercise of any right, power or privilege hereunder shall not preclude any other or further exercise thereof or the exercise of any other right, power or privilege," and "[a]ll of Secured Party's rights and remedies with respect to the Collateral, whether established hereby or by any other agreements, instruments or documents or by law, shall be cumulative and may be exercised singly or concurrently." *Id.* at § 14.

64. Finally, Melody, the Falcones and Three-Hundredth Street LLC entered two Bailment Agreements, one each at the time of the making of the 2016 and 2017 Notes. They are referred to collectively herein as the “2016 and 2017 Bailments.” True and correct copies of the 2016 and 2017 Bailments are attached as Exhibits O and P, and their terms are incorporated by reference herein.

65. In the 2016 and 2017 Bailments, Three-Hundredth Street LLC (as “Bailee”) agreed to “hold the [Jewelry Collateral]” and to do so “for [Melody]’s benefit.” Exs. O and P at § 1; *see also id.* at § 3(g) (Jewelry Collateral to be locked in safe when not being worn). The Bailee further agreed not to part with possession of the Jewelry Collateral, and to deliver it to Melody on demand. *Id.* at § 2; *see also id.* at § 9 (Bailee agrees to deliver to Melody information about the Jewelry Collateral upon request).

66. Melody has a perfected first lien security interest in all of the foregoing Collateral, as reflected in public UCC-1 filings.

**D. The Borrowers default, and the parties cross-collateralize the debt**

67. The loans fell into default. In May 2018, in exchange for Melody’s forbearance, all of the defendants (other than LLC Grantors VXA, LLC, La Brava Farm LCC, and Wild Orchid Farm LLC) agreed to “cross-collateralize” the loans, meaning that the collateral securing one loan would thereafter secure other loans as well. The defaults, Melody’s agreement to forbear, and the cross-collateral agreement are described below.

*1. Defaults on the Eighth Street Loan and Melody’s forbearance*

68. Eighth Street LLC and Croxton 2 LLC defaulted on the Eighth Street Loan Note, including by missing interest payments when due. *See* Ex. D at Article I (promising regular payment of interest); Ex. A at § 2.03 (same). They, the Falcones, and the other LLC Grantors (other than LLC Grantors VXA, LLC, La Brava Farm LCC, and Wild Orchid Farm LLC)

(defined as the “Loan Parties”) acknowledged these defaults, and several others, in a Forbearance Agreement entered into by all of them on or about May 17, 2018 (the “Forbearance Agreement”). A true and correct copy of the Forbearance Agreement is attached hereto as Exhibit Q, and its terms are incorporated by reference herein.

69. As reflected at page 1 of the Forbearance Agreement, the Loan Parties:

acknowledge and agree that as a result of the occurrence and continuation of the Specified Defaults[, Melody is] entitled to exercise certain remedies against the Loan Parties specified in Section 8.01 of the [Eighth Street] Loan Agreement and all other rights and remedies described in the [Eighth Street] Loan Agreement, the [2013 G&S Agreement] and the other Loan Documents as a result of the occurrence and continuation of the Specified Defaults together with all other remedies available to [Melody] at law, equity or by other agreement as a result of the occurrence and continuation of the Specified Defaults.

70. The Loan Parties also represented and warranted that they “have no defense at law, equity or otherwise to the exercise by [Melody] of the Specified Right[s] and Remedies with respect to the Specified Defaults,” and that they “do not have and are not aware of any defense or counterclaim or right of setoff that may be asserted against [Melody] by the Loan Parties with respect to the Loan Agreement, the other Loan Documents or this Agreement or the subject matter thereof or hereof.” Ex. Q at § 6(h), (i).

71. Melody, on the other hand, agreed to forbear exercising its remedies until the “Termination Date,” which was defined as the earlier of 11:59 p.m. on July 9, 2018 or a “Termination Event.” *Id.* at § 2(a); *id.* at 2(c)(iii), (iv). Moreover, Melody agreed to waive the defaults specified in the Forbearance Agreement if, among other things, Eighth Street LLC and Croxton 2 LLC paid down the outstanding balance of the Loans before the Termination Date. *Id.* at § 2(b).

