

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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 MENACHEM FARRO, individually and derivatively as a : Index No. 518007/2016
 shareholder in the right of LM INTERNATIONAL, INC., :
 SELLER1ON1 INCORPORATED, WML : Hon. Sylvia G. Ash
 COMMUNICATIONS, INC., and as a member in the :
 right of LMEG WIRELESS, LLC, : **VERIFIED**
 : **AMENDED ANSWER**
 Plaintiff, : **AND COUNTERCLAIMS**
 :
 -against- :
 :
 ZALMAN SCHOCHET a/k/a SCHNEUR ZALMAN :
 SCHOCHET, LEVI WILHELM, LM :
 INTERNATIONAL, INC., SELLER1ON1 :
 INCORPORATED, WML COMMUNICATIONS, INC., :
 LMEG WIRELESS, LLC, SELLER WIRELESS, LLC, :
 LM WIRELESS INTERNATIONAL, LLC, LMZT, LLC :
 and LMEG ACQUISITION LLC, :
 :
 Defendants. :
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Defendants, by their attorneys, Farrell Fritz, P.C., as and for their Amended Answer to the Second Amended Verified Complaint (the “Complaint”) and Counterclaims, allege as follows:

1. Defendants deny the allegations contained in paragraph “1” of the Complaint.
2. Defendants deny that Farro is a shareholder or member of Defendants, and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “2” of the Complaint.
3. Defendants admit that Schochet is an individual residing in Florida, that he directly or indirectly has a 50% ownership interest as shareholder or member of some or all of Defendant Companies, and otherwise deny the allegations contained in paragraph “3” of the Complaint.

4. Defendants admit that Wilhelm is an individual residing in New York, that he directly or indirectly has a 50% ownership interest as shareholder or member of some or all of Defendant Companies, and otherwise deny the allegations contained in paragraph “4” of the Complaint.

5. Defendants admit the allegations contained in paragraph “5” of the Complaint.

6. Defendants admit the allegations contained in paragraph “6” of the Complaint.

7. Defendants admit the allegations contained in paragraph “7” of the Complaint.

8. Defendants admit the allegations contained in paragraph “8” of the Complaint.

9. Defendants admit the allegations contained in paragraph “9” of the Complaint.

10. Defendants admit the allegations contained in paragraph “10” of the Complaint.

11. Defendants admit the allegations contained in paragraph “11” of the Complaint.

12. Defendants admit the allegations contained in paragraph “12” of the Complaint except deny that said entity currently is known by the name alleged.

13. Defendants admit that Farro and Wilhelm formed LMEG LLC, and otherwise deny the allegations contained in paragraph “13” of the Complaint.

14. Defendants admit that Farro and Wilhelm formed LM Inc., WML Inc. and Seller Inc., and otherwise deny the allegations contained in paragraph “14” of the Complaint.

15. Defendants deny the allegations contained in paragraph “15” of the Complaint.

16. Defendants deny the allegations contained in paragraph “16” of the Complaint.

17. Defendants admit that Schochet is an attorney licensed to practice law in New York, and otherwise deny the allegations contained in paragraph “17” of the Complaint.

18. Defendants deny the allegations contained in paragraph “18” of the Complaint.

19. Defendants deny the allegations contained in paragraph “19” of the Complaint.

20. Defendants deny the allegations contained in paragraph “20” of the Complaint.
21. Defendants deny the allegations contained in paragraph “21” of the Complaint.
22. Defendants respectfully refer the Court to the referenced loan agreements, and otherwise deny the allegations contained in paragraph “22” of the Complaint.
23. Defendants deny the allegations contained in paragraph “23” of the Complaint.
24. Defendants deny the allegations contained in paragraph “24” of the Complaint.
25. Defendants deny the allegations contained in paragraph “25” of the Complaint.
26. Defendants deny the allegations contained in paragraph “26” of the Complaint.
27. Defendants deny the allegations contained in paragraph “27” of the Complaint.
28. Defendants deny the allegations contained in paragraph “28” of the Complaint.
29. Defendants deny the allegations contained in paragraph “29” of the Complaint.
30. Defendants deny the allegations contained in paragraph “30” of the Complaint.
31. Defendants deny the allegations contained in paragraph “31” of the Complaint.
32. Defendants deny the allegations contained in paragraph “32” of the Complaint.
33. Defendants deny the allegations contained in paragraph “33” of the Complaint.
34. Defendants deny the allegations contained in paragraph “34” of the Complaint.
35. Defendants deny the allegations contained in paragraph “35” of the Complaint.
36. Defendants deny the allegations contained in paragraph “36” of the Complaint.
37. Defendants deny the allegations contained in paragraph “37” of the Complaint.
38. Defendants admit that Schochet loaned funds to pay off existing lenders at a lower interest rate after he became an owner of the Companies, and that Schochet acquired a one-third interest after Farro and Wilhelm offered said deal in consideration for a reduction in interest rates, and otherwise deny the allegations contained in paragraph “38” of the Complaint.

39. Defendants deny the allegations contained in paragraph “39” of the Complaint.
40. Defendants deny the allegations contained in paragraph “40” of the Complaint.
41. Defendants deny the allegations contained in paragraph “41” of the Complaint.
42. Defendants deny the allegations contained in paragraph “42” of the Complaint.
43. Defendants deny the allegations contained in paragraph “43” of the Complaint.
44. Defendants admit that at or about the time alleged Schochet became a one-third owner of one or more of the Defendant Companies, and otherwise deny the allegations contained in paragraph “44” of the Complaint.
45. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “45” of the Complaint.
46. Defendants deny the allegations contained in paragraph “46” of the Complaint.
47. Defendants deny the allegations contained in paragraph “47” of the Complaint.
48. Defendants deny the allegations contained in paragraph “48” of the Complaint.
49. Defendants deny the allegations contained in paragraph “49” of the Complaint.
50. Defendants deny the allegations contained in paragraph “50” of the Complaint.
51. Defendants deny the allegations contained in paragraph “51” of the Complaint.
52. Defendants respectfully refer the Court to the referenced ethical rule for its full and correct legal meaning, and otherwise deny the allegations contained in paragraph “52” of the Complaint.
53. Defendants deny the allegations contained in paragraph “53” of the Complaint.
54. Defendants deny the allegations contained in paragraph “54” of the Complaint.
55. Defendants deny the allegations contained in paragraph “55” of the Complaint.
56. Defendants deny the allegations contained in paragraph “56” of the Complaint.

