

EAGLE MATERIALS INC  
Form 10-Q  
February 07, 2014  
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**United States**  
**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 10-Q**  
**QUARTERLY REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**For the Quarterly Period Ended**

**December 31, 2013**

**Commission File Number 1-12984**

**Eagle Materials Inc.**

**Delaware**

**(State of Incorporation)**

**75-2520779**

**(I.R.S. Employer Identification No.)**

**3811 Turtle Creek Blvd., Suite 1100, Dallas, Texas 75219**

**(Address of principal executive offices)**

**(214) 432-2000**

**(Registrant's telephone number)**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

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Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES  NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.) Yes  No

As of February 4, 2014, the number of outstanding shares of common stock was:

Class	Outstanding Shares
Common Stock, \$.01 Par Value	49,973,319

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**Eagle Materials Inc. and Subsidiaries**

**Form 10-Q**

**December 31, 2013**

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## Consolidated Statements of Earnings

(dollars in thousands, except share data)

(unaudited)

	For the Three Months Ended December 31,		For the Nine Months Ended December 31,	
	2013	2012	2013	2012
Revenues	\$ 228,812	\$ 164,743	\$ 708,502	\$ 483,444
Cost of Goods Sold	178,964	133,482	552,571	396,797
Gross Profit	49,848	31,261	155,931	86,647
Equity in Earnings of Unconsolidated Joint Venture	9,856	8,852	27,481	24,070
Corporate General and Administrative	(6,796)	(6,268)	(18,450)	(16,942)
Acquisition and Litigation Expense		(2,485)		(8,859)
Other Income (Expense)	400	(223)	1,300	(427)
Interest Expense, Net	(4,475)	(3,836)	(14,225)	(11,149)
Earnings Before Income Taxes	48,833	27,301	152,037	73,340
Income Tax Expense	(17,212)	(9,321)	(50,412)	(23,429)
Net Earnings	\$ 31,621	\$ 17,980	\$ 101,625	\$ 49,911
<b>EARNINGS PER SHARE:</b>				
Basic	\$ 0.64	\$ 0.37	\$ 2.07	\$ 1.09
Diluted	\$ 0.63	\$ 0.37	\$ 2.03	\$ 1.07
<b>AVERAGE SHARES OUTSTANDING:</b>				
Basic	49,294,010	48,331,185	49,091,476	45,920,452
Diluted	50,162,962	49,249,547	49,948,178	46,574,724
<b>CASH DIVIDENDS PER SHARE:</b>				
	\$ 0.10	\$ 0.10	\$ 0.30	\$ 0.30

*See notes to unaudited consolidated financial statements.*

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**Eagle Materials Inc. and Subsidiaries**

Consolidated Statements of Comprehensive Earnings

(unaudited dollars in thousands)

	For the Three Months Ended December 31,		For the Nine Months Ended December 31,	
	2013	2012	2013	2012
Net Earnings	\$ 31,621	\$ 17,980	\$ 101,625	\$ 49,911
Change in Funded Status of Defined Benefit Plans:				
Amortization of Net Actuarial Loss	238	178	714	534
Tax Expense	(83)	(62)	(249)	(186)
Comprehensive Earnings	\$ 31,776	\$ 18,096	\$ 102,090	\$ 50,259

*See notes to unaudited consolidated financial statements.*

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## Consolidated Balance Sheets

(dollars in thousands)

	December 31, 2013 (unaudited)	March 31, 2013
<b>ASSETS</b>		
Current Assets -		
Cash and Cash Equivalents	\$ 7,424	\$ 3,897
Accounts and Notes Receivable	96,357	87,543
Inventories	173,871	156,380
Income Tax Receivable		2,443
Prepaid and Other Assets	5,074	11,008
<b>Total Current Assets</b>	<b>282,726</b>	<b>261,271</b>
Property, Plant and Equipment -	1,647,138	1,599,992
Less: Accumulated Depreciation	(662,734)	(614,268)
Property, Plant and Equipment, net	984,404	985,724
Notes Receivable	3,208	3,893
Investment in Joint Venture	41,178	42,946
Goodwill and Intangible Assets	161,117	162,400
Other Assets	14,631	19,999
	<b>\$ 1,487,264</b>	<b>\$ 1,476,233</b>
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>		
Current Liabilities -		
Accounts Payable	\$ 47,586	\$ 58,880
Accrued Liabilities	39,622	41,349
Income Taxes Payable	6,835	
Current Portion of Long-term Debt	9,500	
<b>Total Current Liabilities</b>	<b>103,543</b>	<b>100,229</b>
Long-term Debt	382,759	489,259
Other Long-term Liabilities	52,317	51,547
Deferred Income Taxes	143,217	139,028
<b>Total Liabilities</b>	<b>681,836</b>	<b>780,063</b>
Stockholders Equity -		
Preferred Stock, Par Value \$0.01; Authorized 5,000,000 Shares; None Issued		
Common Stock, Par Value \$0.01; Authorized 100,000,000 Shares; Issued and Outstanding 49,964,881 and 49,503,496 Shares, respectively	500	495
Capital in Excess of Par Value	246,161	224,053
Accumulated Other Comprehensive Losses	(6,577)	(7,042)
Retained Earnings	565,344	478,664
<b>Total Stockholders Equity</b>	<b>805,428</b>	<b>696,170</b>

\$ 1,487,264 \$ 1,476,233

*See notes to the unaudited consolidated financial statements.*

**Table of Contents****Eagle Materials Inc. and Subsidiaries**

## Consolidated Statements of Cash Flows

(unaudited dollars in thousands)

	For the Nine Months Ended December 31,	
	2013	2012
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net Earnings	\$ 101,625	\$ 49,911
Adjustments to Reconcile Net Earnings to Net Cash Provided by Operating Activities -		
Depreciation, Depletion and Amortization	52,315	39,780
Deferred Income Tax Provision	3,939	406
Stock Compensation Expense	7,487	6,695
Excess Tax Benefits from Share Based Payments	(4,619)	(3,461)
Equity in Earnings of Unconsolidated Joint Venture	(27,481)	(24,070)
Distributions from Joint Venture	29,250	21,250
Changes in Operating Assets and Liabilities:		
Accounts and Notes Receivable	(6,461)	(4,954)
Inventories	(19,489)	7,721
Accounts Payable and Accrued Liabilities	(8,101)	12,526
Other Assets	1,650	(9,163)
Income Taxes Payable	13,897	10,312
Net Cash Provided by Operating Activities	144,012	106,953
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Property, Plant and Equipment Additions	(43,208)	(28,832)
Acquisition		(448,420)
Net Cash Used in Investing Activities	(43,208)	(477,252)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Increase (Decrease) in Credit Facility	(97,000)	221,000
Repayment of Senior Notes		(4,677)
Dividends Paid to Stockholders	(14,903)	(13,601)
Net Proceeds from Offering of Common Stock		154,832
Proceeds from Stock Option Exercises	10,496	14,722
Shares Redeemed to Settle Employee Taxes on Stock Compensation	(489)	(921)
Payment of Debt Acquisition Costs		(1,751)
Excess Tax Benefits from Share Based Payments	4,619	3,461
Net Cash Provided by (Used in) Financing Activities	(97,277)	373,065
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	<b>3,527</b>	<b>2,766</b>
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD</b>	<b>3,897</b>	<b>6,481</b>
<b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>	<b>\$ 7,424</b>	<b>\$ 9,247</b>

*See notes to the unaudited consolidated financial statements.*





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**Eagle Materials Inc. and Subsidiaries**

**Notes to Unaudited Consolidated Financial Statements**

**December 31, 2013**

**(A) BASIS OF PRESENTATION**

The accompanying unaudited consolidated financial statements as of and for the three and nine month periods ended December 31, 2013 include the accounts of Eagle Materials Inc. and its majority owned subsidiaries (the Company, us or we) and have been prepared by the Company, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. These unaudited consolidated financial statements should be read in conjunction with the audited consolidated financial statements and the notes thereto included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on May 24, 2013.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to such rules and regulations, although we believe that the disclosures are adequate to make the information presented not misleading. In our opinion, all adjustments (consisting solely of normal recurring adjustments) necessary to present fairly the information in the unaudited consolidated financial statements of the Company have been included. The results of operations for interim periods are not necessarily indicative of the results for the full year.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Recent Accounting Pronouncements**

There are no recent accounting pronouncements that we expect will materially impact our financial statements during the current fiscal year.

**(B) ACQUISITION**

On November 30, 2012, the Company completed the acquisition (the Acquisition) of certain assets of Lafarge North America Inc. (Lafarge North America or the Sellers). The Acquisition expanded the scope of our cement business in a geographic area that is complementary to, but does not overlap with, our existing cement business. The Acquisition also further positions the Company near energy growth markets where there is growing demand for our specialty oil well cement and other related products.

The assets acquired by us in the Acquisition were used by the Sellers in connection with the business (the Acquired Assets) of producing, marketing and selling portland cement and concrete in Kansas, Missouri and Oklahoma, and include the following:

two cement plants located in Sugar Creek, Missouri and Tulsa, Oklahoma;

the related cement distribution terminals located in Sugar Creek and Springfield, Missouri; Omaha, Nebraska; Iola and Wichita, Kansas; and Oklahoma City, Oklahoma;

two aggregates quarries near Sugar Creek, Missouri;

eight ready-mix plants located in or near Kansas City, Missouri;

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certain fly ash operations conducted in the Kansas City, Missouri area; and

certain related assets such as equipment, accounts receivable and inventory.

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In most cases, we acquired ownership of these assets from the Sellers. However, the cement plant located in Sugar Creek, Missouri was leased by the Sellers pursuant to a long-term lease containing a purchase option exercisable by payment of a nominal fee. This lease, including the purchase option, was transferred to us at the closing of the Acquisition. In addition, we assumed certain liabilities in the Acquisition, including accounts payable, contractual obligations, reclamation obligations and other liabilities related to the Acquired Assets.

**Purchase Price:** The final purchase price (the Purchase Price ) of the Acquisition was \$450.7 million, which reflects a \$2.7 million reduction from the preliminary purchase price to reflect actual working capital acquired at the closing. The reduction in purchase price was primarily related to adjustments to the final value of inventory and prepaid assets acquired. We funded the payment of the Purchase Price at closing and expenses incurred in connection with the Acquisition through a combination of borrowings under our bank credit facility and the proceeds from our issuance of common stock, which was completed on October 3, 2012.

**Recording of assets acquired and liabilities assumed:** The transaction has been accounted for using the acquisition method of accounting which requires, among other things, that assets acquired and liabilities assumed be recognized at their fair values as of the acquisition date. We engaged a third-party to perform a valuation to support our estimate of the fair value of certain assets acquired in the Acquisition. The estimated working capital amounts paid at the closing were adjusted by approximately \$2.7 million to reflect actual working capital acquired.

The preparation of the valuation of the assets acquired and liabilities assumed in the Acquisition requires the use of significant assumptions and estimates. Critical estimates include, but are not limited to, future expected cash flows, including projected revenues and expenses, and applicable discount rates. These estimates are based on assumptions that we believe to be reasonable. However, actual results may differ from these estimates.

Under the acquisition method of accounting, the total purchase price was allocated to the net tangible and intangible assets and assumed liabilities based on their estimated fair values at the acquisition date. Based on the fair value of tangible and intangible assets acquired and liabilities assumed the purchase price is allocated as follows:

Purchase Price Allocation (in thousands)	
Cash and cash equivalents	\$
Accounts Receivable	23,432
Inventories	20,361
Prepaid and Other Assets	3,511
Property and Equipment	407,260
Intangible Assets	12,500
Accounts Payable	(9,070)
Accrued Liabilities	(3,501)
Other Long-term Liabilities	(1,060)
Total Net Assets	453,433
Goodwill	
Initial Purchase Price	\$ 453,433
Final Working Capital Adjustment	(2,734)
Final Purchase Price	\$ 450,699

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**Intangible Assets:** The following table is a summary of the fair value estimates of the identifiable intangible assets (in thousands) and their weighted-average useful lives:

	Weighted Average Life	Fair Value
Customer Relationships	15	\$ 4,760
Sales Contracts	4	2,500
Permits	40	5,240
Total Intangible Assets		\$ 12,500

**Actual and pro forma impact of the Acquisition:** The following table presents the net sales and operating income of the Acquired Assets that have been included in our consolidated statement of earnings from April 1, 2013 through December 31, 2013 and November 30 through December 31, 2012:

	For the Three Months Ended December 31, 2013      2012 (dollars in thousands)		For the Nine Months Ended December 31, 2013      2012 (dollars in thousands)	
Net Sales	\$ 40,002	\$ 7,905	\$ 133,885	\$ 7,905
Operating Income	\$ 7,082	\$ 665	\$ 25,795	\$ 665

The unaudited pro forma results presented below include the effects of the Acquisition as if it had been consummated as of April 1, 2012. The pro forma results include the amortization associated with an estimate for acquired intangible assets and interest expense associated with debt used to fund the Acquisition, depreciation from the fair value adjustments for property and equipment, and the impact on earnings per share of the issuance of common stock in connection with the Acquisition. To better reflect the combined operating results, material nonrecurring charges directly related to the Acquisition of \$6.1 million have been excluded from pro forma net income for the three and nine month periods ended December 31, 2012.

	Three Month Period Ended December 31, 2012 (dollars in thousands)	Nine Month Period Ended December 31, 2012 (dollars in thousands)
Revenues	\$ 202,737	\$ 633,861
Net Income	\$ 24,818	\$ 70,937
Earnings per share - basic	\$ 0.51	\$ 1.47
Earnings per share - diluted	\$ 0.50	\$ 1.46
Weighted Average Shares Outstanding:		
Basic	48,331,185	48,158,499
Diluted	49,250,467	48,669,224

**The pro forma results do not include any anticipated synergies or other expected benefits of the Acquisition.** Accordingly, the unaudited pro forma results are not necessarily indicative of either future results of operations or results that might have been achieved had the Acquisition been consummated as of April 1, 2012.

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A summary of changes in stockholders equity follows:

	For the Nine Months Ended December 31, 2013 (dollars in thousands)
<b>Common Stock</b>	
Balance at Beginning of Period	\$ 495
Stock Option Exercises	5
Balance at End of Period	\$ 500
<b>Capital in Excess of Par Value</b>	
Balance at Beginning of Period	224,053
Stock Compensation Expense	7,486
Shares Redeemed to Settle Employee Taxes	(489)
Stock Option Exercises	15,111
Balance at End of Period	246,161
<b>Retained Earnings</b>	
Balance at Beginning of Period	478,664
Dividends Declared to Stockholders	(14,945)
Net Earnings	101,625
Balance at End of Period	565,344
<b>Accumulated Other Comprehensive Loss -</b>	
Balance at Beginning of Period	(7,042)
Change in Funded Status of Pension Plan, net of tax	465
Balance at End of Period	(6,577)
<b>Total Stockholders Equity</b>	<b>\$ 805,428</b>

There were no open market share repurchases during the three and nine month periods ended December 31, 2013. As of December 31, 2013, we have authorization to purchase an additional 717,300 shares.

**(D) CASH FLOW INFORMATION SUPPLEMENTAL**

Cash payments made for interest were \$16.1 million and \$13.4 million for the nine months ended December 31, 2013 and 2012, respectively. Net payments made for federal and state income taxes during the nine months ended December 31, 2013 and 2012, were \$32.6 million and \$11.3 million, respectively.

**(E) ACCOUNTS AND NOTES RECEIVABLE**

Accounts and notes receivable have been shown net of the allowance for doubtful accounts of \$5.6 million and \$5.1 million at December 31, 2013 and March 31, 2013, respectively. We perform ongoing credit evaluations of our customers financial condition and generally require no collateral from our customers. The allowance for non-collection of receivables is based upon analysis of economic trends in the construction industry, detailed analysis of the expected collectability of accounts receivable that are past due and the expected collectability of overall

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receivables. We have no significant credit risk concentration among our diversified customer base.

We had notes receivable totaling approximately \$9.5 million at December 31, 2013, of which approximately \$6.3 million has been classified as current and presented with accounts receivable on the balance sheet. We lend funds to certain companies in the ordinary course of business, and the notes bear interest, on average, at the prime rate plus 1.5%. Remaining unpaid amounts, plus accrued interest, mature on various dates between 2014 and 2017. The notes are collateralized by certain assets of the borrowers, namely property and equipment and are generally payable monthly. We monitor the credit risk of each borrower by focusing on the timeliness of payments, review of credit history and credit metrics and interaction with the borrowers.

**Table of Contents****(F) INVENTORIES**

Inventories are stated at the lower of average cost (including applicable material, labor, depreciation, and plant overhead) or market, and consist of the following:

	As of	
	December 31, 2013	March 31, 2013
	(dollars in thousands)	
Raw Materials and Material-in-Progress	\$ 75,971	\$ 56,019
Finished Cement	16,933	18,077
Gypsum Wallboard	5,100	6,855
Aggregates	11,742	16,837
Paperboard	3,811	2,867
Repair Parts and Supplies	52,814	49,361
Fuel and Coal	7,500	6,364
	\$ 173,871	\$ 156,380

**(G) ACCRUED EXPENSES**

Accrued expenses consist of the following:

	As of	
	December 31, 2013	March 31, 2013
	(dollars in thousands)	
Payroll and Incentive Compensation	\$ 15,482	\$ 11,827
Benefits	9,373	10,349
Interest	2,017	4,813
Property Taxes	2,800	3,235
Power and Fuel	2,505	3,146
Sales and Use Tax	771	591
Acquisition Related Expenses		2,023
Other	6,674	5,365
	\$ 39,622	\$ 41,349

**(H) SHARE-BASED EMPLOYEE COMPENSATION**

On August 7, 2013 our stockholders approved the Eagle Materials Inc. Amended and Restated Incentive Plan (the "Plan"), which increased the shares we are authorized to issue as awards by 3,000,000 (1,500,000 of which may be stock awards). Under the terms of the Plan, we can issue equity awards, including stock options, restricted stock units ("RSUs"), restricted stock and stock appreciation rights to employees of the Company and members of the Board of Directors. Awards that were already outstanding prior to the approval of the Plan on August 7 remain outstanding. The Compensation Committee of our Board of Directors specifies the terms for grants of equity awards under the Plan.

*Long-Term Compensation Plans -*

*Options.* In August 2013, the Compensation Committee of the Board of Directors approved an incentive equity award of an aggregate of 206,914 stock options pursuant to the Plan to certain officers and key employees that vest ratably over a three year period (the "Fiscal 2014 Employee Stock Option Grant"). The options have a term of ten years from the date of grant. In August 2013, we granted 30,075 options to



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members of the Board of Directors (the Fiscal 2014 Board of Directors Grant ). Options granted under the Fiscal 2014 Board of Directors Grant vest immediately and can be exercised from the

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date of grant until their expiration on the tenth anniversary of the date of grant. The Fiscal 2014 Employee Stock Option Grant and Fiscal 2014 Board of Directors Grant were valued at the grant date using the Black-Scholes option pricing model.

The weighted-average assumptions used in the Black-Scholes model to value the option awards in fiscal 2014 are as follows:

	Fiscal 2014
Dividend Yield	2.0%
Expected Volatility	44.6%
Risk Free Interest Rate	2.0%
Expected Life	7.0 years

Stock option expense for all outstanding stock option awards totaled approximately \$1.3 million and \$4.0 million for the three and nine months ended December 31, 2013, respectively, and \$1.2 million and \$3.0 million of the three and nine months ended December 31, 2012, respectively. At December 31, 2013, there was approximately \$9.4 million of unrecognized compensation cost related to outstanding stock options, net of estimated forfeitures, which is expected to be recognized over a weighted-average period of 2.2 years.

The following table represents stock option activity for the nine month period ended December 31, 2013:

	Number of Shares	Weighted- Average Exercise Price
Outstanding Options at Beginning of Period	3,022,592	\$ 37.83
Granted	251,989	\$ 67.62
Exercised	(360,727)	\$ 29.17
Cancelled	(5,000)	\$ 53.22
Outstanding Options at End of Period	2,908,854	\$ 41.46
Options Exercisable at End of Period	942,570	\$ 31.51
Weighted-Average Fair Value of Options Granted during the Period	\$ 26.20	

The following table summarizes information about stock options outstanding at December 31, 2013:

Range of Exercise Prices	Outstanding Options			Exercisable Options	
	Number of Shares Outstanding	Average Remaining Contractual Life	Weighted - Average Exercise Price	Number of Shares Outstanding	Weighted - Average Exercise Price
\$23.17 - \$ 30.74	740,129	5.39	\$ 26.63	620,700	\$ 26.44
\$33.08 - \$ 40.78	609,272	7.17	\$ 34.59	257,546	\$ 35.45
\$47.53 - \$ 74.10	1,559,453	2.08	\$ 51.19	64,324	\$ 64.61
	2,908,854	3.99	\$ 41.46	942,570	\$ 31.51

At December 31, 2013, the aggregate intrinsic value for outstanding and exercisable options was approximately \$104.6 million and \$43.3 million, respectively. The total intrinsic value of options exercised during the nine month period ended December 31, 2013 was approximately \$15.9 million.



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*Restricted Stock Units.* There was no expense related to RSUs for the three and nine month periods ended December 31, 2013, respectively and \$0.4 million and \$1.2 million of expense for the three and nine months ended December 31, 2012, respectively.

*Restricted Stock.* In August 2013, the Compensation Committee also approved the granting of an aggregate of 93,186 shares of restricted stock to certain key employees at both the corporate and subsidiary level (the Fiscal 2014 Employee Restricted Stock Award ) that will be earned if our ten year return on equity is at least 15% at March 31, 2014. If this criterion is not met, all of the shares will be forfeited. If the criterion is met, the award may be reduced by the Compensation Committee based on individual performance goals. Following any such reduction, the earned shares will lapse ratably over five years, with the first fifth lapsing promptly following the vesting determination date, and the remaining restrictions lapsing on March 31, 2015 through 2018. The value of the Fiscal 2014 Employee Restricted Stock Award, net of estimated forfeitures, is being expensed over a five year period. In August 2013, we granted 5,761 shares of restricted stock to members of the Board of Directors (the Board of Directors Fiscal 2014 Restricted Stock Award ). Awards issued under the Board of Directors Fiscal 2014 Restricted Stock Award do not fully vest until the retirement of each director, in accordance with the Company's director retirement policy.

Expense related to restricted shares was approximately \$1.3 million and \$3.4 million for the three and nine months ended December 31, 2013, respectively and \$0.9 million and \$2.5 million for the three and nine months ended December 31, 2012, respectively. At December 31, 2013, there was approximately \$16.3 million of unearned compensation from restricted stock, net of estimated forfeitures, which will be recognized over a weighted-average period of 3.5 years.

The number of shares available for future grants of stock options, restricted stock units, stock appreciation rights and restricted stock under the Plan was 3,959,125 at December 31, 2013.

**(I) COMPUTATION OF EARNINGS PER SHARE**

The calculation of basic and diluted common shares outstanding is as follows:

	For the Three Months Ended December 31,		For the Nine Months Ended December 31,	
	2013	2012	2013	2012
Weighted-Average Shares of Common Stock Outstanding	49,294,010	48,331,185	49,091,476	45,920,452
Common Equivalent Shares:				
Assumed Exercise of Outstanding Dilutive Options	1,559,885	3,338,382	1,648,483	2,065,387
Less: Shares Repurchased from Assumed Proceeds of Assumed Exercised Options	(1,011,617)	(2,754,678)	(1,095,651)	(1,693,393)
Restricted Shares	320,684	334,658	303,870	282,278
Weighted-Average Common and Common Equivalent Shares Outstanding	50,162,962	49,249,547	49,948,178	46,574,724
Shares Excluded Due to Anti-dilution Effects	216,914	53,361	124,970	1,435,756

**Table of Contents****(J) PENSION AND EMPLOYEE BENEFIT PLANS**

We sponsor several defined benefit and defined contribution pension plans which together cover substantially all our employees. Benefits paid under the defined benefit plans covering certain hourly employees are based on years of service and the employee's qualifying compensation over the last few years of employment.

The following table shows the components of net periodic cost for our plans:

	For the Three Months Ended December 31,		For the Nine Months Ended December 31,	
	2013	2012	2013	2012
	(dollars in thousands)		(dollars in thousands)	
Service Cost - Benefits Earned During the Period	\$ 360	\$ 261	\$ 753	\$ 525
Interest Cost of Benefit Obligations	306	343	917	879
Expected Return on Plan Assets	(410)	(342)	(1,096)	(1,028)
Recognized Net Actuarial Loss	215	313	707	667
Amortization of Prior-Service Cost	1	(4)	9	24
Net Periodic Pension Cost	\$ 472	\$ 571	\$ 1,290	\$ 1,067

**(K) INCOME TAXES**

Income taxes for the interim period presented have been included in the accompanying financial statements on the basis of an estimated annual effective tax rate. In addition to the amount of tax resulting from applying the estimated annual effective tax rate to pre-tax income, we will, when appropriate, include certain items treated as discrete events to arrive at an estimated overall tax amount. The effective tax rate for the three and nine months ended December 31, 2013 was approximately 35% and 33%, respectively, which increased from 34% and 32% for the three and nine months ended December 31, 2012, respectively, due to the reduction in the impact of our depletion deduction as a result of increased earnings in fiscal year 2014.

**(L) LONG-TERM DEBT**

Long-term debt consists of the following:

	As of	
	December 31, 2013	March 31, 2013
	(dollars in thousands)	
Credit Facility	\$ 200,000	\$ 297,000
Senior Notes	192,259	192,259
Total Debt	392,259	489,259
Current Portion of Long-term Debt	(9,500)	
Long-term Debt	\$ 382,759	\$ 489,259

*Credit Facility -*

On December 16, 2010, we entered into a \$300.0 million revolving credit facility (the "Credit Facility"), which was amended on September 26, 2012 and is scheduled to expire on December 16, 2015. The amendment to the Credit Facility increased available revolving borrowings from

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\$300.0 million to \$400.0 million (including an increase in the swingline loan sublimit from \$15.0 million to \$25.0 million) and changed certain provisions in the negative covenants in order to allow for or facilitate the Acquisition, as well as to implement certain related changes to the financial covenants. These financial covenant changes primarily related to amending the definition of Consolidated EBITDA to allow the add-back to consolidated net income of certain transaction and other allocated overhead costs related to the Acquisition that are not expected to be incurred in the future. Borrowings under the Credit Facility are

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guaranteed by substantially all of the Company's subsidiaries. At the option of the Company, outstanding principal amounts on the Credit Facility bear interest at a variable rate equal to (i) LIBOR, plus an agreed margin (ranging from 100 to 225 basis points), which is to be established quarterly based upon the Company's ratio of consolidated EBITDA, defined as earnings before interest, taxes, depreciation and amortization, to the Company's consolidated indebtedness (the Leverage Ratio), or (ii) an alternative base rate which is the higher of (a) the prime rate or (b) the federal funds rate plus  $\frac{1}{2}\%$  per annum plus an agreed margin (ranging from 0 to 125 basis points). Interest payments are payable, in the case of loans bearing interest at a rate based on the federal funds rate, quarterly, or in the case of loans bearing interest at a rate based on LIBOR, at the end of the LIBOR advance periods, which can be up to a period of six months at the option of the Company. The Company is also required to pay a commitment fee on unused available borrowings under the Credit Facility ranging from 10 to 35 basis points depending upon the Leverage Ratio. The Credit Facility contains customary covenants that restrict our ability to incur additional debt, encumber our assets, sell assets, make or enter into certain investments, loans or guaranties and enter into sale and leaseback arrangements. The Credit Facility also requires us to maintain a consolidated indebtedness ratio (calculated as consolidated indebtedness to consolidated earnings before interest, taxes, depreciation, amortization, certain transaction-related deductions and other non-cash deductions) of 3.5:1.0 or less and an interest coverage ratio (consolidated earnings before interest, taxes, depreciation, amortization, certain transaction-related deductions and other non-cash deductions to consolidated interest expense) of at least 2.5:1.0. The Credit Facility also limits our ability to make certain restricted payments, such as paying cash dividends; however, there are several exceptions to this restriction, including: (i) the Company may pay cash dividends in an aggregate amount of up to \$50.0 million each fiscal year; and (ii) the Company may make restricted payments not otherwise permitted so long as, in each case, no default would result therefrom and our consolidated funded indebtedness ratio does not exceed 3.0:1.0. We had \$200.0 million of borrowings outstanding under the Credit Facility at December 31, 2013. Based on our Leverage Ratio, we had \$192.6 million of available borrowings, net of the outstanding letters of credit, under the Credit Facility at December 31, 2013.

The Credit Facility has a \$50.0 million letter of credit facility. Under the letter of credit facility, the Company pays a fee at a per annum rate equal to the applicable margin for Eurodollar loans in effect from time to time plus a one-time letter of credit fee in an amount equal to 0.125% of the initial stated amount. At December 31, 2013, we had \$7.4 million of letters of credit outstanding.

*Senior Notes -*

We entered into a Note Purchase Agreement on November 15, 2005 (the 2005 Note Purchase Agreement) related to our sale of \$200 million of senior, unsecured notes, designated as Series 2005A Senior Notes (the Series 2005A Senior Notes) in a private placement transaction. The Series 2005A Senior Notes, which are guaranteed by substantially all of our subsidiaries, were sold at par and issued in three tranches on November 15, 2005. Since entering into the 2005 Note Purchase Agreement, we have repurchased \$81.1 million in principal of the Series 2005A Senior Notes (in periods prior to the fiscal year ended March 31, 2013). During November 2012, Tranche A of the Series 2005A Senior Notes matured and we retired the remaining \$4.7 million in notes from this Tranche. Following these repurchases and maturities, the amounts outstanding for each of the remaining tranches are as follows:

	Principal	Maturity Date	Interest Rate
Tranche B	\$ 57.0 million	November 15, 2015	5.38%
Tranche C	\$ 57.2 million	November 15, 2017	5.48%

Interest for each tranche of Notes is payable semi-annually on the 15<sup>th</sup> day of May and the 15<sup>th</sup> day of November of each year until all principal is paid for the respective tranche.

We also entered into an additional Note Purchase Agreement on October 2, 2007 (the 2007 Note Purchase Agreement) related to our sale of \$200 million of senior, unsecured notes, designated as Series 2007A Senior Notes (the Series 2007A Senior Notes) in a private placement transaction. The Series 2007A Senior Notes, which are guaranteed by substantially all of our subsidiaries, were sold at par and

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issued in four tranches on October 2, 2007. Since entering into the 2007 Note Purchase Agreement, we have repurchased \$122.0 million in principal of the Series 2007A Senior Notes (in periods prior to the fiscal year ended March 31, 2013). Following the repurchase, the amounts outstanding for each of the four tranches are as follows:

	Principal	Maturity Date	Interest Rate
Tranche A	\$ 9.5 million	October 2, 2014	6.08%
Tranche B	\$ 8.0 million	October 2, 2016	6.27%
Tranche C	\$ 24.0 million	October 2, 2017	6.36%
Tranche D	\$ 36.5 million	October 2, 2019	6.48%

Interest for each tranche of Notes is payable semi-annually on the second day of April and the second day of October of each year until all principal is paid for the respective tranche.

We amended both the 2005 Note Purchase Agreement and 2007 Note Purchase Agreement (collectively, the Note Purchase Agreements ) on September 26, 2012. The amendment to each Note Purchase Agreement, among other things, mirrors the amendments to the Credit Facility, by changing certain provisions in the negative covenants in order to allow for and facilitate the Acquisition, as well as to implement certain related changes to the financial covenants. These financial covenant changes primarily related to amending the definition of Consolidated EBITDA to allow the add-back to consolidated net income of certain transaction and other allocated overhead costs related to the Acquisition that are not expected to be incurred in the future as well as reasonably identifiable cost savings, improvements and synergies related to the purchase of the Acquired Assets.

Our obligations under the 2005 Note Purchase Agreement and the 2007 Note Purchase Agreement (collectively referred to as the Note Purchase Agreements ) and the Series 2005A Senior Notes and the Series 2007A Senior Notes (collectively referred to as the Senior Notes ) are equal in right of payment with all other senior, unsecured debt of the Company, including our debt under the Credit Facility. The Note Purchase Agreements contain customary restrictive covenants, including covenants that place limits on our ability to encumber our assets, to incur additional debt, to sell assets, or to merge or consolidate with third parties, as well as certain cross covenants with the Credit Facility. We were in compliance with all financial ratios and tests at December 31, 2013 and throughout the fiscal year.

Pursuant to a Subsidiary Guaranty Agreement, substantially all of our subsidiaries have guaranteed the punctual payment of all principal, interest, and Make-Whole Amounts (as defined in the Note Purchase Agreements) on the Senior Notes and the other payment and performance obligations of the Company contained in the Senior Notes and in the Note Purchase Agreements. We are permitted, at our option and without penalty, to prepay from time to time at least 10% of the original aggregate principal amount of the Senior Notes at 100% of the principal amount to be prepaid, together with interest accrued on such amount to be prepaid to the date of payment, plus a Make-Whole Amount. The Make-Whole Amount is computed by discounting the remaining scheduled payments of interest and principal of the Senior Notes being prepaid at a discount rate equal to the sum of 50 basis points and the yield to maturity of U.S. treasury securities having a maturity equal to the remaining average life of the Senior Notes being prepaid.

As a result of the Acquisition, we succeeded to the leasehold interest held by Lafarge North America with respect to the cement plant located in Sugar Creek, Missouri, as well as its obligations under certain related industrial revenue bonds. In 1998, Lafarge North America had entered into a series of agreements, which were later amended in 2003, with the City of Sugar Creek, Missouri, in connection with the construction of improvements at the Sugar Creek cement plant. Under these agreements, Lafarge North America leased the Sugar Creek cement plant from the City of Sugar Creek, Missouri, which issued \$150.0 million of tax-exempt and taxable industrial revenue bonds to partly finance the construction of such improvements. The lease payments due to the City of Sugar Creek under the Sugar Creek cement plant lease are equal in amount to the payments required to be made by the City of Sugar Creek to the holders of the industrial revenue bonds. Upon the closing of the Acquisition, funds for the retirement of



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\$47.0 million of the industrial revenue bonds were placed into escrow by Lafarge North America, resulting in the defeasement of such bonds and leaving \$103.0 million of industrial revenue bonds outstanding. The defeased bonds were subsequently paid in full in June 2013. The remaining \$103.0 million of industrial revenue bonds held by Lafarge North America were transferred to a wholly owned subsidiary of the Company in connection with the Acquisition. Because we are now the holder of all of the outstanding industrial revenue bonds, no debt is reflected on our financial statements in connection with our lease of the Sugar Creek cement plant.

On August 31, 2011, we entered into an Uncommitted Master Shelf Agreement (the Shelf Agreement) with John Hancock Life Insurance Company (U.S.A.) (Hancock). The Shelf Agreement provided the terms under which the Company could offer up to \$75 million of its senior unsecured notes for purchase by Hancock or Hancock's affiliates that become bound by the Shelf Agreement (collectively, Purchasers). The Shelf Agreement did not obligate the Company to sell, or the Purchasers to buy, any such notes, and had a term of two years. We did not sell any notes pursuant to the Shelf Agreement prior to its expiration on August 31, 2013.

## **(M) SEGMENT INFORMATION**

Operating segments are defined as components of an enterprise that engage in business activities that earn revenues, incur expenses and prepare separate financial information that is evaluated regularly by our chief operating decision maker in order to allocate resources and assess performance.

We operate in four business segments: Cement, Gypsum Wallboard, Recycled Paperboard, and Concrete and Aggregates, with Cement and Gypsum Wallboard being our principal lines of business. These operations are conducted in the U.S. and include the mining of limestone and the manufacture, production, distribution and sale of Portland cement (a basic construction material which is the essential binding ingredient in concrete), the mining of gypsum and the manufacture and sale of gypsum wallboard, the manufacture and sale of recycled paperboard to the gypsum wallboard industry and other paperboard converters, the sale of readymix concrete and the mining and sale of aggregates (crushed stone, gravel and sand). These products are used primarily in commercial and residential construction, public construction projects, projects to build, expand and repair roads and highways and in oil and gas drilling.

As further discussed below, subsequent to the Acquisition, we operate six cement plants, seventeen cement distribution terminals, five gypsum wallboard plants, including the plant temporarily idled in Bernalillo, N.M., a gypsum wallboard distribution center, a recycled paperboard mill, seventeen readymix concrete batch plant locations and four aggregates processing plant locations. The principal markets for our cement products are Texas, northern Illinois (including Chicago), the Rocky Mountains, northern Nevada, the Kansas, Oklahoma and Western Missouri area, and northern California. Due to the low value to weight ratio of cement, cement is usually shipped within a 150 mile radius of the plants by truck and up to 400 miles by rail. Gypsum wallboard and recycled paperboard are distributed throughout the continental U.S. Concrete and aggregates are sold to local readymix producers and paving contractors in the Austin, Texas area, northern California and Kansas City, Missouri area.

We conduct one of our six cement plant operations, Texas Lehigh Cement Company LP in Buda, Texas, through a Joint Venture. For segment reporting purposes only, we proportionately consolidate our 50% share of the Joint Venture's revenues and operating earnings, which is consistent with the way management reports the segments within the Company for making operating decisions and assessing performance.