72. The Forbearance Agreement made clear, however, that Melody's forbearance did not waive its remedies with respect to the defaults, and that after the Termination Date Melody's agreement to forbear "shall immediately and automatically terminate without further action by [Melody] or any other Person or notice to any Person." The Falcones and the LLC Grantors "expressly acknowledge[d] and agree[d]" in Section 2(a) that:

the effect of such termination will be to permit [Melody], in [its] sole, absolute and unfettered discretion to exercise any and all Specified Rights and Remedies available to them under the Loan Documents and all other rights and remedies at law, in equity, by contract, or otherwise, in each case, without further demand, presentment, notice of dishonor, notice of Default or Event of Default, notice of intent to accelerate, opportunity to cure, notice of intent to foreclose, notice of protest or other formalities or requirements of any kind, all of which are hereby expressly and irrevocably waived by the [Guarantor].

73. Finally, as a further inducement to enter into the Forbearance Agreement, Mr. Falcone pledged additional equity interests in Harbinger Capital Partners Offshore Manager, LLC, and the Forbearance Agreement modified the Eighth Street Loan Agreement and the 2013 G&S Agreement to reflect this additional pledge. *Id.* at § 3(b), (e)–(g), (j); *see also id.* at § 4.

#### *2. The Cross-Collateral Agreement*

74. Melody's agreement to enter the Forbearance Agreement was made conditional on entry into a contemporaneous Cross-Collateral Agreement. *Id.* at § 5(a). A true and correct copy of the Cross-Collateral Agreement is attached as Exhibit R, and its terms are incorporated by reference herein.

75. The Cross-Collateral Agreement was entered into by Melody, the Falcones, the LLC Grantors (other than LLC Grantors VXA, LLC, La Brava Farm LCC, and Wild Orchid Farm LLC), and Three-Hundredth Street LLC (defined collectively in the agreement as the "Loan Parties"). In it, the Loan Parties agreed that the security separately pledged under the



Eighth Street Loan and the Three-Hundredth Street Loans would thereafter secure all of the loans. Ex. R at § 3. Further, they agreed that “upon the occurrence and continuance of an Event of Default,” Melody “shall have and may exercise any and all rights and remedies of a secured party under the UCC and any other law, statute or regulation as enacted in the applicable jurisdiction and as otherwise granted to [Melody] under any term or provision of any Loan Document.” *Id.* at § 4; *see also id.* at Recitals (defining “Loan Documents” to include, among other things, the 2013 G&S Agreement, the Three-Hundredth Street LLC Pledge, and the 2016 Jewelry Pledge).

76. The Loan Parties also made broad waivers of their defenses to enforcement by Melody. *Id.* at § 15. Thus, “[t]o the maximum extent permitted by law, each Loan Party waive[d],” among other things:

(a) all rights to require [Melody] to proceed against any Loan Party or proceed against, enforce or exhaust any security for the Obligations or to marshal assets or to pursue any other remedy in [Melody’s] power whatsoever; . . .

(c) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Agreement and of the existence or creation of new or additional Obligations, and all other notices or demands to which any Loan Party might otherwise be entitled; . . . [and]

(f) all rights to require [Melody] to enforce any of their remedies. *Id.* at § 5.3.

77. Moreover, the parties agreed that Melody’s enforcement rights under the Cross-Collateral Agreement—which, as noted, incorporates its rights under the various security agreements that preceded it—are cumulative, and not exclusive. *Id.* at § 15. Thus:

All rights and remedies granted to [Melody] hereunder and under any Loan Document shall remain in full force and effect notwithstanding any single or partial exercise of, or any discontinuance of action begun to enforce, any such right or

remedy. The rights and remedies specified herein are cumulative and not exclusive of each other or of any rights or remedies which [Melody] would otherwise have. *Id.*

78. Finally, the parties agreed again to help Melody enforce its rights under the parties' agreements, including the Cross-Collateral Agreement: "The Loan Parties hereby agree from time to time, promptly upon written request by [Melody], to execute and deliver or cause to be executed and delivered, all such documents, instruments and agreements and to take or cause to be taken such further or other action as any Secured Party may reasonably require in order to carry out the intent and purposes of this Agreement or any Loan Document." *Id.* at § 20; *see also* Ex. Q at § 11 (similar promise in Forbearance Agreement).