57. Defendants deny the allegations contained in paragraph “57” of the Complaint.

58. Defendants admit Farro prepared, hand-wrote, and executed the referenced agreement in order to induce Schochet to lend additional funds, and otherwise deny the allegations contained in paragraph “58” of the Complaint.

59. Defendants deny the allegations contained in paragraph “59” of the Complaint.

60. Defendants deny the allegations contained in paragraph “60” of the Complaint.

61. Defendants deny the allegations contained in paragraph “61” of the Complaint.

62. Defendants deny the allegations contained in paragraph “62” of the Complaint.

63. Defendants deny the allegations contained in paragraph “63” of the Complaint.

64. Defendants deny the allegations contained in paragraph “64” of the Complaint.

65. Defendants deny the allegations contained in paragraph “65” of the Complaint.

66. Defendants admit that the referenced meeting notices were timely issued, respectfully refer the Court to said notices for their content, and otherwise deny the allegations contained in paragraph “66” of the Complaint.

67. Defendants deny the allegations contained in paragraph “67” of the Complaint.

68. Defendants deny the allegations contained in paragraph “68” of the Complaint.

69. Defendants deny the allegations contained in paragraph “69” of the Complaint.

70. Defendants deny the allegations contained in paragraph “70” of the Complaint.

71. Defendants deny the allegations contained in paragraph “71” of the Complaint.

72. Defendants deny the allegations contained in paragraph “72” of the Complaint.

73. Defendants admit the meetings were adjourned, and otherwise deny the allegations contained in paragraph “73” of the Complaint.

74. Defendants admit the meetings were adjourned, and otherwise deny the allegations contained in paragraph “74” of the Complaint.

75. Defendants admit the allegations contained in paragraph “75” of the Complaint.

76. Defendants admit the allegations contained in paragraph “76” of the Complaint.

77. Defendants deny the allegations contained in paragraph “77” of the Complaint.

78. Defendants admit the Meetings were held on or about November 1, 2016, and otherwise deny the allegations contained in paragraph “78” of the Complaint.

79. Defendants admit Farro attended the Meetings, and otherwise deny the allegations contained in paragraph “79” of the Complaint.

80. Defendants admit that Farro voted against the proposed transactions, and otherwise deny the allegations contained in paragraph “80” of the Complaint.

81. Defendants admit that certain transfers occurred, and otherwise deny the allegations contained in paragraph “81” of the Complaint.

82. Defendants admit the Merger Notice was served on Farro on or about November 21, 2016, respectfully refer the Court to the Merger Notice for its content, and otherwise deny the allegations contained in paragraph “82” of the Complaint.

83. Defendants respectfully refer the Court to the referenced document for its content and otherwise deny the allegations contained in paragraph “83” of the Complaint.

84. Defendants respectfully refer the Court to the referenced document for content and otherwise deny the allegations contained in paragraph “84” of the Complaint.

85. Defendants deny the allegations contained in paragraph “85” of the Complaint and aver that no prior notice was required pursuant to statute.

86. Defendants deny the allegations contained in paragraph “86” of the Complaint.

- 87. Defendants deny the allegations contained in paragraph “87” of the Complaint.
- 88. Defendants deny the allegations contained in paragraph “88” of the Complaint.
- 89. Defendants deny the allegations contained in paragraph “89” of the Complaint.
- 90. Defendants deny the allegations contained in paragraph “90” of the Complaint.
- 91. Defendants deny the allegations contained in paragraph “91” of the Complaint.

ANSWERING THE FIRST CAUSE OF ACTION
(Breach of Fiduciary Duties Against Schochet
Derivatively On Behalf of the Companies)

92. Defendants repeat and reallege each of the foregoing responses to the above-referenced allegations as if set forth fully herein.

- 93. Defendants deny the allegations contained in paragraph “93” of the Complaint.
- 94. Defendants deny the allegations contained in paragraph “94” of the Complaint.
- 95. Defendants deny the allegations contained in paragraph “95” of the Complaint.
- 96. Defendants deny the allegations contained in paragraph “96” of the Complaint.
- 97. Defendants deny the allegations contained in paragraph “97” of the Complaint.

ANSWERING THE SECOND CAUSE OF ACTION
(Corporate Waste, Mismanagement and Self-Dealing
Against Schochet Derivatively on Behalf of the Corporation)

98. Defendants repeat and reallege each of the foregoing responses to the above-referenced allegations as if set forth fully herein.

- 99. Defendants deny the allegations contained in paragraph “99” of the Complaint.
- 100. Defendants deny the allegations contained in paragraph “100” of the Complaint.
- 101. Defendants deny the allegations contained in paragraph “101” of the Complaint.
- 102. Defendants deny the allegations contained in paragraph “102” of the Complaint.

ANSWERING THE THIRD CAUSE OF ACTION
(Aiding and Abetting Breach of Fiduciary Duties
Against Wilhelm Derivatively On Behalf of the Companies)

103. Defendants repeat and reallege each of the foregoing allegations as if set forth fully herein.

104. Defendants deny the allegations contained in paragraph “104” of the Complaint.

105. Defendants deny the allegations contained in paragraph “105” of the Complaint.

106. Defendants deny the allegations contained in paragraph “106” of the Complaint.

107. Defendants deny the allegations contained in paragraph “107” of the Complaint.

ANSWERING THE FOURTH CAUSE OF ACTION
(Declaratory Judgment Derivatively on Behalf
of the Companies Against All Defendant)

108. Defendants repeat and reallege each of the foregoing responses to the above-referenced allegations as if set forth fully herein.

109. Defendants deny the allegations contained in paragraph “109” of the Complaint.

110. Defendants deny the allegations contained in paragraph “110” of the Complaint.

111. Defendants deny the allegations contained in paragraph “111” of the Complaint.

112. Defendants deny the allegations contained in paragraph “112” of the Complaint.

113. Defendants deny the allegations contained in paragraph “113” of the Complaint.

114. Defendants deny the allegations contained in paragraph “114” of the Complaint.

ANSWERING THE FIFTH CAUSE OF ACTION
(Declaratory Judgment Derivatively on Behalf
of the Companies Against All Defendants)

115. Defendants repeat and reallege each of the foregoing responses to the above-referenced allegations as if set forth fully herein.