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We account for intersegment sales at market prices. The following table sets forth certain financial information relating to our operations by segment:

	For the Three Months Ended December 31,		For the Nine Months Ended December 31,	
	2013	2012	2013	2012
	(dollars in thousands)		(dollars in thousands)	
<b>Revenues -</b>				
Cement	\$ 105,578	\$ 74,935	\$ 356,482	\$ 229,492
Gypsum Wallboard	104,158	80,737	299,099	228,284
Paperboard	33,696	31,331	100,501	93,390
Concrete and Aggregates	28,336	14,201	83,639	41,335
Sub-total	271,768	201,204	839,721	592,501
Less: Intersegment Revenues	(16,766)	(12,461)	(49,247)	(37,434)
Net Revenues, including Joint Venture	255,002	188,743	790,474	555,067
Less: Joint Venture	(26,190)	(24,000)	(81,972)	(71,623)
Net Revenues	\$ 228,812	\$ 164,743	\$ 708,502	\$ 483,444

	For the Three Months Ended December 31,		For the Nine Months Ended December 31,	
	2013	2012	2013	2012
	(dollars in thousands)		(dollars in thousands)	
<b>Intersegment Revenues -</b>				
Cement	\$ 2,556	\$ 535	\$ 7,503	\$ 1,614
Paperboard	13,993	11,780	40,855	35,217
Concrete and Aggregates	217	146	889	603
	\$ 16,766	\$ 12,461	\$ 49,247	\$ 37,434
<b>Cement Sales Volume (in thousands of tons) -</b>				
Wholly owned Operations	876	592	3,037	1,852
Joint Venture	239	226	753	678
	1,115	818	3,790	2,530

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	For the Three Months Ended December 31,		For the Nine Months Ended December 31,	
	2013	2012	2013	2012
	(dollars in thousands)		(dollars in thousands)	
<b>Operating Earnings -</b>				
Cement	\$ 26,011	\$ 16,615	\$ 77,451	\$ 43,923
Gypsum Wallboard	30,730	16,870	90,234	47,356
Paperboard	6,661	7,963	19,277	20,934
Concrete and Aggregates	(3,698)	(1,335)	(3,550)	(1,496)
Other, net	400	(223)	1,300	(427)
<b>Sub-total</b>	<b>60,104</b>	<b>39,890</b>	<b>184,712</b>	<b>110,290</b>
Corporate General and Administrative	(6,796)	(6,268)	(18,450)	(16,942)
Acquisition and Litigation Expense		(2,485)		(8,859)
<b>Earnings Before Interest and Income Taxes</b>	<b>53,308</b>	<b>31,137</b>	<b>166,262</b>	<b>84,489</b>
Interest Expense, net	(4,475)	(3,836)	(14,225)	(11,149)
<b>Earnings Before Income Taxes</b>	<b>\$ 48,833</b>	<b>\$ 27,301</b>	<b>\$ 152,037</b>	<b>\$ 73,340</b>
<b>Cement Operating Earnings -</b>				
Wholly owned Operations	\$ 16,155	\$ 7,763	\$ 49,970	\$ 19,853
Joint Venture	9,856	8,852	27,481	24,070
	\$ 26,011	\$ 16,615	\$ 77,451	\$ 43,923
<b>Capital Expenditures -</b>				
Cement	\$ 2,657	\$ 3,851	\$ 8,493	\$ 8,798
Gypsum Wallboard	1,284	744	2,983	2,208
Paperboard	902	47	2,803	413
Aggregates	6,600	15,560	27,616	17,380
Concrete	68		1,199	24
Other	114	2	114	9
	\$ 11,625	\$ 20,204	\$ 43,208	\$ 28,832
<b>Depreciation, Depletion and Amortization -</b>				
Cement	\$ 8,036	\$ 5,258	\$ 23,684	\$ 12,991
Gypsum Wallboard	5,239	5,252	15,783	15,798
Paperboard	2,205	2,207	6,558	6,626
Aggregates	1,315	866	3,805	2,650
Concrete	460	401	1,356	937
Other, net	436	352	1,129	778
	\$ 17,691	\$ 14,336	\$ 52,315	\$ 39,780

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	As of	
	December 31, 2013	March 31, 2013
	(dollars in thousands)	
Identifiable Assets -		
Cement	\$ 744,363	\$ 756,158
Gypsum Wallboard	412,422	425,866
Paperboard	126,392	129,226
Aggregates	151,167	108,796
Concrete	27,892	27,187
Corporate and Other	25,028	29,000
	\$ 1,487,264	\$ 1,476,233

Segment operating earnings, including the proportionately consolidated 50% interest in the revenues and expenses of the Joint Venture, represent revenues, less direct operating expenses, segment depreciation, and segment selling, general and administrative expenses. Corporate assets consist primarily of cash and cash equivalents, general office assets, miscellaneous other assets and unrecognized tax benefits. The segment breakdown of goodwill is as follows:

	As of	
	December 31, 2013	March 31, 2013
	(dollars in thousands)	
Cement	\$ 8,359	\$ 8,359
Gypsum Wallboard	116,618	116,618
Paperboard	7,538	7,538
	\$ 132,515	\$ 132,515

We perform our annual test of impairment on goodwill during the fourth quarter of our fiscal year. If business conditions in the operating units containing goodwill change substantially during the fiscal year, and we are unable to conclude that an impairment loss is not likely to occur, we will perform impairment tests for those business units during our quarterly periods. At December 31, 2013, we determined that impairment losses are not likely to occur; therefore, no impairment tests were performed during the quarter.

We temporarily idled our gypsum manufacturing facility in Bernalillo, N.M. beginning in December 2009, due to cyclical low gypsum wallboard demand. The carrying value of the Bernalillo plant was \$3.0 million, and the carrying value of the equipment was \$1.9 million at December 31, 2013, and we continue to depreciate the assets over their estimated useful life. We currently have a strong market position in New Mexico, and our Albuquerque gypsum wallboard facility is operating at close to capacity. We plan on resuming manufacturing at the Bernalillo facility in the future as demand for our products improves. Costs of maintaining the facility during the idling are not significant, and the facility was generating positive cash flow prior to being idled; therefore, we have determined that the value of the plant and equipment is not impaired. We are not currently considering the permanent closure of the Bernalillo facility. Any decision to permanently close Bernalillo would be the result of future changes in the building materials industry in the southwest United States and Rocky Mountain region, including changes in the production capacity or operations of our competitors, demand for gypsum wallboard or general macro-economic conditions, which we do not foresee at the present time. If we were to permanently close the Bernalillo facility, or if our expectations as to its use changed such that we project the future undiscounted cash flows from its operations would be insufficient to recover its carrying value due to the factors described above, or for any other reason, we would recognize impairment at that time. All of our other wallboard facilities are currently generating positive cash flow from operations.

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Summarized financial information for the Joint Venture that is not consolidated is set out below (this summarized financial information includes the total amount for the Joint Venture and not our 50% interest in those amounts):

	For the Three Months		For the Nine Months	
	Ended December 31,		Ended December 31,	
	2013	2012	2013	2012
	(dollars in thousands)		(dollars in thousands)	
Revenues	\$ 52,380	\$ 48,000	\$ 163,944	\$ 143,246
Gross Margin	\$ 20,513	\$ 19,165	\$ 57,848	\$ 51,653
Earnings Before Income Taxes	\$ 19,712	\$ 17,704	\$ 54,962	\$ 48,140

	As of	
	December 31,	March 31,
	2013	2013
	(dollars in thousands)	
Current Assets	\$ 57,032	\$ 53,059
Non-Current Assets	\$ 42,777	\$ 44,120
Current Liabilities	\$ 19,617	\$ 12,913

**(N) INTEREST EXPENSE**

The following components are included in interest expense, net:

	For the Three Months		For the Nine Months	
	Ended December 31,		Ended December 31,	
	2013	2012	2013	2012
	(dollars in thousands)		(dollars in thousands)	
Interest (Income)	\$ (1)	\$ (48)	\$ (3)	\$ (52)
Interest Expense	4,102	3,556	13,071	10,449
Interest Expense    Income Taxes	155	100	481	288
Other Expenses	219	228	676	464
<b>Interest Expense, net</b>	<b>\$ 4,475</b>	<b>\$ 3,836</b>	<b>\$ 14,225</b>	<b>\$ 11,149</b>

Interest income includes interest on investments of excess cash. Components of interest expense include interest associated with the Senior Notes, the Credit Facility and commitment fees based on the unused portion of the Credit Facility. Other expenses include amortization of debt issuance costs, and credit facility costs.

Interest expense    Income Taxes relates to interest accrued on our unrecognized tax benefits, primarily related to the Republic Asset Acquisition.

**(O) COMMITMENTS AND CONTINGENCIES**

We have certain deductible limits under our workers' compensation and liability insurance policies for which reserves are established based on the undiscounted estimated costs of known and anticipated claims. We have entered into standby letter of credit agreements relating to workers compensation and auto and general liability self-insurance. At December 31, 2013, we had contingent liabilities under these outstanding letters of credit of approximately \$7.4 million.

In the ordinary course of business, we execute contracts involving indemnifications that are standard in the industry and indemnifications specific to a transaction such as sale of a business. These indemnifications may include claims relating to any of the following: environmental and tax matters;



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intellectual property rights; governmental regulations and employment-related matters; customer, supplier, and other commercial contractual relationships; construction contracts and financial matters. While the maximum amount to which the Company may be exposed under such agreements cannot be estimated, it is the opinion of management that these indemnifications are not expected to have a material adverse effect on our consolidated financial position, results of operations or cash flows. We currently have no outstanding guarantees.

We are currently contingently liable for performance under \$15.3 million in performance bonds required by certain states and municipalities, and their related agencies. The bonds are principally for certain reclamation obligations and mining permits. We have indemnified the underwriting insurance company against any exposure under the performance bonds. In our past experience, no material claims have been made against these financial instruments.

**Outstanding Lawsuit against the IRS**

The IRS has completed its examinations of our federal income tax returns for fiscal years ended March 31, 2001 through March 31, 2010. The IRS issued Exam Reports and Notices of Proposed Adjustment on November 9, 2007 for the examination of the 2001, 2002 and 2003 tax years, and on February 5, 2010 for the examination of the 2004, 2005 and 2006 tax years, in which it denied certain depreciation deductions claimed by us with respect to assets acquired from Republic Group LLC in November 2000 (the Republic Assets). In addition, on October 5, 2012, the IRS issued a 30-day letter related to the examination of the tax returns for fiscal years ended March 31, 2007 through March 31, 2010, denying certain depreciation deductions claimed by us with respect to the Republic Assets, similar to the actions taken by the IRS for our tax years ended March 31, 2001 through March 31, 2006, described above.

In June 2010, we received a Notice of Deficiency ( Notice ) of \$71.5 million of taxes and penalties for the fiscal years ended March 31, 2001 through 2006, inclusive, related to the IRS audit of the Republic Asset Acquisition. The Notice was in substantial agreement with our financial accruals, including interest. The total amount related to the Notice, including interest, was approximately \$98.7 million, of which \$75 million had previously been deposited with the IRS. We deposited the remaining \$23.7 million with the IRS in July 2010 and asked the IRS to apply all \$98.7 million of deposits to the payment of the tax, penalties and interest. Subsequent review of the IRS interest billing produced a refund of \$0.8 million reducing the net outlay to \$97.9 million. Refund claims were filed with the IRS in October 2010 to recover all \$97.9 million, plus interest. The IRS has denied our refund request and we filed a lawsuit in May 2011 in Federal District Court to recover the requested refunds. In September 2013 the judge heard arguments on each party's motion for summary judgment and in November 2013 the judge denied each such motion. Additionally, the judge suspended the December 2013 trial date without setting a new date.

With respect to the tax returns for the fiscal years ended March 31, 2007 through March 31, 2010, the IRS has issued an assessment of approximately \$8.1 million of income tax and approximately \$1.9 million in penalties relating to the acquisition of the Republic Assets. In addition, we estimate that interest of approximately \$2.4 million has accrued on these amounts as of December 31, 2013. These amounts have been fully accrued in our financial statements at December 31, 2013. The amounts accrued have been treated as unrecognized tax liabilities and are included in Other Long Term Liabilities on our Consolidated Balance Sheet at December 31, 2013. On October 31, 2012, we appealed the findings of the examiner to the IRS Appeals Office, contesting the assessment of tax, penalties and interest for fiscal years ended March 31, 2007 through March 31, 2010. In March 2013, the IRS agreed to suspend the audit for tax years 2007 through 2011 pending the outcome of our case in Federal District Court.

In the event we reach a settlement through negotiation or in the courts, we will reverse any accrued taxes, interest and penalties in excess of the negotiated settlement through the Consolidated Statement of Earnings. At this time, we are unable to predict with certainty the ultimate outcome or how much of the amounts paid for tax, interest, and penalties to the IRS and state taxing authorities will be recovered, if any.

**Table of Contents****Domestic Wallboard Antitrust Litigation**

Since late December 2012, several purported class action lawsuits were filed against the Company's subsidiary, American Gypsum Company LLC (American Gypsum), alleging that American Gypsum conspired with other wallboard manufacturers to fix the price for drywall sold in the United States in violation of federal antitrust laws and, in some cases related provisions of state law. The complaints allege that the defendant wallboard manufacturers conspired to increase prices through the announcement and implementation of coordinated price increases, output restrictions, and other restraints of trade, including the elimination of individual job quote pricing. In addition to American Gypsum, the defendants in these lawsuits include CertainTeed Corp., USG Corporation, New NGC, Inc., Lafarge North America, Georgia-Pacific LLC, Temple Inland Inc. and PABCO Building Products LLC. The plaintiffs in these class action lawsuits bring claims on behalf of purported classes of direct or indirect purchasers of wallboard during various periods from 2008 to present for unspecified monetary damage (including treble damages) and in some cases injunctive relief in various United States district courts, including the Eastern District of Pennsylvania, Western District of North Carolina, North Carolina and the Northern District of Illinois. On April 8, 2013, the Judicial Panel on Multidistrict Litigation transferred and consolidated all related cases to the Eastern District of Pennsylvania for coordinated pretrial proceedings.

On June 24, 2013, the direct and indirect purchaser plaintiffs filed consolidated amended class action complaints. The direct purchasers complaint added the Company as a defendant. On July 29, 2013, the Company and American Gypsum answered the complaints, denying all allegations that they conspired to increase the price of drywall and asserting affirmative defenses to plaintiffs' claims.

While American Gypsum's production of written discovery is substantially complete, discovery is ongoing. Due to the fact that these claims remain in a preliminary phase, we are unable to assess the likelihood or amount of potential loss relating to the claims, or whether such losses, if any, would have a material impact on our financial position, results of operations or cash flows. American Gypsum denies the allegations in these lawsuits and will vigorously defend itself against these claims.

**(P) FAIR VALUE OF FINANCIAL INSTRUMENTS**

The fair value of our long-term debt has been estimated based upon our current incremental borrowing rates for similar types of borrowing arrangements. The fair value of our Senior Notes at December 31, 2013 is as follows:

	Fair Value (dollars in thousands)
Series 2005A Tranche B	\$ 59,698
Series 2005A Tranche C	60,847
Series 2007A Tranche A	9,742
Series 2007A Tranche B	8,648
Series 2007A Tranche C	26,208
Series 2007A Tranche D	39,931

The estimated fair value of our long-term debt was based on quoted prices of similar debt instruments with similar terms that are publicly traded (level 2 input). The carrying values of cash and cash equivalents, accounts and notes receivable, accounts payable and accrued liabilities approximate their fair values at December 31, 2013 due to the short-term maturities of these assets and liabilities. The fair value of our Credit Facility also approximates its carrying value at December 31, 2013.



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**Item 2. Management's Discussion and Analysis of Results of Operations and Financial Condition**

**EXECUTIVE SUMMARY**

Eagle Materials Inc. is a diversified producer of basic building products used in residential, industrial, commercial and infrastructure construction. Information presented for the three and nine months ended December 31, 2013 and 2012, respectively, reflects the Company's four business segments, consisting of Cement, Gypsum Wallboard, Recycled Paperboard and Concrete and Aggregates. These operations are conducted in the U.S. and include the mining of limestone and the manufacture, production, distribution and sale of Portland cement (a basic construction material which is the essential binding ingredient in concrete), the mining of gypsum and the manufacture and sale of gypsum wallboard, the manufacture and sale of recycled paperboard to the gypsum wallboard industry and other paperboard converters, the sale of readymix concrete and the mining and sale of aggregates (crushed stone, sand, gravel and frac sand). These products are used primarily in commercial and residential construction, public construction projects and projects to build, expand and repair roads and highways and in oil and natural gas extraction. Certain information for each of Concrete and Aggregates is broken out separately in the segment discussions.

On November 30, 2012, the Company completed the acquisition (the Acquisition) of certain assets of Lafarge North America Inc. (Lafarge North America or the Sellers). The Acquisition expanded the scope of our cement business in a geographic area that is complementary to, but does not overlap with, our existing cement business. The Acquisition also further positions the Company near energy growth markets where there is growing demand for our specialty oil well cement and other related products.

The assets acquired by us in the Acquisition were used by the Sellers in connection with the business (the Acquired Assets) of producing, marketing and selling portland cement and concrete in Kansas, Missouri and Oklahoma, and include the following:

two cement plants located in Sugar Creek, Missouri and Tulsa, Oklahoma;

the related cement distribution terminals located in Sugar Creek and Springfield, Missouri; Omaha, Nebraska; Iola and Wichita, Kansas; and Oklahoma City, Oklahoma;

two aggregates quarries near Sugar Creek, Missouri;

eight ready-mix plants located in or near Kansas City, Missouri;

certain fly ash operations conducted in the Kansas City, Missouri area; and

certain related assets such as equipment, accounts receivable and inventory.

The final purchase price (Purchase Price) of the Acquisition was \$450.7 million, as adjusted to reflect actual working capital acquired at the closing. We funded the payment of the Purchase Price at closing and expenses incurred in connection with the Acquisition through a combination of borrowings under our bank credit facility and the proceeds from our issuance of common stock, which was completed on October 3, 2012. In addition, we assumed certain liabilities in the Acquisition, including accounts payable, contractual obligations, reclamation obligations and other liabilities related to the Acquired Assets. The operating results of the Acquired Assets are included in our results of operations beginning December 1, 2012.

We began operations at our new frac sand plant in Corpus Christi, Texas during the first quarter of fiscal 2014. We continue to pursue other locations that are geographically supportive of the frac sand business, and anticipate capital expenditures related to frac sand to be in the range of \$20.0 million to \$30.0 million during fiscal 2014. The results of operations of the frac sand business are reported in the concrete and aggregates segment.



## **Table of Contents**

We continue to pursue opportunities in businesses which are naturally adjacent to our existing core businesses and would allow us to leverage our core competencies and existing infrastructure and customer relationships. We are also continuing to increase our production of specialty oil well cements. Oil well cements generate higher profit margins than regular construction cement sales and we are among the few producers of oil well cements. The entry into any such new businesses requires capital expenditures and the investment of management time and other resources, and is subject to the risks associated with any new business development.

We operate in cyclical commodity businesses that are affected by changes in market conditions and the overall construction environment. Our operations, depending on each business segment, range from local in nature to national businesses. We have operations in a variety of geographic markets, which subject us to the economic conditions in those geographic markets as well as economic conditions in the national market. Our Cement companies are located in geographic areas west of the Mississippi river and the Chicago, Illinois metropolitan area. Due to the low value-to-weight ratio of cement, it is usually shipped within a 150 mile radius of the plants by truck and up to 300 miles by rail. Concrete and Aggregates are even more regional as those operations serve the areas immediately surrounding Austin, Texas, north of Sacramento, California and the greater Kansas City, Missouri area. Cement, concrete and aggregates demand may fluctuate more widely because local and regional markets and economies may be more sensitive to changes than the national markets. Our Wallboard and Paperboard operations are more national in scope and shipments are made throughout most of the continental United States.

We conduct one of our cement operations through a joint venture, Texas Lehigh Cement Company LP, which is located in Buda, Texas (the Joint Venture ). We own a 50% interest in the Joint Venture and account for our interest under the equity method of accounting. We proportionately consolidate our 50% share of the Joint Venture s revenues and operating earnings in the presentation of our cement segment, which is the way management organizes the segments within the Company for making operating decisions and assessing performance.

## **RESULTS OF OPERATIONS**

### **Consolidated Results**



of the outstanding Series A Convertible Redeemable Preferred Stock at any time at their then current stated value, subject to a redemption

Upon a change of control of the Company, the h

The shares of Series B Convertible Preferred Stock are convertible, at the option of the holders, into shares of our

(i) and (ii) are referred to as the Trading Price Conditions ) or (y) immediately prior to the consummation of a fundamental transact

































er; however, there can be no assurance that an agreement will be reached.















ent expenditures, leases of office space, and costs of cloud computing and hosting services constitute the majority of our monthly operating













fter December 15, 2018. We are currently in the process of evaluating the impact of adoption of ASU 2016-02 on our consolidated financial

























ettle the matter with the holder; however, there can be no assurance that an agreement will be reached.











ernance Committee and Special Committee of SFX. Mr. Barnes brings to our Board knowledge and expertise within corporate finance

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School, both in New York City. The Board has selected Mr. Nelson as a director because it believes his legal and business experience w

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Because Mr. Sillerman is our Chairman and Chief Executive Officer, the Company

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ce of \$1,600.00 per share, but making no other changes in Mr. Sillerman's employment agreement.

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adjustment for stock dividends, subdivisions, reclassifications, recapitalizations and other similar events), of the Company's common stock

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reement and for a period of one year after termination of her employment.























Mr. Sillerman beneficially owns 2,073,079 shares of common stock, including: (i) directly 8,113 shares of common stock owned by Mr. S

are exercisable or will be exercisable within 60 days of January 18, 2017 at \$3,088.00 per share; (v) 31 shares of common stock exercisable upon the exercise of stock options that are exercisable or will be exercisable within 60 days of January 18, 2017; (vi) 15 shares of common stock exercisable upon the exercise of stock options that are exercisable or will be exercisable within 60 days of January 18, 2017; and (vii) 20 shares of common stock exercisable upon the exercise of stock options that are exercisable or will be exercisable within 60 days of January 18, 2017.





documents (including, without limitation, the Underwriting Agreement, and, if appropriate, any Agreement Among Underwriters, Select

common stock at a price below the warrant exercise price. The 53,200 warrants we issued to Aegis Capital Corp. in connection with our

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As used in this report:

Function(x) refers to Function(x) Inc., a Delaware corporation formerly known as DraftDay Fantasy Sports Inc. and Viggie Inc. (also herein referred to as the Company )

App refers to the free Viggie application (also herein referred to as the Viggie App )

We , us and our refer to Function(x) and its subsidiaries, individually, or in any combination

SFX refers to SFX Entertainment Inc., a company affiliated with Robert F.X. Sillerman, the Company s Executive Chairman, Chief Executive Officer, and a Director (hereinafter, Mr. Sillerman )

SIC refers to Sillerman Investment Company, LLC, a company affiliated with Mr. Sillerman

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SIC II refers to Sillerman Investment Company II, LLC, a company affiliated with Mr. Sillerman

SIC III refers to Sillerman Investment Company III, LLC, a company affiliated with Mr. Sillerman

SIC IV refers to Sillerman Investment Company IV, LLC, a company affiliated with Mr. Sillerman

SIC VI refers to Sillerman Investment Company VI, LLC, a company affiliated with Mr. Sillerman

Reverse Stock Split refers to the reverse stock split effected on September 16, 2016, whereby shareholders are entitled to receive one share for each 20 shares of the Company's common stock.

All dollar amounts in this report, except per share amounts, unless indicated otherwise, are in thousands.

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TABLE OF CONTENTS**FINANCIAL STATEMENTS****Function(x) Inc.****CONSOLIDATED BALANCE SHEETS  
(amounts in thousands, except share data)**

	September 30, 2016 (Unaudited)	June 30, 2016
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 827	\$ 537
Marketable securities		2,495
Accounts receivable (net of allowance for doubtful accounts of \$20 at September 30, 2016 and June 30, 2016)	383	307
Prepaid expenses	53	226
Other receivables	127	114
Other current assets	14	110
Current assets of discontinued operations	20	39
Total current assets	1,424	3,828
Restricted cash	435	440
Property & equipment, net	1,337	1,414
Intangible assets, net	10,229	5,339
Goodwill	18,859	11,270
Other assets	786	748
Total assets	\$ 33,070	\$ 23,039
<b>Liabilities, convertible redeemable preferred stock and stockholders equity/(deficit)</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 9,484	\$ 11,625
Deferred revenue	682	637
Current portion of loans payable, net	8,853	8,996
Current liabilities of discontinued operations	2,830	2,851
Total current liabilities	21,849	24,109
Loans payable, less current portion		19,716
Deferred revenue	3,229	3,429
Common stock warrant liability	1,510	10
Other long-term liabilities	929	951
Total liabilities	27,517	48,215

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Series A Convertible Redeemable Preferred Stock, \$1,000 stated value, authorized 100,000 shares, issued and outstanding -0- shares as of September 30, 2016 and June 30, 2016

Commitments and contingencies

Stockholders' equity/(deficit):

Series B Convertible Preferred Stock, \$1,000 stated value, authorized 50,000 shares, issued and outstanding -0- shares as of September 30, 2016 and June 30, 2016

Series C Convertible Redeemable Preferred Stock, \$1,000 stated value, authorized 100,000 shares, issued and outstanding of 33,175 and 3,000 shares as of September 30, 2016 and June 30, 2016, respectively

33,912 4,940

See accompanying Notes to Consolidated Financial Statements

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TABLE OF CONTENTS**FINANCIAL STATEMENTS****Function(x) Inc.****CONSOLIDATED BALANCE SHEETS (continued)  
(amounts in thousands, except share data)**

	September 30, 2016 (Unaudited)	June 30, 2016
Series D Preferred Stock, \$1,000 stated value, authorized 150 shares, issued and outstanding -0- shares as of September 30, 2016 and June 30, 2016	\$	\$
Series E Convertible Preferred Stock, \$1,000 stated value, authorized 10,000 shares, issued and outstanding 4,435 and -0- shares as of September 30, 2016 and June 30, 2016, respectively	7,600	
Common stock, \$0.001 par value: authorized 300,000,000 shares, issued and outstanding 3,056,353 and 3,023,753 shares as of September 30, 2016 and June 30, 2016, respectively	3	3
Additional paid-in-capital	410,995	409,765
Treasury stock, 10,758 shares at September 30, 2016 and June 30, 2016	(11,916 )	(11,916 )
Accumulated deficit	(435,650)	(428,380)
Accumulated other comprehensive income		(361 )
Noncontrolling interest	609	773
Total stockholders' equity/(deficit)	5,553	(25,176 )
Total liabilities and stockholders' equity/(deficit)	\$33,070	\$23,039
See accompanying Notes to Consolidated Financial Statements		

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TABLE OF CONTENTS**Function(x) Inc.**

**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(amounts in thousands, except share and per share**  
**data)**  
**(Unaudited)**

	Three Months Ended	
	September 30,	
	2016	2015
Revenues	\$659	\$922
Selling, general and administrative expenses	(4,040 )	(7,700 )
Operating loss	(3,381 )	(6,778 )
Other expense:		
Other (expense)/income, net	(2,485 )	2
Interest expense, net	(1,651 )	(856 )
Total other expense	(4,136 )	(854 )
Net loss before provision for income taxes	(7,517 )	(7,632 )
Income tax expense		
Net loss from continuing operations	\$(7,517 )	\$(7,632 )
Net loss from discontinued operations	(36 )	(5,780 )
Net loss	(7,553 )	(13,412 )
Accretion of Convertible Redeemable Preferred Stock	22	74
Undeclared Series C Convertible Redeemable Preferred Stock Dividend	(494 )	(307 )
Add: Net loss attributable to non-controlling interest	283	168
Net loss attributable to Function(x) Inc. common stockholders	\$(7,742 )	\$(13,477 )
Net loss per common share basic and diluted:		
Continuing operations	\$(2.52 )	\$(6.46 )
Discontinued operations	\$(0.01 )	\$(4.85 )
Net loss per share attributable to Function(x) Inc. common stockholders basic and diluted	\$(2.53 )	\$(11.31 )
Weighted average common shares outstanding basic and diluted	3,053,796	1,191,434
See accompanying Notes to Consolidated Financial Statements		

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**Function(x) Inc.**

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**

**(amounts in thousands)**

**(Unaudited)**

	Three Months Ended September 30,	
	2016	2015
Net loss	\$(7,553)	\$(13,412)
Other comprehensive income, net of tax:		
Unrealized loss on available for sale securities	(289 )	
Reclass of available for sale securities to Consolidated Statements of Operations	650	
Other comprehensive income	361	
Comprehensive loss	\$(7,192)	\$(13,412)
See accompanying Notes to Consolidated Financial Statements		

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**Function(x) Inc.**

**CONSOLIDATED STATEMENT OF STOCKHOLDERS  
EQUITY/(DEFICIT)  
(amounts in thousands)  
(Unaudited)**

See accompanying Notes to Consolidated Financial Statements

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TABLE OF CONTENTS**Function(x) Inc.**

# CONSOLIDATED STATEMENTS OF CASH FLOWS

## (amounts in thousands)

### (Unaudited)

	Three Months Ended September 30,	
	2016	2015
<b>Operating activities:</b>		
Net loss	\$ (7,553 )	\$ (13,412 )
Adjustments to reconcile net loss to net cash used in operating activities:		
Restricted stock share based compensation	15	4,991
Employee stock options share based compensation	12	173
Fair value adjustments on loans payable and preferred stock		50
Loss on sale of Perk shares and warrants	2,193	
Depreciation and amortization	687	1,196
Accretion of debt issuance costs and discount	1,075	
Changes in operating assets and liabilities:		
Accounts receivable, net	(76 )	732
Other receivables	(13 )	106
Prepaid expenses	173	(58 )
Other assets	58	(140 )
Deferred revenue	(155 )	3,082
Accounts payable and accrued expenses	(591 )	(30 )
Reward points liability		(285 )
Other liabilities	(21 )	92
Net cash used in operating activities	(4,196 )	(3,503 )
<b>Investing activities:</b>		
Acquisitions, net of cash acquired		535
Sale of Perk shares and warrants	1,300	
Net cash provided by investing activities	1,300	535
<b>Financing activities:</b>		
Proceeds from loans	4,348	5,000
Repayments on loans	(1,162 )	(3,000 )
Payments related to contingent consideration		(1,728 )
Net cash provided by financing activities	3,186	272
Net increase (decrease) in cash	290	(2,696 )
Cash at beginning of period	537	4,217
Cash at end of period	\$ 827	\$ 1,521
<b>Supplemental cash flow information:</b>		
Cash paid during the period for interest	\$ 30	\$
<b>Non-Cash investing and financing activities:</b>		

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Series C conversion with SIC III, SIC IV, and SIC VI notes	\$ 28,500	\$
Series E issuance in connection with the Rant acquisition (Note 6)	7,600	
Rant Note issuance in connection with the Rant acquisition (Note 6)	3,500	
Liabilities assumed in connection with Rant acquisition (Note 6)	1,990	
Common stock and warrants issued for DraftDay acquisition		1,757
Common stock and warrants issued for management service contracts		3,475
See accompanying Notes to Consolidated Financial Statements		

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 1. Basis of Presentation and Consolidation

### Overview

On January 27, 2016, Function(x) Inc. ( Company , Function(x) and we ) changed its name from Viggie Inc. to DraftDay Fantasy Sports, Inc. ( DraftDay ), and changed its ticker symbol from VGGL to DDAY. On June 10, 2016, the Company changed its name from DraftDay Fantasy Sports, Inc. to Function(x) Inc., and changed its ticker symbol from DDAY to FNCX. It now conducts business under the name Function(x) Inc.

The Consolidated Financial Statements include the accounts of the Company, its wholly-owned subsidiaries, and DraftDay Gaming Group, Inc. ( DDGG ). The Company has nine wholly-owned subsidiaries, Function(x) Inc., Project Oda, Inc., Sports Hero Inc., Loyalize Inc., Viggie Media Inc., VX Acquisition Corp., Nextguide Inc., Wetpaint.com, Inc. ( Wetpaint ), and Choose Digital, Inc. ( Choose Digital ), each a Delaware corporation. DraftDay owns approximately 60% of the issued and outstanding common stock of DDGG, and also appoints a majority of the members of its Board of Directors.

On September 8, 2015, the Company and its newly created subsidiary DraftDay Gaming Group, Inc. ( DDGG ) entered into an Asset Purchase Agreement (the Asset Purchase Agreement ) with MGT Capital Investments, Inc. ( MGT Capital ) and MGT Sports, Inc. ( MGT Sports ), pursuant to which the Company acquired all of the assets of the DraftDay.com business (the DraftDay Business or DraftDay.com ) from MGT Capital and MGT Sports.

In December 2015, as a result of the sale of certain assets to Perk and acquisition of the DraftDay Business, we reorganized the organizational management and oversight of the Company into three segments (see Note 4, Segments). Accordingly, prior period financial information has been recast to confirm to the current period presentation. These changes impacted Note 4: Segments and Note 3: Summary of Significant Accounting Policies, with no impact on consolidated net loss or cash flows in any period.

On February 8, 2016, the Company completed the sale of assets related to the Company's rewards business, including the Viggie App, in accordance with the Asset Purchase Agreement (the Perk Agreement ) with Perk.com, Inc. ( Perk ) entered into on December 13, 2015. Management entered into this binding sales agreement following a strategic decision to divest the operations related to the Viggie App and place greater focus on its remaining businesses. The assets, liabilities and operations related to Loyalize Inc., and Nextguide Inc. (as well as the portion of the assets relating to our discontinued rewards business within the Company) have been classified as discontinued operations on the accompanying consolidated financial statements for all periods presented. In accordance with Accounting Standards Codification ( ASC ) No. 205, *Presentation of Financial Statements*, the inter-segment revenues and

expenses related to services provided by Choose Digital to the Viggie rewards business (discontinued operations) are presented at cost in the Consolidated Statements of Operations.

On July 12, 2016, the Company and RACX Inc., a Delaware corporation and wholly-owned subsidiary of the Company ( RACX ), completed an acquisition pursuant to an Asset Purchase Agreement (the Asset Purchase Agreement ) with Rant, Inc., a Delaware corporation, pursuant to which RACX has acquired the assets of Rant (the Asset Purchase ) used in the operation of Rant's Rant.com independent media network and related businesses (the Rant Assets ). The Company acquired assets of Rant for approximately \$1,990 in assumed liabilities, a \$3,000 note, and 4,435 shares of Series E Convertible Preferred stock which, upon satisfaction of certain conditions including shareholder approval, will be convertible into shares of our common stock equal to 22% of the fully diluted shares outstanding, in a move to become a market leader in social publishing.

On September 16, 2016, the Company amended its Certificate of Incorporation to effect a reverse stock split of all issued and outstanding shares of common stock at a ratio of 1 for 20 (the Reverse Stock Split ). Owners of fractional shares outstanding after the Reverse Stock Split will be paid cash for such fractional

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 1. Basis of Presentation and Consolidation - (continued)

interests. The effective date of the Reverse Stock Split is September 16, 2016. All common stock share amounts disclosed in these financial statements have been adjusted to reflect the Reverse Stock Split.

### Going Concern

These financial statements have been prepared on a going concern basis which assumes the Company's ability to continue to realize its assets and discharge its liabilities in the normal course of business. The Company is unlikely to generate significant revenue or earnings in the immediate or foreseeable future. The continuation of the Company as a going concern is dependent upon the continued financial support from its stockholders, the ability of the Company to obtain necessary equity or debt financing to continue development of its business and to generate revenue and the Company's ability to cure the events of default (Note 16, Subsequent Events.) Management intends to raise additional funds through equity and/or debt offerings until sustainable revenues are developed. There is no assurance such equity and/or debt offerings will be successful and therefore there is substantial doubt about the Company's ability to continue as a going concern within one year after the financial statements are issued. The accompanying financial statements do not include any adjustments that might result from the outcome of these uncertainties, including the events of default.

## 2. Lines of Business

The Company conducts business through three operating segments: Wetpaint, Choose Digital, and DDGG. These operating segments are described below.

Through Wetpaint, the Company reports original news stories and publishes information content covering top television shows, music, celebrities, entertainment news and fashion. Wetpaint publishes more than 55 new articles, videos and galleries each day. The Company generates revenues through wetpaint.com by displaying advertisements to wetpaint.com users as they view its content.

To enhance our digital publishing business, the Company recently acquired assets of Rant Inc. ( Rant ), a leading digital publisher that publishes original content in 13 different verticals, most notably in sports, entertainment, pets, cars, and food. The combined Wetpaint and Rant properties currently have approximately 13.5 million fans on their Facebook pages and generate an average of 14.4 million visits per month.

Choose Digital is a white-label digital marketplace featuring a recent and wide range of digital content, including



music, movies, TV shows, eBooks and audiobooks. The content is sourced from the world's leading record companies and book publishers and an aggregator of movie and TV content. Choose Digital generates revenues when participants in Choose Digital's clients' loyalty programs redeem loyalty credits for digital content provided by Choose Digital. For example, if a participant in a loyalty program redeems credits for a song download provided by Choose Digital, the client loyalty program pays Choose Digital for the download.

The Company's wholly owned subsidiary, DDGG, made a recent investment in the DraftDay.com platform. Through DraftDay.com, users can draft a fantasy sports team within a salary cap, follow game action and reap rewards. DraftDay.com will continue to offer high-quality entertainment to consumers as well as to businesses desiring turnkey solutions to new revenue streams. See Note 6, Acquisitions, for further details on this acquisition.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

### 3. Summary of Significant Accounting Policies

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and notes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal, recurring adjustments) considered necessary for a fair presentation have been included. Operating results for the three months ended September 30, 2016 are not necessarily indicative of the results that may be expected for the year ending June 30, 2017.

#### Cash and Cash Equivalents and Restricted Cash

The Company considers all highly liquid securities purchased with original maturities of 90 days or less to be cash equivalents. Cash equivalents are stated at cost which approximates market value and primarily consists of money market funds that are readily convertible into cash. Restricted cash comprises amounts held in deposit that were required as collateral under leases of office space.

#### Marketable Securities

In February 2016, the Company received 1,370,000 shares of Perk's stock, which is publicly traded on the Toronto Stock Exchange, as part of the consideration in the sale of assets described in the Perk Agreement. These securities are short-term marketable securities, and have been classified as available-for-sale securities. Pursuant to Accounting Standards Codification (ASC) 320-10, *Investments - Debt and Equity Securities*, the Company's marketable securities are marked to market on a quarterly basis, with unrealized gains and losses recorded in equity as Other Comprehensive Income/Loss. On September 30, 2016, the Company sold to Perk the remaining shares (1,013,068) of Perk common stock, the warrants for additional shares, and the right to the Earn-Out Shares received from Perk on the sale of the Viggle rewards business on February 8, 2016. The Company received \$1,300 from Perk as consideration therefor. The execution of the Securities Purchase Agreement and closing were simultaneous. In connection with the sale of the Perk shares, the warrants for additional shares and the right to the Earn-Out Shares, the Company recorded a loss of \$2,193 in the Other Expense line item of the Consolidated Statements of Operations for the three months ended September 30, 2016.

## Accounts Receivable

Accounts receivable are recorded net of an allowance for doubtful accounts. The Company's allowance for doubtful accounts is based upon historical loss patterns, the number of days that the billings are past due and an evaluation of the potential risk associated with delinquent accounts. The Company also considers any changes to the financial condition of its customers and any other external market factors that could impact the collectability of its receivables in the determination of its allowance for doubtful accounts. The Company's allowance for doubtful accounts as of September 30, 2016 and June 30, 2016 was \$20.

## Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and cash equivalents and trade accounts receivable. The Company maintains cash and cash equivalents with domestic financial institutions of high credit quality. The Company performs periodic evaluations of the relative credit standing of all of such institutions.

The Company performs ongoing credit evaluations of customers to assess the probability of accounts receivable collection based on a number of factors, including past transaction experience with the customer, evaluation of their credit history, and review of the invoicing terms of the contract. The Company generally does not require collateral. The Company maintains reserves for potential credit losses on customer accounts when deemed necessary. Actual credit losses during the three months ended September 30, 2016 and September 30, 2015 were \$0.

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## **Function(x) Inc.**

# **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)**

## **3. Summary of Significant Accounting Policies - (continued)**

### **Fair Value of Financial Instruments**

The carrying amounts reported in the consolidated balance sheets for cash and cash equivalents, accounts and other receivables, accounts payable and accrued liabilities approximate fair value because of the immediate or short-term maturity of these financial instruments. The carrying amount of Perk marketable securities held is marked-to-market on a quarterly basis using the closing day share price of the last business day of the quarter. The changes to fair value are recorded in Other Comprehensive Income/Loss. The carrying amount of Perk warrants held is marked-to-market on a quarterly basis using the Monte Carlo valuation model. The changes to fair value are recorded in the Consolidated Statement of Operations. The carrying amount of loans payable approximates fair value as current borrowing rates for the same, or similar issues, are the same as those that were given to the Company at the issuance of these loans.

### **Property and Equipment**

Property and equipment (consisting primarily of computers, software, furniture and fixtures, and leasehold improvements) is recorded at historical cost and is depreciated using the straight-line method over their estimated useful lives. The useful life and depreciation method are reviewed periodically to ensure that they are consistent with the anticipated pattern of future economic benefits. Expenditures for maintenance and repairs are charged to operations as incurred, while betterments are capitalized. Gains and losses on disposals are included in the results of operations. The estimated useful lives of the Company's property and equipment is as follows: computer equipment and software: 3 years; furniture and fixtures: 4 years; and leasehold improvements: the lesser of the lease term or life of the asset.

### **Business Combinations and Goodwill**

Business combinations are accounted for using the acquisition method of accounting. The Company allocates the purchase price of acquired companies to the identifiable assets acquired, liabilities assumed and any non-controlling interest based on their acquisition date estimated fair values. Goodwill as of the acquisition date is measured as the excess of consideration transferred and the net of the acquisition date fair values of the identifiable assets acquired and liabilities assumed. Any contingent consideration to be transferred to the acquiree is recognized at fair value at the acquisition date.