**E. The Borrowers and the Falcones remain in default, and defendants breach their promises with respect to the Collateral**

79. The Termination Date under the Forbearance Agreement has passed. Moreover, Eighth Street LLC and Croxton 2 LLC failed to pay down the principal balance on the Eighth Street Loan. The February 28, 2019 maturity date for the Eighth Street Loan has also passed. *See supra* ¶ 28. Eighth Street LLC and Croxton 2 LLC have failed to repay the outstanding principal and unpaid interest due under the Note. *See* Ex. D at Article I (Borrowers agreed to repay loan on maturity date); Ex. A at § 2.08(a) (same).

80. As of February 21, 2020, the balance of principal and interest owed pursuant to the Eighth Street Loan Note was approximately \$37,843,489.59.

81. Three-Hundredth Street LLC has also defaulted on the 2015, 2016, and 2017 Notes, including by missing interest payments when due, and by failing to pay the outstanding interest and principal upon maturity. *See* Ex. E at § 2(a), (b), (e) (Three-Hundredth Street LLC agreed to repay 2015 Note on maturity date); Ex. F at § 2(a), (b), (e) (same, 2016 Note); Ex. G at § 2(a), (b), (e) (same, 2017 Note).

82. As of February 21, 2020, the balance of principal, interest, and fees owed on the 2015 Note was approximately \$24,228,544.72; the balance of principal and interest owed on the 2016 Note was approximately \$1,062,160.21; and the balance of principal and interest owed on the 2017 Note was approximately \$2,686,753.55.

83. Melody notified the Borrowers and the Falcones of the defaults in letters dated March 1, 2019 (the “Payment Demand Letters”). True and correct copies of the Payment Demand Letters are attached as Exhibits S and T. Neither the Borrowers nor the Falcones have responded to the Payment Demand Letters, or otherwise denied the fact of their defaults.

84. Under the Eighth Street Loan Agreement, defendants are prohibited from disposing of any collateral while an event of default is continuing, and prohibited altogether from disposing of the Fine Art collateral. Nevertheless, Melody became aware in the fall of 2019 that Mr. Falcone was marketing certain of Melody’s Fine Art collateral for sale. When confronted by Melody, Mr. Falcone claimed that the proceeds of these sales would be paid over to Melody. That claim proved false. Upon information and belief, rather than being used to repay Melody, the proceeds of that sale were distributed to accounts held in Mr. Falcone’s name that are subject to restraining notices of other creditors of Mr. Falcone. Melody has not received an accounting of the sale proceeds from the sale of its collateral.

85. On January 27, 2020, Melody’s counsel sent a notice to Mr. Falcone’s counsel identifying this further default under the parties’ agreements. A true and correct copy of Melody’s January 27 letter is attached hereto as Exhibit U.

86. On February 11, 2020, Melody sent a letter to defendants, demanding their agreement to assemble and deliver certain of Melody’s collateral into its control (the “Collateral

Demand Letter”). A true and correct copy of the Collateral Demand Letter is attached hereto as Exhibit V.

87. Defendants have refused to comply with Melody’s demands. They have not agreed to deliver the collateral or otherwise comply with their obligations under the parties’ agreements.

**F. Melody is entitled to its attorney’s fees arising from defendants’ breach of their promises**

88. Even before instituting this action, Melody has incurred significant out-of-pocket expenses in connection with defendants’ breaches of their agreements. These expenses include legal fees, consultant fees, and diversion of internal resources. Defendants agreed, in several different agreements, to repay and indemnify Melody for these enforcement-related expenses. Ex. A at § 9.05 (Eighth Street Loan Agreement); Ex. H at § 10(a)(ii) (2013 G&S Agreement); Ex. E at § 18(e) (2015 Note); Ex. F at § 18(e) (2016 Note); Ex. G at § 13(e) (2017 Note); Ex. Q at § 7 (Forbearance Agreement); Ex. R at § 10 (Cross-Collateral Agreement).

**AS AND FOR A FIRST CAUSE OF ACTION**  
**Breach of Contract (Eighth Street Loan, 2015, 2016, 2017 Notes) — Against the Borrowers**

89. Melody incorporates by reference the allegations set forth in paragraphs 1 through 88, as though set forth fully herein.

90. The Eighth Street Loan Note, the 2015 Note, the 2016 Note, and the 2017 Note are valid contracts. Melody has performed all of its duties under the Notes, including by lending tens of millions of dollars to the Borrowers.

91. Melody’s loan under the Eighth Street Loan Note has matured, and Eighth Street LLC and Croxton 2 LLC have refused to pay the balance due.