116. Defendants deny the allegations contained in paragraph “116” of the Complaint.

117. Defendants admit that Schochet is a true owner of a 50% interest in the Companies, and otherwise deny the allegations contained in paragraph “117” of the Complaint.

118. Defendants deny the allegations contained in paragraph “118” of the Complaint.

119. Defendants deny the allegations contained in paragraph “119” of the Complaint.

120. Defendants deny the allegations contained in paragraph “120” of the Complaint.

ANSWERING THE SIXTH CAUSE OF ACTION
(Fraud/Rescission On Behalf of Farro Against Schochet)

121. Defendants repeat and reallege each of the foregoing responses to the above-referenced allegations as if set forth fully herein.

122. Defendants deny the allegations contained in paragraph “122” of the Complaint.

123. Defendants deny the allegations contained in paragraph “123” of the Complaint.

124. Defendants deny the allegations contained in paragraph “124” of the Complaint.

125. Defendants deny the allegations contained in paragraph “125” of the Complaint.

126. Defendants deny the allegations contained in paragraph “126” of the Complaint.

127. Defendants deny the allegations contained in paragraph “127” of the Complaint.

128. Defendants deny the allegations contained in paragraph “128” of the Complaint.

129. Defendants deny the allegations contained in paragraph “129” of the Complaint.

130. Defendants deny the allegations contained in paragraph “130” of the Complaint.

131. Defendants deny the allegations contained in paragraph “131” of the Complaint.

132. Defendants deny the allegations contained in paragraph “132” of the Complaint.

ANSWERING THE SEVENTH CAUSE OF ACTION
(Breach of Contract On Behalf of Farro Against Schochet)

133. Defendants repeat and reallege each of the foregoing responses to the above-referenced allegations as if set forth fully herein.

134. Defendants deny the allegations contained in paragraph “134” of the Complaint.

135. Defendants deny the allegations contained in paragraph “135” of the Complaint.

136. Defendants deny the allegations contained in paragraph “136” of the Complaint.

137. Defendants deny the allegations contained in paragraph “137” of the Complaint.

ANSWERING THE EIGHTH CAUSE OF ACTION

**(Removal of Schochet as Director and Officer
of the Corporate Companies On Behalf of Farro)**

138. Defendants repeat and reallege each of the foregoing responses to the above-referenced allegations as if set forth fully herein.

139. Defendants deny the allegations contained in paragraph “139” of the Complaint.

140. Defendants deny the allegations contained in paragraph “140” of the Complaint.

141. Defendants deny the allegations contained in paragraph “141” of the Complaint.

ANSWERING THE NINTH CAUSE OF ACTION

(Accounting on Behalf of Farro Against All Defendants)

142. Defendants repeat and reallege each of the foregoing responses to the above-referenced allegations as if set forth fully herein.

143. Defendants deny the allegations contained in paragraph “143” of the Complaint.

144. Defendants deny the allegations contained in paragraph “144” of the Complaint.

145. Defendants deny the allegations contained in paragraph “145” of the Complaint.

ANSWERING THE TENTH CAUSE OF ACTION

(Unjust Enrichment On Behalf of Farro Against Schochet)

146. Defendants repeat and reallege each of the foregoing responses to the above-referenced allegations as if set forth fully herein.

147. Defendants deny the allegations contained in paragraph “147” of the Complaint.

148. Defendants deny the allegations contained in paragraph “148” of the Complaint.

149. Defendants deny the allegations contained in paragraph “149” of the Complaint.

ANSWERING THE ELEVENTH CAUSE OF ACTION
(Declaratory Relief by Farro against Schochet, Wilhelm,
LMEG LLC and LMEG Acquisition LLC)

150. Defendants repeat and reallege each of the foregoing responses to the above-referenced allegations as if set forth fully herein.

151. Defendants respectfully refer the Court to the referenced statute for its full and correct legal meaning, and otherwise deny the allegations contained in paragraph “151” of the Complaint.

152. Defendants respectfully refer the Court to the referenced statute for its full and correct legal meaning, and otherwise deny the allegations contained in paragraph “152” of the Complaint.

153. Defendants respectfully refer the Court to the referenced statute for its full and correct legal meaning, and otherwise deny the allegations contained in paragraph “153” of the Complaint.

154. Defendants respectfully refer the Court to the referenced statute for its full and correct legal meaning, and otherwise deny the allegations contained in paragraph “154” of the Complaint.

155. Defendants respectfully refer the Court to the referenced statute for its full and correct legal meaning, and otherwise deny the allegations contained in paragraph “155” of the Complaint.

156. Defendants respectfully refer the Court to the referenced statute for its full and correct legal meaning, and otherwise deny the allegations contained in paragraph “156” of the Complaint.

157. Defendants respectfully refer the Court to the referenced statutes for their full and correct legal meaning, and otherwise deny the allegations contained in paragraph “157” of the Complaint.

158. Defendants deny the allegations contained in paragraph “158” of the Complaint.

159. Defendants deny the allegations contained in paragraph “159” of the Complaint.

160. Defendants admit the Freeze-Out Merger is valid as alleged in paragraph “160” of the Complaint.

161. Defendants deny the allegations contained in paragraph “161” of the Complaint.

162. Defendants deny the allegations contained in paragraph “162” of the Complaint.

163. Defendants deny the allegations contained in paragraph “163” of the Complaint.

ANSWERING THE TWELFTH CAUSE OF ACTION
(Breach of Fiduciary Duty By Farro Against Schochet and Wilhelm)

164. Defendants repeat and reallege each of the foregoing responses to the above-referenced allegations as if set forth fully herein.

165. Defendants deny the allegations contained in paragraph “165” of the Complaint.

166. Defendants deny the allegations contained in paragraph “166” of the Complaint.

167. Defendants deny the allegations contained in paragraph “167” of the Complaint.

168. Defendants deny the allegations contained in paragraph “168” of the Complaint.

169. Defendants deny the allegations contained in paragraph “169” of the Complaint.

170. Defendants deny the allegations contained in paragraph “170” of the Complaint.

AFFIRMATIVE DEFENSES

As separate and distinct defenses to the Complaint, Defendants, without conceding that they bear the burden of proof as to any of them, allege the following defenses and also give notice that they intend to rely upon such other and further affirmative defenses as may become available during disclosure in this action and reserve the right to amend their Answer to assert any such defenses.