Determining the fair value of assets acquired and liabilities assumed requires the Company to make significant estimates and assumptions, including assumptions related to future cash flows, discount rates, asset lives and the probability of future cash pay-outs related to contingent consideration. The estimates of fair value are based upon assumptions believed to be reasonable by management, but are inherently uncertain and unpredictable and, therefore, actual results may differ from estimates. As a result, during the measurement period, which may be up to one year from the acquisition date, the Company may record adjustments to the fair value of assets acquired and liabilities assumed, with the corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the fair value of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded to the Consolidated Statements of Operations.

For the purpose of impairment testing, goodwill acquired in a business combination is, from the acquisition date, allocated to each of the Company's reporting units that are expected to benefit from the combination, irrespective of whether other assets or liabilities of the acquiree are assigned to those units. Where goodwill has been allocated to a reporting unit and part of the operation within that unit is disposed of, the goodwill associated with the disposed operation is included in the carrying amount of the operation when determining the gain or loss on disposal. Goodwill disposed in these circumstances is measured based on the relative fair values of the disposed operation and the portion of the reporting units retained.

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TABLE OF CONTENTS**Function(x) Inc.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(amounts in thousands, except share and per share**  
**data)**  
**(Unaudited)**

**3. Summary of Significant Accounting Policies - (continued)**

As required by ASC 350, *Goodwill and Other Intangible Assets*, the Company tests goodwill for impairment during the fourth quarter of its fiscal year. Goodwill is not amortized, but instead tested for impairment at the reporting unit level at least annually and more frequently upon occurrence of certain events. As noted above, the Company has three reporting units. The annual goodwill impairment test is a two step process. First, the Company determines if the carrying value of its reporting unit exceeds fair value, which would indicate that goodwill may be impaired. If the Company then determines that goodwill may be impaired, it compares the implied fair value of the goodwill to its carry amount to determine if there is an impairment loss.

Historically, the Company had one reporting unit. However, in connection with the sale of a significant portion of the Company's assets (see Note 1, Basis of Presentation and Consolidation), the remaining operations were divided into three reporting units (see Note 4, Segments). The Company engaged a third-party valuation firm to test the Choose Digital and Wetpaint reporting units for goodwill impairment. The DDGG reporting unit was not tested for impairment at December 31, 2015 as the acquisition of this entity occurred in September 2015. The Company determined that the fair value of both of the Wetpaint and Choose Digital reporting units were significantly below their respective carrying values, indicating that goodwill related to these reporting units may be impaired. The Company determined the fair value of all long-lived assets other than goodwill related to each reporting unit and calculated the residual goodwill value for each. Upon comparing the residual goodwill values to the respective carrying values, the Company determined that there was an impairment loss on both the Choose Digital and Wetpaint reporting units.

The Company recorded an impairment loss of \$4,335 related to the Choose Digital reporting unit and \$10,708 related to the Wetpaint reporting unit during the three months ended December 31, 2015. Upon the finalization of the December 31, 2015 Choose Digital and Wetpaint goodwill impairment analysis, the consolidated goodwill ending balances as of March 31, 2016 were adjusted by \$3,350 at June 30, 2016. The Company also recorded an additional goodwill impairment loss of \$1,672 in the Selling, general and administrative expense line and reduced the gain on the sale of the Viggie Business by \$1,672 in the Consolidated Statement of Operations during the nine months ended March 31, 2016 as a result of the finalization of the December 2015 Choose Digital and Wetpaint impairment analysis. There were no impairments recorded during the three months ended September 30, 2016.

At June 30, 2016, the Company determined that the fair value of the DDGG reporting unit was significantly below its carrying value, indicating that goodwill may be impaired. The Company determined the fair value of all long-lived assets other than goodwill and calculated the residual goodwill for the reporting unit. The residual goodwill was higher than the carrying value of goodwill related to the DDGG reporting unit, therefore the Company did not record

an impairment loss for DDGG goodwill during the year ended June 30, 2016.

## Other Long-Lived Assets

The Company accounts for the impairment of long-lived assets other than goodwill in accordance with ASC 360, *Property, Plant, and Equipment* ( ASC 360 ), which addresses financial accounting and reporting for the impairment or disposal of long-lived assets. ASC 360 requires impairment losses to be recorded on long-lived assets used in operations when indicators of impairment are present and the undiscounted cash flows estimated to be generated by those assets (fair value) are less than the assets' carrying amounts. In that event, a loss is recognized based on the amount by which the carrying amount exceeds the fair value of the long-lived assets. Loss on long-lived assets to be disposed of is determined in a similar manner, except that fair values are reduced for the cost of disposal.

At June 30, 2015, the Company determined that certain intangible assets related to the acquisition of Choose Digital (see Note 6, Acquisitions for further detail regarding the Choose Digital acquisition) were impaired.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(amounts in thousands, except share and per share  
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**3. Summary of Significant Accounting Policies - (continued)**

Due to a shift in the Company's business operations and utilization of its resources, during the fourth quarter of fiscal 2015 the Company determined that intangible assets related to customer relationships and trade name no longer had value. Therefore, such assets were written off as of June 30, 2015. The total amount of the write-off was \$2,086.

At December 31, 2015, as described above, the Company determined that the fair value of the Choose Digital and Wetpaint reporting units tested was significantly below the respective carrying values and assessed the fair values of the long-lived assets other than goodwill for each reporting unit. Upon comparing the fair values of the long-lived assets to their respective carrying values, the Company recorded a loss of \$1,331 on intangible assets related to Choose Digital's software and licenses, and a loss of \$11,418 on intangible assets related to Wetpaint's technology, trademark, customer relationships and non-competition agreements, during the three months ended December 31, 2015. No impairments were recorded during the three months ended September 30, 2016.

At June 30, 2016, the Company determined that certain intangible assets related to the acquisition of Draftday.com were impaired. At June 30, 2016, DDGG's Management Services Agreement By and Between DraftDay Gaming Group, Inc. and Sportech Racing, LLC ( Sportech MSA ) terminated, which led to a significantly lower revenues forecast for the reporting unit. As a result, the Company determined that the intangible assets related to internally developed software, trade name and non-compete agreements were impaired. The Company recorded a loss of \$749 on intangible assets related to DDGG during the year ended June 30, 2016.

No impairments were recorded during the three months ended September 30, 2016.

**Capitalized Software**

The Company records amortization of acquired software on a straight-line basis over the estimated useful life of the software.

In addition, the Company records and capitalizes internally generated computer software and, appropriately, certain internal costs have been capitalized in the amount of \$1,498 as of September 30, 2016 and \$1,498 as of June 30, 2016, in accordance with ASC 350-40 *Internal-use Software* . At the time software is placed into service, the Company records amortization on a straight-line basis over the estimated useful life of the software. The change in capitalized software is due to impairment of long-term assets related to the Choose Digital and Wetpaint businesses described earlier, as well as the abandonment of certain technology as of January 1, 2016, and internal development costs.



## **DDGG Player Deposits**

The Company maintains a separate bank account to hold player deposits in accordance with current industry regulations. The player deposits bank account represents money reserved for player withdrawals and winnings. Accordingly, the Company records an offsetting liability at the time of receipt of player deposits.

## **Deferred Rent**

The Company leases its corporate office, and as part of the lease agreement the landlord provided a rent abatement for the first 10 months of the lease. In 2014, the Company entered into two lease agreements for its satellite offices which provided for tenant improvement work sponsored by the landlords. The abatement and landlord sponsored improvements have been accounted for as a reduction of rental expense over the life of the lease. The Company accounts for rental expense on a straight-line basis over the entire term of the lease. Deferred rent is equal to the cumulative timing difference between actual rent payments and recognized rental expense. The satellite office leases were terminated in Fiscal 2016. The Company wrote-off residual leasehold

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 3. Summary of Significant Accounting Policies - (continued)

improvement and deferred rent balances related to landlord sponsored tenant improvement work, and recorded a write-off of \$83 in the Consolidated Statements of Operations for the year ended June 30, 2016.

### Revenue Recognition

The Company recognizes revenue when: (1) persuasive evidence exists of an arrangement with the customer reflecting the terms and conditions under which products or services will be provided; (2) delivery has occurred or services have been provided; (3) the fee is fixed or determinable; and (4) collection is reasonably assured. For all revenue transactions, the Company considers a signed agreement, a binding insertion order or other similar documentation to be persuasive evidence of an arrangement.

*Advertising Revenue:* the Company generates advertising revenue primarily from third-party advertising via real-time bidding, which is typically sold on a per impression basis.

*Deferred Revenue:* deferred revenue consists principally of prepaid but unrecognized revenue. Deferred revenue is recognized as revenue when the services are provided and all other revenue recognition criteria have been met.

*Barter Revenue:* barter transactions represent the exchange of advertising or programming for advertising, merchandise or services. Barter transactions which exchange advertising for advertising are accounted for in accordance with Emerging Issues Task Force Issue No. 99-17 *Accounting for Advertising Barter Transactions* (ASC Topic 605-20-25). Such transactions are recorded at the fair value of the advertising provided based on the Company's own historical practice of receiving cash for similar advertising from buyers unrelated to the counter party in the barter transactions. Barter transactions which exchange advertising or programming for merchandise or services are recorded at the monetary value of the revenue expected to be realized from the ultimate disposition of merchandise or services.

The Company recognized barter revenue and barter expense in the amount of \$0 and \$2,609 for the three months ended September 30, 2016 and September 30, 2015, respectively.

### Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with ASC 718, *Compensation - Stock Compensation* (ASC 718). Under the fair value recognition provisions of ASC 718, stock-based compensation cost is measured at the grant date based on the fair value of the award and is recognized as expense ratably over the

requisite service period. The Company uses the Black-Scholes option pricing model to determine the fair value of stock options and warrants issued. Stock-based awards issued to date are comprised of both restricted stock awards (RSUs) and employee stock options.

## Marketing

Marketing costs are expensed as incurred. Marketing expense for the Company for the three months ended September 30, 2016 and September 30, 2015 was \$32 and \$3,321, respectively.

## Income Taxes

The Company uses the liability method of accounting for income taxes as set forth in ASC 740, *Income Taxes* ( ASC 740 ). Under the liability method, deferred taxes are determined based on the temporary differences between the financial statement and tax basis of assets and liabilities using tax rates expected to be in effect during the years in which the basis differences reverse. A valuation allowance is recorded when it is unlikely that the deferred tax assets will not be realized. The Company assesses its income tax positions and record tax benefits for all years subject to examination based upon the Company's evaluation of the facts, circumstances and information available at the reporting date. In accordance with ASC 740-10, for those tax positions where there is a greater than 50% likelihood that a tax benefit will be sustained, the Company's

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
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**3. Summary of Significant Accounting Policies - (continued)**

policy will be to record the largest amount of tax benefit that is more likely than not to be realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where there is less than 50% likelihood that a tax benefit will be sustained, no tax benefit will be recognized in the financial statements.

**Comprehensive Loss**

In accordance with ASC 220, *Comprehensive Income*, the Company reports by major components and as a single total, the change in its net assets during the period from non-owner sources. Comprehensive income consists of net income (loss), accumulated other comprehensive income (loss), which includes certain changes in equity that are excluded from net income (loss). The Company's comprehensive loss for all periods presented is related to the effect of unrealized gain on available for sale marketable securities.

**Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. These estimates include, among others, fair value of financial assets and liabilities, net realizable values on long-lived assets, certain accrued expense accounts, and estimates related to stock-based compensation. Actual results could differ from those estimates.

During the three months ended September 30, 2016, there have been no significant changes related to the Company's critical accounting policies and estimates as disclosed in Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations set forth in the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2016.

**Recently Issued Accounting Pronouncements**

In October 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update 2016-16, *Accounting for Income Taxes: Intra-Entity Asset Transfers of Assets Other than Inventory* (ASU 2016-16). This update eliminates the exception for all intra-entity sales of assets other than inventory. As a result, a reporting entity

would recognize the tax expense from the sale of the asset in the seller's tax jurisdiction when the transfer occurs, even though the pre-tax effects of that transaction are eliminated in consolidation. Any deferred tax asset that arises in the buyer's jurisdiction would also be recognized at the time of the transfer. ASU 2016-16 is effective for financial statements issued for annual periods beginning after December 15, 2017. The Company does not expect the standard to have a material impact on its consolidated financial statements.

In May 2016, FASB issued Accounting Standards Update 2016-12, Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients (ASU 2016-12). The amendments in this update affect the guidance in Accounting Standards Update 2014-09, Revenue from Contracts with Customers (Topic 606) (ASU 2014-09), which is not yet effective. This update focuses on improving several aspects of ASU 2014-09, such as assessing the collectability criterion in paragraph 606-10-25-1(e) and accounting for contracts that do not meet the criteria for step 1; presentation of sales taxes and other similar taxes collected from customers; noncash consideration; contract modifications at transition; and completed contracts at transition. ASU 2016-12 is effective for financial statements issued for annual periods beginning after December 15, 2017. The Company does not expect the standard to have a material impact on its consolidated financial statements.

In April 2016, the FASB issued Accounting Standards Update 2016-10, Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing (ASU 2016-10). The amendments in this update affect the guidance in ASU 2014-09, which is not yet effective. This update

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
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**3. Summary of Significant Accounting Policies - (continued)**

focuses on clarifying the following two aspects of ASU 2014-09: identifying performance obligations and the licensing implementation guidance, while retaining the related principles for those areas. ASU 2016-10 is effective for financial statements issued for annual periods beginning after December 15, 2017. The Company does not expect the standard to have a material impact on its consolidated financial statements.

In March 2016, the Financial Accounting Standards Board ( FASB ) issued Accounting Standards Update No. 2016-09, Compensation – Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting ( ASU 2016-09 ). This update is intended to improve the accounting for employee share-based payments and affects all organizations that issue share-based payment awards to their employees. Several aspects of the accounting for share-based payment award transactions are simplified, including: (a) income tax consequences; (b) classification of awards as either equity or liabilities; and (c) classification on the statement of cash flows. ASU 2016-09 is effective for financial statements issued for annual periods beginning after December 15, 2016. The Company is currently in the process of evaluating the impact of adoption of ASU 2016-09 on its financial statements.

In February 2016, FASB issued Accounting Standards Update No. 2016-02, Leases ( ASU 2016-02 ). ASU 2016-02 requires lessees to recognize the following for all leases (with the exception of short-term leases) at the commencement date: a lease liability, which is a lessee’s obligation to make lease payments arising from a lease, measured on a discounted basis; and a right-of-use asset, which is an asset that represents the lessee’s right to use, or control the use of, a specified asset for the lease term. Under the new guidance, lessor accounting is largely unchanged. Certain targeted improvements were made to align, where necessary, lessor accounting with the lessee accounting model and Topic 606, Revenue from Contracts with Customers. The new lease guidance also simplified the accounting for sale and leaseback transactions primarily because lessees must recognize lease assets and lease liabilities. Lessees will no longer be provided with a source of off-balance sheet financing. Lessees (for capital and operating leases) and lessors (for sales-type, direct financing, and operating leases) must apply a modified retrospective transition approach for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. The modified retrospective approach would not require any transition accounting for leases that expired before the earliest comparative period presented. Lessees and lessors may not apply a full retrospective transition approach. ASU 2016-02 is effective for financial statements issued for annual periods beginning after December 15, 2018. The Company is currently in the process of evaluating the impact of adoption of ASU 2016-02 on its financial statements.

In January 2016, FASB issued Accounting Standards Update No. 2016-01, Financial Instruments- Overall: Recognition and Measurement of Financial Assets and Financial Liabilities ( ASU 2016-01 ). ASU 2016-01 requires all

equity investments to be measured at fair value with changes in the fair value recognized through net income (other than those accounted for under equity method of accounting or those that result in consolidation of the investee). Additionally, it requires an entity to present separately in other comprehensive income the portion of the total change in the fair value of a liability resulting from a change in the instrument-specific credit risk when the entity has elected to measure the liability at fair value in accordance with the fair value option for financial instruments. Lastly, the standard eliminates the requirement to disclose the method(s) and significant assumptions used to estimate the fair value that is required to be disclosed for financial instruments measured at amortized cost on the balance sheet. ASU 2016-01 is effective for financial statements issued for annual periods beginning after December 15, 2017, and interim periods within those annual periods. The Company does not expect the standard to have a material impact on its consolidated financial statements.

In November 2015, FASB issued Accounting Standards Update No. 2015-17, Income taxes: Balance Sheet Classification of Deferred Taxes Business ( ASU 2015-17 ). Topic 740, Income Taxes, requires an entity to separate deferred income tax liabilities and assets into current and noncurrent amounts in a classified statement

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

### 3. Summary of Significant Accounting Policies - (continued)

of financial position. Deferred tax liabilities and assets are classified as current or noncurrent based on the classification of the related asset or liability for financial reporting. Deferred tax liabilities and assets that are not related to an asset or liability for financial reporting are classified according to the expected reversal date of the temporary difference. To simplify the presentation of deferred income taxes, ASU 2015-17 requires that deferred income tax liabilities and assets be classified as noncurrent in a classified statement of financial position. ASU 2015-17 is effective for for financial statements issued for annual periods beginning after December 15, 2016, and interim periods within those annual periods. The Company does not expect the standard to have a material impact on its consolidated financial statements.

In September 2015, the FASB issued Accounting Standard Update No. 2015-16, *Business Combinations Simplifying the Accounting for Measurement-Period Adjustments* ( ASU 2015-16 ). This standard requires that an acquirer retrospectively adjust provisional amounts recognized in a business combination, during the measurement period. To simplify the accounting for adjustments made to provisional amounts, the amendments in the ASU 2015-16 require that the acquirer recognize adjustments to provisional amounts that are identified during the measurement period in the reporting period in which the adjustment amount is determined. The acquirer is required to also record, in the same period s financial statements, the effect on earnings of changes in depreciation, amortization, or other income effects, if any, as a result of the change to the provisional amounts, calculated as if the accounting had been completed at the acquisition date. In addition an entity is required to present separately on the face of the income statement or disclose in the notes to the financial statements the portion of the amount recorded in current-period earnings by line item that would have been recorded in previous reporting periods if the adjustment to the provisional amounts had been recognized as of the acquisition date. ASU 2015-16 is effective for fiscal years beginning after December 15, 2016, and interim periods within fiscal years beginning after December 15, 2017 (July 1, 2017 for the Company). The Company does not believe that the adoption of ASU 2015-16 will have a material impact on its consolidated financial statements.

### 4. Segments

Historically, the Company had one operating segment. However, in connection with the sale of the Viggie rewards business (discontinued operations) to Perk in February 2016, which represents a significant portion of the Company s assets and revenues, the Company s remaining operations were divided into three operating segments. These segments offer different products and services and are currently presented separately in internal management reports, and managed separately.



*Wetpaint*: a media channel reporting original news stories and publishing information content covering top television shows, music, celebrities, entertainment news and fashion.

*Choose Digital*: a business-to-business platform for delivering digital content.

*DDGG*: a business-to-business operator of daily fantasy sports.

The accounting policies followed by the segments are described in Note 3, Summary of Significant Accounting Policies. The operating segments of the Company include the assets, liabilities, revenues and expenses that management has determined are specifically or primarily identifiable to each segment, as well as direct and indirect costs that are attributable to the operations of each segment. Direct costs are the operational costs that are administered by the Company following the shared services concept. Indirect costs are the costs of support functions that are provided on a centralized or geographic basis by the Company, which include, but are not limited to, finance, human resources, benefits administration, procurement support, information technology, legal, corporate strategy, corporate governance and other professional services and general commercial support functions.

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data)  
(Unaudited)****4. Segments - (continued)**

Central support costs have been allocated to each operating segment based on a specific identification basis or, when specific identification is not practicable, a proportional cost allocation method (primarily based on net sales or direct payroll costs), depending on the nature of the services received. Management considers that such allocations have been made on a reasonable basis, but may not necessarily be indicative of the costs that would have been incurred if the operating segments had been operated on a stand-alone basis for the periods presented.

Information regarding the results of each reportable segment is included below. Performance is measured based on unit profit after tax, as included in the internal management reports that are reviewed by the chief operating decision maker, who is the Company's Chief Executive Officer. Business unit profit is used to measure performance as management believes that such information is the most relevant in evaluating the success of each business and determining the going forward strategy for the Company as a whole.

Information about reportable segments:

	Three Months Ended September 30,							
	Wetpaint		Choose Digital		DDGG		Total	
	2016	2015	2016	2015	2016	2015	2016	2015
External revenues	371	516	58	198	105	83	534	797
Inter-segment revenues <sup>(1)</sup>								
Net loss, net of income taxes <sup>(2)</sup>	(2,077)	(1,857)	(401)	(484)	(752)	26	(3,230)	(2,315)

Notes:

- (1) The Choose Digital business provides digital content to the Viggle business. These inter-segment revenues are presented at Choose Digital's cost in this schedule and in the consolidated statements of operations.
- (2) The net loss figures presented exclude certain corporate expenses detailed in the reconciliation to the consolidated net loss below.
- (3) Assets and liabilities are not presented as they are reviewed at the consolidated level by management and not accounted for by segment.

Reconciliation of revenues attributable to reportable segments to consolidated revenues from continuing operations:

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	Three Months Ended	
	September 30,	
	2016	2015
Revenues attributable to reportable segments	\$ 534	\$ 797
Licensing revenues related to SFX licensing agreement	125	125
Other revenues		
Revenues per Consolidated Statements of Operations	\$ 659	\$ 922

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
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**4. Segments - (continued)**

Reconciliation of net loss for reportable segments, net of income taxes to consolidated net loss from continuing operations, net of income taxes:

	Three Months Ended September 30,	
	2016	2015
Net loss for reportable segments, net of income taxes	(3,230 )	(2,315 )
Other net gain (loss)	(2,478 )	
	(5,708 )	(2,315 )
Stock compensation related to corporate financing activities <sup>(1)</sup>		(4,250 )
Corporate expenses allocated to discontinued operations <sup>(2)</sup>	(158 )	(211 )
Interest expense <sup>(3)</sup>	(1,651 )	(856 )
Consolidated net loss from continuing operations, net of income taxes	(7,517 )	(7,632 )

Notes:

Stock compensation expense related to RSUs, options and warrants issues in connection with financing activities.

(1) Expenses related to financing activities are considered to be corporate expenses and are not allocated to reportable segments.

(2) Certain corporate expenses were allocated to the Viggie segment, however such expenses are not classified as discontinued operations because they are fixed and are not affected by the sales transaction.

(3) Interest expense related to corporate debt instruments is not allocated to reportable segments.

Total assets for reportable segments:

	September 30, 2016			
	Wetpaint	Choose Digital	DDGG	Total
Total assets for reportable segments	\$ 21,740	\$ 5,273	\$ 4,021	\$ 31,034

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	June 30, 2016			
	Wetpaint	Choose Digital	DDGG	Total
Total assets for reportable segments	\$ 8,495	\$ 5,416	\$ 3,740	\$ 17,651
Reconciliation of assets attributable to reportable segments to consolidated assets of continuing operations:				

	September 30, 2016	June 30, 2016
Total assets for reportable segments	\$ 31,034	\$ 17,651
Other assets <sup>(1)</sup>	2,016	5,349
Total consolidated assets, net of current and non-current assets of discontinued operations	\$ 33,050	\$ 23,000

Notes:

- (1) Corporate assets that are not specifically related to any of the reporting units.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 4. Segments - (continued)

The Company continues to support the cash needs and operations of DDGG. As of September 30, 2016 the Company has transferred \$736 to the DDGG subsidiary. A portion of these transfers, or \$500, was funded as part of the purchase price commitment. The remaining transfers are part of the subscription agreement entered into with DDGG on May 12, 2016 (see Note 16, Subsequent Events).

On July 12, 2015, to enhance our digital publishing business, we recently acquired assets of Rant. Rant is a leading digital publisher that publishes original content in 13 different verticals, most notably in sports, entertainment, pets, cars, and food. Rant results of operations are included in the Company's digital publishing segment, Wetpaint.

## 5. Discontinued Operations

On February 8, 2016, the Company completed the sale of assets related to the Company's rewards business, including the Viggie App, in accordance with the Perk Agreement entered into on December 13, 2015. Management entered into this binding sales agreement following a strategic decision to divest the operations related to the Viggie App and place greater focus on its remaining businesses. The Company has classified the Viggie assets, liabilities and operations as discontinued operations in the accompanying Consolidated Financial Statements for all periods presented. In accordance with ASC No. 205, *Presentation of Financial Statements*, the inter-segment revenues and expenses related to services provided by Choose Digital to the Viggie rewards business (discontinued operations) are presented at cost in the Consolidated Statements of Operations.

On December 13, 2015, the Parent entered into the Perk Agreement. Perk's shares are currently traded on the Toronto Stock Exchange. On February 8, 2016, pursuant to the Perk Agreement, the Company completed the sale of the assets related to the Company's rewards business, including Viggie's application, to Perk. The total consideration received net of transaction fees was approximately \$5,110, and consisted of the following:

- 1,370,000 shares of Perk common stock, a portion of which was placed in escrow to satisfy any potential indemnification claims;
- 2,000,000 shares of Perk common stock if Perk's total revenues exceed USD \$130,000 for the year ended December 31, 2016 or December 31, 2017;
- a warrant entitling the Company to purchase 1,000,000 shares of Perk common stock at a strike price of CDN \$6.25 per share in the event the volume weighted average price ( VWAP ) of shares of Perk common stock is greater than or equal to CDN \$12.50 for 20 consecutive trading days in the two year period following the closing of the transaction;

a warrant entitling the Company to purchase 1,000,000 shares of Perk common stock at a strike price of CDN \$6.25 per share in the event that the VWAP of Perk common stock is greater than or equal to CDN \$18.75 for 20 consecutive trading days in the two year period following the closing of the transaction, and

Perk assumed certain liabilities of the Company, consisting of the Viggie points liability.

At the time the Company entered into the Perk Agreement, Perk provided the Company with a \$1,000 secured line of credit, which the Company fully drew down. The Company had the option of repaying amounts outstanding under that line of credit by reducing the number of Initial Perk Shares by 130,000. The Company exercised this option and received 1,370,000 shares of Perk common stock at closing, and the amounts outstanding under the Line of Credit were deemed paid in full.

At the closing, 37.5% (562,600) of the Initial Perk Shares were issued and delivered to an escrow agent to be used exclusively for the purpose of securing the Company's indemnification obligations under the Perk Agreement.

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**(Unaudited)**

**5. Discontinued Operations - (continued)**

Additionally, after the closing, the Company delivered 357,032 of the Initial Perk Shares to Gracenote, Inc. and Tribune Media Services, Inc., former providers of technology services of the Company, as per the Settlement and Transfer Agreement dated February 5, 2016, to satisfy an obligation. The Company recognized a gain of \$593 in the Consolidated Statements of Operations for the year ended June 30, 2016.

On September 30, 2016, the Company sold to Perk the remaining shares (1,013,068) of Perk common stock, the warrants for additional shares, and the right to the Earn-Out Shares received from Perk on the sale of the Viggie rewards business on February 8, 2016. The Company received \$1,300 from Perk as consideration therefor. The execution of the Securities Purchase Agreement and closing were simultaneous. The escrowed shares were released as part of this transaction.

The Company recognized a gain of \$1,060 on this transaction, net of transaction fees associated with the sale of the Viggie rewards business.

Results of operations classified as discontinued operations:

	Three Months Ended	
	September 30,	
	2016	2015
Revenues	\$	\$ 4,130
Cost of watchpoints and engagement points		(2,022 )
Selling, general and administrative expenses	(36 )	(7,866 )
Loss before income taxes	(36 )	(5,758 )
Income taxes (see Note 13, Income Taxes)		(22 )
Net loss	\$ (36 )	\$ (5,780 )

Current assets and non-current assets used in discontinued operations:

	September	June 30,
	30,	2016
	2016	
Current assets:		



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Accounts receivable, net	\$ 20	\$ 39
Prepaid expenses		
Current assets of discontinued operations	\$ 20	\$ 39
Non-current assets:		
Property and equipment, net	\$	\$
Intangible assets, net		
Goodwill		
Other assets		
Non-current assets of discontinued operations	\$	\$

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data)  
(Unaudited)****5. Discontinued Operations - (continued)**

Current liabilities and non-current liabilities used in discontinued operations:

	September 30, 2016	June 30, 2016
Current liabilities:		
Accounts payable and accrued expenses	\$ 2,609	\$ 2,634
Reward points payable		
Current portion of loan payable	221	217
Current liabilities of discontinued operations	\$ 2,830	\$ 2,851
Non-current liabilities:		
Other long-term liabilities	\$	\$
Non-current liabilities of discontinued operations	\$	\$

**6. Acquisitions****Acquisition of Choose Digital**

On June 24, 2014, the Company acquired Choose Digital, a Miami, Florida based, digital marketplace platform that allows companies to incorporate digital content into existing rewards and loyalty programs in support of marketing and sales initiatives.

In connection with the acquisition, the Company was required to make a contingent payment, which was due within five business days after June 24, 2015, of \$4,792. Such amount was accrued in the accompanying Consolidated Balance Sheets as of June 30, 2015. On June 24, 2015, the Company determined that the maximum amount of contingent consideration of \$4,792 should be recorded. As such, the Company adjusted the original estimate of contingent consideration of \$2,570 to \$4,792. The increase of \$2,222 was recorded as an expense and included in Selling, general and administrative expenses in the accompanying Consolidated Statements of Operations for the year ended June 30, 2015. On July 31, 2015, the Company entered into a Forbearance Agreement with AmossyKlein Family Holdings, LLP ( AmossyKlein ), as representative of the former shareholders of Choose Digital Inc. (the Stockholders ). The Forbearance Agreement provides that the Company will make monthly installment payments to the Stockholders, beginning on July 31, 2015 and ending on January 29, 2016. Specifically, the Company agreed to pay \$668 on July 31, 2015; \$532 on August 31, 2015; \$528 on September 30, 2015; \$524 on October 31, 2015; \$521

on November 30, 2015; \$517 on December 31, 2015; and \$1,754 on January 29, 2016. The scheduled payments include \$170 of interest and \$82 of legal fee charges. The Company agreed to deliver an affidavit of confession of judgment to be held in escrow by AmossyKlein's counsel in the event the Company does not make such installment payments. The Company made the installment payments through December 2015, but failed to make the payment due on January 29, 2016.

On May 12, 2016, the Company and AmossyKlein entered into an amendment to the Forbearance Agreement to provide for the payment of the remaining \$1,754. The Forbearance Agreement now provides that the Company will make a payment of approximately \$300 by May 18, 2016, and thereafter, the Company will make monthly payments of \$100, plus interest at a rate of 9% per annum, until the remaining amount is paid in full. In addition, the Company agreed to pledge 100,000 shares of common stock it holds in Perk.com, Inc. as collateral for these obligations. Finally, the Company agreed if it consummates a sale of a substantial part of its assets or a public equity offering, the Company will first apply the proceeds to remaining amounts due to AmossyKlein, except for payments to advisors or expenses necessary to close such transactions. The Company also delivered an amended confession of judgment that it had previously delivered to AmossyKlein, which will be held in escrow by AmossyKlein's counsel in the event the Company does not make installment

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 6. Acquisitions - (continued)

payments as set forth in the amended Forbearance Agreement. During the three months ended September 30, 2016, the Company paid approximately \$400 under the Forbearance Agreement.

In addition, at June 30, 2015, due to a shift in business operations and utilization of resources during the fourth quarter of 2015, the Company determined that certain intangible assets related to the acquisition of Choose Digital no longer had value (see Note 3, Summary of Significant Accounting Policies). At December 31, 2015, the Company further determined that certain intangible assets and goodwill related to the acquisition of Choose digital were impaired (see Note 3, Summary of Significant Accounting Policies).

### Acquisition of DraftDay.com

On September 8, 2015, the Company and its newly created subsidiary DDGG entered into an Asset Purchase Agreement (the "Asset Purchase Agreement") with MGT Capital Investments, Inc. ("MGT Capital") and MGT Sports, Inc. ("MGT Sports"), pursuant to which the Company acquired all of the assets of the DraftDay.com business (the "DraftDay Business") from MGT Capital and MGT Sports. In exchange for the acquisition of the DraftDay Business, the Company paid MGT Sports the following: (a) 63,647 shares of the Company's Common Stock, par value \$0.001 per share ("Common Stock"), (b) a promissory note in the amount of \$234 due September 29, 2015, (c) a promissory note in the amount of \$1,875 due March 8, 2016 (the "MGT Note"), and (d) 2,550 shares of common stock of DDGG. In addition, in exchange for providing certain transitional services, DDGG will issue to MGT Sports a warrant to purchase 1,500 shares of DDGG common stock at an exercise price of \$400 per share.

In addition, in exchange for the release of various liens and encumbrances, the Company also agreed to issue to third parties: (a) 4,232 shares of its Common Stock, (b) a promissory note in the amount of \$16 due September 29, 2015 and (c) a promissory note in the amount of \$125 due March 8, 2016, and DDGG issued: (i) 150 shares of its common stock and (ii) a warrant to purchase 150 shares of DDGG common stock at \$400 per share.

Accordingly, the Company issued a total of 67,879 shares of Common Stock in connection with the acquisition of the DraftDay Business.

The Company contributed the assets of the DraftDay Business to DDGG and received 11,250 shares of DDGG common stock.

The Asset Purchase Agreement contains customary representations, warranties and covenants of MGT Capital and MGT Sports. In addition, on September 8, 2015, DDGG entered into an agreement with Sportech Racing, LLC ( Sportech ) pursuant to which Sportech agreed to provide certain management services to DDGG in exchange for 9,000 shares of DDGG common stock. As a result of the transactions described above, the Company owns a total of 11,250 shares of DDGG common stock, Sportech Inc., an affiliate of Sportech, owns 9,000 shares of DDGG common stock, MGT Sports owns 2,550 shares of DDGG common stock and an additional third party owns 150 shares of DDGG common stock. In addition, MGT Sports holds a warrant to purchase 1500 shares of DDGG common stock at an exercise price of \$400 and an additional third party holds a warrant to purchase 350 shares of DDGG common stock at \$400 per share. On September 8, 2015, the various stockholders of DDGG entered into a Stockholders Agreement (the Stockholders Agreement ). The Stockholders Agreement provides that all stockholders will vote their shares of DDGG common stock for a Board comprised of three members, two of which will be designated by the Company and one of which will be designated by Sportech. Mr. Sillerman will serve as the Chairman of DDGG. The Stockholders Agreement also provides customary rights of first refusal for the various stockholders, as well as customary co-sale, drag along and preemptive rights.

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(amounts in thousands, except share and per share  
data)  
(Unaudited)****6. Acquisitions - (continued)**

As a result of the transactions described herein, the Company issued promissory notes in the aggregate principal amount of \$250 due and paid on September 29, 2015 and in the aggregate principal amount of \$2,000 due March 8, 2016. All such notes bear interest at a rate of 5% per annum. The Company was not able to make the \$2,000 in payments at the due date and on March 24, 2016 converted \$825 of the promissory notes to common stock and \$110 of the promissory notes to a Series D Preferred Stock (see Note 11, Stockholders' (Deficit) Equity). On April 13, 2016, MGT converted all 110 shares of the Company's Series D Preferred Stock into shares of common stock of the Company. Accordingly, the Company issued 18,332 shares of common stock to MGT. Thereafter, there are no shares of the Company's Series D Preferred Stock outstanding. On June 14, 2016, the Company entered into a second exchange agreement with MGT (the "Second MGT Exchange Agreement") relating to the \$940 remaining due under the MGT Note. Under the Second MGT Exchange Agreement, the MGT Note shall be exchanged in full for (a) \$11 in cash representing accrued interest and (b) 132,092 shares of our common stock, subject to certain adjustments. Issuance of the shares is conditioned upon approval of the Company's shareholders and approval of its listing of additional shares application with NASDAQ. On October 10, 2016, the Company satisfied the MGT Note through the issuance of 136,304 shares of its common stock and payment of interest of \$16.

On December 28, 2015, DDGG's Board of Directors effectuated a 1-for-1,000 reverse stock split (the "1-for-1,000 Reverse Split"). Under the terms of the 1-for-1,000 Reverse Split, each share of DDGG's common stock, issued and outstanding as of such effective date, was automatically reclassified and changed into one-thousandth of one share of common stock, without any action by the stockholders. Fractional shares were cashed out.

On May 12, 2016, the Company entered into a subscription agreement with DDGG pursuant to which the Company agreed to purchase up to 550 shares of Series A Preferred Stock of DDGG for \$1 per share. DDGG also entered into a subscription agreement with Sportech pursuant to which Sportech agreed to purchase up to 450 shares of Series A Preferred Stock of DDGG for \$1 per share. In accordance with this agreement, the Company transferred a total of \$550 to the DDGG subsidiary since the date of acquisition and through November 20, 2016.

**Kuusamo Warrants**

In exchange for releasing certain liens and encumbrances with respect to DDGG, the Company issued promissory notes to Kuusamo Capital Ltd. ("Kuusamo Promissory Notes") in the principal amount of \$16 due and paid on September 29, 2015 and in the aggregate principal amount of \$125 due March 8, 2016. All such notes bear interest at a rate of 5% per annum. The Company was not able to make the \$125 payment at the due date. On April 25, 2016, the Company also entered into an exchange agreement with Kuusamo Capital Ltd. ("Kuusamo"), pursuant to which the

Company issued 10,394 shares of its common stock to Kuusamo in exchange for a reduction of \$71 in principal amount of a promissory note the Company owed to Kuusamo.

The outstanding balance of the Kuusamo Promissory Notes was \$55 and \$54 at September 30, 2016 and June 30, 2016, respectively. The Company recorded \$5 in interest expense for the year ended June 30, 2016.

## **Sportech MSA Termination**

On April 12, 2016, DDGG entered into an amendment to the transitional management services agreement pursuant to which the DDGG's Management Services Agreement By and Between DraftDay Gaming Group, Inc. and Sportech Racing, LLC ( Sportech MSA ) terminated effective June 30, 2016. Sportech paid a \$75 termination fee, to provide transitional services for 45 days, and has agreed to revert 4,200 shares of DDGG stock back to the Company on August 15, 2016. The Company had previously recorded the value of the services provided by Sportech under the Sportech MSA to prepaid assets, to be recognized as a professional services expense in the Consolidated Statements of Operations over the term of the agreement.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 6. Acquisitions - (continued)

Due to the termination of the agreement, the Company reduced prepaid assets and non-controlling interest accounts for the value of the returned 4,200 shares of DDGG stock, and expensed the remaining value of the Sportech services, except for 45 days of transitional services. The value of returned DDGG shares was determined by a third-party valuation firm as of June 30, 2016 using Level 3 inputs. The termination of the Sportech MSA will require DDGG to begin performing certain functions on its own.

### DDGG Intangibles and Goodwill Impairment

As noted above, at June 30, 2016, the Sportech MSA terminated, which led to a significantly lower revenues forecast for the reporting unit. As a result, the Company determined that intangible assets related to internally developed software, trade name and non-compete agreements were impaired as of June 30, 2016. The Company recorded a loss of \$749 on intangible assets related to DDGG during the year ended June 30, 2016. There was no impairment of goodwill (see Note 3, Summary of Significant Accounting Policies).

This acquisition has been accounted for under the acquisition method of accounting in accordance with ASC 805, *Business Combinations*. Under the acquisition method, the consideration transferred is measured at the acquisition closing date. The assets of the DraftDay Business have been measured based on various preliminary estimates using assumptions that the Company's management believes are reasonable utilizing information currently available. Use of different estimates and judgments could yield different results. The Company has performed a preliminary allocation of the purchase price to the underlying net assets acquired and liabilities assumed based on their estimated fair values as of the acquisition date, with any excess of the purchase price allocated to goodwill. The Company has not completed the analysis of certain acquired assets and assumed liabilities, including, but not limited to, other identifiable intangible assets such as customer lists and technology. However, the Company is continuing its review of these items during the measurement period, and further changes to the preliminary allocation will be recognized as the valuations are finalized. Such valuations are being conducted using Level 3 inputs as described in ASC 820, *Fair Value Measurements and Disclosures*, that are generally unobservable and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability.