92. Melody’s loan under the 2015 Note has matured, and Three-Hundredth Street LLC has refused to pay the balance due.

93. Melody’s loan under the 2016 Note has matured, and Three-Hundredth Street LLC has refused to pay the balance due.

94. Melody’s loan under the 2017 Note has matured, and Three-Hundredth Street LLC has refused to pay the balance due.

95. Melody is therefore entitled to judgment in the amount of \$37,843,489.59 against Eighth Street LLC and Croxton 2 LLC, plus interest, costs, and attorney’s fees; and a judgment in the amount of \$27,977,458.50 against Three-Hundredth Street LLC, plus interest, costs, and attorney’s fees.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**Breach of Contract (2013 G&S Agreement, 2015, 2016, and 2017 Guaranties) — Against**  
**the Falcones**

96. Melody incorporates by reference the allegations set forth in paragraphs 1 through 95, as though set forth fully herein.

97. The 2013 G&S Agreement, and the 2015 Guaranty, the 2016 Guaranty, and the 2017 Guaranty (the “Guaranties”) are valid contracts. Melody has performed all of its duties under the Guaranties, including by lending tens of millions of dollars to the Borrowers.

98. The Falcones were obligated under the Guaranties to pay the amounts due under the Notes when the Borrowers failed to do so.

99. The Falcones breached their obligation by failing to pay.

100. Melody is therefore entitled to judgment in the amount of \$37,843,489.59 against Mr. Falcone, plus interest, costs, and attorney’s fees representing the total amount outstanding under the Eighth Street Loan Note, as guaranteed by the 2013 G&S Agreement.

101. Melody is further entitled to judgment in the amount of \$27,977,458.50 against the Falcones, plus interest, costs, and attorney’s fees, representing the total amount outstanding under the 2015, 2016, and 2017 Notes, as guaranteed by the 2015, 2016, and 2017 Guaranties.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**Breach of Contract (2013 G&S Agreement, 2016 LLC Pledge, 2016 Jewelry Pledge, 2017 Jewelry Pledge, Cross-Collateral Agreement) and UCC — Against All Defendants**

102. Melody incorporates by reference the allegations set forth in paragraphs 1 through 101, as though set forth fully herein.

103. The 2013 G&S Agreement, 2016 LLC Pledge, 2016 Jewelry Pledge, 2017 Jewelry Pledge, the Forbearance Agreement, and the Cross-Collateral Agreement (the “Pledging Agreements”) are valid contracts, and Melody has performed all of its duties under them.

104. Defendants have breached the Pledging Agreements. Among other things, they have refused to assemble and deliver the Collateral despite the existence and continuance of events of default under the parties’ loan agreements.

105. In addition to breaching their contract with Melody, defendants’ refusal to assemble and deliver the Collateral is also a breach of the UCC. *See* UCC §§ 9-601, 9-609.

106. Defendants have also failed to provide the assistance promised to Melody under the Pledging Agreements to facilitate its marketing and sale of the Collateral.

107. By reason of the foregoing breaches, Melody is entitled both to damages and specific performance of defendants’ promises.

108. Accordingly, Melody demands possession of the Collateral, and judgment in the amount of its damages resulting from defendants’ breaches, including its attorney’s fees, in an amount to be determined at trial.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**Breach of Contract (Eighth Street Loan Agreement) — Against First Street LLC and Philip A. Falcone**

109. Melody incorporates by reference the allegations set forth in paragraphs 1 through 108, as though set forth fully herein.

110. The Eighth Street Loan Agreement is a valid contract, and Melody has performed all of its duties under it.

111. Mr. Falcone breached the Eighth Street Loan Agreement, which prohibits the sale of any Collateral while an event of default is continuing, and of the Fine Art Collateral at any time.

112. On information and belief, Mr. Falcone caused First Street LLC, which he owns and controls, to sell two pieces of the Fine Art collateral in violation of the Eighth Street Loan Agreement.

113. As a result of this breach, Melody has been deprived of its Collateral and security for its loan, and will be forced to satisfy its obligations from the unencumbered assets of the Borrowers and the Falcones, to the extent any such assets exist. Meanwhile, Melody has expended resources identifying and seeking to remedy this breach.