FIRST AFFIRMATIVE DEFENSE

171. The Complaint fails to state a viable cause of action.

SECOND AFFIRMATIVE DEFENSE

172. The Complaint fails to allege one or more causes of action with requisite particularity.

THIRD AFFIRMATIVE DEFENSE

173. Plaintiff's claims are barred, in whole or in in part, by the Law of the Case Doctrine based on the prior Orders of the Court herein.

FOURTH AFFIRMATIVE DEFENSE

174. Plaintiff's claims are barred, in whole or in in part, for failure to comply with statutory conditions precedent to suit.

FIFTH AFFIRMATIVE DEFENSE

175. Plaintiff's claims are barred, in whole or in part, by the provisions of the New York Limited Liability Company Law.

SIXTH AFFIRMATIVE DEFENSE

176. Plaintiff's claims are barred, in whole or in part, by the provisions of the New York Business Corporation Law.

SEVENTH AFFIRMATIVE DEFENSE

177. Plaintiff's claims are barred, in whole or in part, for lack of privity.

EIGHTH AFFIRMATIVE DEFENSE

178. Plaintiff's claims are barred, in whole or in part, for lack of standing.

NINTH AFFIRMATIVE DEFENSE

179. Plaintiff's claims are barred, in whole or in part, for failure to make a demand on the Companies.

TENTH AFFIRMATIVE DEFENSE

180. Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

181. Plaintiff's claims are barred, in whole or in part, by the statute of frauds.

TWELFTH AFFIRMATIVE DEFENSE

182. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

THIRTEENTH AFFIRMATIVE DEFENSE

183. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

FOURTEENTH AFFIRMATIVE DEFENSE

184. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

FIFTEENTH AFFIRMATIVE DEFENSE

185. Plaintiff's claims are barred, in whole or in part, by the doctrine of ratification.

SIXTEENTH AFFIRMATIVE DEFENSE

186. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

SEVENTEENTH AFFIRMATIVE DEFENSE

187. Plaintiff's claims are barred, in whole or in part, by the doctrine of setoff.

EIGHTEENTH AFFIRMATIVE DEFENSE

188. Plaintiff's claims are barred, in whole or in part, by Plaintiff's own bad faith.

NINETEENTH AFFIRMATIVE DEFENSE

189. Plaintiff's claims are barred, in whole or in part, by Plaintiff's own wrongful acts, breaches and culpable conduct.

TWENTIETH AFFIRMATIVE DEFENSE

190. Defendants did not breach any applicable duty.

TWENTY-FIRST AFFIRMATIVE DEFENSE

191. Defendants at all times acted in the lawful exercise of their proper authority.

TWENTY-SECOND AFFIRMATIVE DEFENSE

192. Defendants at all times performed their duties in good faith and with that degree of care and diligence that an ordinarily prudent person in a like position would use under similar circumstances.

TWENTY-THIRD AFFIRMATIVE DEFENSE

193. Defendants' actions are protected by the business judgment rule.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

194. To the extent that Plaintiff sustained any alleged damages, which Defendants expressly deny, it was caused by Plaintiff's own culpable conduct, wrongdoing, negligence, lack of care, breaches, omissions and failure to act.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

195. Plaintiff failed to mitigate his alleged damages, if any.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

196. Plaintiff would be unjustly enriched if allowed to recover on any of his claims.

COUNTERCLAIMS

Defendants / Counterclaim Plaintiffs LMEG Wireless, LLC (“LMEG”), Levi Wilhelm (“Wilhelm”), and Zalman Schochet (“Schochet”), as and for their Counterclaims against Plaintiff / Counterclaim Defendant Menachem Farro (“Farro”), allege as follows:

FACTS COMMON TO ALL COUNTERCLAIMS

The Parties

197. LMEG was and is a New York limited liability company with a principal place of business in the County of Kings, State of New York.

198. Wilhelm is an individual residing in the County of Kings, State of New York.

199. Schochet is an individual residing in the County of Miami-Dade, State of Florida.

200. Farro is an individual, upon information and belief, residing in the County of Kings, State of New York.

LMEG’s Members

201. On or about April 14, 2003, Farro and Defendant Levi Wilhelm (“Wilhelm”) formed LMEG as equal 50% members to buy and sell aftermarket cell phones and accessories.

202. LMEG had no written operating agreement.

203. On or about December 7, 2011, Farro and Wilhelm conveyed Schochet a 33% membership interest in LMEG and its affiliated businesses, as a result of which Farro, Wilhelm, and Schochet became equal 33% members of LMEG.

204. Farro, Wilhelm, and Schochet remained equal 33% members of LMEG until November 17, 2016, when LMEG consummated a cash-out merger with and into LMEG Acquisition LLC (“LMEG Acquisition”) under Section 1002 of the New York Limited Liability Company Law, as a result of which LMEG was dissolved, Wilhelm and Schochet became equal

50% members of LMEG Acquisition, and Farro ceased to be a member of LMEG or LMEG Acquisition.

Farro's Position of Trust and Confidence as *De Facto* Chief Financial Officer of LMEG

205. Upon information and belief, while a member of LMEG, from the inception of the business on April 14, 2003 until the termination of Farro's membership interest in LMEG on November 17, 2016, Farro engaged in a widespread, systematic, deliberate pattern of misconduct and fraud, to the detriment of both LMEG and his co-members, Wilhelm and Schochet.

206. Upon information and belief, at all relevant times, Farro was the sole and exclusive person responsible for obtaining working funds on behalf of LMEG, with the primary business responsibility of soliciting and securing loans from prospective lenders, managing LMEG's day-to-day cash flow, and ensuring that LMEG's loans and vendors were repaid timely.

207. Upon information and belief, at all relevant times, Farro was the sole individual at LMEG responsible for receiving loans from lenders, and making loan repayments to lenders.

208. Upon information and belief, at all relevant times, Farro was the sole and exclusive administrator of all of LMEG's accounts, books, and records.