A summary of the fair value of consideration transferred for this acquisition and the fair value of the assets and liabilities at the date of acquisition is as follows (amounts in thousands):

#### Consideration transferred:



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Shares of the Company's common stock on closing market price at issuance	\$ 1,760
Notes issued to sellers	2,250
Total consideration transferred	\$ 4,010
<b>Purchase allocation:</b>	
Goodwill	\$ 1,591
Intangible assets	3,012
Other Assets	799
Total liabilities	(1,392 )
	\$ 4,010

The operations of this acquisition are not material, and thus, pro forma disclosures are not presented.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 6. Acquisitions - (continued)

### Rant

On July 12, 2016, the Company, and RACX Inc., a Delaware corporation and wholly-owned subsidiary of the Company ( RACX ), completed an acquisition pursuant to an Asset Purchase Agreement (the Asset Purchase Agreement ) with Rant, Inc., a Delaware corporation, pursuant to which RACX has acquired the assets of Rant (the Asset Purchase ) used in the operation of Rant's Rant.com independent media network and related businesses, including but not limited to the *www.rantsports.com*, *www.rantlifestyle.com*, *www.rantchic.com*, *www.rantgirls.com*, *www.rant-inc.com*, *www.rantstore.com*, *www.rantcities.com*, *www.rantcars.com*, *www.rantfinance.com*, *www.ranthollywood.com*, *www.rantfood.com*, *www.rantgamer.com*, *www.rantgizmo.com*, *www.rantpets.com*, *www.rantplaces.com*, *www.rantpolitical.com*, *www.rantmn.com*, *www.rantbeats.com*, *www.rantgirls.com*, *www.rantstore.com*, *www.rantcities.com*, *www.rantranet.com*, and *www.rantmovies.com* websites (the Rant Assets ).

In consideration for the purchase of the Rant Assets, the Company delivered a Secured Convertible Promissory Note (the Secured Convertible Note ) to Rant with a fair value determined to be \$3,500 and delivered the stock consideration of \$7,600 described below.

The \$3,000 Secured Convertible Note matures on July 8, 2017 barring any events of default or a change of control of the Company. The Secured Convertible Note bears interest at 12% per annum, payable at maturity. At the election of Rant, the Secured Convertible Note is convertible into shares of the Company's common stock at a price equal to the lower of (i) \$5.20 per share, or (ii) such lower price as may have been set for conversion of any debt or securities into Common Stock held on or after the date hereof by Sillerman until the first to occur of March 31, 2017 or the date the Note has been satisfied or converted (for the purposes hereof Robert F.X. Sillerman is the Company's Executive Chairman and Chief Executive Officer and/or any affiliate of Robert F.X. Sillerman is herein collectively, Sillerman ). In connection with the Secured Convertible Note, the Company has entered into a Note Purchase Agreement (the NPA ) and a Security Agreement (the Rant Security Agreement ) with Rant, under which the Company has granted Rant a continuing security interest in substantially all assets of the Company. In connection with the issuance of the Secured Convertible Note, Sillerman and Rant entered into a subordination agreement subordinating repayment of the notes to the Debentures (as described in (b) hereof) and entered into an Intercreditor Agreement providing for the parties' respective rights and remedies with respect to payments against the collateral held as security for both of them.

In connection with the Asset Purchase Agreement, and in addition to the consideration represented by the Secured Convertible Note and the Assumed Liabilities, the Company issued to Rant 4,435 shares of Company Series E Convertible Preferred Stock which, upon satisfaction of certain conditions including shareholder approval, will be

convertible into shares of Company common stock equal to 22% of the outstanding common stock of the Company. The number of shares will be adjusted for dilution between the date of closing and the date of any public offering by the Company of its common stock and to reflect additional capital structure changes through the first of (i) the date Sillerman converts debt and preferred shares to common shares pursuant to the Exchange Agreement just before an offering of the Company's common stock closes or (ii) March 31, 2017.

This acquisition has been accounted for under the acquisition method of accounting in accordance with ASC 805, *Business Combinations*. Under the acquisition method, the consideration transferred is measured at the acquisition closing date. The assets of Rant have been measured based on various preliminary estimates using assumptions that the Company's management believes are reasonable utilizing information currently available. Use of different estimates and judgments could yield different results. The Company has performed a preliminary allocation of the purchase price to the underlying net assets acquired and liabilities assumed based on their estimated fair values as of the acquisition date, with any excess of the purchase price allocated

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
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**6. Acquisitions - (continued)**

to goodwill. The Company has not completed the analysis of certain acquired assets and assumed liabilities, including, but not limited to, other identifiable intangible assets such as customer lists and technology. However, the Company is continuing its review of these items during the measurement period, and further changes to the preliminary allocation will be recognized as the valuations are finalized. Such valuations are being conducted using Level 3 inputs as described in ASC 820, *Fair Value Measurements and Disclosures*, that are generally unobservable and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability.

The preliminary allocation of the purchase price to the underlying net assets acquired and liabilities assumed based on their estimated fair values as of the acquisition date is as follows:

Goodwill	\$ 7,589
Intangible assets	5,500
Total liabilities	(1,990 )
	\$ 11,099

The goodwill related to the Rant acquisition is tax deductible.

**7. Property and Equipment**

Property and Equipment consists of the following:

	September 30, 2016	June 30, 2016
Leasehold Improvements	\$ 2,261	\$ 2,261
Furniture and Fixtures	588	588
Computer Equipment	456	456
Software	164	164
Total	3,469	3,469
Accumulated Depreciation and Amortization	(2,132 )	(2,055 )
Property and Equipment, net	\$ 1,337	\$ 1,414

Depreciation and amortization charged to selling, general and administrative expenses for the three months ended September 30, 2016 and 2015 amounted to \$77 and \$53, respectively.



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**8. Intangible Assets and Goodwill**

Description	Amortization Period	September 30, 2016			June 30, 2016		
		Amount	Accumulated Amortization	Carrying Value	Amount	Accumulated Amortization	Carrying Value
Wetpaint technology	60 months	\$4,952	\$ (3,368 )	\$ 1,584	\$4,952	\$ (3,276 )	\$ 1,676
Wetpaint trademarks	276 months	1,453	(427 )	1,026	1,453	(415 )	1,038
Wetpaint customer relationships	60 months	917	(832 )	85	917	(827 )	90
Choose Digital licenses	60 months	829	(574 )	255	829	(559 )	270
Choose Digital software	60 months	627	(234 )	393	627	(212 )	415
DraftDay tradename	84 months	180	(50 )	130	180	(38 )	142
Draftday non-compete agreements	6 months	30	(30 )		30	(30 )	
DraftDay internally generated capitalized software	60 months	1,498	(394 )	1,104	1,498	(303 )	1,195
DraftDay customer relationships	24 months	556	(456 )	100	556	(351 )	205
Rant trademarks	120 months	2,700	(56 )	2,644			
Rant content	24 months	650	(68 )	582			
Rant technology	60 months	1,500	(64 )	1,436			
Rant advertising relationships	24 months	650	(68 )	582			
Other	various	326	(18 )	308	326	(18 )	308
Total		\$16,868	\$ (6,639 )	\$ 10,229	\$ 11,368	\$ (6,029 )	\$ 5,339

See Note 3, Summary of Significant Accounting Policies, for a discussion of the write-downs recorded with respect to intangible assets related to the Wetpaint and Choose Digital businesses in the quarter ended December 31, 2015 and to the DraftDay business in the quarter ended June 30, 2016. The changes in the gross amounts and useful lives of intangibles related to the Wetpaint, Choose Digital and DraftDay businesses, and to internally generated capitalized software, are a result of these write-downs during the three months ended December 31, 2015 and June, 30, 2016, as well as the abandonment of certain technology as of January 1, 2016, and internal development costs. See Note 6, Acquisitions, for a detailed description of DraftDay and Rant assets and liabilities purchased and their fair values on the date of the acquisition.

Amortization of intangible assets included in selling, general and administrative expenses for the three months ended September 30, 2016 and 2015 amounted to \$610 and \$797, respectively.

Future annual amortization expense expected is as follows:

Years ending June 30,	
2017	\$ 2,370
2018	\$ 3,026
2019	\$ 1,730
2020	\$ 1,367
2021	\$ 1,036

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**8. Intangible Assets and Goodwill - (continued)**

Goodwill consists of the following:

Description	Amount
Balance at July 1, 2016	\$ 11,270
Rant preliminary purchase price allocation	7,589
Balance at September 30, 2016	\$ 18,859

**9. Loans Payable**

	Maturity Date	Total Facility Amount	September 30, 2016	June 30, 2016
Convertible Debentures (the Debentures ), net of discount	7/11/2017	\$ 4,444	\$ 3,155	\$
Secured Convertible Promissory Note (the Secured Convertible Note )	7/8/2017	3,000	3,500	
Line of Credit Promissory Note (the Note )	10/24/2017	20,000		19,716
Line of Credit Grid Note (the Grid Note )	12/31/2016	10,000	900	4,563
Secured Line of Credit (the Secured Revolving Loan I )	12/31/2016	1,500		1,500
Secured Line of Credit (the Secured Revolving Line of Credit )	12/31/2016	500		500
Secured Revolving Loan (the Secured Revolving Loan )	12/31/2016	500		500
Secured Revolving Loan II (the Secured Revolving Loan II )	12/31/2016	500		500
Secured Revolving Loan III (the Secured Revolving Revolving Loan III )	12/31/2016	1,200		135
Convertible Promissory Note (the RI Convertible Note )	12/31/2016	300	300	300
MGT Promissory Notes (the MGT Promissory Notes )	7/31/2016	2,109	943	943
Kuusamo Promissory Notes (the Kuusamo Promissory Notes )	3/8/2016	141	55	55
Total Loans Payable, net			\$ 8,853	\$ 28,712



## Convertible Debentures

On July 12, 2016, the Company closed a private placement (the **Private Placement**) of \$4,444 principal amount of convertible debentures (the **Debentures**) and common stock warrants (the **Warrants**). The Debentures and Warrants were issued pursuant to a Securities Purchase Agreement, dated July 12, 2016 (the **Purchase Agreement**), by and among the Company and certain accredited investors within the meaning of the Securities Act of 1933, as amended (the **Purchasers**). Upon the closing of the Private Placement, the Company received gross proceeds of \$4,000 before placement agent fees, original issue discount, and other expenses associated with the transaction. \$1,162 of the proceeds was used to repay the Grid Note. The placement agent fees of \$420 and original issue discount of \$444 were recorded as a reduction to the debenture balance and will be accreted to interest expense over the term of the Debentures.

The Debentures mature on the one-year anniversary of the issuance date thereof. The Debentures are convertible at any time at the option of the holder into shares of the the Company's common stock at an initial conversion price of \$6.2660 per share (the **Conversion Price**). Based on such initial Conversion

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 9. Loans Payable - (continued)

Price, the Debentures will be convertible into up to 780,230 shares of common stock. If we issue or sell shares of our common stock, rights to purchase shares of our common stock, or securities convertible into shares of our common stock for a price per share that is less than the Conversion Price then in effect, the Conversion Price then in effect will be decreased to equal such lower price. The adjustments to the Conversion Price will not apply to certain exempt issuances, including issuances pursuant to certain employee benefit plans or for certain acquisitions. In addition, the Conversion Price is subject to adjustment upon stock splits, reverse stock splits, and similar capital changes. However, in no event will the Conversion Price be less than \$0.10 per share. The Debentures are secured by a first priority lien on substantially all of the Company's assets in accordance with a security agreement.

The Debentures bear interest at 10% per annum with interest payable upon maturity or on any earlier redemption date. At any time after the issuance date, we will have the right to redeem all or any portion of the outstanding principal balance of the Debentures, plus all accrued but unpaid interest at a price equal to 120% of such amount. The holders of Debentures shall have the right to convert any or all of the amount to be redeemed into common stock prior to redemption. Subject to certain exceptions, the Debentures contain customary covenants against incurring additional indebtedness and granting additional liens and contain customary events of default. Upon the occurrence of an event of default under the Debentures, a holder of Debentures may require the Company to pay the greater of (i) the outstanding principal amount, plus all accrued and unpaid interest, divided by the Conversion Price multiplied by the daily volume weighted average price or (ii) 115% of the outstanding principal amount plus 100% of accrued and unpaid interest. Pursuant to the Debentures, the Company is required to make amortizing payments of the aggregate principal amount, interest, and other amounts outstanding under the Debentures. Such payments must be made beginning three months from the issuance of the Debentures and on the monthly anniversary through and including the maturity date. The Amortization Amount is payable in cash or in shares of our common stock pursuant to the conversion mechanism contained in the Debentures.

On July 20, 2016, the Company and the Purchasers entered into an Amendment to Securities Purchase Agreement and Consent to Modify Debentures (the Amendment and Consent). The Amendment and Consent provides that, while the Debentures are outstanding, Mr. Sillerman will guarantee that the Company shall have \$1,000 available in its commercial bank account or otherwise available in liquid funds. At any time when the Company's available funds fall below \$1,000, Mr. Sillerman will provide (the Sillerman Guaranty) the amounts necessary to make-up the shortfall in an aggregate amount not to exceed \$6,000; however, the first \$5,000 of the guaranty shall be provided by drawing down on our Line of Credit with SIC IV. Any remaining amounts, up to a maximum aggregate of \$1,000 million shall be provided by Sillerman. In connection with the Sillerman Guaranty, the Company's independent directors approved a fee of \$100 as compensation for providing such guaranty.

As a part of the Private Placement, the Company issued Warrants to the Purchasers providing them with the right to purchase up to an aggregate of 354,650 shares of the Company's common stock at an initial exercise price of \$6.5280 per share. Subject to certain limitations, the Warrants are exercisable on any date after the date of issuance and the exercise price for the Warrant is subject to adjustment for certain events, such as stock splits and stock dividends. If the Company issues or sells shares of its common stock, rights to purchase shares of its common stock, or securities convertible into shares of its common stock for a price per share that is less than the conversion price of the Debentures, the exercise price of the Warrants will be decreased to a lower price based on the amount by which the conversion price of the Debentures was reduced due to such transaction. The foregoing adjustments to the exercise price for future stock issues will not apply to certain exempt issuances, including issuances pursuant to certain employee benefit plans or for certain acquisitions. In addition, the exercise price is subject to adjustment upon stock splits, reverse stock splits, and similar capital changes. The Warrants will expire 5 years from the initial issuance date. The fair value of the warrants as of

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**9. Loans Payable - (continued)**

July 12, 2016 was determined to be \$1,500 and the offset was recorded as a debt discount. The warrants are recorded as a liability due to the adjustment of the exercise price due to subsequent common stock issuances.

The Purchasers shall not have the right to convert the Debentures or exercise the Warrants to the extent that such conversion or exercise would result in such Purchaser being the beneficial owner in excess of 4.99% of our common stock. In addition, the Purchasers have no right to convert the Debentures or exercise the Warrants if the issuance of the shares of common stock upon such conversion or exercise would exceed the aggregate number of shares of our common stock which we may issue upon conversion of the Note and exercise of the Warrants without breaching our obligations under NASDAQ listing rules. Such limitation does not apply if our shareholders approve such issuances. We intend to promptly seek shareholder approval for issuances of shares of common stock issuable upon conversion of the Debentures and exercise of the Warrants.

In connection with the Private Placement, the Company and the Purchasers entered into a Registration Rights Agreement under which the Company was required, on or before 30 days after the closing of the Private Placement, to file a registration statement with the Securities and Exchange Commission (the "SEC") covering the resale of the shares of its common stock issuable pursuant to the Debentures and Warrants and to use commercially reasonable efforts to have the registration declared effective as soon as practicable, but in no event later than 90 days after the filing date. The Company will be subject to certain monetary penalties, as set forth in the Registration Rights Agreement, if the registration statement is not filed, does not become effective on a timely basis, or does not remain available for the resale (subject to certain allowable grace periods) of the Registrable Securities, as such term is defined in the Registration Rights Agreement.

Also in connection with the Private Placement, certain stockholders of the Company have executed Lock-Up Agreements, pursuant to which they have agreed not to sell any shares of the Company's common stock until the later of (i) six months following the issuance of the Debentures or (ii) 90 days following the effectiveness of a resale registration statement filed pursuant to the requirements of the Registration Rights Agreement.

The Company valued the Debentures as of July 12, 2016, the issuance date, using the methods of fair value as described ASC 820, *Fair Value Measurements and Disclosures* (ASC 820). The fair value of the conversion feature in the Debentures was determined to be \$1,856 as of July 12, 2016 and the offset was recorded as a debt discount.

On October 12, 2016, the first amortization payment in the amount of \$444, plus accrued interest of approximately \$114 pursuant to the terms of the Debentures became due and payable to the Purchasers. The Company did not make

such payment at the time it was due.

The Company has also not maintained the Minimum Cash Reserve as required by the Purchase Agreement. Pursuant to the terms of the Debentures, the failure to cure the failure to maintain the Minimum Cash Reserve within three trading days constitutes an Event of Default. Among other things: (1) at the Purchaser's election, the outstanding principal amount of the Debentures, plus accrued but unpaid interest, plus all interest that would have been earned through the one year anniversary of the original issue date if such interest has not yet accrued, liquidated damages and other amounts owed through the date of acceleration, shall become, immediately due and payable in either cash or stock pursuant to the terms of the Debentures; and (2) the interest rate on the Debentures will increase to the lesser of 18% or the maximum allowed by law. In addition to other remedies available to the Purchasers, our obligation to repay amounts due under the Debentures is secured by a first priority security interest in and lien on all of our assets and property, including our intellectual property, and such remedies can be exercised by the Purchasers without additional notice to the Company.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 9. Loans Payable - (continued)

The Company entered into waiver agreements with respect to the initial amortization payments due under the Debentures with Purchasers holding approximately 87% of the Debentures. The Waivers entered into with some of the Purchasers related to the failure to pay the amortization amounts do not address the failure to maintain the Minimum Cash Reserve.

Pursuant to the terms of the Debentures, the failure to cure the non-payment of the amortization amount within three trading days after the date such payment was due constitutes an Event of Default. Following the occurrence of an event of default, among other things: (1) at the Purchaser's election, the outstanding principal amount of the Debentures, plus accrued but unpaid interest, plus all interest that would have been earned through the one year anniversary of the original issue date if such interest has not yet accrued, liquidated damages and other amounts owed through the date of acceleration, shall become, immediately due and payable in either cash or stock pursuant to the terms of the Debentures; and (2) the interest rate on the Debentures will increase to the lesser of 18% or the maximum allowed by law. In addition to other remedies available to the Purchasers, our obligation to repay amounts due under the Debentures is secured by a first priority security interest in and lien on all of our assets and property, including our intellectual property, and such remedies can be exercised by the Purchasers without additional notice to the Company.

The Company did not receive a waiver from one of its debenture holders, holding approximately 13% of the principal amount of the Debentures with respect to the event of default arising out of the Company's failure to make the first amortization payment when due. Pursuant to the terms of the Debentures, such holder has sent a notice of acceleration, stating that the Company owes \$696, reflecting the principal amount of the Debenture plus interest through November 1, 2016. Interest will accrue at 18% until this amount is satisfied. The Company is seeking to settle the matter with the holder; however, there can be no assurance that an agreement will be reached.

### Secured Convertible Promissory Note

On July 8, 2016 the Company issued a Secured Convertible Promissory Note (the "Secured Convertible Note") to Rant in the amount of \$3,000 as part of the consideration for the purchase of the Rant Assets.

The \$3,000 Secured Convertible Note matures on July 8, 2017 barring any events of default or a change of control of the Company. The Secured Convertible Note bears interest at 12% per annum, payable at maturity. At the election of Rant, the Secured Convertible Note is convertible into shares of the Company's common stock at a price equal to the lower of (i) \$5.20 per share, or (ii) such lower price as may have been set for conversion of any debt or securities into common stock held on or after the date hereof by Sillerman until the first to occur of March 31, 2017 or the date the

Note has been satisfied or converted (for the purposes hereof Robert F.X. Sillerman is the Company's Executive Chairman and Chief Executive Officer and/or any affiliate of Robert F.X. Sillerman is herein collectively, "Sillerman"). The Company valued the conversion feature at issuance using methods of fair value as described in ASC 820 and it was determined to be \$500. In connection with the Secured Convertible Note, the Company has entered into a Note Purchase Agreement (the "NPA") and a Security Agreement (the "Rant Security Agreement") with Rant, under which the Company has granted Rant a continuing security interest in substantially all assets of the Company. In connection with the issuance of the Secured Convertible Note, Sillerman and Rant entered into a subordination agreement subordinating repayment of the notes to the Debentures (as described in (b) hereof) and entered into an Intercreditor Agreement providing for the parties' respective rights and remedies with respect to payments against the collateral held as security for both of them.

The events of default under the Debentures noted above also constituted a default under the Secured Convertible Note issued in connection with the acquisition of Rant. The holder of the Secured Convertible Note has executed a waiver that provides that, until May 15, 2017, the events of default arising out of the

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 9. Loans Payable - (continued)

failure to pay the amounts due under the Debentures as of the date of the waiver and the failure by the Company to maintain the Minimum Cash Reserve shall not constitute events of default for purposes of the Secured Convertible Note.

### Line of Credit Promissory Note

On October 24, 2014, the Company and SIC III, a company affiliated with Mr. Sillerman, entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") pursuant to which SIC III agreed to purchase certain securities issued by the Company for a total of \$30,000. Pursuant to the Securities Purchase Agreement, the Company issued a Line of Credit Promissory Note (the "Note"), which provides for a \$20,000 line of credit to the Company (see Note 11, Stockholders' Equity, for a discussion of the remaining \$10,000 of the Securities Purchase Agreement). The Company also agreed to issue to SIC III warrants to purchase 1,000,000 shares of the Company's common stock. The Company issued warrants to purchase 50,000 shares of the Company's common stock for every \$1,000 advanced under the Note. The warrants will be issued in proportion to the amounts the Company draws under the Note. The exercise price of the warrants will be 10% above the closing price of the Company's shares on the date prior to the issuance of the warrants. Exercise of the warrants was subject to approval of the Company's stockholders, which occurred on January 13, 2015.

The Note provides a right for the Company to request advances under the Note from time to time. The Note bears interest at a rate of 12% per annum, payable in cash on a quarterly basis. The Note matures on October 24, 2017. On October 24, 2014, SIC III made an initial advance under the Note in the principal amount of \$4,500. On December 15, 2014, SIC III made an additional advance in the principal amount of \$15,500 pursuant to the terms of the Note (the proceeds of which were used to repay amounts outstanding under the DB Line, as discussed above). As of September 30, 2016, the total outstanding principal amount of the Note was \$20,000. The Note provides for a 3% discount, such that the amount advanced by SIC III was 3% less than the associated principal amount of the advances. Therefore, the net amount actually outstanding under the Note at September 30, 2016, was \$19,666, which includes accretion of the discount of \$266 (the 3% discount of \$600 is being accreted to the principal balance over the life of the Note). From and after the occurrence and during the continuance of any event of default under the Note, the interest rate is automatically increased to 17% per annum.

In connection with the first drawdown of \$4,500 under the Note, the Company issued SIC III warrants to purchase 11,250 shares of the Company's common stock. These warrants have an exercise price of \$70.20, representing a price equal to 10% above the closing price of the Company's common stock on the day prior to issuance. In connection with



the additional drawdown of \$15,500 under the Note, the Company issued SIC III warrants to purchase 38,750 shares of the Company's common stock. These warrants have an exercise price of \$72.60, representing a price equal to 10% above the closing price of the Company's common stock on the day prior to issuance. The warrants are exercisable for a period of five years from issuance. Stock compensation expense related to the issuances of warrants to SIC III was \$2,049 during the year ended June 30, 2015.

The Note is not convertible into equity securities of the Company.

The Note also contains certain covenants and restrictions, including, among others, that, for so long as the Note is outstanding, the Company will not, without the consent of the holder of the Note, (i) make any loan or advance in excess of \$500 to any officer, director, employee of affiliate of the Company (except advances and similar expenditures: (a) under the terms of employee stock or option plans approved by the Board of Directors, (b) in the ordinary course of business, consistent with past practice or (c) to its subsidiaries), (ii) incur any indebtedness that exceeds \$1,000 in the aggregate other than indebtedness outstanding under the Note, (iii) guaranty any indebtedness of any unaffiliated third party, (iv) change the principal business of the

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 9. Loans Payable - (continued)

Company or exit the Company's current business, provided that the foregoing is subject to the Board's compliance with its fiduciary duties, (v) sell, assign, or license material technology or intellectual property of the Company except (a) in the ordinary course of business, consistent with past practice, (b) sales and assignments thereof in any 12 month period that do not have a fair market value in excess of \$500 or (c) in connection with a change of control transaction, (vi) enter into any corporate strategic relationship involving the payment, contribution or assignment by the Company of its assets that have a fair market value in excess of \$1,000 or (vii) liquidate or dissolve the Company or wind up the business of the Company, except in connection with changes of control or merger, acquisition or similar transactions or as approved by the Company's Board in compliance with their fiduciary duties.

On August 22, 2016, the Company and SIC III, entered into a Note Exchange Agreement pursuant to which \$23,264, which represents all of the outstanding principal and accrued interest outstanding under the Notes, was exchanged for 23,264 shares of the Company's Series C Preferred Stock at an exchange price of \$1,000 per share. The Note Exchange Agreement provides for the newly issued shares to be held subject to the obligations to convert the shares into common stock on the terms and on the conditions set forth in the Exchange Agreement. After the exchange, the Notes were retired.

Interest expense on the Note was \$382 and \$613 for the three months ended September 30, 2016 and 2015, respectively.

### Line of Credit Grid Note

On June 11, 2015, the Company and Sillerman Investment Company IV, LLC ( SIC IV ) entered into a Line of Credit Grid Note (the Grid Note ). The Grid Note provides a right for the Company to request advances under the Grid Note from time to time in an aggregate amount of up to \$10,000. The Grid Note bears interest at a rate of 12% per annum, payable in cash on the maturity of the Grid Note. From and after the occurrence and during the continuance of any event of default under the Grid Note, the interest rate is automatically increased to 14% per annum.

The Grid Note is not convertible into equity securities of the Company.

In order for the Company to make requests for advances under the Grid Note, the Company must have an interest coverage ratio equal to or greater than 1, unless SIC IV waives this requirement. The interest coverage ratio is calculated by dividing: (a) the Company's net income for the measurement period, plus the Company's interest expense for the measurement period, plus the Company's tax expense for the measurement period, by (b) the Company's interest

expense for the measurement period, plus the amount of interest expense that would be payable on the amount of the requested draw for the twelve months following the request for the advance. The measurement period is the twelve months ended as of the last day of the last completed fiscal quarter prior to the request for the advance. The Company currently does not have an interest coverage ratio equal to or greater than 1, so advances would require the SIC IV to waive this requirement. In addition, in order to make requests for advances under the Grid Note, there can be no event of default under the Note at the time of the request for an advance, including that there has been no material adverse change in the business plan or prospects of the Company in the reasonable opinion of SIC IV.

The Grid Note matures on the first to occur of: (a) 12/31/2016 or (b) upon a Change of Control Transaction. A Change of Control Transaction includes (i) a sale of all or substantially all of the assets of the Company or (ii) the issuance by the Company of common stock that results in any person or group becoming the beneficial owner of a majority of the aggregate ordinary voting power represented by the Company's issued and outstanding common stock (other than as a result of, or in connection with, any merger, acquisition, consolidation or other business combination in which the Company is the surviving entity following the consummation thereof), excluding transactions with affiliates of the Company.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 9. Loans Payable - (continued)

If an event of default occurs under the Grid Note, SIC IV has the right to require the Company to repay all or any portion of the Grid Note. An event of default is deemed to have occurred on: (i) the non-payment of any of the amounts due under the Grid Note within five (5) Business Days after the date such payment is due and payable; (ii) dissolution or liquidation, as applicable, of the Company; (iii) various bankruptcy or insolvency events shall have occurred, (iv) the inaccuracy in any material respect of any warranty, representation, statement, report or certificate the Company makes to Lender under the Note hereto; (v) the Company contests, disputes or challenges in any manner, whether in a judicial proceeding or otherwise, the validity or enforceability of any material provision in the Grid Note; or (vi) a material adverse change in the business plan or prospects of the Company in the reasonable opinion of SIC IV.

As of September 30, 2016 and June 30, 2016 the principal amount outstanding under the Grid Note was \$900 and \$4,563, respectively.

On July 8, 2016, the Company and SIC III, SIC IV and SIC VI entered into an Exchange Agreement pursuant to which, subject to adjustment, (i) 3,000 shares of the Company's Series C Preferred Stock owned by SIC III are to be exchanged for 890,898 shares of the Company's common stock and (ii) all of the debt held by Mr. Sillerman and such affiliates is to be exchanged for 5,066,654 shares of the Company's common stock. Issuance of the shares is conditioned upon approval of the Company's shareholders, the closing of an offering of the Company's common stock in the amount of at least \$10,000, approval of its Listing of Additional Shares application with NASDAQ, the Company shall not be subject to any bankruptcy proceeding, and various other conditions. The exchange price shall be equal to the lesser of \$5.20 and the price at which the Debentures can be exchanged for shares of the Company's common stock. The Company received an independent valuation with respect to the original exchange that the exchange price of \$5.20 reflects fair value. Any additional change is subject to the receipt by the Company of an updated fair value determination. The agreement provides for termination in the event the conditions are not satisfied by March 31, 2017. At the date of this filing, this transaction has not yet closed.

### Amended Exchange Agreement/Amended Grid Note

On July 18, 2016, SIC III, SIC IV and SIC VI, LLC entered into an amendment to the Exchange Agreement relating to the exchange of debt and shares of the Series C Preferred Stock of the Company for shares of the Company's common stock. The Exchange Agreement modified the Grid Note to provide that SIC IV shall be entitled to repayment of up to \$2,000 of the outstanding principal balance of the Grid Note and the Company shall be entitled to draw up to an additional \$5,000.

On August 22, 2016, the Company and SIC IV, entered into a Note Exchange Agreement pursuant to which \$3,150, which represents all of the outstanding principal and accrued interest outstanding under the Grid Note other than \$900, was exchanged for 3,150 shares of the Company's Series C Preferred Stock at an exchange price of \$1,000 per share. The Note Exchange Agreement provides for the newly issued shares to be held subject to the obligations to convert the shares into common stock on the terms and on the conditions set forth in the Exchange Agreement. Therefore, the outstanding balance of the Grid Note at September 30, 2016 was \$900.

Interest expense on the Grid Note for the three months ended September 30, 2016 and 2015 was \$77 and \$96, respectively.

In connection with the Company's entering into the Perk Credit Agreement (as defined below), SIC IV agreed to subordinate payment of the Grid Note to amounts owed to Perk under the Perk Credit Agreement. SIC IV also consented to the consummation of the Asset Purchase Agreement with Perk. In exchange for such consent and such agreement to subordinate, the Company agreed to provide SIC IV a security interest in the assets of the Company in connection with amounts outstanding under the Grid Note.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 9. Loans Payable - (continued)

The Company entered into a Security Agreement with SIC IV, pursuant to which the Company pledged its assets in connection with such security interest. The foregoing descriptions of the Security Agreement is qualified in its entirety by reference to the full text of the form of Security Agreement.

### Secured Revolving Loans and Lines of Credit

On January 27, 2016, Sillerman Investment Company VI LLC ( SIC VI ), an affiliate of Robert F.X. Sillerman, the Executive Chairman and Chief Executive Officer of the Company, entered into a Secured Revolving Loan agreement (the Secured Revolving Loan I ) with the Company and its subsidiaries, wetpaint.com, Inc. and Choose Digital Inc. (collectively, the Subsidiaries ), pursuant to which the Company can borrow up to \$1,500. The Secured Revolving Loan bears interest at the rate of 12% per annum. In connection with the Secured Revolving Loan, the Company and the Subsidiaries have entered into a Security Agreement (the Security Agreement ) with SIC VI, under which the Company and the Subsidiaries have granted SIC VI a continuing security interest in all assets of the Company and the Subsidiaries, with the exception of the Company s interest in DraftDay Gaming Group, Inc. The Company intends to use the proceeds from the Secured Revolving Loan to fund working capital requirements and for general corporate purposes in accordance with a budget to be agreed upon by SIC VI and the Company. As of June 30, 2016, \$1,500 had been advanced thereunder. Interest expense on the Secured Revolving Loan I was \$27 for the three months ended September 30, 2016.

The Company and its subsidiaries wetpaint.com, inc., and Choose Digital, Inc. (the Subsidiaries ) entered into a secured, revolving Line of Credit on March 29, 2016 with SIC VI (the Secured Revolving Line of Credit ), pursuant to which the Company can borrow up to \$500. The Secured Revolving Line of Credit bears interest at the rate of 12% per annum. In connection with the Secured Revolving Line of Credit, the Company and the Subsidiaries have entered into a Security Agreement (the Security Agreement ) with SIC VI, under which the Company and the Subsidiaries have granted SIC VI a continuing security interest in all assets of the Company and the Subsidiaries, with the exception of the Company s interest in DraftDay Gaming Group, Inc. The Company intends to use the proceeds from the Secured Revolving Line of Credit to fund working capital requirements and for general corporate purposes in accordance with a budget to be agreed upon by SIC VI and the Company. At June 30, 2016, \$500 had been advanced thereunder. Interest expense on the Secured Revolving Line of Credit was \$9 for the three months ended September 30, 2016.

On April 29, 2016, SIC VI entered into an additional secured revolving loan agreement with the Company and the Subsidiaries ( Secured Revolving Loan ), pursuant to which the Company can borrow up to \$500. Loans under this loan

agreement bear interest at the rate of 12% per annum and mature on December 31, 2016, barring any events of default or a change of control of the Company. As of June 30, 2016, \$500 had been advanced thereunder. Interest expense on the Secured Revolving Loan was \$9 for the three months ended September 30, 2016.

On May 16, 2016, SIC VI entered into an additional secured revolving loan agreement with the Company and the Subsidiaries ( Secured Revolving Loan II ), pursuant to which the Company can borrow up to \$500. Loans under this loan agreement bear interest at the rate of 12% per annum and mature on December 31, 2016, barring any events of default or a change of control of the Company. As of June 30, 2016, \$500 had been advanced thereunder. Interest expense on the Secured Revolving Loan II was \$9 for the three months ended September 30, 2016.

On June 27, 2016, SIC VI entered into a secured revolving loan agreement (the Secured Revolving Loan III ) with the Company and its subsidiaries, pursuant to which the Company can borrow up to \$1,200. The Secured Revolving Loan III bears interest at the rate of 12% per annum and matures on December 31, 2016, barring any events of default or a change of control of the Company. At June 30, 2016,

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 9. Loans Payable - (continued)

\$135 had been advanced thereunder. Interest expense on the Secured Revolving Loan III was \$8 for the three months ended September 30, 2016.

On August 22, 2016, the Company and SIC VI entered into a Note Exchange Agreement pursuant to which \$3,608, which represents all of the outstanding principal and accrued interest of certain notes held by SIC VI was exchanged for 3,608 shares of the Company's Series C Preferred Stock at an exchange price of \$1,000 per share. The Note Exchange Agreement provides for the newly issued shares to be held subject to the obligations to convert the shares into common stock on the terms and on the conditions set forth in the Exchange Agreement. The Secured Revolving Loans and Lines of Credit were retired with the exchange transaction.

### Related Approvals

Because each of the transactions referred to in the foregoing sections involved Mr. Sillerman, or an affiliate of his, the transactions were subject to certain rules regarding affiliate transactions. As such, each was approved by a Special Committee of the Board of Directors and a majority of the independent members of the Board of Directors of the Company.

### Convertible Promissory Note

On June 27, 2016, the Company entered into a Convertible Promissory Note with Reaz Islam (RI), the Company's Chief of Staff, pursuant to which RI loaned the Company \$300 (the RI Convertible Note). The RI Convertible Note bears interest at a rate of 12% and matures on December 31, 2016. RI shall have the right to convert the RI Convertible Note into shares of the common stock of the Company at such time, on such terms, and in accordance with such procedures as Mr. Sillerman shall have the right to convert debt held by Mr. Sillerman or his affiliates into shares of the Company's common stock. The RI Convertible Note is subordinate to any note held by Mr. Sillerman or his affiliates and RI has agreed to execute any agreement reasonably required in connection therewith. As of September 30, 2016 and June 30, 2016, \$300 of principal was outstanding under the RI Convertible Note.

### Promissory Notes

In accordance with the Assets Purchase Agreement to purchase the DraftDay Business (see Note 6, Acquisitions), the Company issued promissory notes to MGT Capital (MGT Promissory Notes) in the principal amount of \$234 due and



paid on September 29, 2015 and in the aggregate principal amount of \$1,875 due March 8, 2016. The Company was not able to make the payment at the due date and on March 24, 2016 converted \$824 of the promissory notes to common stock and \$110 of the promissory notes to a Series D Preferred Stock (see Note 11, Stockholders' Equity (Deficit)). All such notes bear interest at a rate of 5% per annum. On April 13, 2016, MGT converted all 110 shares of the Company's Series D Preferred Stock into shares of common stock of the Company. Accordingly, the Company issued 18,332 shares of common stock to MGT. Thereafter, there are no shares of the Company's Series D Preferred Stock outstanding.

On June 14, 2016, the Company entered into a second exchange agreement with MGT (the "Second MGT Exchange Agreement") relating to the \$940 remaining due under the MGT Note (see Note 6, Acquisitions). Under the Second MGT Exchange Agreement, the MGT Note shall be exchanged in full for (a) \$11 in cash representing accrued interest and (b) 132,092 shares of Company common stock, subject to certain adjustments. Issuance of the shares is conditioned upon approval of the Company's shareholders and approval of its Listing of Additional Shares application with NASDAQ. Therefore, the outstanding balance of the MGT Promissory Notes was \$943 at September 30, 2016. The Company recorded interest expense of \$12 for the three months ended September 30, 2016. On October 10, 2016, the Company satisfied the MGT Note through the issuance of 136,304 shares of its common stock and payment of interest of \$16.

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**Function(x) Inc.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(amounts in thousands, except share and per share  
data)  
(Unaudited)**

**9. Loans Payable - (continued)**

In exchange for releasing certain liens and encumbrances with respect to the DraftDay Business (see Note 6, Acquisitions), the Company issued promissory notes to Kuusamo Capital Ltd. ( Kuusamo Promissory Notes ) in the principal amount of \$16 due and paid on September 29, 2015 and in the aggregate principal amount of \$125 due March 8, 2016. The Company was not able to make the payment at the due date. All such notes bear interest at a rate of 5% per annum.

The outstanding balance of the Kuusamo Promissory Notes was \$55 at September 30, 2016. The Company recorded interest expense of \$1 for the three months ended September 30, 2016.

**Accounts Payable Settlements**

North America Photon Infotech Ltd. ( Photon ), a company based in Mauritius that had provided development services to the Company, filed suit in California on March 28, 2016 to collect approximately \$218 owed by the Company to Photon. The Company settled this matter on May 12, 2016 in part by issuing a Note in the amount of \$110, payable in six months. Such note was settled on November 15, 2016 with the issuance of 31,510 shares of the Company's common stock.

On April 7, 2016, the Company issued a note in the amount of \$56 to Simulmedia, Inc., a former vendor of the Company, as partial settlement of the outstanding balance due to Simulmedia, Inc. for services provided.

Pandera Systems, LLC ( Pandera ), which formerly provided analytics development services to the Company, filed suit on March 11, 2016 against the Company to demand collection of amounts due for such services. The Company settled this matter on April 12, 2016, in part by issuing a note in the amount of \$50.

Interest expense on these notes issued in connection with settlements with vendors was \$14 for the three months ended September 30, 2016.