114. Accordingly, Melody demands judgment in the amount of its damages resulting from defendants' breaches, including its attorney's fees, in an amount to be determined at trial.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
**Recovery of Chattels under CPLR Article 71 — Against All Defendants**

115. Melody incorporates by reference the allegations set forth in paragraphs 1 through 114, as though set forth fully herein.

116. The Collateral pledged by defendants to Melody qualifies as "goods" under UCC § 9-102(a)(44).

117. Following the Borrowers' defaults, Melody demanded that defendants assemble and make available to it all secured property under the Pledging Agreements.

118. Defendants refused to comply with Melody's demands.

119. Melody has a property interest superior to that of defendants in the Collateral.

120. Defendants' continued possession of the secured property constitutes wrongful detention.

121. Melody is entitled to immediate possession of the property pledged to Melody under the Pledging Agreements and pursuant to UCC §§ 9-601 and 9-609, and a judgment under CPLR 7101 entitling it to recover the chattels constituting the Collateral, along with an award of damages for wrongful detention, including its attorney's fees, in an amount to be determined at trial.

**AS AND FOR A SIXTH CAUSE OF ACTION**  
**Declaratory Judgment — Against All Defendants**

122. Melody incorporates by reference the allegations set forth in paragraphs 1 through 121, as though set forth fully herein.

123. There exists an actual, present, substantial, and justiciable controversy under CPLR 3001 between Melody and defendants concerning Melody's entitlement to possession of the Collateral, and thus its ability to market and sell the Collateral in satisfaction for the defaulted debts. This dispute is reflected in Melody's demand for possession of the tangible Collateral and defendants' refusal to deliver possession. This dispute is also reflected in defendants' breach of their promises to take steps necessary or desirable to permit Melody to enforce its right.

124. The present dispute among the parties casts a cloud over Melody's ability to deliver good title to a buyer, thus interfering with its ability to exercise its rights under the parties' contracts and the UCC and diminishing the amount of Melody's potential recovery against the Collateral.

125. Accordingly, pursuant to CPLR 3001, Melody seeks a declaration that it has the right and ability to sell the Collateral and deliver good title to a buyer, and defendants have no



rights to prevent or interfere with such sale, or to make a later claim against any good-faith purchaser. Such a declaration will increase the willingness of buyers to bid on the Collateral, thus maximizing its value to Melody, while correspondingly decreasing any deficiency owed by the Borrowers if the Collateral is insufficient to satisfy all of the secured obligations.

**PRAYER FOR RELIEF**

WHEREFORE, judgment should be entered in favor of Melody and against defendants, for one or more of the following forms of relief or some combination of them:

- (a) Judgment on Count One against the Borrowers, as follows:
  - (i) \$37,843,489.59 vs Eighth Street LLC and Croxton 2 LLC on the Eighth Street Loan Note, plus interest, attorney's fees, and costs and disbursement of this action; and
  - (ii) \$27,977,458.50 vs Three-Hundredth Street LLC on the 2015, 2016, and 2017 Notes, plus interest, attorney's fees, and costs and disbursement of this action.
- (b) Judgment on Count Two against Mr. Falcone, in the amounts due from Eighth Street LLC and Croxton 2 LLC under Count One, plus interest, attorney's fees, and costs and disbursement of this action; and against the Falcones, in the amounts due from Three-Hundredth Street LLC under Count One, plus interest, attorney's fees, and costs and disbursement of this action.
- (c) Judgment on Count Three against all defendants for immediate possession of the Collateral and any proceeds of its disposition, and damages for wrong detention, plus interest, attorney's fees, and costs and disbursement of this action.
- (d) Judgment on Count Four against Mr. Falcone and First Street LLC, for damages caused by their wrongful dissipation of Melody's Collateral, plus interest, attorney's fees, and costs and disbursement of this action.
- (e) Judgment on Count Five against all defendants for specific performance directing delivery of the Collateral to Melody, and authorizing the sheriff to take all necessary steps to ensure that delivery, and for specific performance directing compliance with defendants promises to take whatever steps are reasonably necessary to permit Melody to exercise its rights under the parties' agreements and the UCC.

(d) Judgment on Count Six against all defendants declaring the rights and duties of the parties as indicated herein.

(e) Any such other and further relief as this Court may deem just and proper.

DATED: New York, New York  
February 21, 2020

HOLWELL SHUSTER & GOLDBERG LLP

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