209. Farro exploited his position of trust and confidence as LMEG's *de facto* chief financial officer, with the sole and exclusive control over LMEG's finances, to engage in a variety of wrongful activities constituting breaches of his fiduciary duties and fraud, ultimately misappropriating millions of dollars from LMEG and his co-members for the sole benefit of himself, his friends, and his family members.

Farro's Heavy Reliance on Unreported, Untaxed, Usurious Loans

210. Since LMEG's inception in April 2003, Farro relied heavily upon borrowed funds to finance LMEG's business operations.

211. Farro's preferred source of financing for LMEG, which, upon information and belief, began in 2003 and continued uninterrupted through and including Farro's termination as a member of LMEG in November 2016, were loans from Farro's friends and family members.

212. Upon information and belief, specific friends and family members of Farro who loaned LMEG and/or Farro personally large sums of money over the years include, without limitation, Yitzhak Ben-Abou (Farro's close friend), Abraham Lokshin (Farro's close friend), Edna Cohen (Farro's grandmother), Neil Cohen (Farro's uncle), Shuly Eizicovics (Farro's close friend), Alexander Skoczylas (Farro's father-in-law), and Sara Skoczylas (Farro's mother-in-law), among others.

213. Upon information and belief, much of the funds Farro borrowed – ostensibly on behalf of LMEG – were either never deposited into LMEG's bank accounts, or, if Farro deposited the funds, he distributed the funds back to himself and concealed the distribution by giving false inventory numbers, rendering LMEG insolvent and the distributions voidable as fraudulent conveyances under, *inter alia*, Debtor and Creditor Law § 273.

214. Upon information and belief, many of the funds borrowed were wired funds and cash loans in excess of \$10,000.

215. Upon information and belief, neither Farro nor the lenders he solicited on behalf of LMEG filed the legally required paperwork when transacting business in cash in amounts over \$10,000.

216. Upon information and belief, Farro "borrowed" these cash funds to assist his lenders in "laundering" their funds, including without limitation, to help them avoid paying taxes, in violation of various criminal State and Federal laws.

217. Upon information and belief, Farro never recorded many of the loans he obtained ostensibly on behalf of LMEG on LMEG's books and records.

218. Upon information and belief, Farro represented to these lenders that any interest paid would not be recorded on LMEG's books and records.

219. Upon information and belief, LMEG paid large interest payments on these "cash" and wired loans.

220. Upon information and belief, much of the interest paid on these loans were deposited into Farro's personal accounts by LMEG.

221. Upon information and belief, Farro was never issued a Form 1099 by LMEG for the interest payment on these loans.

222. Upon information and belief, these lenders were never issued a Form 1099 by LMEG for these loans.

223. Upon information and belief, Farro never issued a Form 1099 to his "cash" or wired funds lenders for their loans, nor did Farro cause the interest paid on their loans to be recorded on LMEG's books and records.

224. Effectively, this caused LMEG to lose millions of dollars that should have been deductible as business expenses, but were not deducted because Farro kept the loans secret, failed to record them on LMEG's books and records, and failed to report them to taxing authorities.

225. Upon information and belief, most of the loans Farro's friends and family members made to LMEG bore usurious interest rates in excess of 25%.

226. Upon information and belief, Farro personally agreed to pay these lenders (both "cash" and regular) illegal and criminally usurious interest rates to the detriment of LMEG.

227. Upon information and belief, Farro purposely kept the terms of the loans and amounts of payments vague to assure the true nature of his self-dealing and/or protection of his family and friends.

228. Farro placed his loyalty to his friends and family members over the interests of LMEG and his co-members by unilaterally choosing to pay criminally usurious interest rates when he could have obtained financing for LMEG on more favorable, legal terms.

229. The harm Farro caused LMEG and his co-members was compounded by not allowing LMEG to deduct interest payments or issuing Form 1099s.

Farro's Misappropriation of LMEG's Borrowed Funds for His Own Personal Use

230. Upon information and belief, Farro abused his position of trust and confidence and defrauded LMEG and his co-members by embezzling cash and wired funds he purported to borrow on behalf of LMEG for his own personal use to support his own lavish lifestyle.

231. Upon information and belief, and according to tax records, during the time in question, LMEG earned and distributed less than \$100,000 per year.

232. Upon information and belief, Farro's personal lifestyle, expenses, and investments exceeded \$250,000 annually.

233. Upon information and belief, Farro borrowed millions of dollars allegedly on behalf of LMEG, much of which Farro used for his own personal expenses and investments.

Farro's Secret Lending Directly to LMEG and Pocketing of Interest Payments

234. Upon information and belief, much of the borrowed money LMEG obtained to finance its operations initially went into Farro's personal account and Farro in turn "loaned" the funds to LMEG at illegal and criminally usurious interest rates.

235. Upon information and belief, Farro represented to LMEG and his co-members that these loans were from third parties directly to LMEG, rather than from himself to LMEG, thereby intentionally concealing his role in the transaction, from which he ultimately profited.

236. Upon information and belief, many of the funds were loaned to Farro and Farro made a spread on the interest, secretly profiting from his transactions with LMEG by collecting the difference between the interest third party lenders charged him and the interest he charged LMEG.

Farro's Misrepresentation of His Personal Debts as Debts of LMEG

237. In addition, Farro represented to LMEG and his co-members that LMEG had various debt obligations, which in fact often were obligations belonging either to Farro personally or to his prior businesses.

238. On one occasion, in order to induce Schochet to join LMEG and pay off LMEG's existing loans, Farro provided Schochet with a handwritten list of LMEG's lenders, amounts outstanding, and rates of interest.

239. Farro represented that all the funds listed on the list were deposited into LMEG's accounts.

240. Farro represented that all the funds on said list were invested into LMEG to purchase inventory.

241. Farro represented that these funds were not used to support distributions or his lifestyle.

242. At the same time, Farro provided Schochet with a balance sheet for LMEG indicating an inventory valued at approximately \$10 million.

243. Upon information and belief, the inventory value was less than \$2 million.

244. Based on this representation, Schochet advanced LMEG millions of dollars and reduced his interest rate below the rates being charged by Farro's family and friends.

245. Farro used the funds advanced by Schochet to pay off many of the outstanding usurious loans allegedly owed to Farro's friends and family members, including the "cash loans."