**10. Commitments and Contingencies**

## Litigation

CFGI, LLC, a former provider of consulting services of the Company, served the Company with a lawsuit to collect approximately \$200 owed by the Company to CFGI, LLC on September 9, 2016. The Company settled this matter for \$150 and the case was dismissed.

Creditors Adjustment Bureau, Inc., a collection agency in California, has filed suit in Santa Clara County Superior Court (California) to collect an \$84 debt assigned to it by Gigya Inc. The Company settled this matter for \$55.

A Complaint (Index #654984/2016) was filed by Andy Mule, on behalf of himself and others similarly situated, in the Supreme Court of the State of New York. The Complaint, which names the Company, each of its current directors, and President, as a former director, as defendants, claims a breach of fiduciary duty relating to the terms of a proposed conversion of debt and preferred shares into common equity by Mr. Sillerman and/or his affiliates. The Complaint seeks unspecified damages and such relief as the Court may deem appropriate. The Company accepted service on October 4, 2016, and filed a motion to dismiss on November 14, 2016. The Company believes that this claim is without merit.

A Complaint (Case #8:16-cv-02101-DOC-JCG) was filed in the United States District Court, Central District of California, Southern Division by Stephan Wurth Photography, Inc. The Complaint, which names Wetpaint.com, Inc. and two former employees of Rant, Inc., claims copyright infringement relating to photographs of Anna Kournikova that first appeared on a Rant website some time ago and continued to appear after our purchase of Rant on July 8, 2016. We have not yet been served in this matter. If and when we are served, we intend to vigorously defend the matter.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 10. Commitments and Contingencies - (continued)

The Company is subject to litigation and other claims that arise in the ordinary course of business. While the ultimate result of our outstanding legal matters cannot presently be determined, the Company does not expect that the ultimate disposition will have a material adverse effect on its results of operations or financial condition. However, legal matters are inherently unpredictable and subject to significant uncertainties, some of which are beyond our control. As such, there can be no assurance that the final outcome will not have a material adverse effect on the Company's financial condition and results of operations.

## 11. Stockholders Equity

### Reverse Stock Split

On September 16, 2016, the Company amended its Certificate of Incorporation to effect a reverse stock split of all issued and outstanding shares of common stock at a ratio of 1 for 20 (the Reverse Stock Split). Owners of fractional shares outstanding after the Reverse Stock Split were paid cash for such fractional interests. The effective date of the Reverse Stock Split is September 16, 2016. All common stock share amounts disclosed in these financial statements have been adjusted to reflect the Reverse Stock Split.

### Common Stock

As of September 30, 2016 there were 300,000,000 shares of authorized common stock and 3,056,353 shares of common stock issued and outstanding, respectively. As of June 30, 2016 there were 300,000,000 shares of authorized common stock and 3,023,753 shares of common stock issued and outstanding, respectively. Except as otherwise provided by Delaware law, the holders of the Company's common stock are entitled to one vote per share on all matters to be voted upon by the stockholders.

### Preferred Stock

The Company has authorized four series of preferred stock, including classes of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock. At this time, there is no Series A, Series B or Series D Preferred Stock outstanding. Only Series C and Series E Preferred Stock are outstanding, as described below.

## Series A Convertible Redeemable Preferred Stock

Prior to September 16, 2013, the Company had authorized a class of Series A Preferred Shares, but none of those shares were issued or outstanding. On September 16, 2013, the Company eliminated the prior class of series A preferred shares and created a new class of Series A Convertible Redeemable Preferred Stock (the Series A Convertible Redeemable Preferred Stock ). The Company authorized the issuance of up to 100,000 shares of the Series A Convertible Redeemable Preferred Stock. The designation, powers, preferences and rights of the shares of Series A Convertible Redeemable Preferred Stock and the qualifications, limitations and restrictions thereof are summarized as follows:

The shares of Series A Convertible Redeemable Preferred Stock have an initial stated value of 1,000 per share (the Stated Value ).

The shares of Series A Convertible Redeemable Preferred Stock are entitled to receive quarterly cumulative dividends at a rate equal to 7% per annum of the Stated Value whenever funds are legally available and when and as declared by the Company s board of directors. If the Company declares a dividend or the distribution of its assets, the holders of Series A Convertible Redeemable Preferred Stock shall be entitled to participate in the distribution to the same extent as if they had converted each share of Series A Convertible Redeemable Preferred Stock held into Company common stock.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 11. Stockholders Equity - (continued)

Each share of Series A Convertible Redeemable Preferred Stock is convertible, at the option of the holders, into shares of Company common stock at a conversion price of \$23.00.

The Company may redeem any or all of the outstanding Series A Convertible Redeemable Preferred Stock at any time at the then current Stated Value, subject to a redemption premium of (i) 8% if redeemed prior to the one year anniversary of the initial issuance date; (ii) 6% if redeemed on or after the one year anniversary of the initial issuance date and prior to the two year anniversary of the initial issuance date; (iii) 4% if redeemed on or after the two year anniversary of the initial issuance date and prior to the three year anniversary of the initial issuance date; (iv) 2% if redeemed on or after the three year anniversary of the initial issuance date and prior to the 42 months anniversary of the initial issuance date; and (v) 0% if redeemed on or after the 42 months anniversary of the initial issuance date. However, no premium shall be due on the use of up to 33% of proceeds of a public offering of common shares at a price of \$1.00 or more per share.

The Company is required to redeem the Series A Convertible Redeemable Preferred Stock on the fifth anniversary of its issuance.

Upon a change of control of the Company, the holders of Series A Convertible Redeemable Preferred Stock shall be entitled to a change of control premium of (i) 8% if redeemed prior to the one year anniversary of the initial issuance date; (ii) 6% if redeemed on or after the one year anniversary of the initial issuance date and prior to the two year anniversary of the initial issuance date; (iii) 4% if redeemed on or after the two year anniversary of the initial issuance date and prior to the three year anniversary of the initial issuance date; (iv) 2% if redeemed on or after the three year anniversary of the initial issuance date and prior to the 42 months anniversary of the initial issuance date; and (v) 0% if redeemed on or after the 42 months anniversary of the initial issuance date.

The shares of Series A Convertible Redeemable Preferred Stock are senior in liquidation preference to the shares of Company common stock.

The shares of Series A Convertible Redeemable Preferred Stock shall have no voting rights except as required by law. The consent of the holders of 51% of the outstanding shares of Series A Convertible Redeemable Preferred Stock shall be necessary for the Company to: (i) create or issue any Company capital stock (or any securities convertible into any Company capital stock) having rights, preferences or privileges senior to or on parity with the Series A Convertible Redeemable Preferred Stock; or (ii) amend the Series A Convertible Redeemable Preferred Stock. At September 30, 2016 and June 30, 2016 there were no shares of Series A Convertible Redeemable Preferred Stock outstanding.

## **Series B Convertible Preferred Stock**

On September 16, 2013, the Company created 50,000 shares of Series B Convertible Preferred Stock (the Series B Convertible Preferred Stock ). The designation, powers, preferences and rights of the shares of Series B Convertible Preferred Stock and the qualifications, limitations and restrictions thereof are summarized as follows:

The shares of Series B Convertible Preferred Stock have an initial stated value of \$1,000 per share.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(amounts in thousands, except share and per share**  
**data)**  
**(Unaudited)**

**11. Stockholders Equity - (continued)**

The shares of Series B Convertible Preferred Stock are convertible, at the option of the holders, into shares of Company common stock at a conversion price of \$23.00. The shares of Series B Convertible Preferred Stock may only be converted from and after the earlier of either of: (x) the first trading day immediately following (i) the closing sale price of the Company's common stock being equal to or greater than \$33.40 per share (as adjusted for stock dividends, stock splits, stock combinations and other similar transactions occurring with respect to the Company's common stock from and after the initial issuance date) for a period of five consecutive trading days following the initial issuance date and (ii) the average daily trading volume of the Company's common stock (as reported on Bloomberg) on the principal securities exchange or trading market where the Company's common stock is listed or traded during the measuring period equaling or exceeding 1,250 shares of Company's common stock per trading day (the conditions set forth in the immediately preceding clauses (i) and (ii) are referred to herein as the Trading Price Conditions ) or (y) immediately prior to the consummation of a fundamental transaction , regardless of whether the Trading Price Conditions have been satisfied prior to such time. A fundamental transaction is defined as (i) a sale of all or substantially all of the assets of the Company, (ii) a sale of at least 90% of the shares of capital stock of the Company or (iii) a merger, consolidation or other business combination as a result of which the holders of capital stock of the Company prior to such merger, consolidation or other business combination (as the case may be) hold in the aggregate less than 50% of the Voting Stock of the surviving entity immediately following the consummation of such merger, consolidation or other business combination (as the case may be), in each case of clauses (i), (ii) and (iii), the Board has determined that the aggregate implied value of the Company's capital stock in such transaction is equal to or greater than \$125,000.

The shares of Series B Convertible Preferred Stock are not redeemable by either the Company or the holders thereof. The shares of Series B Convertible Preferred Stock are on parity in dividends and liquidation preference with the shares of Company common stock, which shall be payable only if then convertible into common stock.

The shares of Series B Convertible Preferred Stock shall have no voting rights except as required by law. The consent of the holders of 51% of the outstanding shares of Series B Convertible Preferred Stock shall be necessary for the Company to alter, amend or change any of the terms of the Series B Convertible Preferred Stock. At September 30, 2016 and June 30, 2016, there were no shares of Series B Convertible Preferred Stock outstanding.

**Series C Convertible Preferred Stock**

On October 24, 2014, the Company created a new class of Series C Convertible Redeemable Preferred Stock (the Series C Convertible Redeemable Preferred Stock ). The Company authorized the issuance of up to 100,000 shares of the Series C Convertible Redeemable Preferred Stock. The rights, preferences, privileges and restrictions of the shares of Series C Convertible Preferred Stock and the qualifications, limitations and restrictions thereof are summarized as



follows:

The shares of Series C Convertible Redeemable Preferred Stock have a stated value of \$1,000 per share.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
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data)  
(Unaudited)**

**11. Stockholders Equity - (continued)**

Each holder of a share of Series C Convertible Redeemable Preferred Stock shall be entitled to receive dividends ( Dividends ) on such share equal to twelve percent (12%) per annum (the Dividend Rate ) of the Stated Value before any Dividends shall be declared, set apart for or paid upon any junior stock or parity stock. Dividends on a share of Series C Convertible Redeemable Preferred Stock shall accrue daily at the Dividend Rate, commence accruing on the issuance date thereof, compound annually, be computed on the basis of a 360-day year consisting of twelve 30-day months and be convertible into common stock in connection with the conversion of such share of Series C Convertible Redeemable Preferred Stock.

Each share of Series C Convertible Redeemable Preferred Stock is convertible, at the option of the holders, on the basis of its stated value and accrued, but unpaid dividends, into shares of Company common stock at a conversion price of \$80.00 per common share.

The Company may redeem any or all of the outstanding Series C Convertible Redeemable Preferred Stock at any time at the then current Stated Value plus accrued Dividends thereon plus a redemption premium equal to the Stated Value multiplied by 6%. However, no premium shall be due on the use of up to 33% of proceeds of a public offering of common shares at a price of \$100.00 or more per share.

The Company is required to redeem each Series C Convertible Redeemable Preferred Stock on the tenth business day immediately following the fifth anniversary of its issuance. However, the Company shall have no obligation to mandatorily redeem any shares of Series C Convertible Redeemable Preferred Stock at any time that (x) the Company does not have surplus under Section 154 of the Delaware General Corporation Law (the DGCL ) or funds legally available to redeem all shares of Series C Convertible Redeemable Preferred Stock, (y) the Company's capital is impaired under Section 160 of the DGCL or (z) the redemption of any shares of Series C Convertible Redeemable Preferred Stock would result in an impairment of the Company's capital under Section 160 of the DGCL; provided, that if the Company is prohibited from redeeming the shares due to those limitations, the Company will redeem the Shares as soon as possible after such restrictions are no longer applicable.

Upon a change of control of the Company, each holder of Series C Convertible Redeemable Preferred Stock shall be entitled to require the Company to redeem from such holder all of such holder's shares of Series C Convertible Redeemable Preferred Stock so long as such holder requests such redemption in writing at least one business day prior to the consummation of such change of control. The redemption amount per share equals the Stated Value thereof plus accrued Dividends plus a change of control premium equal to the stated value multiplied 6%.

The shares of Series C Convertible Redeemable Preferred Stock are senior in liquidation preference to all shares of capital stock of the Company unless otherwise consented to by a majority of the holders of shares of Series C Convertible Redeemable Preferred Stock.

The shares of Series C Convertible Redeemable Preferred Stock shall have no voting rights except as required by law.

The consent of the holders of a majority of the shares of Series C Convertible Redeemable Preferred Stock is necessary for the Company to amend the Series C certificate of designation.

The Series C Convertible Redeemable Preferred Stock was not classified as a component of stockholders' equity in the accompanying Consolidated Balance Sheets. Likewise, the undeclared dividends related to Series C Convertible Redeemable Preferred Stock have been recorded as an addition within the Series C

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 11. Stockholders Equity - (continued)

Convertible Preferred Stock account in the amount of \$484 and \$307 for the three months ended September 30, 2016 and September 30, 2015.

On August 22, 2016, the Company amended the terms of the Series C Convertible Redeemable Preferred Stock. The amendment provided that the Series C Preferred Stock is no longer convertible into common stock by its terms (though the Series C Preferred Stock held by Mr. Sillerman remains subject to the Exchange Agreement in Note 9, Loans Payable) and is no longer redeemable by holder five years after issuance. As amended, the rights, preferences, privileges and restrictions of the shares of Series C Preferred Stock and the qualifications, limitations and restrictions thereof are summarized as follows:

The shares of Series C Convertible Redeemable Preferred Stock have a stated value of \$1,000 per share. Each holder of a share of Series C Convertible Redeemable Preferred Stock shall be entitled to receive dividends ( Dividends ) on such share equal to twelve percent (12%) per annum (the Dividend Rate ) of the Stated Value before any Dividends shall be declared, set apart for or paid upon any junior stock or parity stock. Dividends on a share of Series C Preferred Stock shall accrue daily at the Dividend Rate, commence accruing on the issuance date thereof, compound annually, be computed on the basis of a 360-day year consisting of twelve 30-day months and be convertible into common stock in connection with the conversion of such share of Series C Preferred Stock. The Company may redeem any or all of the outstanding Series C Preferred Stock at any time at the then current Stated Value plus accrued Dividends thereon plus a redemption premium equal to the Stated Value multiplied by 6%. However, no premium shall be due on the use of up to 33% of proceeds of a public offering of common stock at a price of \$5.00 or more per share.

The shares of Series C Preferred Stock are senior in liquidation preference to all shares of capital stock of the Company unless otherwise consented to by a majority of the holders of shares of Series C Preferred Stock.

The shares of Series C Preferred Stock shall have no voting rights except as required by law.

The consent of the holders of a majority of the shares of Series C Preferred Stock is necessary for the Company to amend the Series C certificate of designation.

The Series C Preferred Stock is no longer convertible into common stock, except in accordance with the Exchange Agreement.

### Preferred Stock Conversion

Sillerman Investment Company III, LLC ( SIC III ), an affiliate of Robert F.X. Sillerman, the Company's Executive Chairman and Chief Executive Officer of the Company, owned 10,000 shares of Series C Convertible Redeemable

Preferred Stock. On May 9, 2016 (the Exchange Date ), the Company and SIC III entered into a Subscription Agreement pursuant to which SIC III subscribed for 1,129,032 shares of the Company's common stock at a price of \$6.20 per share. Accordingly, the aggregate purchase price for such shares was \$7,000. The Company and SIC III agreed that SIC III would pay the purchase price for such shares by exchanging \$7,000 shares of the Company's Series C Convertible Redeemable Preferred Stock owned by SIC III for the common stock (the Exchange ). All conditions of the Subscription Agreement have been satisfied, and therefore 1,129,032 shares of the Company's common stock were issued to SIC III. Mr. Sillerman and his affiliates now own more than 50% of the outstanding shares of the Company's common stock. The Company determined that this was a fair transaction and did not recognize any stock compensation expense in relation with the conversion.

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**Function(x) Inc.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(amounts in thousands, except share and per share  
data)  
(Unaudited)**

**11. Stockholders Equity - (continued)**

On August 22, 2016, the Company and SIC III, SIC IV, SIC VI entered into an Note Exchange Agreement pursuant to which \$30,175, which represents all of the outstanding principal and accrued interest of certain notes held by SIC III, SIC IV, and SIC VI other than \$900 of debt held by SIC IV pursuant to that certain Line of Credit Grid Note dated as of June 11, 2015, was exchanged for 30,175 shares of the Company's Series C Convertible Preferred Stock at an exchange price of \$1,000 per share. The Note Exchange Agreement provides for the newly issued shares to be held subject to the obligations to convert the shares into common stock on the terms and on the conditions set forth in the Exchange Agreement.

At September 30, 2016 and June 30, 2016, there were 33,175 and 3,000 shares of Series C Convertible Preferred Stock outstanding, respectively.

**Series D Convertible Preferred Stock**

On March 24, 2016, the Company created a new class of Series D Convertible Redeemable Preferred Stock (the Series D Convertible Preferred Stock). The Company authorized the issuance of up to 110 shares of the Series D Convertible Preferred Stock. The rights, preferences, privileges and restrictions of the shares of Series D Convertible Preferred Stock and the qualifications, limitations and restrictions thereof are summarized as follows:

The shares of Series D Convertible Preferred Stock have a stated value of \$1,000 per share. Each share of Series D Convertible Preferred Stock is convertible, at the option of the holders, at a rate of 167 shares of common stock for one share of converted Series D Convertible Preferred Stock.

Shares of Series D Convertible Preferred Stock are not entitled to a liquidation preference. Conversions of the Series D Convertible Preferred Stock shall be limited such that any given conversion shall not cause the holder's aggregate beneficial ownership of the shares of common stock to exceed 9.99% of the Company's outstanding common stock.

The shares of Series D Convertible Preferred Stock shall have no voting rights except as required by law. The consent of the holders of a majority of the shares of Series D Convertible Preferred Stock is necessary for the Company to amend the Series D certificate of designation.

The Series D Convertible Preferred Stock is classified as a component of stockholders' equity in the accompanying consolidated balance sheets. There were no shares of Series D Convertible Preferred Stock outstanding at September 30, 2016 and June 30, 2016.

## Series E Convertible Preferred Stock

On July 7, 2016, the Company created a new class of Series E Convertible Preferred Stock (the Series E Convertible Preferred Stock ) by filing a Certificate of Designation of the Series E Convertible Preferred Stock of the Company (the Series E Certificate of Designation ) with the Secretary of State of the State of Delaware. The Company authorized the issuance of up to 10,000 shares of the Series E Convertible Preferred Stock. The rights, preferences, privileges and restrictions of the shares of Series E Convertible Preferred Stock and the qualifications, limitations and restrictions thereof are contained in the Series E Certificate of Designation and are summarized as follows:

The shares of Series E Convertible Preferred Stock have a stated value of \$1,000 per share (the Stated Value ).

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 11. Stockholders Equity - (continued)

Subject to the satisfaction of certain conditions as set forth therein, each share of Series E Convertible Preferred Stock is convertible, at the option of the holders, on the basis of its Stated Value and accrued, but unpaid Dividends, into shares of the Company's common stock at a conversion price equal to the lesser of \$5.20 or the Exchange Price.

The shares of Series E Convertible Preferred Stock shall have no voting rights except as required by law. The consent of the holders of a majority of the shares of Series E Convertible Preferred Stock is necessary for the Company to amend its Series C Certificate of Designation.

As of September 30, 2016, there were 4,435 shares of Series E Convertible Preferred Stock outstanding. There were no shares of Series E Convertible Preferred Stock outstanding as of June 30, 2016.

## Subscription Agreement

On December 3, 2015, the Company and SIC IV entered into a Subscription Agreement pursuant to which SIC IV subscribed for 437,500 shares of the Company's common stock at a price of \$9.40 per share. Accordingly, the aggregate purchase price for such shares was \$4,112.

## Non-controlling Interest

As discussed in Note 6, Acquisitions, on September 8, 2015, the Company acquired the assets of the DraftDay Business and its operations have been consolidated with the Company's operations as of that date. The Company has recorded non-controlling interest in its Consolidated Balance Sheets and Consolidated Statements of Operations for the portion of the DraftDay Business that the Company does not own. In the three months ended September 30, 2016, Sportech invested an additional \$121 into the DraftDay Business in exchange for shares of Series A Preferred Stock of DDGG for \$1 per share. In connection with termination of the Sportech MSA at June 30, 2016 (see Note 6, Acquisitions), Sportech returned 4,200 shares of DDGG stock. The Company reduced non-controlling interest by \$378, which represents the fair value of these shares.

## 12. Share-Based Payments

### Equity Incentive Plan

The 2011 Executive Incentive Plan (the Plan) of the Company was approved on February 21, 2011 by the written consent of the holder of a majority of the Company's outstanding common stock. The Plan provides the Company the



ability to grant to any officer, director, employee, consultant or other person who provides services to the Company or any related entity, options, stock appreciation rights, restricted stock awards, dividend equivalents and other stock-based awards and performance awards, provided that only employees are entitled to receive incentive stock options in accordance with IRS guidelines. The Plan provides for the issuance of a maximum of 6,250,000 shares of common stock. Pursuant to the Executive Incentive Plan and the employment agreements, between February 15, 2011 and September 30, 2016, the Compensation Committee of the Company's Board of Directors authorized the grants of restricted stock and stock options described below.

## **Restricted Stock**

Compensation expense related to restricted stock was \$15 and \$4,991 for the three months ended September 30, 2016 and 2015, respectively. As of September 30, 2016, there was \$29 in total unrecognized share-based compensation costs related to restricted stock. There was no restricted stock granted during the three months ended September 30, 2016.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
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**12. Share-Based Payments - (continued)**

**Stock Options**

The Company accounts for these options at fair market value of the options on the date of grant, with the value being recognized over the requisite service period. The fair value of each option award is estimated using a Black-Scholes option valuation model. Expected volatility is based on the historical volatility of the price of comparable companies stock. The risk-free interest rate is based on U.S. Treasury issues with a term equal to the expected life of the option. The Company uses historical data to estimate expected dividend yield, expected life and forfeiture rates. Options generally have an expiration of 10 years and vest over a period of 3 or 4 years. There were no options granted during the three months ended September 30, 2016 and 2015.

Compensation expense related to stock options of \$12 and \$173 is included in the accompanying Consolidated Statements of Operations in selling, general and administrative expenses for the three months ended September 30, 2016 and 2015, respectively. As of September 30, 2016, there was approximately \$133 of total unrecognized stock-based compensation cost which will generally be recognized over a four year period.

**13. Income Taxes**

For the three months ended September 30, 2016 and 2015, the Company did not record an income tax benefit because it has incurred taxable losses and has no history of generating taxable income and therefore the Company cannot presently anticipate the realization of a tax benefit on its Net Operating Loss carryforward. At September 30, 2016 the Company has a Net Operating Loss carryforward of approximately \$162,900, which will begin to expire in 2030.

The Company has evaluated its income tax positions and has determined that it does not have any uncertain tax positions. The Company will recognize interest and penalties related to any uncertain tax positions through its income tax expense.

The Company may in the future become subject to federal, state and local income taxation though it has not been since its inception. The Company is not presently subject to any income tax audit in any taxing jurisdiction.

## 14. Related Party Transactions

### Shared Services Agreements

The Company also entered into a shared services agreement ( SFX Shared Services Agreement ) with SFX, pursuant to which it shares costs for services provided by several of the Company's and/or SFX's employees. Such employees will continue to be paid by their current employers, and SFX will reimburse the Company directly for its portion of such salary and benefits and Company will reimburse SFX directly for its portion of such salary and benefits (but not for any bonus, option or restricted share grant made by either company, which will be the responsibility of the company making such bonus, option or restricted share grant). The Audit Committee of each company's Board of Directors reviews and, if appropriate, approves the allocations made and whether payments need to be adjusted or reimbursed, depending on the circumstances. The Company entered into an amendment (the Amendment ) to the shared services agreement on January 22, 2015, pursuant to which the Company may provide additional services to SFX, and SFX may provide certain services to the Company. In particular, the shared services agreement provides that, in addition to services already provided, certain employees of the Company may provide human resources, content and programming, and facilities services to SFX, subject to reimbursement based on salary and benefits for the employees providing the services, plus 20% for miscellaneous overhead, based on a reasonable estimate of time spent. In addition, the Amendment provides that SFX may provide certain tax services to the Company, subject to reimbursement based on salary and benefits for the employees providing the services, plus 20% for miscellaneous overhead, based on a reasonable estimate of time spent.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 14. Related Party Transactions - (continued)

The parties terminated the SFX Shared Services Agreement effective as of January 1, 2016. We continue to try to settle amounts remaining outstanding.

For the three months ended September 30, 2015, the Company was billed by SFX, net of amounts billed by the Company to SFX, respectively. The net balance due (to)/from SFX, including amounts related to the Sales Agency Agreement, discussed below, as of September 30, 2016 and June 30, 2016 was \$139 and \$142, respectively.

### License Agreement

On March 10, 2014, the Company entered into an audio recognition and related loyalty program software license and services agreement with SFX. Pursuant to the terms of the license agreement, SFX paid the Company \$5,000 to license its audio recognition software and related loyalty platform for a term of 10 years. The amount was deferred and is being amortized over the ten years period. For the three months ended September 30, 2016 and 2015, the Company recognized \$125 and \$125, respectively of revenue related to this agreement.

### Secured Line of Credit

On January 27, 2016, Sillerman Investment Company VI LLC ( SIC VI ), an affiliate of Robert F.X. Sillerman, the Executive Chairman and Chief Executive Officer of the Company, entered into a secured revolving loan agreement (the Secured Revolving Loan ) with the Company and its subsidiaries, Wetpaint and Choose Digital (collectively, the Subsidiaries ), pursuant to which the Company can borrow up to \$1,500. The Secured Revolving Loan bears interest at the rate of 12% per annum. In connection with the Secured Revolving Loan, the Company and the Subsidiaries have entered into a Security Agreement (the Security Agreement ) with SIC VI, under which the Company and the Subsidiaries have granted SIC VI a continuing security interest in all assets of the Company and the Subsidiaries, with the exception of the Company's interest in DraftDay Gaming Group, Inc. The Company intends to use the proceeds from the Secured Revolving Loan to fund working capital requirements and for general corporate purposes in accordance with a budget to be agreed upon by SIC VI and the Company. As of June 30, 2016, \$1,500 had been advanced thereunder. Because Mr. Sillerman is a director, executive officer and greater than 10% stockholder of the Company, a majority of the Company's independent directors approved the transaction. On August 22, 2016, the Company and SIC IV entered into an Note Exchange Agreement pursuant to which \$1,500, which represents all of the outstanding principal and accrued interest of certain notes held by SIC IV was exchanged for 1,500 shares of the Company's Series C Convertible Preferred Stock at an exchange price of \$1,000 per share. See Note Exchange Agreement paragraph below for additional information on the August 22, 2016 exchange.

## **\$500 Line of Credit**

The Company and its subsidiaries entered into a secured, revolving Line of Credit on March 29, 2016 with SIC VI (the Secured Revolving Line of Credit ), pursuant to which the Company can borrow up to \$500. The Secured Revolving Line of Credit bears interest at the rate of 12% per annum. In connection with the Secured Revolving Line of Credit, the Company and the Subsidiaries have entered into a Security Agreement (the Security Agreement ) with SIC VI, under which the Company and the Subsidiaries have granted SIC VI a continuing security interest in all assets of the Company and the Subsidiaries, with the exception of the Company s interest in DraftDay Gaming Group, Inc. The Company intends to use the proceeds from the Secured Revolving Line of Credit to fund working capital requirements and for general corporate purposes in accordance with a budget to be agreed upon by SIC VI and the Company. At June 30, 2016, \$500 had been advanced thereunder. On August 22, 2016, the Company and SIC VI entered into an Note Exchange Agreement pursuant to which \$500, which represents all of the outstanding principal and accrued interest of

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# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 14. Related Party Transactions - (continued)

certain notes held by SIC VI was exchanged for 500 shares of the Company's Series C Convertible Preferred Stock at an exchange price of \$1,000 per share. See Note Exchange Agreement paragraph below for additional information on the August 22, 2016 exchange.

### Preferred Stock Conversion

Sillerman Investment Company III, LLC ( SIC III ), an affiliate of Robert F.X. Sillerman, the Company's Executive Chairman and Chief Executive Officer of the Company, owned 10,000 shares of Series C Convertible Redeemable Preferred Stock. On May 9, 2016 (the Exchange Date ), the Company and SIC III entered into a Subscription Agreement pursuant to which SIC III subscribed for 1,129,032 shares of the Company's common stock at a price of \$6.20 per share. Accordingly, the aggregate purchase price for such shares was \$7,000. The Company and SIC III agreed that SIC III would pay the purchase price for such shares by exchanging 7,000 shares of the Company's Series C Convertible Redeemable Preferred Stock owned by SIC III for the common stock (the Exchange ). All conditions of the Subscription Agreement have been satisfied, and therefore 1,129,032 shares of the Company's common stock were issued to SIC III. Mr. Sillerman and his affiliates now own more than 50% of the outstanding shares of the Company's common stock. The Company determined that this was a fair transaction and did not recognize any stock compensation expense in relation with the conversion.

### Exchange Agreement

On July 8, 2016, the Company and SIC III, SIC IV and SIC VI, each an affiliate of Mr. Sillerman, entered into an Exchange Agreement pursuant to which, subject to adjustment, (i) 3,000 shares of the Company's Series C Preferred Stock owned by SIC III are to be exchanged for 890,898 shares of the Company's common stock and (ii) all of the debt held by Mr. Sillerman and such affiliates is to be exchanged for 5,066,654 shares of the Company's common stock. Issuance of the shares is conditioned upon approval of the Company's shareholders (see Shareholder Approval in this section), the closing of an offering of the Company's common stock in the amount of at least \$10,000, approval of its Listing of Additional Shares application with NASDAQ, the Company shall not be subject to any bankruptcy proceeding, and various other conditions. The exchange price shall be equal to the lesser of \$5.20 and the price at which the Debentures can be exchanged for shares of the Company's common stock. The Company received an independent valuation with respect to the original exchange that the exchange price of \$5.20 reflects fair value. Any additional change is subject to the receipt by the Company of an updated fair value determination. The agreement provides for termination in the event the conditions are not satisfied by March 31, 2017. At the date of this filing, this transaction has not yet closed.

## **Amended Exchange Agreement/Amended Grid Note**

On July 18, 2016, SIC III, SIC IV and SIC VI, LLC entered into an amendment to the Exchange Agreement relating to the exchange of debt and shares of the Series C Preferred Stock of the Company for shares of the Company's common stock. The Exchange Agreement modified the Grid Note to provide that SIC IV shall be entitled to repayment of up to \$2,000 of the outstanding principal balance of the Grid Note and the Company shall be entitled to draw up to an additional \$5,000. \$3,605 remains available to draw under the Grid Note and at the date of this filing, the current balance is \$1,405.

## **Note Exchange Agreement**

On August 22, 2016, the Company and SIC III, SIC IV, and SIC VI, each an affiliate of Mr. Sillerman, entered into a Note Exchange Agreement pursuant to which \$30,175, which represents all of the outstanding principal and accrued interest of the Note, the Loans, the Secured Revolving Loan, the Secured Revolving Promissory Note, the Secured Revolving Promissory Note II, and the Secured Revolving Promissory Note III (all described and defined in Note 9, Loans Payable) other than \$900 of debt held by SIC IV pursuant to that

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 14. Related Party Transactions - (continued)

certain Line of Credit Grid Promissory Note dated as of June 11, 2015 (see Grid Note ), was exchanged for 30,175 shares of the Company's Series C Preferred Stock (see Amendment to Certificate of Designation of Series C Preferred Stock in this section.) The exchange price is \$1,000 per share. The Note Exchange Agreement provides for the newly issued shares to be held subject to the obligations to convert the shares into common stock on the terms and on the conditions set forth in the Exchange Agreement, and subject to the additional obligations set forth in the Subordination Agreement and the Lockup Agreements. The Grid Note remains subject to the Exchange Agreement.

### Related Approvals

Because the above transactions were subject to certain rules regarding affiliate transactions, the Company's Audit Committee and a majority of the independent members of the Company's Board of Directors approved each of these transactions.

## 15. Fair Value Measurement

The Company values its assets and liabilities using the methods of fair value as described in ASC 820. ASC 820 establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. The three levels of fair value hierarchy are described below:

*Level 1* Quoted prices in active markets for identical assets or liabilities.

*Level 2* Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

*Level 3* Inputs that are generally unobservable and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability.

In determining fair value, the Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible, and considers counter-party credit risk in its assessment of fair value. Observable or market inputs reflect market data obtained from independent sources, while



unobservable inputs reflect the Company's assumptions based on the best information available. The Company has certain liabilities that are required to be recorded at fair value on a recurring basis in accordance with accounting principles generally accepted in the United States, as described below.

The Company issued 1,068 warrants in connection with the May 10, 2012 PIPE. Each warrant has a sale price of \$8,800 and is exercisable into 1 share of common stock at a price of \$12,800 over a term of three years. Further, the exercise price of the warrants is subject to "down round" protection, whereby any issuance of shares at a price below the current price resets the exercise price equal to a the price of newly issued shares (the "Warrants"). In connection with the PIPE Exchanges on September 16, 2013, the exercise price of the Warrants was reset to \$2. The fair value of such warrants has been determined utilizing the Binomial Lattice Model in accordance with ASC 820-10, *Fair Value Measurements*. The fair value of the warrants when issued was \$5,281. On September 16, 2013, 341 warrants were exchanged in connection with the PIPE Exchanges. The remaining 14,545 warrants were marked to market as of September 30, 2016 and 2015 to a fair value of \$10 and \$10, respectively. The Company recorded gains/(losses) of \$0 and \$(5) to other income, net in the Consolidated Statements of Operations for the nine months ended September 30, 2016 and 2015, respectively. The fair value of the warrant is classified as a long-term liability on the Consolidated Balance Sheets as of September 30, 2016, due to the Company's intention to retire a significant portion of these warrants in its next round of financing. The Company's warrants were classified as a Level 3 input within the fair value hierarchy

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**Function(x) Inc.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(amounts in thousands, except share and per share  
data)  
(Unaudited)**

**15. Fair Value Measurement - (continued)**

because they were valued using unobservable inputs and management's judgment due to the absence of quoted market prices and inherent lack of liquidity.

On February 8, 2016, the Company received Perk warrants as part of the consideration in the sale of the Viggie business. The carrying amount of Perk warrants held is marked-to-market on a quarterly basis using the Monte Carlo valuation model, in accordance with ASC 820-10, *Fair Value Measurements*. The changes to fair value are recorded in the Consolidated Statement of Operations. The fair value of the warrants when issued was \$1,023. The warrants were marked to market as of September 30, 2016 to a fair value of \$1,091. The Company recorded a loss of \$503 to other expense, net in the Consolidated Statements of Operations for the three months ended September 30, 2016. The fair value of the warrant was classified as an other asset on the Consolidated Balance Sheet as of June 30, 2016. The Perk warrants were classified as a Level 3 input within the fair value hierarchy because they were valued using unobservable inputs and management's judgment due to the absence of quoted market prices and inherent lack of liquidity.

In February 2016, the Company received 1,370,000 shares of Perk stock, which is publicly traded on the Toronto Stock Exchange, as part of the consideration in the sale of assets described in the Perk Agreement. These securities are short-term marketable securities, and have been classified as available-for-sale securities. Pursuant to ASC 320-10, Investments - Debt and Equity Securities the Company's marketable securities are marked to market on a quarterly basis, with unrealized gains and losses recorded in equity as Other Comprehensive Income/Loss.

On September 30, 2016, the Company sold to Perk the remaining shares (1,013,068) of Perk common stock, the warrants for additional shares, and the right to the Earn-Out Shares received from Perk on the sale of the Viggie rewards business on February 8, 2016. The Company received \$1,300 from Perk as consideration therefor. The execution of the Securities Purchase Agreement and closing were simultaneous. In connection with the sale of the Perk shares, the warrants for additional shares and the right to the Earn-Out Shares, the Company recorded a loss of \$2,193 in the Other Expense line item of the Consolidated Statements of Operations for the three months ended September 30, 2016.

As discussed in Note 6, Acquisitions, the Company purchased Rant on July 12, 2016. In conjunction with the Rant acquisition, the Company delivered a Secured Convertible Note to Rant in the amount of \$3,000 and issued 4,435 of Series E Convertible Preferred Stock. In accordance with ASC 820, the Company had the Secured Convertible Note and Series E Preferred Stock fair valued at the acquisition date. The fair value of the Rant Note was \$3,500 and the fair value of the Series E Preferred Stock was \$7,600. The Rant Note and Series E Preferred Stock were recorded at

their acquisition date fair values with a corresponding charges to goodwill in the Consolidated Balance Sheets at September 30, 2016.

On July 12, 2016, the Company closed the Private Placement of \$4,444 principal amount of the Debentures and Warrants. The Debentures and Warrants were fair valued at the Private Placement closing date. The fair value of the Conversion feature was \$1,856 and the fair value of the Warrants was \$1,500. The Conversion feature and Warrants were recorded at the Private Placement closing date fair values with corresponding charges to debt discount of \$1,856 for the Debentures and \$1,500 for the Warrants in the Consolidated Balance Sheets at September 30, 2016.

On August 22, 2016, the Company and SIC III, SIC IV, SIC VI entered into an Note Exchange Agreement pursuant to which \$30,175, which represents all of the outstanding principal and accrued interest of certain notes held by SIC III, SIC IV, and SIC VI other than \$900 of debt held by SIC IV pursuant to that certain Line of Credit Grid Note dated as of June 11, 2015, was exchanged for 30,175 shares of the Company's Series C Convertible Preferred Stock at an exchange price of \$1,000 per share. The Series C Convertible Preferred Stock was fair valued at the exchange date, August 22, 2016, and determined to be \$28,500. The

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**Function(x) Inc.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(amounts in thousands, except share and per share  
data)  
(Unaudited)**

**15. Fair Value Measurement - (continued)**

Series C Convertible Preferred Stock was recorded at the exchange date fair value with a corresponding charge to additional paid-in capital of \$1,675 in the Consolidated Balance Sheets at September 30, 2016.

**Non-financial Assets and Liabilities that are Measured at Fair Value on a  
Nonrecurring Basis**

On a nonrecurring basis, the Company uses fair value measures when analyzing asset impairment. Long-lived assets and certain identifiable intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If it is determined such indicators are present and the review indicates that the assets will not be fully recoverable, based on undiscounted estimated cash flows over the remaining amortization periods, their carrying values are reduced to estimated fair value. Measurements based on undiscounted cash flows are considered to be Level 3 inputs. During the fourth quarter of each year, the Company evaluates goodwill and indefinite-lived intangibles for impairment at the reporting unit level. For each acquisition, the Company performed a detailed review to identify intangible assets and a valuation is performed for all such identified assets. The Company used several market participant measurements to determine estimated value. This approach includes consideration of similar and recent transactions, as well as utilizing discounted expected cash flow methodologies, and/or revenue or EBITDA multiples, among other methods. The amounts allocated to assets acquired and liabilities assumed in the acquisitions were determined using Level 3 inputs. Fair value for property and equipment was based on other observable transactions for similar property and equipment. Accounts receivable represents the best estimate of balances that will ultimately be collected, which is based in part on allowance for doubtful accounts reserve criteria and an evaluation of the specific receivable balances.

Where goodwill has been allocated to a reporting unit and part of the operation within that unit is disposed of, the goodwill associated with the disposed operation is included in the carrying amount of the operation when determining the gain or loss on disposal. Goodwill disposed in these circumstances is measured based on the relative values of the disposed operation and the portion of the reporting units retained. The relative fair value of each reporting unit is established using discounted expected cash flow methodologies, and/or revenue or EBITDA multiples, or other applicable valuation methods, which are considered to be Level 3 inputs.

The following table presents a reconciliation of assets measured at fair value on a recurring basis using unobservable inputs (level 3):

	(in thousands)
Balance at July 1, 2016	\$ 648
Unrealized losses for the period included in other income (expense), net	(503 )
Sale of Perk warrants	(145 )
Balance at September 30, 2016	\$

As noted above, on September 30, 2016, the Company sold to Perk the remaining shares of Perk common stock, the warrants for additional shares, and the right to the Earn-Out Shares received from Perk on the sale of the Viggie rewards business on February 8, 2016. The Company received \$1,300 from Perk as consideration therefor. In connection with the sale of the Perk shares, the warrants for additional shares and the right to the Earn-Out Shares, the Company recorded a loss of \$2,193 in the Other Expense line item of the Consolidated Statements of Operations for the three months ended September 30, 2016.

The following table presents a reconciliation of liabilities measured at fair value on a recurring basis using unobservable inputs (level 3):

	(in thousands)
Balance at July 1, 2016	\$ 10
Additions to Level 3	
Balance at September 30, 2016	\$ 10

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 16. Subsequent Events

### MGT Shares

On October 10, 2016, the Company satisfied the MGT Notes through the issuance of 136,304 shares of its common stock and payment of interest of \$16.

### Events of Default

The Company is currently in default under the Debentures issued in the Private Placement for failure to make the first amortization payment and for failure to maintain the Minimum Cash Reserve.

On October 12, 2016, the first amortization payment in the amount of \$444, plus accrued interest of approximately \$114 pursuant to the terms of the Debentures became due and payable to the Purchasers. The Company did not make such payment at the time it was due. The Company entered into waiver agreements with Purchasers holding approximately 87% of the principal amount of the Debentures. Such waivers are not binding on the remaining Purchasers of the Debentures. Pursuant to the terms of the Waiver, the Purchasers have agreed to waive the payment of the amortization payments and accrued interest due for October 2016 and November 2016. In consideration for waiving the payment terms of the Debentures, the Company has agreed to pay, upon execution of the Waiver, 10% of the Amortization Amount that became due on October 12, 2016 and has agreed to pay on November 12, 2016 10% of the Amortization Amount due in November 2016. All other amounts will be due and payable in accordance with the terms of the Debentures, with the deferred payments due at maturity. The Company did not receive a waiver from one of its debenture holders, holding approximately 13% of the principal amount of the Debentures with respect to the event of default arising out of the Company's failure to make the first amortization payment when due. Pursuant to the terms of the Debentures, such holder has sent a notice of acceleration, stating that the Company owes \$696, reflecting the principal amount of the Debenture plus interest through November 1, 2016. Interest will accrue at 18% until this amount is satisfied. The Company is seeking to settle the matter with the holder; however, there can be no assurance that an agreement will be reached.

The waivers entered into with some of the Purchasers related to the failure to pay the amortization amount do not address the failure to maintain the Minimum Cash Reserve. Pursuant to the terms of the Debentures, the failure to cure the non-payment of amortization or failure to maintain the Minimum Cash Reserve within three trading days after the due date constitutes an Event of Default. Following the occurrence of an event of default, among other things: (1) at the Purchaser's election, the outstanding principal amount of the Debentures, plus accrued but unpaid interest, plus all interest that would have been earned through the one year anniversary of the original issue date if such interest has not

yet accrued, liquidated damages and other amounts owed through the date of acceleration, shall become, immediately due and payable in either cash or stock pursuant to the terms of the Debentures; and (2) the interest rate on the Debentures will increase to the lesser of 18% or the maximum allowed by law. In addition to other remedies available to the Purchasers, the Company's obligation to repay amounts due under the Debentures is secured by a first priority security interest in and lien on all of the Company's assets and property, including the Company's intellectual property, and such remedies can be exercised by the Purchasers without additional notice to the Company.

Under terms of the \$3,000 Secured Convertible Note issued in connection with the acquisition of Rant, a default under other indebtedness owed by the Company constitutes a default under the Rant Note. As a result of such Event of Default, the holder of the Rant Note has executed a waiver that provides that, until May 15, 2017, the events of default arising out of the failure to pay the amounts due under the Debentures as of the date of the waiver and the failure by the Company to maintain the Minimum Cash Reserve shall not constitute events of default for purposes of the Rant Note.

Pursuant to the terms of the Registration Rights Agreement, the Company is required to pay liquidated damages to the Purchasers if the resale Registration Statement, of which this prospectus is a part, was not declared effective within 90 days of the filing deadline, which was August 11, 2016. As a result, the

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data) (Unaudited)

## 16. Subsequent Events - (continued)

Purchasers are entitled to liquidated damages on the date the deadline was missed and on each monthly anniversary thereafter until the Registration Statement is declared effective calculated as follows:

1.5% of the purchase price paid for securities purchased pursuant to the Purchase Agreement payable in cash; and Shares of Common Stock of the Company equivalent to 1.5% of the purchase price divided by the average closing bid price for the Company's common stock for the five-day period prior to the date liquidated damages became due (or the monthly anniversary thereof).

After the first monthly anniversary, any liquidated damages will be pro-rated on a daily basis for any portion of a month before the Registration Statement is declared effective. In no event will the Company be liable for liquidated damages in excess of 12% of the aggregate purchase price of securities purchased under the Purchase Agreement.

### Departure of an Officer

On October 18, 2016, Olga Bashkatova resigned her position as the Controller and Principal Accounting Officer of the Company effective October 26, 2016. Her employment agreement with the Company, previously reported on the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2016, was terminated as of October 26, 2016.

### NASDAQ Status

The Company's common stock is listed on The NASDAQ Capital Market under the symbol FNCX. The NASDAQ Staff informed the Company that it failed to comply with NASDAQ's continued listing criteria for stockholders' equity and minimum bid price. In response, the Company appealed the decision to a NASDAQ Listing Qualifications Panel (the Panel). Following the hearing and an extension of time to regain compliance granted by the Panel, the Company was notified by NASDAQ on November 1, 2016 that it had regained compliance with the stockholders' equity and bid price requirements. The Panel further indicated, however, that the Company will remain subject to a Panel Monitor as that term is defined under NASDAQ Listing Rule 5815(d)(4)(A), through November 1, 2017.

Under the terms of the Panel Monitor, in the event the Company's stockholders' equity falls below the \$2.5 million threshold (or any other requirement that would ordinarily require the Company to submit a compliance plan to the NASDAQ Staff) during the monitor period and the Company does not qualify for continued listing under an alternative to the stockholders' equity requirement, the Panel will promptly conduct a hearing with respect to the stockholders' equity deficiency.



In addition, the Company received a letter from NASDAQ that due to the resignation of Birame Sock as a director, the Company is no longer in compliance with NASDAQ rules relating to independent directors and audit committee compliance. The Company has until February 1, 2017 to regain compliance with these requirements.

## **Secured Lines of Credit**

Since the three months ended September 30, 2016, the Company borrowed an additional \$505 under the SIC IV Line of Credit as of the date of this filing. The principal amount now outstanding under the Line of Credit is \$2,115 and the Company is entitled to draw up to an additional \$3,785 under the Line of Credit.

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## **Function(x) Inc. (formerly known as Viggle Inc.)**

# **Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders  
Function(x) Inc. (formerly known as Viggle Inc.)

New York, New York

We have audited the accompanying consolidated balance sheets of Function(x) Inc. (the Company) (formerly known as Viggle Inc.) as of June 30, 2016 and 2015, and the related consolidated statements of operations, stockholders equity (deficit) and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. The Company is not required to, nor were we engaged to perform an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall consolidated financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Function(x) Inc. (formerly known as Viggle Inc.) at June 30, 2016 and 2015, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses from operations and at June 30, 2016 has a deficiency in working capital that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

*/s/ BDO USA, LLP*

New York, NY  
October 11, 2016



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**FINANCIAL STATEMENTS**

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(amounts in thousands, except share data)**

	June 30, 2016	June 30, 2015
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$537	\$4,217
Marketable securities	2,495	
Accounts receivable (net of allowance for doubtful accounts of \$20 at June 30, 2016 and 2015)	307	838
Prepaid expenses	226	483
Other receivables	114	661
Other current assets	110	
Current assets of discontinued operations	39	3,431
Total current assets	3,828	9,630
Restricted cash	440	695
Property & equipment, net	1,414	2,334
Intangible assets, net	5,339	18,683
Goodwill	11,270	24,722
Other assets	748	270
Non-current assets of discontinued operations		13,895
Total assets	\$23,039	\$70,229
<b>Liabilities, convertible redeemable preferred stock and stockholders (deficit) equity</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$11,625	\$10,040
Deferred revenue	637	593
Current portion of loans payable	8,996	1,575
Current liabilities of discontinued operations	2,851	13,278
Total current liabilities	24,109	25,486
Loans payable, less current portion	19,716	22,516
Deferred revenue	3,429	3,854
Common stock warrant liability	10	10
Other long-term liabilities	951	1,678
Non-current liabilities of discontinued operations		538
Total liabilities	48,215	54,082
Series A Convertible Redeemable Preferred Stock, \$1,000 stated value, authorized 100,000 shares, issued and outstanding -0- shares as of June 30, 2016 and 2015		
Series C Convertible Redeemable Preferred Stock, \$1,000 stated value,	4,940	11,815

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authorized 100,000 shares, issued and outstanding of 3,000 and 10,000 shares as of June 30, 2016 and 2015, respectively

Commitments and contingencies

Stockholders (deficit) equity:

Series B Convertible Preferred Stock, \$1,000 stated value, authorized 50,000 shares, issued and outstanding -0- shares as of June 30, 2016 and 2015

Series D Convertible Preferred Stock, \$1,000 stated value, authorized 150 shares, issued and outstanding -0- shares as of June 30, 2016 and 2015

Common stock, \$0.001 par value: authorized 15,000,000 shares, issued and outstanding 3,023,753 and 1,169,156 shares as of June 30, 2016 and 2015, respectively

	3	1
Additional paid-in-capital	409,765	383,607
Treasury stock, 10,758 shares at June 30, 2016 and 2015	(11,916 )	(11,916 )
Accumulated deficit	(428,380)	(367,360)
Accumulated other comprehensive loss	(361 )	
Non-controlling interest	773	
Total stockholders (deficit) equity	(30,116 )	4,332
Total liabilities, convertible redeemable preferred stock and stockholders (deficit) equity	\$23,039	\$70,229

See accompanying Notes to Consolidated Financial Statements

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TABLE OF CONTENTS**Function(x) Inc.****CONSOLIDATED STATEMENTS OF OPERATIONS  
(amounts in thousands, except share and per share data)**

	Year Ended June 30,	
	2016	2015
Revenues	\$4,509	\$5,674
Selling, general and administrative expenses	(29,324 )	(47,072 )
Impairment loss (see Note 8)	(28,541 )	(2,085 )
Operating loss	(53,356 )	(43,483 )
Other income (expense):		
Other income, net	(23 )	6
Interest expense, net	(3,788 )	(2,050 )
Total other expense, net	(3,811 )	(2,044 )
Net loss before provision for income taxes	(57,167 )	(45,527 )
Income tax expense		
Net loss from continuing operations	(57,167 )	(45,527 )
Net loss from discontinued operations, net of tax	(6,522 )	(33,012 )
Net loss	(63,689 )	(78,539 )
Accretion of Convertible Redeemable Preferred Stock	280	135
Undeclared Series C Convertible Redeemable Preferred Stock Dividend	(1,156 )	(468 )
Add: Net loss attributable to non-controlling interest	\$1,826	\$
Net loss attributable to common stockholders	\$(62,739 )	\$(78,872 )
Net loss per common stock basic and diluted:		
Continuing operations	\$(33.03 )	\$(54.78 )
Discontinued operations	\$(3.83 )	\$(39.44 )
Net loss per common stock attributable to common stockholders basic and diluted	\$(36.86 )	\$(94.22 )
Weighted average common stock outstanding basic and diluted	1,702,080	837,093
See accompanying Notes to Consolidated Financial Statements		

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**Function(x) Inc.**

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**

**(amounts in thousands)**

	Year Ended June 30,	
	2016	2015
Net loss	\$ (63,689 )	\$ (78,539 )
Other comprehensive income, net of tax		
Unrealized loss on available for sale securities	(361 )	
Other comprehensive loss	(361 )	
Comprehensive loss	\$ (64,050 )	\$ (78,539 )

See accompanying Notes to Consolidated Financial Statements

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## CONSOLIDATED STATEMENTS OF STOCKHOLDERS (DEFICIT) EQUITY (amounts in thousands)

	Common Stock	Class D Preferred Stock	Additional Paid-In Capital	Treasury Stock	Accumulated Other Comprehens ive Loss	Accumulated Deficit	Non- Controlling Interest	Total
<b>Balance June 30, 2014</b>	\$1	\$	\$340,178	\$(11,556)	\$	\$(288,821)	\$	\$39,802
Net loss						(78,539 )		(78,539)
Purchase of common stock from former officer				(360 )				(360 )
Accretion of Series C Convertible Redeemable Preferred Stock			135					135
Undeclared Series C Preferred Stock Dividend			(468 )					(468 )
Common stock offerings			12,459					12,459
Common stock issued for services			208					208
Common stock issued in settlement of Blue Spike litigation			139					139
Share based compensation in connection with Securities Purchase Agreement			2,657					2,657
Restricted stock share based compensation			24,649					24,649
Employee stock options share based compensation			3,650					3,650
<b>Balance June 30, 2015</b>	\$1	\$	\$383,607	\$(11,916)	\$	\$(367,360)	\$	\$4,332
Net loss						(61,863 )	\$(1,826)	(63,689)
Unrealized loss on marketable securities					(361)			(361 )
Common stock issued for DraftDay acquisition			1,755				610	2,365
Common stock and warrants of Draftday issued for management service							1,733	1,733

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contracts								
Series A investment into DDGG						256		256
Series D issuance		110						110
Series D conversion to common stock		(110)	110					
Common stock issued for MGT debt conversion			797					797
Conversion of Sillerman debt to common stock	1		4,111					4,112
Common stock issued for Kuusamo debt conversion			71					71
Common stock issued to Coda search debt conversion			5					5
Common stock purchased PP Reaz Islam			200					200
Accretion of Series C Convertible Redeemable Preferred Stock			280					280
Undeclared Series C Preferred Stock Dividend			(1,156 )					(1,156 )
Series C conversion to common	1		7,750					7,751
Interest income on note receivable from shareholders			2					2
Other matter related to Choose Digital RSUs (Note 12)						843		843
Restricted stock share based compensation			11,998					11,998
Employee stock options share based compensation			235					235
<b>Balance June 30, 2016</b>	\$3	\$	\$409,765	\$(11,916)	\$(361)	\$(428,380)	\$773	\$(30,116)
See accompanying Notes to Consolidated Financial Statements								

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TABLE OF CONTENTS**Function(x) Inc.****CONSOLIDATED STATEMENTS OF CASH FLOWS  
(amounts in thousands)**

	Year Ended June 30,	
	2016	2015
<b>Operating activities:</b>		
Net loss	\$ (63,689 )	\$ (78,539 )
Adjustments to reconcile net loss to net cash used in operating activities:		
Restricted stock based compensation	11,998	24,649
Employee stock options share based compensation	235	3,650
Share based compensation in connection with securities purchase agreement		4,140
Write-off of certain intangible assets related to Choose Digital		2,086
Stock issued for services		208
Stock issued in settlement of litigation		139
Gain on sale of a business	(1,262 )	
Gain on settlement of accounts payable	(2,132 )	
Fair value loss in financial assets	376	
Loss on abandonment of assets	173	
Loss on settlement of receivables	549	
Impairment loss	28,541	
Decrease in fair value of common stock warrants		(5 )
Increase in fair value of contingent consideration related to acquisitions		2,222
Accretion of note discount	200	115
Depreciation and amortization	3,748	6,040
Interest income on notes receivable from shareholders and officer	(2 )	
Changes in operating assets and liabilities:		
Marketable securities	(148 )	
Accounts receivable	3,299	(157 )
Other receivables	547	(581 )
Prepaid expenses	2,065	316
Other assets	319	41
Deferred revenue	(381 )	(818 )
Points liability	(64 )	4,102
Accounts payable and accrued expenses	6,213	1,737
Other liabilities	(180 )	(40 )
Net cash used in operating activities	(9,595 )	(30,695 )
<b>Investing activities:</b>		
Purchase of property and equipment		(113 )
Capitalized software costs		(1,051 )
Net cash used in investing activities		(1,164 )
See accompanying Notes to Consolidated Financial Statements		



TABLE OF CONTENTS**Function(x) Inc.****CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)**  
**(amounts in thousands)**

	Year Ended June 30,	
	2016	2015
<b>Financing activities:</b>		
Issuance of common stock and warrants for cash	\$200	\$12,459
Proceeds from loans	11,535	35,975
Repayments on loans	(3,000)	(27,000)
Sale of Class C Convertible Redeemable Preferred Stock		10,000
Purchase of common stock from former officer		(360)
Restricted cash		4,995
Payments related to contingent consideration	(2,570)	
Repayment on notes payable	(250)	
Net cash provided by financing activities	5,915	36,069
Net change in cash	(3,680)	4,210
Cash at beginning of period	4,217	7
Cash at end of period	\$537	\$4,217
<b>Supplemental cash flow information:</b>		
Cash paid during the year for interest	\$110	\$999
Landlord lease incentive build-out allowance	\$	\$449
Common stock and warrants issued for DraftDay acquisition	\$1,755	\$
DDGG common stock and warrants issued for DraftDay acquisition	\$610	\$
Notes issued for DraftDay acquisition	\$2,250	\$
Common stock and warrants issued for management service contracts	\$2,111	\$
Common stock issued for partially settled notes related to DraftDay acquisition	\$868	\$
Preferred Series D shares issued to partially settle notes related to DraftDay acquisition	\$110	\$
Settlement of Perk Loan in common stock	\$1,000	\$
Loans converted to common stock	\$4,117	\$
Preferred Series C shares converted to common stock	\$7,751	\$
Reversal of Choose Digital RSU liability (Note 12)	\$843	\$
See accompanying Notes to Consolidated Financial Statements		

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 1. Basis of Presentation and Consolidation

On January 27, 2016, Function(x) Inc. ( Function(x) and/or the Company ) changed its name from Viggie Inc. to DraftDay Fantasy Sports, Inc. ( DraftDay ), and changed its ticker symbol from VGGL to DDAY. On June 10, 2016, the Company changed its name from DraftDay Fantasy Sports, Inc. to Function(x) Inc., and changed its ticker symbol from DDAY to FNCX. It now conducts business under the name Function(x) Inc. The Consolidated Financial Statements include the accounts of the Company and its wholly-owned subsidiaries. The Company has nine wholly-owned subsidiaries, Function(x) Inc., Project Oda, Inc., Sports Hero Inc., Loyalize Inc., Viggie Media Inc., VX Acquisition Corp., Nextguide Inc., Wetpaint.com, Inc. ( Wetpaint ), and Choose Digital Inc. ( Choose Digital ), each a Delaware corporation. The Company also owns approximately 49% of the issued and outstanding common stock of DDGG, and also appoints a majority of the members of its Board of Directors. All significant intercompany accounts and transactions have been eliminated in consolidation.

On September 8, 2015, the Company and its newly created subsidiary DraftDay Gaming Group, Inc. ( DDGG ) entered into an Asset Purchase Agreement (the Asset Purchase Agreement ) with MGT Capital Investments, Inc. ( MGT Capital ) and MGT Sports, Inc. ( MGT Sports ), pursuant to which the Company acquired all of the assets of the DraftDay.com business (the DraftDay Business or DraftDay.com ) from MGT Capital and MGT Sports.

On February 8, 2016, the Company completed the sale of assets related to the Company's rewards business, including the Viggie App, in accordance with the Asset Purchase Agreement (the Perk Agreement ) with Perk.com, Inc. ( Perk ) entered into on December 13, 2015. Management entered into this binding sales agreement following a strategic decision to divest the operations related to the Viggie App and place greater focus on its remaining businesses. The assets, liabilities and operations related to Loyalize Inc., and Nextguide Inc. (as well as the portion of the assets relating to the Company's discontinued rewards business within the Company) have been classified as discontinued operations in the accompanying consolidated financial statements for all periods presented. In accordance with Accounting Standards Codification ( ASC ) No. 205, *Presentation of Financial Statements*, the inter-segment revenues and expenses related to services provided by Choose Digital to the Viggie rewards business (discontinued operations) are presented at cost in the Consolidated Statements of Operations.

In December 2015, as a result of the sale of certain assets to Perk and acquisition of the DraftDay Business, we reorganized the organizational management and oversight of the Company into three segments (see Note 4, Segments). Accordingly, prior period financial information has been recast to confirm to the current period presentation. These changes impacted Note 4: Segments and Note 3: Summary of Significant Accounting Policies, with no impact on consolidated net loss or cash flows in any period.

On July 12, 2016, the Company and RACX Inc., a Delaware corporation and wholly-owned subsidiary of the Company ( RACX ), completed an acquisition pursuant to an Asset Purchase Agreement (the Asset Purchase

Agreement ) with Rant, Inc., a Delaware corporation, pursuant to which RACX has acquired the assets of Rant (the Asset Purchase ) used in the operation of Rant's Rant.com independent media network and related businesses (the Rant Assets ). We acquired assets of Rant for \$2,000 in assumed liabilities, a \$3,000 note, and 4,435 shares of Function(x) Inc. Series E Convertible Preferred Stock which, upon satisfaction of certain conditions including shareholder approval, will be convertible into shares of our common stock equal to 22% of the fully diluted shares outstanding, in a move to become a market leader in social publishing.

On September 16, 2016, the Company amended its Certificate of Incorporation to effect a reverse stock split of all issued and outstanding shares of common stock at a ratio of 1 for 20 (the Reverse Stock Split ). Owners of fractional shares outstanding after the Reverse Stock Split will be paid cash for such fractional interests. The effective date of the Reverse Stock Split is September 16, 2016. All common stock share amounts disclosed in these financial statements have been adjusted to reflect the Reverse Stock Split.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 1. Basis of Presentation and Consolidation - (continued)

### Going Concern

These consolidated financial statements have been prepared on a going concern basis which assumes the Company's ability to continue to realize its assets and discharge its liabilities in the normal course of business. The Company is unlikely to generate significant revenue or earnings in the immediate or foreseeable future. The continuation of the Company as a going concern is dependent upon the continued financial support from its stockholders, the ability of the Company to obtain necessary equity or debt financing to continue development of its business and to generate revenue. Management intends to raise additional funds through equity and/or debt offerings until sustainable revenues are developed. There is no assurance such equity and/or debt offerings will be successful and therefore there is substantial doubt about the Company's ability to continue as a going concern within one year after the financial statements are issued. The accompanying consolidated financial statements do not include any adjustments that might result from the outcome of these uncertainties.

## 2. Line of Business

The Company conducts business through three operating segments: Wetpaint, Choose Digital and DDGG. These operating segments are described below.

Through Wetpaint, the Company reports original news stories and publishes information content covering top television shows, music, celebrities, entertainment news and fashion. Wetpaint publishes more than 55 new articles, videos and galleries each day. The Company generates revenues through wetpaint.com by displaying advertisements to wetpaint.com users as they view its content.

Choose Digital is a white-label digital marketplace featuring a recent and wide range of digital content, including music, movies, TV shows, eBooks and audiobooks. The content is sourced from the world's leading record companies and book publishers and an aggregator of movie and TV content. Choose Digital generates revenues when participants in Choose Digital's clients' loyalty programs redeem loyalty credits for digital content provided by Choose Digital. For example, if a participant in a loyalty program redeems credits for a song download provided by Choose Digital, the client loyalty program pays Choose Digital for the download.

The Company's wholly owned subsidiary, DDGG, made a recent investment in the DraftDay.com platform. Through DraftDay.com, users can draft a fantasy sports team within a salary cap, follow game action and reap rewards. DraftDay.com will continue to offer high-quality entertainment to consumers as well as to businesses desiring turnkey solutions to new revenue streams. See Note 6, Acquisitions, for further details on this acquisition.



### **3. Summary of Significant Accounting Policies**

#### **Cash and Cash Equivalents and Restricted Cash**

The Company considers all highly liquid securities purchased with original maturities of 90 days or less to be cash equivalents. Cash equivalents are stated at cost which approximates market value and primarily consists of money market funds that are readily convertible into cash. Restricted cash comprises amounts held in deposit that were required as collateral under the lease of office space and security interest held by Deutsche Bank Trust Company Americas in connection with the Company's debt agreement more fully described in Note 9, Loans Payable.

#### **Marketable Securities**

In February 2016, the Company received 1,370,000 shares of Perk's stock, which is publicly traded on the Toronto Stock Exchange, as part of the consideration in the sale of assets described in the Perk Agreement. These securities are short-term marketable securities, and have been classified as available-for-sale

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 3. Summary of Significant Accounting Policies - (continued)

securities. Pursuant to ASC 320-10, *Investments - Debt and Equity Securities* the Company's marketable securities are marked to market on a quarterly basis, with unrealized gains and losses recorded in equity as Other Comprehensive Income/Loss.

### Accounts Receivable

Accounts receivable are recorded net of an allowance for doubtful accounts. The Company's allowance for doubtful accounts is based upon historical loss patterns, the number of days that the billings are past due and an evaluation of the potential risk associated with delinquent accounts. The Company also considers any changes to the financial condition of its customers and any other external market factors that could impact the collectability of its receivables in the determination of its allowance for doubtful accounts.

### Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and cash equivalents and trade accounts receivable. The Company maintains cash and cash equivalents with domestic financial institutions of high credit quality. The Company performs periodic evaluations of the relative credit standing of all of such institutions.

The Company performs ongoing credit evaluations of customers to assess the probability of accounts receivable collection based on a number of factors, including past transaction experience with the customer, evaluation of their credit history, and review of the invoicing terms of the contract. The Company generally does not require collateral. The Company maintains reserves for potential credit losses on customer accounts when deemed necessary. Actual credit losses during the years ended June 30, 2016 and June 30, 2015 were \$549 and \$0, respectively.

### Fair Value of Financial Instruments

The carrying amounts reported in the Consolidated Balance Sheets for cash and cash equivalents, accounts and other receivables, accounts payable and accrued liabilities approximate fair value because of the immediate or short-term maturity of these financial instruments. The carrying amount of Perk marketable securities held is marked-to-market on a quarterly basis using the closing day share price of the last business day of the quarter. The changes to fair value are recorded in Other Comprehensive Income/Loss. The carrying amount of Perk warrants held is marked-to-market on a quarterly basis using the Monte Carlo valuation model. The changes to fair value are recorded in the Consolidated Statement of Operations. The carrying amount of loans payable approximates fair value as current

borrowing rates for the same, or similar issues, are the same as those that were given to the Company at the issuance of these loans.

## **Property and Equipment**

Property and equipment (consisting primarily of computers, software, furniture and fixtures, and leasehold improvements) is recorded at historical cost and is depreciated using the straight-line method over their estimated useful lives. The useful life and depreciation method are reviewed periodically to ensure they are consistent with the anticipated pattern of future economic benefits. Expenditures for maintenance and repairs are charged to operations as incurred, while betterments are capitalized. Gains and losses on disposals are included in the results of operations. The estimated useful lives of the Company's property and equipment is as follows: computer equipment and software: 3 years; furniture and fixtures: 4 years; and leasehold improvements: the lesser of the lease term or life of the asset.

## **Business Combinations and Goodwill**

Business combinations are accounted for using the acquisition method of accounting. The Company allocates the purchase price of acquired companies to the identifiable assets acquired, liabilities assumed and any non-controlling interest based on their acquisition date estimated fair values. Goodwill as of the acquisition

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

### 3. Summary of Significant Accounting Policies - (continued)

date is measured as the excess of consideration transferred and the net of the acquisition date fair values of the identifiable assets acquired and liabilities assumed. Any contingent consideration to be transferred to the acquiree is recognized at fair value at the acquisition date.

Determining the fair value of assets acquired and liabilities assumed requires the Company to make significant estimates and assumptions, including assumptions related to future cash flows, discount rates, asset lives and the probability of future cash pay-outs related to contingent consideration. The estimates of fair value are based upon assumptions believed to be reasonable by management, but are inherently uncertain and unpredictable and, therefore, actual results may differ from estimates. As a result, during the measurement period, which may be up to one year from the acquisition date, the Company may record adjustments to the fair value of assets acquired and liabilities assumed, with the corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the fair value of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded to the Consolidated Statements of Operations.

For the purpose of impairment testing, goodwill acquired in a business combination is, from the acquisition date, allocated to each of the Company's reporting units that are expected to benefit from the combination, irrespective of whether other assets or liabilities of the acquiree are assigned to those units. Where goodwill has been allocated to a reporting unit and part of the operation within that unit is disposed of, the goodwill associated with the disposed operation is included in the carrying amount of the operation when determining the gain or loss on disposal. Goodwill disposed in these circumstances is measured based on the relative values of the disposed operation and the portion of the reporting units retained.

As required by Accounting Standards Codification (ASC) 350, *Goodwill and Other Intangible Assets*, the Company tests goodwill for impairment during the fourth quarter of its fiscal year. Goodwill is not amortized, but instead tested for impairment at the reporting unit level at least annually and more frequently upon occurrence of certain events. As noted above, the Company has three reporting units. The annual goodwill impairment test is a two step process. First, the Company determines if the carrying value of its reporting unit exceeds fair value, which would indicate that goodwill may be impaired. If the Company then determines that goodwill may be impaired, it compares the implied fair value of the goodwill to its carrying amount to determine if there is an impairment loss.

Historically, the Company had one reporting unit. However, in connection with the sale of a significant portion of the Company's assets (see Note 1, Basis of Presentation and Consolidation), the remaining operations were divided into 3 reporting units (see Note 4, Segments). The Company engaged a third-party valuation firm to test the Choose Digital and Wetpaint reporting units for goodwill impairment. The DDGG reporting unit was not tested for impairment at December 31, 2015 as the acquisition of this entity occurred in September 2015. The Company determined that the

fair value of both of the Wetpaint and Choose Digital reporting units were significantly below their respective carrying values, indicating that goodwill related to these reporting units may be impaired. The Company determined the fair value of all long-lived assets other than goodwill related to each reporting unit and calculated the residual goodwill value for each. Upon comparing the residual goodwill values to the respective carrying values, the Company determined that there was an impairment loss on both the Choose Digital and Wetpaint reporting units. As a result, the Company recorded an impairment loss of \$4,335 related to the Choose Digital reporting unit and \$10,708 related to the Wetpaint reporting unit in the Selling, general and administrative expense line of the Consolidated Statements of Operations during the six months ended December 31, 2015. Upon the finalization of the December 31, 2015 Choose Digital and Wetpaint goodwill impairment analysis, the consolidated goodwill ending balances as of March 31, 2016 were adjusted by \$3,350 at June 30, 2016. The Company also recorded an additional goodwill impairment loss of \$1,672 in the Selling, general and administrative expense line and reduced the gain on the sale of the Viggie Business by \$1,672 in the Consolidated Statement of Operations during the nine months ended March 31, 2016 as a result of the finalization of the December 2015 Choose Digital and

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**Function(x) Inc.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(amounts in thousands, except share and per share  
data)**

**3. Summary of Significant Accounting Policies - (continued)**

Wetpaint impairment analysis. There were no other impairments of goodwill related to the Choose Digital or Wetpaint reporting units recorded during the year ended June 30, 2016.

At June 30, 2016, the Company determined that the fair value of the DDGG reporting unit was significantly below its carrying value, indicating that goodwill may be impaired. The Company determined the fair value of all long-lived assets other than goodwill and calculated the residual goodwill for the reporting unit. The residual goodwill was higher than the carrying value of goodwill related to the DDGG reporting unit, therefore the Company did not record an impairment loss for DDGG goodwill during the year ended June 30, 2016.

There were no impairments to goodwill recorded during the year ended June 30, 2015.

***Other Long-Lived Assets***

The Company accounts for the impairment of long-lived assets other than goodwill in accordance with ASC 360, *Property, Plant, and Equipment* (ASC 360), which addresses financial accounting and reporting for the impairment or disposal of long-lived assets. ASC 360 requires impairment losses to be recorded on long-lived assets used in operations when indicators of impairment are present and the undiscounted cash flows estimated to be generated by those assets are less than the assets' carrying amounts. In that event, a loss is recognized based on the amount by which the carrying amount exceeds the fair value of the long-lived assets. Loss on long-lived assets to be disposed of is determined in a similar manner, except that fair values are reduced for the cost of disposal.

At June 30, 2015, the Company determined that certain intangible assets related to the acquisition of Choose Digital were impaired. Due to a shift in the Company's business operations and utilization of its resources, during the fourth quarter of fiscal 2015, the Company determined that intangible assets related to customer relationships and trade name no longer had value. Therefore, such assets were written off as of June 30, 2015. The total amount of the write off was \$2,085 and is included in selling, general and administrative costs in the accompanying Consolidated Statements of Operations. There were no other impairments of long-lived assets during the year ended June 30, 2015.

At December 31, 2015, as described above, the Company determined that the fair value of the Choose Digital and Wetpaint reporting units tested was significantly below the respective carrying values and assessed the fair values of the long-lived assets other than goodwill for each reporting unit. Upon comparing the fair values of the long-lived assets to their respective carrying values, the Company recorded a loss of \$1,331 on intangible assets related to Choose Digital's software and licenses, and a loss of \$11,418 on intangible assets related to Wetpaint's technology, trademark, customer relationships and non-competition agreements, during the three months ended December 31, 2015. There were no other impairments of long-lived assets related to the Choose Digital or Wetpaint reporting units

during the year ended June 30, 2016.

At June 30, 2016, the Company determined that certain intangible assets related to the acquisition of Draftday.com were impaired. At June 30, 2016, DDGG's Management Services Agreement By and Between DraftDay Gaming Group, Inc. and Sportech Racing, LLC ( Sportech MSA ) terminated, which led to a significantly lower revenues forecast for the reporting unit. As a result, the Company determined that the intangible assets related to internally developed software, trade name and non-compete agreements were impaired. The Company recorded a loss of \$749 on intangible assets related to DDGG during the year ended June 30, 2016.

## **Capitalized Software**

The Company records amortization of acquired software on a straight-line basis over the estimated useful life of the software.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

### 3. Summary of Significant Accounting Policies - (continued)

In addition, the Company records and capitalizes internally generated computer software and, appropriately, certain internal costs have been capitalized in the amounts of \$1,498 and \$1,610 as of June 30, 2016 and June 30, 2015, respectively, in accordance with ASC 350-40, *Internal-use Software*. Once software is placed into service, the Company records amortization on a straight-line basis over the estimated useful life of the software. The change in capitalized software is due to impairment of long-term assets related to Choose Digital and Wetpaint businesses described earlier, as well as the abandonment of certain technology as of January 1, 2016, and internal development costs.

#### DDGG Player Deposits

The Company maintains a separate bank account to hold player deposits in accordance with current industry regulations. The player deposits bank account represents money reserved for player withdrawals and winnings. Accordingly, the Company records an offsetting liability at the time of receipt of player deposits.

#### Deferred Rent

The Company currently leases office space for its corporate office, and as part of the lease agreement the landlord provided a rent abatement for the first 10 months of the lease. In 2014, the Company entered into two lease agreements for its satellite offices which provided for tenant improvement work sponsored by the landlords. The abatement and landlord sponsored improvements have been accounted for as a reduction of rental expense over the life of the lease. The Company accounts for rental expense on a straight line basis over the entire term of the lease. Deferred rent is equal to the cumulative timing difference between actual rent payments and recognized rental expense. The satellite office leases were terminated in Fiscal 2016. The Company wrote-off residual leasehold improvement and deferred rent balances related to landlord sponsored tenant improvement work, and recorded a write-off of \$83 in the Consolidated Statements of Operations for the year ended June 30, 2016.

#### Revenue Recognition

The Company recognizes revenue when: (1) persuasive evidence exists of an arrangement with the customer reflecting the terms and conditions under which products or services will be provided; (2) delivery has occurred or services have been provided; (3) the fee is fixed or determinable; and (4) collection is reasonably assured. For all revenue transactions, the Company considers a signed agreement, a binding insertion order or other similar documentation to be persuasive evidence of an arrangement.



*Advertising Revenue:* the Company generates advertising revenue primarily from third-party advertising via real-time bidding, which is typically sold on a per impression basis.

*Deferred Revenue:* deferred revenue consists principally of prepaid but unrecognized revenue. Deferred revenue is recognized as revenue when the services are provided and all other revenue recognition criteria have been met.

*Barter Revenue:* barter transactions represent the exchange of advertising or programming for advertising, merchandise or services. Barter transactions which exchange advertising for advertising are accounted for in accordance with Emerging Issues Task Force Issue No. 99-17 *Accounting for Advertising Barter Transactions* (ASC Topic 605-20-25). Such transactions are recorded at the fair value of the advertising provided based on the Company's own historical practice of receiving cash for similar advertising from buyers unrelated to the counter party in the barter transactions. Barter transactions which exchange advertising or programming for merchandise or services are recorded at the monetary value of the revenue expected to be realized from the ultimate disposition of merchandise or services.

The Company recognized barter revenue and barter expense for the year ended June 30, 2016 of \$428 and \$428, respectively.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 3. Summary of Significant Accounting Policies - (continued)

The Company recognized barter revenue and barter expense for the year ended June 30, 2015 of \$437 and \$437, respectively.

### Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with ASC 718, *Compensation - Stock Compensation* ( ASC 718 ). Under the fair value recognition provisions of ASC 718, stock-based compensation cost is measured at the grant date based on the fair value of the award and is recognized as expense ratably over the requisite service period. The Company uses the Black-Scholes option pricing model to determine the fair value of stock options and warrants issued. Stock-based awards issued to date are comprised of both restricted stock awards (RSUs) and employee stock options.

### Marketing

Marketing costs are expensed as incurred. Marketing expense for the years ended June 30, 2016 and June 30, 2015 was \$603 and \$528, respectively, including barter expense.

### Income Taxes

The Company uses the liability method of accounting for income taxes as set forth in ASC 740, *Income Taxes* ( ASC 740 ). Under the liability method, deferred taxes are determined based on the temporary differences between the financial statement and tax basis of assets and liabilities using tax rates expected to be in effect during the years in which the basis differences reverse. A valuation allowance is recorded when it is unlikely that the deferred tax assets will not be realized. The Company assesses its income tax positions and record tax benefits for all years subject to examination based upon the Company's evaluation of the facts, circumstances and information available at the reporting date. In accordance with ASC 740-10, for those tax positions where there is a greater than 50% likelihood that a tax benefit will be sustained, the Company's policy will be to record the largest amount of tax benefit that is more likely than not to be realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where there is less than 50% likelihood that a tax benefit will be sustained, no tax benefit will be recognized in the financial statements.

## Comprehensive Loss

In accordance with ASC 220, *Comprehensive Income*, the Company reports by major components and as a single total, the change in its net assets during the period from non-owner sources. Comprehensive income consists of net income (loss), accumulated other comprehensive income (loss), which includes certain changes in equity that are excluded from net income (loss). The Company's comprehensive loss for all periods presented is related to the effect of an unrealized loss on available for sale marketable securities.

## Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. These estimates include, among others, fair value of financial assets and liabilities, net realizable values on long-lived assets, certain accrued expense accounts, and estimates related to stock-based compensation. Actual results could differ from those estimates.