246. Upon information and belief, the loans Farro gave Schochet on the list were artificially inflated.

247. Upon information and belief, the loans on the list included personal loans from the lenders to Farro that Farro used to subsidize his personal lifestyle.

248. Upon information and belief, the lenders, upon receipt of the inflated loans, "kicked back" some of the funds to Farro.

249. After the initial pay off and inducement of Schochet to advance funds, Farro represented that his in-laws, Abraham and Sara Skoczylas, loaned LMEG an additional \$250,000 not previously disclosed on Farro's list and that they needed to be repaid as well.

250. Upon information and belief, the funds Farro's in-laws allegedly loaned LMEG were never deposited into LMEG's account.

251. Upon information and belief, Farro personally borrowed the money from his in-laws, then claimed after the fact that LMEG borrowed the money.

252. As a result, Farro caused LMEG to repay loans that were made either to Farro personally or to his prior businesses, rather than to LMEG, and from which LMEG derived no benefit.

Farro's Unauthorized Use of LMEG Funds to Repay Unauthorized Indebtedness

253. In or around September 2013, Wilhelm and Schochet traveled to Israel for an extended period leaving Farro in *de facto* charge of LMEG's daily operations.

254. Farro immediately began improperly and unilaterally distributing LMEG's funds to pay down his personal debts, including his personal credit card, and to pay off lenders with whom he had a personal relationship, including some of the loans Farro solicited from his friends and family members at usurious interest rates, including without limitation, his grandmother, Edna Cohen, and his uncle, Neil Cohen.

255. Over the express objection of Farro's co-members, Wilhelm and Schochet, Farro repaid his debts to his friends and family members with unauthorized use of LMEG's funds.

Farro's Additional Acts of Waste, Mismanagement, Fraud, and Abuse

256. In breach of his fiduciary duties, and in violation of the trust given to him by Wilhelm and Schochet, Farro engaged in a variety of additional acts of mismanagement and waste of LMEG's assets for his own personal benefit, and to the detriment of his co-members, Wilhelm and Schochet.

257. Such additional acts of waste, mismanagement, fraud, and abuse include, but are not limited to: (i) pocketing cash paid to LMEG on sales of LMEG's products; (ii) underreporting or failing to report accurately LMEG's cash sales; (iii) taking LMEG's products without permission and without either paying for the merchandise or recording the amounts against his distributions; and (iv) using LMEG's funds and credit cards for his own personal benefit and for non-business purposes, without reimbursement to LMEG, including without limitation, paying for family vacations and cell phones for family members, improperly taking

product and repaying debts owed under his personal credit cards, his prior businesses' obligations and loans owed by him individually.

FIRST COUNTERCLAIM

(Breach of Fiduciary Duty / Faithless Servant – LMEG)

258. Defendants / Counterclaim Plaintiffs repeat and reallege the foregoing allegations as if set forth fully herein.

259. Farro owed LMEG and his co-members, Wilhelm and Schochet, fiduciary duties, including the duties of utmost good faith, loyalty, honesty, and due care.

260. Farro breached his fiduciary duties and actively deceived LMEG and his co-members, Wilhelm and Schochet, by, among other things: (i) never depositing funds he borrowed ostensibly on behalf of LMEG into LMEG's bank accounts, pocketing the funds; (ii) failing to issue himself, his friends, and his family members required documentation, including Form 1099s, for loans made to LMEG; (iii) causing to be filed inaccurate and/or false tax returns so that Farro, his friends, and his family members could avoid paying taxes; (iv) never recording loans he obtained on behalf of LMEG on LMEG's books and records; (v) never recording interest LMEG paid on loans on LMEG's books and records; (vi) never reporting interest LMEG paid on loans to the taxing authorities; (vii) depriving LMEG of the ability to deduct millions of dollars in loan payments that should have been deductible as business expenses; (viii) borrowing funds on behalf of LMEG at illegal and criminally usurious interest rates; (ix) personally loaning funds to LMEG at illegal and criminally usurious interest rates; (x) repaying loans on behalf of LMEG to himself and third parties at illegal and criminally usurious interest rates; (xi) misappropriating funds he purported to borrow on behalf of LMEG for his own personal use, including causing LMEG to repay his personal debts and those of his former businesses; (xii) borrowing money for his own account, loaning the money to LMEG, fraudulent concealing his

identity as the source of the loans to LMEG, secretly paying himself interest from LMEG, and secretly profiting from LMEG by collecting a spread on the interest third party lenders charged him and the interest he charged LMEG; (xiii) causing LMEG to repay loans that were made to him personally, rather than to LMEG, and from which LMEG derived no benefit; (xiv) pocketing cash paid to LMEG on sales of LMEG's products; (xv) underreporting or failing to report accurately LMEG's cash sales; (xvi) taking LMEG's products without permission and without either paying for the merchandise or recording the amounts against his distributions; and (xvii) using LMEG's funds and credit cards for his own personal benefit and for non-business purposes.

261. As a direct and proximate result of Farro's numerous and continuous breaches of his fiduciary duties, LMEG has been damaged in an amount to be determined at trial, and are entitled to disgorgement of all compensation, profits, and benefits of any kind obtained by Farro during the entire period of his disloyalty to LMEG.

SECOND COUNTERCLAIM
(Fraud – LMEG)

262. Defendants / Counterclaim Plaintiffs repeat and reallege the foregoing allegations as if set forth fully herein.

263. Farro made material misrepresentations of existing fact to LMEG, and concealed material facts from LMEG that he had an affirmative duty, by virtue of his position of trust and confidence as both a member and *de facto* chief financial officer of LMEG, to disclose to LMEG, by, among other things: (i) never depositing funds he borrowed ostensibly on behalf of LMEG into LMEG's bank accounts, pocketing the funds, or, if he deposited the funds, distributing the funds back to himself and concealing the distribution by giving false inventory numbers, rendering LMEG insolvent and the distributions voidable as fraudulent conveyances

under, *inter alia*, Debtor and Creditor Law § 273; (ii) causing to be filed inaccurate and/or false tax returns so that Farro, his friends, and his family members could avoid paying taxes; (iii) never recording loans he obtained on behalf of LMEG on LMEG's books and records; (iv) never recording interest LMEG paid on loans on LMEG's books and records; (v) misappropriating funds he purported to borrow on behalf of LMEG for his own personal use, including causing LMEG to repay his personal debts and those of his former businesses; (vi) borrowing money for his own account, loaning the money to LMEG, fraudulent concealing his identity as the source of the loans to LMEG, secretly paying himself interest from LMEG, and secretly profiting from LMEG by collecting a spread on the interest third party lenders charged him and the interest he charged LMEG; (vii) causing LMEG to repay loans that were made to him personally, rather than to LMEG, and from which LMEG derived no benefit; (viii) pocketing cash paid to LMEG on sales of LMEG's products; (ix) underreporting or failing to report accurately LMEG's cash sales; (x) taking LMEG's products without permission and without either paying for the merchandise or recording the amounts against his distributions; and (xi) using LMEG's funds and credit cards for his own personal benefit and for non-business purposes.