## Recently Issued Accounting Pronouncements

In May 2016, the Financial Accounting Standards Board ( FASB ) issued Accounting Standards Update 2016-12, Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients ( ASU 2016-12 ). The amendments in this update affect the guidance in Accounting Standards

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

### 3. Summary of Significant Accounting Policies - (continued)

Update 2014-09, Revenue from Contracts with Customers (Topic 606) ( ASU 2014-09 ), which is not yet effective. This update focuses on improving several aspects of ASU 2014-09, such as assessing the collectability criterion in paragraph 606-10-25-1(e) and accounting for contracts that do not meet the criteria for step 1; presentation of sales taxes and other similar taxes collected from customers; noncash consideration; contract modifications at transition; and completed contracts at transition. The Company does not expect the standard to have a material impact on its consolidated financial statements.

In April 2016, the FASB issued Accounting Standards Update 2016-10, Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing ( ASU 2016-10 ). The amendments in this update affect the guidance in ASU 2014-09, which is not yet effective. This update focuses on clarifying the following two aspects of ASU 2014-09: identifying performance obligations and the licensing implementation guidance, while retaining the related principles for those areas. The Company does not expect the standard to have a material impact on its consolidated financial statements.

In March 2016, FASB issued Accounting Standards Update No. 2016-09, Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting ( ASU 2016-09 ). This update is intended to improve the accounting for employee share-based payments and affects all organizations that issue share-based payment awards to their employees. Several aspects of the accounting for share-based payment award transactions are simplified, including: (a) income tax consequences; (b) classification of awards as either equity or liabilities; and (c) classification on the statement of cash flows. ASU 2016-09 is effective for financial statements issued for annual periods beginning after December 15, 2016. The Company is currently in the process of evaluating the impact of adoption of ASU 2016-09 on its financial statements.

In February 2016, FASB issued Accounting Standards Update No. 2016-02, Leases ( ASU 2016-02 ). ASU 2016-02 requires lessees to recognize the following for all leases (with the exception of short-term leases) at the commencement date: a lease liability, which is a lessee's obligation to make lease payments arising from a lease, measured on a discounted basis; and a right-of-use asset, which is an asset that represents the lessee's right to use, or control the use of, a specified asset for the lease term. Under the new guidance, lessor accounting is largely unchanged. Certain targeted improvements were made to align, where necessary, lessor accounting with the lessee accounting model and Topic 606, Revenue from Contracts with Customers. The new lease guidance also simplified the accounting for sale and leaseback transactions primarily because lessees must recognize lease assets and lease liabilities. Lessees will no longer be provided with a source of off-balance sheet financing. Lessees (for capital and operating leases) and lessors (for sales-type, direct financing, and operating leases) must apply a modified retrospective transition approach for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. The modified retrospective approach would not require any transition

accounting for leases that expired before the earliest comparative period presented. Lessees and lessors may not apply a full retrospective transition approach. ASU 2016-02 is effective for financial statements issued for annual periods beginning after December 15, 2018. The Company is currently in the process of evaluating the impact of adoption of ASU 2016-02 on its financial statements.

In January 2016, FASB issued Accounting Standards Update No. 2016-01, Financial Instruments- Overall: Recognition and Measurement of Financial Assets and Financial Liabilities ( ASU 2016-01 ). ASU 2016-01 requires all equity investments to be measured at fair value with changes in the fair value recognized through net income (other than those accounted for under equity method of accounting or those that result in consolidation of the investee). Additionally, it requires an entity to present separately in other comprehensive income the portion of the total change in the fair value of a liability resulting from a change in the instrument-specific credit risk when the entity has elected to measure the liability at fair value in accordance with the fair value option for financial instruments. Lastly, the standard eliminates the requirement to disclose the method(s) and significant assumptions used to estimate the fair value that is required to be disclosed for

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

### 3. Summary of Significant Accounting Policies - (continued)

financial instruments measured at amortized cost on the balance sheet. ASU 2016-01 is effective for financial statements issued for annual periods beginning after December 15, 2017, and interim periods within those annual periods. The Company does not expect the standard to have a material impact on its consolidated financial statements.

In November 2015, FASB issued Accounting Standards Update No. 2015-17, *Income taxes: Balance Sheet Classification of Deferred Taxes Business* ( ASU 2015-17 ). Topic 740, *Income Taxes*, requires an entity to separate deferred income tax liabilities and assets into current and noncurrent amounts in a classified statement of financial position. Deferred tax liabilities and assets are classified as current or noncurrent based on the classification of the related asset or liability for financial reporting. Deferred tax liabilities and assets that are not related to an asset or liability for financial reporting are classified according to the expected reversal date of the temporary difference. To simplify the presentation of deferred income taxes, ASU 2015-17 requires that deferred income tax liabilities and assets be classified as noncurrent in a classified statement of financial position. ASU 2015-17 is effective for financial statements issued for annual periods beginning after December 15, 2016, and interim periods within those annual periods. The Company does not expect the standard to have a material impact on its consolidated financial statements.

In September 2015, the FASB issued Accounting Standard Update No. 2015-16, *Business Combinations Simplifying the Accounting for Measurement-Period Adjustments* ( ASU 2015-16 ). This standard requires that an acquirer retrospectively adjust provisional amounts recognized in a business combination, during the measurement period. To simplify the accounting for adjustments made to provisional amounts, the amendments in the ASU 2015-16 require that the acquirer recognize adjustments to provisional amounts that are identified during the measurement period in the reporting period in which the adjustment amount is determined. The acquirer is required to also record, in the same period's financial statements, the effect on earnings of changes in depreciation, amortization, or other income effects, if any, as a result of the change to the provisional amounts, calculated as if the accounting had been completed at the acquisition date. In addition an entity is required to present separately on the face of the income statement or disclose in the notes to the financial statements the portion of the amount recorded in current-period earnings by line item that would have been recorded in previous reporting periods if the adjustment to the provisional amounts had been recognized as of the acquisition date. ASU 2015-16 is effective for fiscal years beginning after December 15, 2016, and interim periods within fiscal years beginning after December 15, 2017 (July 1, 2017 for the Company). The Company does not believe that the adoption of ASU 2015-16 will have a material impact on its consolidated financial statements.

### 4. Segments

Historically, the Company had one operating segment. However, in connection with the sale of the Viggie rewards business (discontinued operations) to Perk in February 2016, which represents a significant portion of the Company's

assets and revenues, the Company's remaining operations were divided into three operating segments. These segments offer different products and services are separately reviewed in internal management reports, and managed separately.

*Wetpaint*: a media channel reporting original news stories and publishing information content covering top television shows, music, celebrities, entertainment news and fashion.

*Choose Digital*: a business-to-business platform for delivering digital content.

*DDGG*: a business-to-business operator of daily fantasy sports.

The accounting policies followed by the segments are described in Note 3, Summary of Significant Accounting Policies. The operating segments of the Company include the assets, liabilities, revenues and expenses that management has determined are specifically or primarily identifiable to each segment, as well as

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TABLE OF CONTENTS**Function(x) Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(amounts in thousands, except share and per share data)****4. Segments - (continued)**

direct and indirect costs that are attributable to the operations of each segment. Direct costs are the operational costs that are administered by the Company following the shared services concept. Indirect costs are the costs of support functions that are provided on a centralized or geographic basis by the Company, which include, but are not limited to, finance, human resources, benefits administration, procurement support, information technology, legal, corporate strategy, corporate governance and other professional services and general commercial support functions.

Central support costs have been allocated to each operating segment based on a specific identification basis or, when specific identification is not practicable, a proportional cost allocation method (primarily based on net sales or direct payroll costs), depending on the nature of the services received. Management considers that such allocations have been made on a reasonable basis, but may not necessarily be indicative of the costs that would have been incurred if the operating segments had been operated on a stand-alone basis for the periods presented.

Information regarding the results of each reportable segment is included below. Performance is measured based on unit profit after tax, as included in the internal management reports that are reviewed by the Chief Operating Decision Maker, who is the Company's Chief Executive Officer. Business unit profit is used to measure performance as management believes that such information is the most relevant in evaluating the success of each business and determining the going forward strategy for the Company as a whole.

Information about reportable segments:

<i>In thousands of U.S. dollars</i>	For The Year Ended June 30,						
	Wetpaint		Choose Digital		DDGG	Total	
	2016	2015	2016	2015	2016	2016	2015
External revenues	\$ 1,533	\$ 3,454	\$ 664	\$ 848	\$ 528	\$ 2,725	\$ 4,302
Inter-segment revenues <sup>(1)</sup>			1,285	855		1,285	855
Net loss, net of income taxes <sup>(2)</sup>	(27,560)	(8,747)	(7,621)	(6,744)	(5,194)	(40,375)	(15,491)

Notes:

In September 2014, the Choose Digital business began providing digital content to the Viggie business. These (1) inter-segment revenues are presented at Choose Digital's cost in this schedule and in the consolidated statements of operations.

(2)



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The net loss figures presented exclude certain corporate expenses detailed in the reconciliation to the consolidated net loss below.

Reconciliation of revenues attributable to reportable segments to consolidated revenues from continuing operations:

<i>In thousands of U.S. dollars</i>	Year Ended June 30,	
	2016	2015
Revenues attributable to reportable segments	\$ 4,010	\$ 5,157
Licensing revenues related to SFX licensing agreement	499	507
Other revenues		10
Revenues per Consolidated Statements of Operations	\$ 4,509	\$ 5,674

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TABLE OF CONTENTS**Function(x) Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(amounts in thousands, except share and per share data)****4. Segments - (continued)**

Reconciliation of net loss for reportable segments, net of income taxes to consolidated net loss from continuing operations, net of income taxes:

<i>In thousands of U.S. dollars</i>	Year Ended June 30, 2016	Year Ended June 30, 2015
Net loss for reportable segments, net of income taxes	\$ (40,375 )	\$ (15,491 )
Other net loss	(72 )	(659 )
	(40,447 )	(16,150 )
Stock compensation related to corporate financing activities <sup>(1)</sup>	(11,017 )	(21,141 )
Corporate expenses, net allocated to discontinued operations <sup>(2)</sup>	(1,915 )	(3,262 )
Interest expense, net <sup>(3)</sup>	(3,788 )	(2,050 )
Loss on contingent consideration <sup>(4)</sup>		(2,222 )
Corporate financing expenses		(702 )
Consolidated net loss from continuing operations, net of tax	\$ (57,167 )	\$ (45,527 )

Notes:

Stock compensation expense related to RSUs, options and warrants issued in connection with financing activities.

(1) Expenses related to financing activities are considered to be corporate expenses and are not allocated to reportable segments.

(2) Certain corporate expenses were allocated to the Viggle business, however such expenses are not classified as discontinued operations because they are fixed and are not affected by the sales transaction.

(3) Interest expense related to corporate debt instruments is not allocated to reportable segments.

(4) Contingent consideration loss related to Choose Digital (see Note 6, *Acquisitions*).

Total assets for reportable segments:

<i>In thousands of U.S. dollars</i>	June 30,		Choose Digital		DDGG		Total	
	Wetpaint 2016	2015	2016	2015	2016	2015	2016	2015
Total assets for reportable segments	\$8,495	\$35,272	\$5,416	\$10,587	\$3,740	\$	\$17,651	\$45,859

Reconciliation of assets attributable to reportable segments to consolidated assets of continuing operations:

*In thousands of U.S. dollars*

	June 30, 2016	June 30, 2015
Total assets for reportable segments	\$17,651	\$45,859
Other assets <sup>(1)</sup>	5,349	8,723
Total consolidated assets, net of current and non-current assets of discontinued operations	\$23,000	\$54,582

Notes:

- (1) Corporate assets that are not specifically related to any of the reporting units.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 4. Segments - (continued)

The Company continues to support the cash needs and operations of DDGG. As of June 30, 2016 the Company has transferred \$857 to the DDGG subsidiary. A portion of these transfers, or \$500, was funded as part of the purchase price commitment. The remaining transfers are part of the subscription agreement entered into with DDGG on May 12, 2016 (see Note 6, Acquisitions).

## 5. Discontinued Operations

On February 8, 2016, the Company completed the sale of assets related to the Company's rewards business, including the Viggie App, in accordance with the Perk Agreement entered into on December 13, 2015. Management entered into this binding sales agreement following a strategic decision to divest the operations related to the Viggie App and place greater focus on its remaining businesses. The Company has classified the Viggie assets, liabilities and operations as discontinued operations in the accompanying Consolidated Financial Statements for all periods presented. In accordance with ASC No. 205, *Presentation of Financial Statements*, the inter-segment revenues and expenses related to services provided by Choose Digital to the Viggie rewards business (discontinued operations) are presented at cost in the Consolidated Statements of Operations.

On December 13, 2015, the Company entered into the Perk Agreement. Perk's shares are currently traded on the Toronto Stock Exchange. On February 8, 2016, pursuant to the Perk Agreement, the Company completed the sale of the assets related to the Company's rewards business, including the Viggie App, to Perk. The total consideration received, net of transaction fees, was approximately \$5,110, and consisted of the following:

1,370,000 shares of Perk common stock, a portion of which was placed in escrow to satisfy any potential indemnification claims;

2,000,000 shares of Perk common stock if Perk's total revenues exceed USD \$130,000 for the year ended December 31, 2016 or December 31, 2017;

a warrant entitling the Company to purchase 1,000,000 shares of Perk common stock at a strike price of CDN \$6.25 per share in the event the volume weighted average price ( VWAP ) of shares of Perk common stock is greater than or equal to CDN \$12.50 for 20 consecutive trading days in the two year period following the closing of the transaction;

a warrant entitling the Company to purchase 1,000,000 shares of Perk common stock at a strike price of CDN \$6.25 per share in the event the volume weighted average price ( VWAP ) of shares of Perk common stock is greater than or equal to CDN \$18.75 for 20 consecutive trading days in the two year period following the closing of the transaction;

Perk assumed certain liabilities of the Company, consisting of the Viggie points liability.

At the time the Company entered into the Perk Agreement, Perk provided the Company with a \$1,000 secured line of credit, which the Company fully drew down. The Company had the option of repaying amounts outstanding under that line of credit by reducing the number of Initial Perk Shares by 130,000. The Company exercised this option and

received 1,370,000 shares of Perk common stock at closing, and the amounts outstanding under the Line of Credit were deemed paid in full.

**Escrow**

At the closing, 37.5% (562,600) of the Initial Perk Shares were issued and delivered to an escrow agent to be used exclusively for the purpose of securing the Company's indemnification obligations under the Perk Agreement.

On September 30, 2016, the Company sold to Perk the remaining shares (1,013,068) of Perk common stock, the warrants for additional shares, and the right to the Earn-Out Shares received from Perk on the sale of the Viggie rewards business on February 8, 2016. The Company received \$1,300 from Perk as consideration

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TABLE OF CONTENTS**Function(x) Inc.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(amounts in thousands, except share and per share  
data)****5. Discontinued Operations - (continued)**

therefor. The execution of the Securities Purchase Agreement and closing were simultaneous. The escrowed shares were released as part of this transaction.

The Company recognized a gain of \$1,060 on this transaction, net of transaction fees.

Additionally, after the closing, the Company delivered 357,032 of the Initial Perk Shares to Gracernote, Inc. and Tribune Media Services, Inc., former providers of technology services of the Company, as per the Settlement and Transfer Agreement dated February 5, 2016, to satisfy an obligation. The Company recognized a gain of \$593 in the consolidated statements of operations for the year ended June 30, 2016.

Results of operations classified as discontinued operations:

<i>In thousands of U.S. dollars</i>	Year Ended June 30,	
	2016	2015
Revenues	\$ 5,321	\$ 19,852
Cost of watch points and engagement points	(3,416 )	(9,574 )
Selling, general and administrative expenses	(12,553 )	(43,203 )
Operating loss	(10,648 )	(32,925 )
Other expense:		
Other income, net	4,169	
Total other expense, net	4,169	
Net loss before provision for income taxes	(6,479 )	(32,925 )
Income tax expense	(43 )	(87 )
Net loss from discontinued operations, net of tax	\$ (6,522 )	\$ (33,012 )
Cash flows used in discontinued operations:		

<i>In thousands of U.S. dollars</i>	Year Ended June 30,	
	2016	2015
Net cash used in operating activities	\$ (15,998 )	\$ (17,984 )
Net cash used in investing activities		(843 )
Net cash used in discontinued operations	\$ (15,998 )	\$ (18,827 )
Current assets and Non-current assets used in discontinued operations:		

<i>In thousands of U.S. dollars</i>	June 30, 2016	June 30, 2015
Current assets:		
Accounts receivable, net	\$ 39	\$ 3,281
Prepaid expenses		150
Current assets of discontinued operations	\$ 39	\$ 3,431
Non-current assets:		
Property and equipment, net	\$	\$ 114
Intangible assets, net		2,630
Goodwill		11,111
Other assets		40
Non-current assets of discontinued operations	\$	\$ 13,895

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(amounts in thousands, except share and per share  
data)****5. Discontinued Operations - (continued)**

Current liabilities and Non-current liabilities used in discontinued operations:

<i>In thousands of U.S. dollars</i>	June 30, 2016	June 30, 2015
Current liabilities:		
Accounts payable and accrued expenses	\$ 2,634	\$ 4,249
Reward points payable		9,029
Current portion of loan payable	217	
Current liabilities of discontinued operations	\$ 2,851	\$ 13,278
Non-current liabilities:		
Other long-term liabilities	\$	\$ 538
Non-current liabilities of discontinued operations	\$	\$ 538

**6. Acquisitions****Acquisition of Choose Digital**

On June 24, 2014, the Company acquired Choose Digital, a Miami, Florida based, digital marketplace platform that allows companies to incorporate digital content into existing rewards and loyalty programs in support of marketing and sales initiatives.

In connection with the acquisition, all outstanding shares of Choose Digital, the Company was required to make a contingent payment, which was due within five business day after June 24, 2015, of \$4,792. Such amount was accrued in the accompanying Consolidated Balance Sheets as of June 30, 2015. On June 24, 2015, the Company determined that the maximum amount of contingent consideration of \$4,792 should be recorded. As such, the Company adjusted the original estimate of contingent consideration of \$2,570 to \$4,792. The increase of \$2,222 is recorded as an expense and included in Selling, general and administrative expenses in the accompanying Consolidated Statements of Operations for the year ended June 30, 2015. On July 31, 2015, the Company entered into a Forbearance Agreement with AmossyKlein Family Holdings, LLP ( AmossyKlein ), as representative of the former shareholders of Choose Digital Inc. (the Stockholders ). The Forbearance Agreement provides that the Company will make monthly installment payments to the Stockholders, beginning on July 31, 2015 and ending on January 29, 2016. Specifically, the Company agreed to pay \$668 on July 31, 2015; \$532 on August 31, 2015; \$528 on September 30, 2015; \$524 on October 31, 2015; \$521 on November 30, 2015; \$517 on December 31, 2015; and \$1,754 on January 29, 2016. The scheduled payments include \$170 of interest and \$82 of legal fee charges. The Company agreed to deliver an affidavit



of confession of judgment to be held in escrow by AmossyKlein's counsel in the event the Company does not make such installment payments. The Company made the installment payments through December 2015, but failed to make the payment due on January 29, 2016.

On May 12, 2016, the Company and AmossyKlein entered into an amendment to the Forbearance Agreement to provide for the payment of the remaining \$1,754. The Forbearance Agreement now provides that the Company will make a payment of approximately \$300 by May 18, 2016, and thereafter, the Company will make monthly payments of \$100, plus interest at a rate of 9% per annum, until the remaining amount is paid in full. In addition, the Company agreed to pledge 100,000 shares of common stock it holds in Perk.com, Inc. as collateral for these obligations. Finally, the Company agreed if it consummates a sale of a substantial part of its assets or a public equity offering, the Company will first apply the proceeds to remaining amounts due to AmossyKlein, except for payments to advisors or expenses necessary to close such transactions. The Company also delivered an amended confession of judgment that it had previously delivered to AmossyKlein, which will be held in escrow by AmossyKlein's counsel in the event the Company does not make installment

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 6. Acquisitions - (continued)

payments as set forth in the amended Forbearance Agreement. At June 30, 2016, the Company was in compliance with the agreed upon payment plan.

In addition, at June 30, 2015, due to a shift in business operations and utilization of resources during the fourth quarter of 2015, the Company determined that certain intangible assets related to the acquisition of Choose Digital no longer had value (see Note 3, Summary of Significant Accounting Policies). At December 31, 2015, the Company further determined that certain intangible assets and goodwill related to the acquisition of Choose digital were impaired (see Note 3, Summary of Significant Accounting Policies).

### DraftDay.com

On September 8, 2015, the Company and its newly created subsidiary DDGG entered into an Asset Purchase Agreement with MGT Capital and MGT Sports, pursuant to which the Company acquired all of the assets of the DraftDay Business from MGT Capital and MGT Sports. In exchange for the acquisition of the DraftDay Business, the Company paid MGT Sports the following: (a) 63,647 shares of the Company's common stock, par value \$0.001 per share, (b) a promissory note in the amount of \$234, which will be due September 29, 2015, (c) a promissory note in the amount of \$1,875 due March 8, 2016, and (d) 2,550 shares of common stock of DDGG. In addition, in exchange for providing certain transitional management services, DDGG will issue to MGT Sports a warrant to purchase 1,500 shares of DDGG common stock at an exercise price of \$400 per share.

In addition, in exchange for the release of various liens and encumbrances, the Company also agreed to issue to third parties: (a) 4,232 shares of its common stock, (b) a promissory note in the amount of \$16 due September 29, 2015 and (c) a promissory note in the amount of \$125 due March 8, 2016, and DDGG issued: (i) 7,500 shares of the Company's common stock and (ii) a warrant to purchase 150 shares of DDGG common stock at \$400 per share.

Accordingly, the Company issued a total of 67,879 shares of common stock in connection with the acquisition of the DraftDay Business.

The Company contributed the assets of the DraftDay Business to DDGG and received 11,250 shares of DDGG common stock.

The Asset Purchase Agreement contains customary representations, warranties and covenants of MGT Capital and MGT Sports. In addition, on September 8, 2015, DDGG entered into an agreement with Sportech Racing, LLC ( Sportech ) pursuant to which Sportech agreed to provide certain management services to DDGG in exchange for 9,000 shares of DDGG common stock ( Sportech MSA ). As a result of the transactions described above, the Company

owns a total of 11,250 shares of DDGG common stock, Sportech Inc., an affiliate of Sportech, owns 9,000 shares of DDGG common stock, MGT Sports owns 2,550 shares of DDGG common stock and an additional third party owns 150 shares of DDGG common stock. In addition, MGT Sports holds a warrant to purchase 1,500 shares of DDGG common stock at an exercise price of \$400 and an additional third party holds a warrant to purchase 350 shares of DDGG common stock at \$400 per share. On September 8, 2015, the various stockholders of DDGG entered into a Stockholders Agreement (the "Stockholders Agreement"). The Stockholders Agreement provides that all stockholders will vote their shares of DDGG common stock for a Board comprised of three members, two of which will be designated by the Company and one of which will be designated by Sportech. Mr. Sillerman will serve as the Chairman of DDGG. The Stockholders Agreement also provides customary rights of first refusal for the various stockholders, as well as customary co-sale, drag along and preemptive rights.

As a result of the transactions described herein, the Company issued promissory notes in the aggregate principal amount of \$250 due and paid on September 29, 2015 and in the aggregate principal amount of \$2,000 due March 8, 2016. All such notes bear interest at a rate of 5% per annum. The Company was not able to make the \$2,000 in payments at the due date and on March 24, 2016 converted \$825 of the

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 6. Acquisitions - (continued)

promissory notes to common stock and \$110 of the promissory notes to a Series D Preferred Stock (see Note 11, Stockholders' (Deficit) Equity). On April 13, 2016, MGT converted all 110 shares of the Company's Series D Preferred Stock into shares of common stock of the Company. Accordingly, the Company issued 18,332 shares of common stock to MGT. Thereafter, there are no shares of the Company's Series D Preferred Stock outstanding. On June 14, 2016, the Company entered into a second exchange agreement with MGT (the "Second MGT Exchange Agreement") relating to the \$940 remaining due under the MGT Note. Under the Second MGT Exchange Agreement, the MGT Note shall be exchanged in full for (a) \$11 in cash representing accrued interest and (b) 132,092 shares of our common stock, subject to certain adjustments. Issuance of the shares is conditioned upon approval of the Company's shareholders and approval of its listing of additional shares application with NASDAQ. On October 10, 2016, the Company satisfied the MGT Note through the issuance of 136,304 shares of its common stock and payment of interest of \$16.

On December 28, 2015, DDGG's Board of Directors effectuated a 1-for-1,000 reverse stock split (the "1-for-1,000 Reverse Split"). Under the terms of the 1-for-1,000 Reverse Split, each share of DDGG's common stock, issued and outstanding as of such effective date, was automatically reclassified and changed into one-thousandth of one share of common stock, without any action by the stockholders. Fractional shares were cashed out.

On May 12, 2016, the Company entered into a subscription agreement with DDGG pursuant to which the Company agreed to purchase up to 550 shares of Series A Preferred Stock of DDGG for \$1 per share. DDGG also entered into a subscription agreement with Sportech pursuant to which Sportech agreed to purchase up to 450 shares of Series A Preferred Stock of DDGG for \$1 per share. In accordance with this agreement, the Company transferred a total of \$502 to the DDGG subsidiary since the date of acquisition and through October 11, 2016.

### Kuusamo Warrants

In exchange for releasing certain liens and encumbrances with respect to DDGG, the Company issued promissory notes to Kuusamo Capital Ltd. ("Kuusamo Promissory Notes") in the principal amount of \$16 due and paid on September 29, 2015 and in the aggregate principal amount of \$125 due March 8, 2016. All such notes bear interest at a rate of 5% per annum. The Company was not able to make the \$125 payment at the due date. On April 25, 2016, the Company also entered into an exchange agreement with Kuusamo Capital Ltd. ("Kuusamo"), pursuant to which the Company issued 10,394 shares of its common stock to Kuusamo in exchange for a reduction of \$71 in principal amount of a promissory note the Company owed to Kuusamo.

The outstanding balance of the Kuusamo Promissory Notes was \$54 at June 30, 2016. The Company recorded \$5 in interest expense for the year ended June 30, 2016.

## Sportech MSA Termination

On April 12, 2016, DDGG entered into an amendment to the transitional management services agreement pursuant to which the DDGG's Management Services Agreement By and Between DraftDay Gaming Group, Inc. and Sportech Racing, LLC ( Sportech MSA ) terminated effective June 30, 2016. Sportech paid a \$75 termination fee, to provide transitional services for 45 days, and has agreed to revert 4,200 shares of DDGG stock back to the Company on August 15, 2016. The Company had previously recorded the value of the services provided by Sportech under the Sportech MSA to prepaid assets, to be recognized as a professional services expense in the Consolidated Statements of Operations over the term of the agreement. Due to the termination of the agreement, the Company reduced prepaid assets and non-controlling interest accounts for the value of the returned 4,200 shares of DDGG stock, and expensed the remaining value of the Sportech services, except for 45 days of transitional services. The value of returned DDGG shares was

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(amounts in thousands, except share and per share  
data)****6. Acquisitions - (continued)**

determined by a third-party valuation firm as of June 30, 2016 using Level 3 inputs. The termination of the Sportech MSA will require DDGG to begin performing certain functions on its own.

**DDGG Intangibles and Goodwill Impairment**

As noted above, at June 30, 2016, the Sportech MSA terminated, which led to a significantly lower revenues forecast for the reporting unit. As a result, the Company determined that intangible assets related to internally developed software, trade name and non-compete agreements were impaired as of June 30, 2016. The Company recorded a loss of \$749 on intangible assets related to DDGG during the year ended June 30, 2016. There was no impairment of goodwill (see Note 3, Summary of Significant Accounting Policies).

This acquisition has been accounted for under the acquisition method of accounting in accordance with ASC 805, *Business Combinations*. Under the acquisition method, the consideration transferred is measured at the acquisition closing date. The assets of the DraftDay Business have been measured based on various estimates using assumptions that the Company's management believes are reasonable utilizing information currently available. Use of different estimates and judgments could yield different results. In the quarter ended June 30, 2015, the Company completed the analysis of certain acquired assets and assumed liabilities, including, but not limited to, other identifiable intangible assets such as customer lists, technology, trade name and non-competition agreements. Therefore, the Company finalized its allocation of the purchase price to the underlying net assets acquired and liabilities assumed based on their estimated fair values as of the acquisition date, with any excess of the purchase price allocated to goodwill. These valuations were conducted using Level 3 inputs as described in ASC 820, *Fair Value Measurements and Disclosures*, that are generally unobservable and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability.

A summary of the fair value of consideration transferred for this acquisition and the fair value of the assets and liabilities at the date of acquisition is as follows (amounts in thousands):

**Consideration transferred:**

Shares of Viggle common stock on closing market price at issuance	\$ 1,760
Notes issued to sellers	2,250
Total consideration transferred	4,010

**Purchase allocation:**

Goodwill	1,591
Intangible assets	3,012

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Other Assets	799
Total liabilities	(1,392)
	\$ 4,010

The operations of this acquisition are not material, and thus, pro forma disclosures are not presented.

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(amounts in thousands, except share and per share data)****7. Property and Equipment**

Property and Equipment consists of the following:

Description	June 30, 2016	June 30, 2015
Leasehold Improvements	\$ 2,261	\$ 2,886
Furniture and Fixtures	588	588
Computer Equipment	456	458
Software	164	5
Total	3,469	3,937
Accumulated Depreciation and Amortization	(2,055 )	(1,603 )
Property and Equipment, net	\$ 1,414	\$ 2,334

Depreciation and amortization charges included in Selling, general and administrative expenses for the years ended June 30, 2016 and 2015 amounted to \$512 and \$656, respectively.

**8. Intangible Assets and Goodwill**

Intangible assets consist of the following:

Description	Amortization Period	June 30, 2016			June 30, 2015		
		Amount	Accumulated Amortization	Carrying Value	Amount	Accumulated Amortization	Carrying Value
Wetpaint technology	60 months	\$4,952	\$ (3,276 )	\$ 1,676	\$10,600	\$ (2,336 )	\$ 8,264
Wetpaint trademarks	276 months	1,453	(415 )	1,038	5,800	(296 )	5,504
Wetpaint customer relationships	60 months	917	(827 )	90	2,000	(617 )	1,383
Wetpaint non-compete agreements	36 months				609	(313 )	296
Choose Digital licenses	60 months	829	(559 )	270	1,740	(355 )	1,385
Choose Digital software	60 months	627	(212 )	415	550	(112 )	438



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DraftDay tradename	84 months	180	(38 )	142			
Draftday non-compete agreements	6 months	30	(30 )				
DraftDay internally generated capitalized software	60 months	1,498	(303 )	1,195			
DraftDay customer relationships	24 months	556	(351 )	205			
Internally generated capitalized software	36 months				1,610	(515 )	1,095
Other	various	326	(18 )	308	326	(8 )	318
Total		\$11,368	\$(6,029 )	\$5,339	\$23,235	\$(4,552 )	\$18,683

See Note 3, Summary of Significant Accounting Policies, for a discussion of the write-downs recorded with respect to intangible assets related to the Wetpaint and Choose Digital businesses in the quarter ended December 31, 2015 and to the DraftDay business in the quarter ended June 30, 2016. The changes in the gross amounts and useful lives of intangibles related to the Wetpaint, Choose Digital and DraftDay businesses, and to internally generated capitalized software, are a result of these write-downs during the three months ended December 31, 2015 and June, 30, 2016, as well as the abandonment of certain technology as of

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(amounts in thousands, except share and per share data)****8. Intangible Assets and Goodwill - (continued)**

January 1, 2016, and internal development costs. See Note 6, Acquisitions, for a detailed description of DraftDay assets and liabilities purchased and their fair values on the date of the acquisition.

Amortization of intangible assets included in selling, general and administrative expenses for the years ended June 30, 2016 and 2015 amounted to \$1,227 and \$3,497, respectively. Future annual amortization expense expected is as follows:

Years Ending June 30	Amount
2017	\$ 1,194
2018	966
2019	919
2020	919
2021	670

The activity in the goodwill balance consists of the following:

Description	Amount
Balance at June 30, 2015	\$ 24,722
Acquisition of DDGG	1,591
Wetpaint impairment loss	(10,708 )
Choose Digital impairment loss	(4,335 )
Balance at June 30, 2016	\$ 11,270

**9. Loans Payable**

Facility Name	Maturity Date	Total Facility Amount	Outstanding Balances	
			June 30, 2016	June 30, 2015
Term Loan Agreement ( DB Line )	Retired	\$ 15,000	\$	\$
Line of Credit Promissory Note (the Note )	10/24/2017	20,000	19,716	19,516
Unsecured Demand Loans (the Loans )	On Demand			1,575
Line of Credit Grid Note (the Grid Note )	12/31/2016	10,000	4,563	3,000
Secured Line of Credit (the Secured Revolving Loan I )	12/31/2016	1,500	1,500	

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Secured Line of Credit (the Secured Revolving Line of Credit )	12/31/2016	500	500
Secured Revolving Loan (the Secured Revolving Loan )	12/31/2016	500	500
Secured Revolving Loan II (the Secured Revolving Loan II )	12/31/2016	500	500
Secured Revolving Loan III (the Secured Revolving Revolving Loan III )	12/31/2016	1,200	135
Convertible Promissory Note (the RI Convertible Note )	12/31/2016	300	300
MGT Promissory Notes (the MGT Promissory Notes )	7/31/2016	2,109	943
Kuusamo Promissory Notes (the Kuusamo Promissory Notes )	3/8/2016	141	55
Total Loans Payable			\$28,712 \$ 24,091

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 9. Loans Payable - (continued)

### Term Loan Agreement

On March 11, 2013, Viggie entered into a Term Loan Agreement (the **DB Line**) with Deutsche Bank Trust Company Americas ( **Deutsche Bank** ), under which Deutsche Bank agreed to loan the Company up to \$10,000. The Company may, from time to time, request advances (the **Advances**) from the DB Line in amounts of no less than \$1,000.

On December 13, 2013, the Company entered into an amendment (the **Amendment**) to the DB Line. Pursuant to the Amendment, the line of credit was increased to \$30,000, and the maturity date was extended from December 16, 2013 to April 30, 2014.

The interest rate on the outstanding balance was lowered as a result of the Amendment. Previously, the interest rate on the outstanding balance was, at the Company's election, a per annum rate equal to the LIBOR Rate plus 4.00% or (ii) the Prime Rate plus 1.75%. Pursuant to the Amendment, the interest rate on the outstanding balance was lowered to a per annum rate, at the Company's option, of the LIBOR Rate plus 2.50%, or the Prime Rate plus 0.25%. Interest is payable monthly in arrears.

The Company may make prepayments, in whole or in part, under the DB Line at any time, as long as all accrued and unpaid interest thereon is paid through the prepayment date.

On December 13, 2013, the Company made a draw under the DB Line of \$16,951, bringing the total draws to \$26,951. The proceeds of this draw were used to repay amounts outstanding under the Company's previous Amended and Restated \$25,000 Line of Credit. On December 19, 2013, the Company drew the remaining amount available under the DB Line of \$3,049. The Company used the proceeds from the final draw on the DB Line to fund working capital requirements and for general corporate purposes.

On February 13, 2014, the Company entered into a further amendment (the **February Amendment**) to the DB Line. Pursuant to the February Amendment, the maturity date of the DB Line was extended to December 31, 2014, and the mandatory prepayment provision was amended to provide that only the first \$10,000 in net cash proceeds from an equity offering shall be required to be used to prepay amounts outstanding under the DB Line.

On March 11, 2014, the Company entered into a further amendment (the **March Amendment**) to the DB Line. Pursuant to the March Amendment, the line of credit was increased from \$30,000 to \$35,000, providing the Company with an additional \$5,000 for working capital purposes. Concurrent with the March Amendment, on March 11, 2014, the Company entered into a Pledge and Security Agreement with Deutsche Bank pursuant to which it agreed to provide Deutsche Bank a security interest in \$5,000 in cash, as well as a pledge to secure the prompt and timely

payment of all obligations under the DB Line. The Pledge and Security Agreement will remain in place as long as there are any obligations outstanding under the DB Line. The \$5,000 is classified as short term restricted cash in the accompanying Consolidated Balance Sheet as of June 30, 2014.

On April 30, 2014, the Company repaid \$10,000 of the DB Line in accordance with the February Amendment discussed above. On June 13, 2014, the Company repaid an additional \$10,000 of the DB Line. Each repayment reduced the amount available on the DB Line.

On December 15, 2014, the Company repaid the remaining \$15,000 outstanding under the DB Line from the proceeds of the Line of Credit Promissory Note (see description below). After this repayment, the DB Line was retired.

The DB Line did not contain any financial covenants.

Repayment of the DB Line was guaranteed by Mr. Sillerman. In consideration for the guarantee, Mr. Sillerman's designee, Sillerman Investment Company II LLC ( SIC II ), which was the lender under the

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 9. Loans Payable - (continued)

Amended and Restated \$25,000 Line of Credit described below, received a warrant for 6,250 shares of common stock of Viggie, which may be exercised at any time within 60 months of the issuance date at \$1,600 a share, (subject to adjustment in the event of stock splits and combination, reclassification, merger or consolidation)(the Guarantee Warrant ). The Guarantee Warrant contains a piggyback registration right with respect to the underlying common stock which may be issued if it is exercised. The Guarantee Warrant was issued in a transaction exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(a)(2) thereunder and Rule 506 of Regulation D promulgated thereunder.

The Company used the proceeds from the DB Line to fund working capital requirements and for general corporate purposes.

Interest expense on the DB Line for the year ended June 30, 2015 was \$185.

### Line of Credit Promissory Note

On October 24, 2014, the Company and Sillerman Investment Company III LLC ( SIC III ), a company affiliated with Mr. Sillerman entered into a Securities Purchase Agreement (the Securities Purchase Agreement ) pursuant to which SIC III agreed to purchase certain securities issued by the Company for a total of \$30,000. Pursuant to the Securities Purchase Agreement, the Company issued a Line of Credit Promissory Note (the Note ), which provides for a \$20,000 line of credit to the Company (see Note 11, Stockholders (Deficit) Equity, for a discussion of the remaining \$10,000 of the Securities Purchase Agreement). The Company also agreed to issue to SIC III warrants to purchase 50,000 shares of the Company s common stock. The Company issued warrants to purchase 2,500 shares of the Company s common stock for every \$1,000 advanced under the Note. The warrants will be issued in proportion to the amounts the Company draws under the Note. The exercise price of the warrants will be 10% above the closing price of the Company s shares on the date prior to the issuance of the warrants. Exercise of the warrants was subject to approval of the Company s stockholders, which occurred on January 13, 2015.

The Note provides a right for the Company to request advances under the Note from time to time. The Note bears interest at a rate of 12% per annum, payable in cash on a quarterly basis. The Note matures on October 24, 2017. On October 24, 2014, SIC III made an initial advance under the Note in the principal amount of \$4,500. On December 15, 2014, SIC III made an additional advance in the principal amount of \$15,500 pursuant to the terms of the Note (the proceeds of which were used to repay amounts outstanding under the DB Line, as discussed above). As of June 30, 2015, the total outstanding principal amount of the Note was \$20,000. The Note provides for a 3% discount, such that the amount advanced by SIC III was 3% less than the associated principal amount of the advances. Therefore, the net amount actually outstanding under the Note at June 30, 2016, was \$19,716 which includes accretion of the discount of

\$316 (the 3% discount of \$600 is being accreted to the principal balance over the life of the Note). From and after the occurrence and during the continuance of any event of default under the Note, the interest rate is automatically increased to 17% per annum.