264. Farro made the foregoing misrepresentations and concealments of material fact with knowledge of their falsity.

265. Farro intended to induce LMEG's reliance upon his material misrepresentations and concealments.

266. LMEG justifiably relied upon Farro's material misrepresentations and concealments.

267. As a direct and proximate result of Farro's fraud, LMEG has been damaged in an amount to be determined at trial.

THIRD COUNTERCLAIM
(Negligent Misrepresentation – LMEG)

268. Defendants / Counterclaim Plaintiffs repeat and reallege the foregoing allegations as if set forth fully herein.

269. Farro owed LMEG a duty, by virtue of his position of trust and confidence as both a member and *de facto* chief financial officer of LMEG, to impart correct information to LMEG.

270. The information Farro imparted to LMEG was incorrect.

271. LMEG reasonably relied upon the information.

272. As a direct and proximate result of Farro's negligent misrepresentations, LMEG has been damaged in an amount to be determined at trial.

FOURTH COUNTERCLAIM
(Conversion – LMEG)

273. Defendants / Counterclaim Plaintiffs repeat and reallege the foregoing allegations as if set forth fully herein.

274. LMEG had legal ownership and a superior, immediate right of possession to specifically identifiable funds.

275. Farro exercised unauthorized dominion over such funds to the exclusion of the LMEG's rights.

276. Farro used and misappropriated such funds for unauthorized personal purposes.

277. As a direct and proximate result of Farro's conversion, LMEG has been damaged in an amount to be determined at trial.

FIFTH COUNTERCLAIM
(Unjust Enrichment – LMEG)

278. Defendants / Counterclaim Plaintiffs repeat and reallege the foregoing allegations as if set forth fully herein.

279. By reason of the foregoing misconduct, Farro was enriched.

280. Farro's enrichment was at LMEG's expense.

281. It is against equity and good conscience to permit Farro to retain the funds he used and misappropriated from LMEG for unauthorized personal purposes.

282. Therefore, LMEG is entitled to recovery from Farro of all funds he used and misappropriated from LMEG for unauthorized personal purposes.

SIXTH COUNTERCLAIM
(Declaratory Judgment – LMEG)

283. Defendants / Counterclaim Plaintiffs repeat and reallege the foregoing allegations as if set forth fully herein.

284. An actual and justiciable controversy exists, a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have some practical effect, concerning Farro's right to retain the funds he used and misappropriated from LMEG for unauthorized personal purposes.

285. LMEG has no adequate remedy at law.

286. Therefore, LMEG is entitled to a declaratory judgment that Farro must repay to LMEG all funds he used and misappropriated from LMEG for unauthorized personal purposes.

SEVENTH COUNTERCLAIM
(Accounting – LMEG, Wilhelm, and Schochet)

287. Defendants / Counterclaim Plaintiffs repeat and reallege the foregoing allegations as if set forth fully herein.

288. Farro, as a member of LMEG, and by reason of his position of trust and confidence as LMEG's *de facto* chief financial officer, with the sole and exclusive control over LMEG's finances, owed LMEG, Wilhelm, and Schochet fiduciary duties to manage and operate LMEG with due care, loyalty and honesty, and to refrain from self-dealing and the misappropriation of LMEG's assets.

289. Farro breached his fiduciary duties.

290. Prior to commencing this action, LMEG, Wilhelm, and Schochet made a written demand for an accounting, which demand was refused.

291. LMEG, Wilhelm, and Schochet have no adequate remedy at law.

292. By reason of the foregoing, LMEG, Wilhelm, and Schochet are entitled to an accounting by Farro of his conduct and of all financial matters of LMEG in his possession, custody, and control, including, but not limited to, any and all loans made on behalf of LMEG and bank account activity initiated by Farro and, upon the completion of such accounting, to the recovery of all damages that LMEG, Wilhelm, and Schochet have suffered as a result of Farro's misconduct.

EIGHTH COUNTERCLAIM

(Fraud – Schochet)

293. Defendants / Counterclaim Plaintiffs repeat and reallege the foregoing allegations as if set forth fully herein.

294. In or around November 2008, Farro asked Schochet to provide LMEG debt financing.

295. Schochet eventually became LMEG's primary lender, loaning LMEG several millions dollars.

296. By 2011, LMEG was technically insolvent and unable to repay Schochet's loans.

297. As a result, Farro and Wilhelm offered Schochet a co-equal 33% equity interest in LMEG and its affiliated businesses in exchange for, among other things, Schochet agreeing to forbear against foreclosing on his loans and restructuring LMEG's indebtedness to Schochet.

298. In or around December 2011, in connection with the transaction, with the intent to hide from Schochet the dire financial condition of LMEG, as well as Farro's misdeeds, including without limitation, his practice of depositing loans, distributing the funds back to himself, and concealing the distribution by giving false inventory numbers, Farro presented Schochet with a fraudulent balance sheet for LMEG, which stated that the value of LMEG's inventory was approximately \$10 million.

299. The inventory value of approximately \$10 million that Farro presented to Schochet on LMEG's balance sheet was a representation of material fact.

300. The inventory value Farro presented to Schochet was false.

301. The actual value of LMEG's inventory was less than \$2 million.

302. Farro knew his representation was false when made.

303. Schochet justifiably relied upon Farro's false representation that the value of LMEG's inventory was approximately \$10 million.

304. In reliance upon Farro's representation to Schochet that the actual value of LMEG's inventory of approximately \$10 million, and as a direct result of Farro's fraudulent inducement, on December 7, 2011, Schochet entered into an Amended Loan Agreement with LMEG, which Farro and Wilhelm guaranteed, restructuring LMEG's indebtedness to Schochet, evidencing a new loan balance from Schochet to LMEG of \$11 million, and conveying to Schochet a 33% equity interest in LMEG and its affiliated businesses.

305. As a direct and proximate result of Farro's fraudulent representation, Schochet became an owner of a business, including LMEG, which had far less value than Farro represented to Schochet prior to the transaction.

306. Accordingly, Schochet has been damaged in an amount to be determined at trial.

NINTH COUNTERCLAIM
(Negligent Misrepresentation – Schochet)

307. Defendants / Counterclaim Plaintiffs repeat and reallege the foregoing allegations as if set forth fully herein.

308. Farro owed Schochet a special or privity-like relationship imposing a duty to impart correct information.

309. The information Farro imparted to Schochet about the value of LMEG's inventory was incorrect.

310. Schochet reasonably relied upon the information.

311. As a direct and proximate result of Farro's negligent misrepresentation, Schochet has been damaged in an amount to be determined at trial.

TENTH COUNTERCLAIM
(Constructive Fraudulent Conveyance –
Debtor and Creditor Law § 273 – Schochet)

312. Defendants / Counterclaim Plaintiffs repeat and reallege the foregoing allegations as if set forth fully herein.

313. At all relevant times, Schochet was a lender to and creditor of LMEG.

314. While Schochet was a lender to and creditor of LMEG, Farro distributed various funds to himself from LMEG's assets.

315. Farro's distributions of funds to himself from LMEG's assets were made without a fair consideration.

316. Farro's distributions of funds to himself from LMEG's assets rendered LMEG insolvent.

317. Therefore, pursuant to Section 273 of the Debtor and Creditor Law, Schochet is entitled to a judgment setting aside all fraudulent conveyances made from LMEG to Farro.

WHEREFORE, Defendants / Counterclaim Plaintiffs demand judgment as follows:

- i) dismissing the Complaint in its entirety with prejudice;
- ii) on the First Counterclaim: (a) awarding LMEG money damages in an amount to be determined at trial; and (b) awarding disgorgement of all compensation, profits, and benefits of any kind obtained by Farro during the entire period of his disloyalty to LMEG;
- iii) on the Second Counterclaim, awarding LMEG money damages in an amount to be determined at trial;
- iv) on the Third Counterclaim, awarding LMEG money damages in an amount to be determined at trial;

- v) on the Fourth Counterclaim, awarding LMEG money damages in an amount to be determined at trial;
- vi) on the Fifth Counterclaim, awarding LMEG recovery from Farro of all funds he used and misappropriated from LMEG for unauthorized personal purposes;
- vii) on the Sixth Counterclaim, a declaratory judgment that Farro must repay to LMEG all funds he used and misappropriated from LMEG for unauthorized personal purposes.
- viii) on the Seventh Counterclaim, ordering Farro to render an accounting to LMEG, Wilhelm, and Schochet of his conduct as a member of LMEG, and, upon the completion of such accounting, awarding all damages LMEG, Wilhelm, and Schochet suffered as a result of Farro's misconduct;
- ix) on the Eighth Counterclaim, awarding Schochet money damages in an amount to be determined at trial;
- x) on the Ninth Counterclaim, awarding Schochet money damages in an amount to be determined at trial;
- xi) on the Tenth Counterclaim, setting aside all fraudulent conveyances from LMEG to Farro;
- xii) awarding treble damages;
- xiii) awarding punitive damages;
- xiv) awarding statutory pre-judgment interest at the rate of nine percent (9%) per annum from the date of Farro's first wrongful act through the date of judgment;
- xv) awarding attorneys' fees, costs and disbursements; and

xvi) awarding such other and further relief as the Court deems just, equitable and proper.

Dated: March 1, 2018

FARRELL FRITZ, P.C.

By: /s/ *Peter A. Mahler*

Peter A. Mahler
Franklin C. McRoberts
622 Third Avenue, Suite 37200
New York, New York 10017
(212) 687-1230

*Attorneys for Defendants /
Counterclaim Plaintiffs*

TO: All Counsel of Record (By NYSECF)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- X
 MENACHEM FARRO, individually and derivatively as a : Index No. 518007/2016
 shareholder in the right of LM INTERNATIONAL, INC., :
 SELLER1ON1 INCORPORATED, WML : **VERIFICATION**
 COMMUNICATIONS, INC., and as a member in the :
 right of LMEG WIRELESS, LLC, :

Plaintiff,

-against-

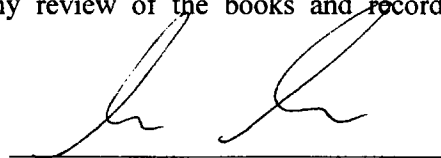
ZALMAN SCHOCHET a/k/a SCHNEUR ZALMAN :
 SCHOCHET, LEVI WILHELM, LM :
 INTERNATIONAL, INC., SELLER1ON1 :
 INCORPORATED, WML COMMUNICATIONS, INC., :
 LMEG WIRELESS, LLC, SELLER WIRELESS, LLC, :
 LM WIRELESS INTERNATIONAL, LLC, LMZT, LLC :
 and LMEG ACQUISITION LLC, :

Defendants.

----- X
 STATE OF NEW YORK)
) ss.:
 COUNTY OF KINGS)

LEVI WILHELM, an Orthodox Jew prohibited by his religion from taking an oath,
 affirms the following to be true on penalty of perjury:

I am a defendant in this action. I have read the annexed Verified Amended Answer and
 Counterclaims and know the contents thereof, and state that the same is true to my own
 knowledge, except to those matters which are stated to be on information and belief, and as to
 those matters I believe them to be true based upon my review of the books and records
 maintained by defendants.


 Levi Wilhelm

Affirmed before me this
 1st day of March, 2018


 Notary Public

SHIRA ROSENBERG - 01RO6353014
 NOTARY PUBLIC - NEW YORK
 KINGS COUNTY
 COMMISSION EXPIRES
 FF6610251.1 01/09/2021