In connection with the first drawdown of \$4,500 under the Note, the Company issued SIC III warrants to purchase 11,250 shares of the Company's common stock. These warrants have an exercise price of \$70.20, representing a price equal to 10% above the closing price of the Company's common stock on the day prior to issuance. In connection with the additional drawdown of \$15,500 under the Note, the Company issued SIC III warrants to purchase 38,750 shares of the Company's common stock. These warrants have an exercise price of \$72.60, representing a price equal to 10% above the closing price of the Company's common stock on the day prior to issuance. The Warrants are exercisable for a period of five years from issuance. Stock compensation expense related to the issuances of warrants to SIC III was \$2,049 during the year ended June 30, 2015.

The Note is not convertible into equity securities of the Company as of June 30, 2016 (see Note 16, Subsequent Events).

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(amounts in thousands, except share and per share  
data)****9. Loans Payable - (continued)**

The Note also contains certain covenants and restrictions, including, among others, that, for so long as the Note is outstanding, the Company will not, without the consent of the holder of the Note, (i) make any loan or advance in excess of \$500 to any officer, director, employee of affiliate of the Company (except advances and similar expenditures: (a) under the terms of employee stock or option plans approved by the Board of Directors, (b) in the ordinary course of business, consistent with past practice or (c) to its subsidiaries), (ii) incur any indebtedness that exceeds \$1,000 in the aggregate other than indebtedness outstanding under the Note, (iii) guaranty any indebtedness of any unaffiliated third party, (iv) change the principal business of the Company or exit the Company's current business, provided that the foregoing is subject to the Board's compliance with its fiduciary duties, (v) sell, assign, or license material technology or intellectual property of the Company except (a) in the ordinary course of business, consistent with past practice, (b) sales and assignments thereof in any 12 month period that do not have a fair market value in excess of \$500 or (c) in connection with a change of control transaction, (vi) enter into any corporate strategic relationship involving the payment, contribution or assignment by the Company of its assets that have a fair market value in excess of \$1,000 or (vii) liquidate or dissolve the Company or wind up the business of the Company, except in connection with changes of control or merger, acquisition or similar transactions or as approved by the Company's Board in compliance with their fiduciary duties.

On August 22, 2016, the Company and SIC III, SIC IV, SIC VI entered into a Note Exchange Agreement pursuant to which \$30,175, which represents all of the outstanding principal and accrued interest of certain notes held by SIC III, SIC IV, and SIC VI other than \$900 of debt held by SIC IV pursuant to that certain Line of Credit Grid Note dated as of June 11, 2015, was exchanged for 30,175 shares of the Company's Series C Preferred Stock at an exchange price of \$1,000 per share. The Note Exchange Agreement provides for the newly issued shares to be held subject to the obligations to convert the shares into common stock on the terms and on the conditions set forth in the Exchange Agreement (see Note 16, Subsequent Events).

Interest expense on the Note was \$2,440 and \$1,391 for the years ended June 30, 2016 and 2015.

**Unsecured Demand Loans**

During the year ended June 30, 2015, Mr. Sillerman made the following demand loans (the "Loans") to the Company:

Date	Amount
December 19, 2014	\$ 2,000
January 14, 2015	2,000
January 30, 2015	2,000



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February 13, 2015	750
February 26, 2015	1,000
March 2, 2015	1,000
March 16, 2015	3,000
April 20, 2015	1,000
May 5, 2015	500
May 14, 2015	325
Total	\$ 13,575

Each of the Loans bear interest at the rate of 12% per annum. Principal and interest due under the Loans shall be due and payable upon demand. The principal amount of the Loans may be prepaid at any time and from time to time, in whole or in part, without premium or penalty. The Company used the proceeds from the Loans to fund working capital requirements and for general corporate purposes.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 9. Loans Payable - (continued)

As discussed in Note 11, Stockholders' (Deficit) Equity, on March 16, 2015, SIC III purchased 7,000 shares of Series C Convertible Preferred Stock pursuant to the Securities Purchase Agreement, for a purchase price of \$7,000. The Company used the \$7,000 proceeds from the sale of 7,000 shares of Series C Convertible Stock to repay \$7,000 in principal amount of the Loans. In addition, the Company used \$798 of the proceeds of the Loan on March 16, 2015 to pay all accrued and unpaid interest on the Loans. On June 1, 2015, the Company repaid an additional \$5,000 in principal amount of the Loans. On July 1, 2015, the Company repaid the remaining \$1,575 in principal amount of the Loans. Accordingly, after the transactions described herein, the total outstanding principal amount of the Loans at June 30, 2016 and 2015 is \$0 and \$1,575, respectively.

Interest expense on the Loans was \$1 and \$306 for the years ended June 30, 2016 and 2015, respectively.

### Line of Credit Grid Note

On June 11, 2015, the Company and SIC IV entered into a Line of Credit Grid Note (the Grid Note). The Grid Note provides a right for the Company to request advances under the Grid Note from time to time in an aggregate amount of up to \$10,000. The Grid Note bears interest at a rate of 12% per annum, payable in cash on the maturity of the Grid Note. From and after the occurrence and during the continuance of any event of default under the Grid Note, the interest rate is automatically increased to 14% per annum.

The Grid Note is not convertible into equity securities of the Company.

In order for the Company to make requests for advances under the Grid Note, the Company must have an interest coverage ratio equal to or greater than 1, unless SIC IV waives this requirement. The interest coverage ratio is calculated by dividing: (a) the Company's net income for the measurement period, plus the Company's interest expense for the measurement period, plus the Company's tax expense for the measurement period, by (b) the Company's interest expense for the measurement period, plus the amount of interest expense that would be payable on the amount of the requested draw for the twelve months following the request for the advance. The measurement period is the twelve months ended as of the last day of the last completed fiscal quarter prior to the request for the advance. The Company currently does not have an interest coverage ratio equal to or greater than 1, so advances would require the SIC IV to waive this requirement. In addition, in order to make requests for advances under the Grid Note, there can be no event of default under the Note at the time of the request for an advance, including that there has been no material adverse change in the business plan or prospects of the Company in the reasonable opinion of SIC IV.

The Company made requests for advances under the Grid Note, and SIC IV made advances to the Company as follows:

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Date	Amount
6/11/2015	\$ 1,000
6/24/2015	2,000
7/31/2015	1,000
8/31/2015	2,000
9/15/2015	1,000
9/29/2015	1,000
10/13/2015	500
10/30/2015	600
11/25/2015	1,000
Total	\$ 10,100

On July 1, 2015, the Company repaid \$1,425 of the Grid Note.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 9. Loans Payable - (continued)

On December 3, 2015, the Company and SIC IV entered into a Subscription Agreement pursuant to which SIC IV subscribed for 437,500 shares of the Company's common stock at a price of \$9.40 per share. Accordingly, the aggregate purchase price for such shares was \$4,112.

The Company and SIC IV agreed that SIC IV would pay the purchase price for such shares by reducing the amounts outstanding under the Line of Credit. As of December 3, 2015, there was \$8,675 in outstanding principal amount under the Line of Credit.

Accordingly, the principal amount of the Line of Credit was therefore reduced to \$4,563.

The Grid Note matures on the first to occur of: (a) 12/31/2016 or (b) upon a Change of Control Transaction. A Change of Control Transaction includes (i) a sale of all or substantially all of the assets of the Company or (ii) the issuance by the Company of common stock that results in any person or group becoming the beneficial owner of a majority of the aggregate ordinary voting power represented by the Company's issued and outstanding common stock (other than as a result of, or in connection with, any merger, acquisition, consolidation or other business combination in which the Company is the surviving entity following the consummation thereof), excluding transactions with affiliates of the Company.

If an event of default occurs under the Grid Note, SIC IV has the right to require the Company to repay all or any portion of the Grid Note. An event of default is deemed to have occurred on: (i) the non-payment of any of the amounts due under the Grid Note within five (5) Business Days after the date such payment is due and payable; (ii) dissolution or liquidation, as applicable, of the Company; (iii) various bankruptcy or insolvency events shall have occurred, (iv) the inaccuracy in any material respect of any warranty, representation, statement, report or certificate the Company makes to Lender under the Note hereto; (v) the Company contests, disputes or challenges in any manner, whether in a judicial proceeding or otherwise, the validity or enforceability of any material provision in the Grid Note; or (vi) a material adverse change in the business plan or prospects of the Company in the reasonable opinion of SIC IV.

Interest expense on the Grid Note for the years ended June 30, 2016 and 2015 was \$574 and \$10, respectively.

In connection with the Company's entering into the Perk Credit Agreement (as defined below), SIC IV agreed to subordinate payment of the Grid Note to amounts owed to Perk under the Perk Credit Agreement. SIC IV also consented to the consummation of the Asset Purchase Agreement with Perk. In exchange for such consent and such agreement to subordinate, the Company agreed to provide SIC IV a security interest in the assets of the Company in connection with amounts outstanding under the Grid Note.

The Company entered into a Security Agreement with SIC IV, pursuant to which the Company pledged its assets in connection with such security interest.

On July 8, 2016, SIC III, SIC IV and SIC VI, entered into an exchange agreement (the Exchange Agreement ) relating to the exchange of debt and shares of the Series C Preferred stock of the Company for common stock of the Company under certain conditions. Issuance of the shares is conditioned upon approval of the Company's shareholders, the closing of an offering of the Company's common stock in the amount of at least \$10,000, approval of its Listing of Additional Shares application with NASDAQ, the Company shall not be subject to any bankruptcy proceeding, and various other conditions. The exchange price shall be equal to the lesser of \$5.20 and the price at which the Debentures can be exchanged for shares of the Company's common stock, so long as the Company received a valuation that the exchange price reflects fair value. The agreement provides for termination in the event the conditions are not satisfied by March 31, 2017.

On July 18, 2016, SIC III, SIC IV and SIC VI entered into an amended exchange agreement (the Amended Exchange Agreement ) relating to the exchange of debt and shares of the Series C Preferred stock of the Company for common stock of the Company under certain conditions. The Amended Exchange Agreement

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 9. Loans Payable - (continued)

modified the Grid Note to provide that SIC IV shall be entitled to repayment of up to \$2,000 of the outstanding principal balance of the Grid Note and the Company shall be entitled to draw up to an additional \$5,000 (see Note 16, Subsequent Events).

This debt has been converted to Preferred C Shares in accordance with the Note Exchange Agreement described above, except for the \$900 of debt that remains outstanding under the SIC IV Note that will remain subject to the Exchange Agreement (see Note 16, Subsequent Events).

### Secured Revolving Loans and Lines of Credit

On January 27, 2016, Sillerman Investment Company VI LLC ( SIC VI ), an affiliate of Robert F.X. Sillerman, the Executive Chairman and Chief Executive Officer of the Company, entered into a Secured Revolving Loan agreement (the Secured Revolving Loan I ) with the Company and its subsidiaries, wetpaint.com, Inc. and Choose Digital Inc. (collectively, the Subsidiaries ), pursuant to which the Company can borrow up to \$1,500. The Secured Revolving Loan bears interest at the rate of 12% per annum. In connection with the Secured Revolving Loan, the Company and the Subsidiaries have entered into a Security Agreement (the Security Agreement ) with SIC VI, under which the Company and the Subsidiaries have granted SIC VI a continuing security interest in all assets of the Company and the Subsidiaries, with the exception of the Company's interest in DraftDay Gaming Group, Inc. The Company intends to use the proceeds from the Secured Revolving Loan to fund working capital requirements and for general corporate purposes in accordance with a budget to be agreed upon by SIC VI and the Company. As of June 30, 2016, \$1,500 has been advanced thereunder. Interest expense on the Secured Revolving Loan I was \$71 for the year ended June 30, 2016.

The Company and its subsidiaries wetpaint.com, inc., and Choose Digital, Inc. (the Subsidiaries ) entered into a secured, revolving Line of Credit on March 29, 2016 with SIC VI (the Secured Revolving Line of Credit ), pursuant to which the Company can borrow up to \$500. The Secured Revolving Line of Credit bears interest at the rate of 12% per annum. In connection with the Secured Revolving Line of Credit, the Company and the Subsidiaries have entered into a Security Agreement (the Security Agreement ) with SIC VI, under which the Company and the Subsidiaries have granted SIC VI a continuing security interest in all assets of the Company and the Subsidiaries, with the exception of the Company's interest in DraftDay Gaming Group, Inc. The Company intends to use the proceeds from the Secured Revolving Line of Credit to fund working capital requirements and for general corporate purposes in accordance with a budget to be agreed upon by SIC VI and the Company. At June 30, 2016, \$500 had been advanced thereunder. Interest expense on the Secured Revolving Line of Credit was \$12 for the year ended June 30, 2016.

On April 29, 2016, SIC VI entered into an additional secured revolving loan agreement with the Company and the Subsidiaries ( Secured Revolving Loan ), pursuant to which the Company can borrow up to \$500. Loans under this loan agreement bear interest at the rate of 12% per annum and mature on December 31, 2016, barring any events of default or a change of control of the Company. As of June 30, 2016, \$500 had been advanced thereunder. Interest expense on the Secured Revolving Loan was \$9 for the year ended June 30, 2016.

On May 16, 2016, SIC VI entered into an additional secured revolving loan agreement with the Company and the Subsidiaries ( Secured Revolving Loan II ), pursuant to which the Company can borrow up to \$500. Loans under this loan agreement bear interest at the rate of 12% per annum and mature on December 31, 2016, barring any events of default or a change of control of the Company. As of June 30, 2016, \$500 had been advanced thereunder. Interest expense on the Secured Revolving Loan II was \$6 for the year ended June 30, 2016.

On June 27, 2016, SIC VI entered into a secured revolving loan agreement (the Secured Revolving Loan III ) with the Company and its subsidiaries, pursuant to which the Company can borrow up to \$1,200.

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(amounts in thousands, except share and per share  
data)****9. Loans Payable - (continued)**

The Secured Revolving Loan III bears interest at the rate of 12% per annum and matures on December 31, 2016, barring any events of default or a change of control of the Company. At June 30, 2016, \$135 had been advanced thereunder.

This debt has been converted to Preferred C Shares in accordance with the Note Exchange Agreement described above.

**Related Approvals**

Because each of the above loan payable transactions (other than the DB Line) referred to in the foregoing sections involved Mr. Sillerman, or an affiliate of his, the transactions were subject to certain rules regarding affiliate transactions. As such, each was approved by a Special Committee of the Board of Directors and a majority of the independent members of the Board of Directors of the Company.

**Loan from Perk**

During the year ended June 30, 2016, Perk made two advances to the Company as follows:

Date	Amount
12/14/2015	\$ 667
12/23/2015	333
Total	\$ 1,000

On December 13, 2015, the Company entered into a Credit Agreement with Perk pursuant to which Perk provided a \$1,000 line of credit to the Company (the Perk Credit Agreement). The Perk Credit Agreement provided for drawdowns pursuant to which Perk made advances to the Company, which totaled \$1,000. The first advance in the amount of \$667 was made on December 14, 2015. The final drawdown of \$333 was made when the Information Statement relating to the transaction was filed with the SEC, which occurred on December 23, 2015. Amounts outstanding under the Perk Credit Agreement bore interest at 12% per annum, with an additional 12% if the Company was in default of its obligations under the Perk Credit Agreement. Amounts outstanding under the Perk Credit Agreement were repaid on February 8, 2016 upon the closing of the sale of the Viggie assets to Perk. The Company was entitled to elect to repay all amounts outstanding pursuant to the Perk Credit Agreement by reducing the number of the shares of Perk common stock payable upon closing of the sale of the Viggie assets to Perk by 130,000 shares. The Company elected to so reduce the number of shares issuable to the Company at the closing of the asset sale transaction. Therefore, Perk agreed to deliver to the Company at closing 1,370,000 shares of Perk common stock,



rather than 1,500,000 shares, and in return the amounts outstanding under the Perk Credit Agreement were deemed repaid in full.

Therefore, the outstanding balance of the loan from Perk was \$0 at June 30, 2016. No interest expense was recorded by the Company for the year ended June 30, 2016.

In connection with the Perk Credit Agreement, the Company also entered into a Security Agreement, pursuant to which the Company provided Perk with a security interest in its assets to secure repayment of amounts outstanding under the Perk Credit Agreement. As the amounts payable under the Perk Credit Agreement have now been settled in full, the Security Agreement has been terminated.

## Promissory Notes

In accordance with the Assets Purchase Agreement to purchase the DraftDay Business (see Note 6, Acquisitions), the Company issued promissory notes to MGT Capital ( MGT Promissory Notes ) in the principal amount of \$234 due and paid on September 29, 2015 and in the aggregate principal amount of \$1,875 due March 8, 2016. All such notes bear interest at a rate of 5% per annum. The Company was not able to make the \$1,875 payment at the due date and on March 24, 2016 converted \$824 of the promissory

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 9. Loans Payable - (continued)

notes to common stock and \$110 of the promissory notes to a Series D Preferred Stock (see Note 11, Stockholders (Deficit) Equity). On April 13, 2016, MGT converted all 110 shares of the Company's Series D Preferred Stock into shares of common stock of the Company. Accordingly, the Company issued 18,332 shares of common stock to MGT. Thereafter, there are no shares of the Company's Series D Preferred Stock outstanding.

On June 14, 2016, the Company entered into a second exchange agreement with MGT (the Second MGT Exchange Agreement) relating to the \$940 remaining due under the MGT Note (see Note 6, Acquisitions). Under the Second MGT Exchange Agreement, the MGT Note shall be exchanged in full for (a) \$11 in cash representing accrued interest and (b) 132,092 shares of Company common stock, subject to certain adjustments. Issuance of the shares is conditioned upon approval of the Company's shareholders and approval of its Listing of Additional Shares application with NASDAQ. Therefore, the outstanding balance of the MGT Promissory Notes was \$943 at June 30, 2016. The Company recorded interest expense of \$65 for the year ended June 30, 2016. On October 10, 2016, the Company satisfied the MGT Note through the issuance of 136,304 shares of its common stock and payment of interest of \$16.

In exchange for releasing certain liens and encumbrances with respect to the DraftDay Business (see Note 6, Acquisitions), the Company issued promissory notes to Kuusamo Capital Ltd. in the principal amount of \$16 due and paid on September 29, 2015 and in the aggregate principal amount of \$125 due March 8, 2016. All such notes bear interest at a rate of 5% per annum. The Company was not able to make the \$125 payment at the due date. On April 25, 2016, the Company entered into an exchange agreement with Kuusamo Capital Ltd. (Kuusamo), pursuant to which the Company issued 10,394 shares of its common stock to Kuusamo in exchange for a reduction of \$71 in principal amount of a promissory note the Company owed to Kuusamo.

Thereafter, the outstanding balance of the Kuusamo Promissory Notes was \$55 at June 30, 2016. The Company recorded interest expense of \$5 for the year ended June 30, 2016.

## Accounts Payable Settlements

North America Photon Infotech Ltd. (Photon), a company based in Mauritius that had provided development services to the Company, filed suit in California on March 28, 2016 to collect approximately \$218 owed by the Company to Photon. The Company settled this matter on May 12, 2016 in part by issuing a Note in the amount of \$110, payable in six months.

On April 7, 2016, the Company issued a note in the amount of \$56 to Simulmedia, Inc., a former vendor of the Company, as partial settlement of the outstanding balance due to Simulmedia, Inc. for services provided.

Pandera Systems, LLC ( Pandera ), which formerly provided analytics development services to the Company, filed suit on March 11, 2016 against the Company to demand collection of amounts due for such services. The Company settled this matter on April 12, 2016, in part by issuing a note in the amount of \$50.

On April 25, 2016, Carpathia Hosting, LLC ( Carpathia ), which formerly provided hosting services to the Company, filed suit in the Eastern District of Virginia to demand collection of \$658 due. The Company settled this matter on June 29, 2016. The Company recorded a gain of \$505 for the year ended June 30, 2016.

On June 24, 2016, the Company entered into a settlement agreement with Pandora. As a result, the Company recorded a gain of \$222 in the Consolidated Statements of Operations for the year ended June 30, 2016.

Interest expense on these notes issued in connection with settlements with vendors was \$2 for the year ended June 30, 2016.

### **Convertible Promissory Note**

On June 27, 2016, the Company entered into a Convertible Promissory Note with Reaz Islam ( Islam ), an advisor to Sillerman, pursuant to which Islam loaned the Company \$300 (the RI Convertible Note ). The

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(amounts in thousands, except share and per share data)****9. Loans Payable - (continued)**

RI Convertible Note bears interest at a rate of 12% and matures on December 31, 2016. Islam has the right to convert the RI Convertible Note into shares of common stock of the Company at the same time and on the same terms as Sillerman can convert debt held by Sillerman into shares of the Company's common stock. The RI Convertible Note is subordinate to any note held by Sillerman. As of June 30, 2016, there was \$300 outstanding under the RI Convertible Note. Interest expense on the RI Convertible Note was \$2 for the year ended June 30, 2016. The fair value of the conversion feature of the RI Convertible Note is nominal but will be marked to market at its fair value in future periods until the debt is repaid or converted to shares of the Company's common stock.

**10. Commitments and Contingencies****Operating Leases**

The Company maintains operating leases for its corporate office and several satellite offices. There are no capital leases. Rent expense for operating leases, which may include free rent or fixed escalation amounts in addition to minimum lease payments, is recognized on a straight-line basis over the duration of each lease term. Total rent expense for continuing operations, net of sublease income, for the Company under operating leases recorded for the years ended June 30, 2016 and 2015 was \$361 and \$610, respectively. The Company's future minimum rental commitments under noncancelable operating leases are as follows (amounts are shown net of contractual sublease income):

Years Ending June 30,	Amount
2017	\$ 466
2018	490
2019	688
2020	729
2021	749
Thereafter	640
Total	\$ 3,762

**Litigation**

The Company delivered 357,032 of the Initial Perk Shares to Gracenote, Inc. and Tribune Media Services, Inc., former providers of technology services of the Company, as per the Settlement and Transfer Agreement dated February 5, 2016, to satisfy an obligation. The Company recognized a gain of \$593 in the consolidated statements of

operations for the year ended June 30, 2016.

CFGI, LLC, a former provider of consulting services of the Company, served the Company with a lawsuit to collect approximately \$200 owed by the Company to CFGI, LLC on September 9, 2016. There is a dispute regarding the services rendered by CFGI, LLC and the Company is attempting to settle the matter. There was no impact on the consolidated financial statements for the year ended June 30, 2016.

A Complaint (Index #654984/2016) was filed by Andy Mule, on behalf of himself and others similarly situated, in the Supreme Court of the State of New York. The Complaint, which names the Company, each of its current directors, and President, as a former director, as defendants, claims a breach of fiduciary duty relating to the terms of a proposed conversion of debt and preferred shares into common equity by Mr. Sillerman and/or his affiliates. The Complaint seeks unspecified damages and such relief as the Court may deem appropriate. The Company accepted service on October 4, 2016, and has agreed to respond by November 14, 2016. The Company believes that this claim is without merit.

The Company is subject to litigation and other claims that arise in the ordinary course of business. While the ultimate result of the Company's outstanding legal matters cannot presently be determined, the Company does

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 10. Commitments and Contingencies - (continued)

not expect that the ultimate disposition will have a material adverse effect on its results of operations or financial condition. However, legal matters are inherently unpredictable and subject to significant uncertainties, some of which are beyond the Company's control. As such, there can be no assurance that the final outcome will not have a material adverse effect on the Company's consolidated financial condition and results of operations.

## 11. Stockholders (Deficit) Equity

### Series A Convertible Redeemable Preferred Stock

Prior to September 16, 2013, the Company had authorized a class of series A preferred shares, but none of those shares were issued or outstanding. On September 16, 2013, the Company eliminated the prior class of series A preferred shares and created a new class of Series A Convertible Redeemable Preferred Stock (the Series A Convertible Redeemable Preferred Stock). The Company authorized the issuance of up to 100,000 shares of the Series A Convertible Redeemable Preferred Stock. The designation, powers, preferences and rights of the shares of Series A Convertible Redeemable Preferred Stock and the qualifications, limitations and restrictions thereof are summarized as follows:

The shares of Series A Convertible Redeemable Preferred Stock had an initial stated value of \$1,000 per share (the Stated Value).

The shares of Series A Convertible Redeemable Preferred Stock were entitled to receive quarterly cumulative dividends at a rate equal to 7% per annum of the Stated Value whenever funds are legally available and when and as declared by the Company's board of directors. If the Company declared a dividend or the distribution of its assets, the holders of Series A Convertible Redeemable Preferred Stock were entitled to participate in the distribution to the same extent as if they had converted each share of Series A Convertible Redeemable Preferred Stock held into Company common stock.

Each share of Series A Convertible Redeemable Preferred Stock was convertible, at the option of the holders, into shares of Company common stock at a conversion price of \$23.00.

The Company could redeem any or all of the outstanding Series A Convertible Redeemable Preferred Stock at any time at the then current Stated Value, subject to a redemption premium of (i) 8% if redeemed prior to the one year anniversary of the initial issuance date; (ii) 6% if redeemed on or after the one year anniversary of the initial issuance date and prior to the two year anniversary of the initial issuance date; (iii) 4% if redeemed on or after the two year anniversary of the initial issuance date and prior to the three year anniversary of the initial issuance date; (iv) 2% if redeemed on or after the three year anniversary of the initial issuance date and prior to the 42 months anniversary of the initial issuance date; and (v) 0% if redeemed on or after the 42 months anniversary of the initial issuance date.

However, no premium was due on the use of up to 33% of proceeds of a public offering of common stock at a price of \$80.00 or more per share.

The Company was required to redeem the Series A Convertible Redeemable Preferred Stock on the fifth anniversary of its issuance.

Upon a change of control of the Company, the holders of Series A Convertible Redeemable Preferred Stock were entitled to a change of control premium of (i) 8% if redeemed prior to the one year anniversary of the initial issuance date; (ii) 6% if redeemed on or after the one year anniversary of the initial issuance date and prior to the two year anniversary of the initial issuance date; (iii) 4% if redeemed on or after the two year anniversary of the initial issuance date and prior to the three

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 11. Stockholders (Deficit) Equity - (continued)

year anniversary of the initial issuance date; (iv) 2% if redeemed on or after the three year anniversary of the initial issuance date and prior to the 42 months anniversary of the initial issuance date; and (v) 0% if redeemed on or after the 42 months anniversary of the initial issuance date.

The shares of Series A Convertible Redeemable Preferred Stock were senior in liquidation preference to the shares of Company common stock.

The shares of Series A Convertible Redeemable Preferred Stock had no voting rights except as required by law. The consent of the holders of 51% of the outstanding shares of Series A Convertible Redeemable Preferred Stock was necessary for the Company to: (i) create or issue any Company capital stock (or any securities convertible into any Company capital stock) having rights, preferences or privileges senior to or on parity with the Series A Convertible Redeemable Preferred Stock; or (ii) amend the Series A Convertible Redeemable Preferred Stock. At June 30, 2016 and 2015, there were no shares of Series A Convertible Redeemable Preferred Stock outstanding.

### Series B Convertible Preferred Stock

On September 16, 2013, the Company created 50,000 shares of Series B Convertible Preferred Stock (the Series B Convertible Preferred Stock). The designation, powers, preferences and rights of the shares of Series B Convertible Preferred Stock and the qualifications, limitations and restrictions thereof are summarized as follows:

The shares of Series B Convertible Preferred Stock had an initial stated value of \$1,000 per share. The shares of Series B Convertible Preferred Stock were convertible, at the option of the holders, into shares of Company common stock at a conversion price of \$23.00. The shares of Series B Convertible Preferred Stock could only be converted from and after the earlier of either of: (x) the first trading day immediately following (i) the closing sale price of the Company's common stock being equal to or greater than \$33.40 per share (as adjusted for stock dividends, stock splits, stock combinations and other similar transactions occurring with respect to the Company's common stock from and after the initial issuance date) for a period of five consecutive trading days following the initial issuance date and (ii) the average daily trading volume of the Company's common stock (as reported on Bloomberg) on the principal securities exchange or trading market where the Company's common stock is listed or traded during the measuring period equaling or exceeding 1,250 shares of Company's common stock per trading day (the conditions set forth in the immediately preceding clauses (i) and (ii) are referred to herein as the Trading Price Conditions) or (y) immediately prior to the consummation of a fundamental transaction, regardless of whether the Trading Price Conditions have been satisfied prior to such time. A fundamental transaction is defined as (i) a sale of all or substantially all of the assets of the Company, (ii) a sale of at least 90% of the shares of capital stock of the Company or (iii) a merger, consolidation or other business combination as a result of which the holders of capital stock of the Company prior to such merger, consolidation or other business combination (as the case may be) hold in the aggregate less than 50% of the Voting Stock of the surviving entity immediately following the consummation of



such merger, consolidation or other business combination (as the case may be), in each case of clauses (i), (ii) and (iii), the Board determined that the aggregate implied value of the Company's capital stock in such transaction was equal to or greater than \$125,000.

The shares of Series B Convertible Preferred Stock were not redeemable by either the Company or the holders thereof.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 11. Stockholders (Deficit) Equity - (continued)

The shares of Series B Convertible Preferred Stock were on parity in dividends and liquidation preference with the shares of Company common stock, which were payable only if then convertible into common stock.

The shares of Series B Convertible Preferred Stock had no voting rights except as required by law.

The consent of the holders of 51% of the outstanding shares of Series B Convertible Preferred Stock was necessary for the Company to alter, amend or change any of the terms of the Series B Convertible Preferred Stock.

At June 30, 2016 and 2015, there were no shares of Series B Convertible Preferred Stock outstanding.

### Series C Convertible Redeemable Preferred Stock

On October 24, 2014, the Company created a new class of Series C Convertible Redeemable Preferred Stock (the Series C Convertible Redeemable Preferred Stock ). The Company authorized the issuance of up to 100,000 shares of the Series C Convertible Redeemable Preferred Stock. The rights, preferences, privileges and restrictions of the shares of Series C Convertible Preferred Stock and the qualifications, limitations and restrictions thereof are summarized as follows:

The shares of Series C Convertible Redeemable Preferred Stock have a stated value of \$1,000 per share. Each holder of a share of Series C Convertible Redeemable Preferred Stock shall be entitled to receive dividends ( Dividends ) on such share equal to twelve percent (12%) per annum (the Dividend Rate ) of the Stated Value before any Dividends shall be declared, set apart for or paid upon any junior stock or parity stock. Dividends on a share of Series C Convertible Redeemable Preferred Stock shall accrue daily at the Dividend Rate, commence accruing on the issuance date thereof, compound annually, be computed on the basis of a 360-day year consisting of twelve 30-day months and be convertible into common stock in connection with the conversion of such share of Series C Convertible Redeemable Preferred Stock.

Each share of Series C Convertible Redeemable Preferred Stock is convertible, at the option of the holders, on the basis of its stated value and accrued, but unpaid dividends, into shares of Company common stock at a conversion price of \$80.00 per common stock share.

The Company may redeem any or all of the outstanding Series C Convertible Redeemable Preferred Stock at any time at the then current Stated Value plus accrued Dividends thereon plus a redemption premium equal to the Stated Value multiplied by 6%. However, no premium shall be due on the use of up to 33% of proceeds of a public offering of common stock at a price of \$100.00 or more per share.

The Company is required to redeem each Series C Convertible Redeemable Preferred Stock on the tenth business day immediately following the fifth anniversary of its issuance. However, the Company shall have no obligation to mandatorily redeem any shares of Series C Convertible Redeemable Preferred Stock at any time that (x) the Company does not have surplus under Section 154 of the Delaware General Corporation Law (the DGCL ) or funds legally available to redeem all shares of Series C Convertible Redeemable Preferred Stock, (y) the Company's capital is

impaired under Section 160 of the DGCL or (z) the redemption of any shares of Series C Convertible Redeemable Preferred Stock would result in an impairment of the Company's capital under Section 160 of the DGCL; provided, that if the Company is prohibited from redeeming the shares due to those limitations, the Company will redeem the Shares as soon as possible after such restrictions are no longer applicable.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 11. Stockholders (Deficit) Equity - (continued)

Upon a change of control of the Company, each holder of Series C Convertible Redeemable Preferred Stock shall be entitled to require the Company to redeem from such holder all of such holder's shares of Series C Convertible Redeemable Preferred Stock so long as such holder requests such redemption in writing at least one business day prior to the consummation of such change of control. The redemption amount per share equals the Stated Value thereof plus accrued Dividends plus a change of control premium equal to the stated value multiplied 6%.

The shares of Series C Convertible Redeemable Preferred Stock are senior in liquidation preference to all shares of capital stock of the Company unless otherwise consented to by a majority of the holders of shares of Series C Convertible Redeemable Preferred Stock.

The shares of Series C Convertible Redeemable Preferred Stock shall have no voting rights except as required by law. The consent of the holders of a majority of the shares of Series C Convertible Redeemable Preferred Stock is necessary for the Company to amend the Series C certificate of designation.

The Series C Convertible Redeemable Preferred Stock is not classified as a component of stockholders' (deficit) equity in the accompanying consolidated balance sheets. Likewise, the undeclared dividends related to Series C Convertible Redeemable Preferred Stock have been recorded as an addition within the Series C Convertible Preferred Stock account in the amount of \$1,156 for the year ended June 30, 2016, and \$468 for the year ended June 30, 2015.

On August 22, 2016, the Company amended the terms of the Series C Preferred Stock. The amendment provided that the Series C Preferred Stock is no longer convertible into common stock by its terms (though the Series C Preferred Stock held by Mr. Sillerman remains subject to the Exchange Agreement described in this section) and is no longer redeemable by holder five years after issuance. See Note 16, Subsequent Events.

## Securities Purchase Agreement

Pursuant to the Securities Purchase Agreement discussed in Note 7, Loans Payable, SIC III acquired a total of 10,000 Shares of Series C Convertible Redeemable Preferred Stock for \$10,000 as described below. The Company also agreed to issue to SIC III warrants to purchase a total of 25,000 shares of the Company's common stock. The Company issued warrants to purchase 2,500 shares of the Company's common stock for every \$1,000 of purchase price paid for the shares. The exercise price of the warrants was 10% above the closing price of the Company's shares on the date prior to the issuance of the warrants. Exercise of the warrants was subject to approval of the Company's stockholders, which occurred on January 13, 2015.

On November 25, 2014, SIC III purchased 3,000 shares of Series C Convertible Redeemable Preferred Stock for \$3,000. The shares of Series C Convertible Redeemable Preferred Stock were recorded in the accompanying consolidated balance sheet at its fair value as of the date of the purchase of November 25, 2014. In addition, in accordance with the Securities Purchase Agreement, the Company also issued SIC III warrants to purchase 7,500

shares of the Company's common stock at an exercise price of \$59.60, which was 10% above the closing price of the Company's shares on the date prior to issuance.

On March 16, 2015, SIC III purchased 7,000 additional shares of Series C Convertible Redeemable Preferred Stock for \$7,000. The shares of Series C Convertible Redeemable Preferred Stock were recorded in the accompanying consolidated balance sheet at its fair value as of the date of the purchase of March 16, 2015. In addition, in accordance with the Securities Purchase Agreement, the Company also issued SIC III warrants to purchase 17,500 shares of the Company's common stock at an exercise price of \$35.60, which was 10% above the closing price of the Company's shares on the date prior to issuance.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 11. Stockholders (Deficit) Equity - (continued)

In connection with the Securities Purchase Agreement, the Company recorded total stock compensation expense based on the fair value of the Series C Convertible Redeemable Preferred Stock and warrants of \$2,091 during the year ended June 30, 2015.

### Preferred Stock Conversion

Sillerman Investment Company III, LLC ( SIC III ), an affiliate of Robert F.X. Sillerman, the Company's Executive Chairman and Chief Executive Officer of the Company, owned 10,000 shares of Series C Convertible Redeemable Preferred Stock. On May 9, 2016 (the Exchange Date ), the Company and SIC III entered into a Subscription Agreement pursuant to which SIC III subscribed for 1,129,032 shares of the Company's common stock at a price of \$6.20 per share. Accordingly, the aggregate purchase price for such shares was \$7,000. The Company and SIC III agreed that SIC III would pay the purchase price for such shares by exchanging \$7,000 shares of the Company's Series C Convertible Redeemable Preferred Stock owned by SIC III for the common stock (the Exchange ). All conditions of the Subscription Agreement have been satisfied, and therefore 1,129,032 shares of the Company's common stock were issued to SIC III. Mr. Sillerman and his affiliates now own more than 50% of the outstanding shares of the Company's common stock. The Company determined that this was a fair transaction and did not recognize any stock compensation expense in relation with the conversion.

On August 22, 2016, the Company and SIC III, SIC IV, SIC VI entered into an Note Exchange Agreement pursuant to which \$30,175, which represents all of the outstanding principal and accrued interest of certain notes held by SIC III, SIC IV, and SIC VI other than \$900 of debt held by SIC IV pursuant to that certain Line of Credit Grid Note dated as of June 11, 2015, was exchanged for 30,175 shares of the Company's Series C Convertible Redeemable Preferred Stock at an exchange price of \$1,000 per share. The Note Exchange Agreement provides for the newly issued shares to be held subject to the obligations to convert the shares into common stock on the terms and on the conditions set forth in the Exchange Agreement (see Note 16, Subsequent events).

At June 30, 2016, there were 3,000 shares of Series C Convertible Redeemable Preferred Stock outstanding.

### Series D Convertible Preferred Stock

On March 24, 2016, the Company created a new class of Series D Convertible Redeemable Preferred Stock (the Series D Convertible Preferred Stock ). The Company authorized the issuance of up to 150 shares of the Series D Convertible Preferred Stock. The rights, preferences, privileges and restrictions of the shares of Series D Convertible Preferred Stock and the qualifications, limitations and restrictions thereof are summarized as follows:

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The shares of Series D Convertible Preferred Stock have a stated value of \$1,000 per share. Each share of Series D Convertible Preferred Stock is convertible, at the option of the holders, at a rate of 167 shares of common stock for one share of converted Series D Convertible Preferred Stock.

Shares of Series D Convertible Preferred Stock are not entitled to a liquidation preference. Conversions of the Series D Convertible Preferred Stock shall be limited such that any given conversion shall not cause the holder's aggregate beneficial ownership of the shares of common stock to exceed 9.99% of the Company's outstanding common stock.

The shares of Series D Convertible Preferred Stock shall have no voting rights except as required by law. The consent of the holders of a majority of the shares of Series D Convertible Preferred Stock is necessary for the Company to amend the Series D certificate of designation.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 11. Stockholders (Deficit) Equity - (continued)

On April 13, 2016, MGT Sports, Inc. ( MGT ) converted all 110 shares of the Company's Series D Convertible Preferred Stock it held into shares of common stock of the Company. Accordingly, the Company issued 18,332 shares of common stock to MGT. Thereafter, there are no shares of the Company's Series D Convertible Preferred Stock outstanding.

### Public Offerings of Common Stock

On May 28, 2015, the Company closed an underwritten public offering of 181,309 shares of its common stock at a price of \$50.00 per share, resulting in approximately \$8,442 of net proceeds. The offering was made pursuant to a registration statement previously filed with the Securities and Exchange Commission which became effective on May 12, 2015.

On June 30, 2015, the Company closed an underwritten public offering of 102,439 shares of its common stock at a price of \$41.00 per share, resulting in approximately \$3,878 of net proceeds. The offering was made pursuant to a registration statement previously filed with the Securities and Exchange Commission which became effective on May 12, 2015.

### Private Placements of Common Stock

### Subscription Agreement

On December 3, 2015, the Company and SIC IV entered into a Subscription Agreement pursuant to which SIC IV subscribed for 437,500 shares of the Company's common stock at a price of \$9.40 per share. Accordingly, the aggregate purchase price for such shares was \$4,112.

### Non-controlling Interest

As discussed in Note 6, Acquisitions, on September 8, 2015, the Company acquired the assets of the DraftDay Business and its operations have been consolidated with the Company's operations as of that date. The Company has recorded non-controlling interest in its Consolidated Balance Sheets and Consolidated Statements of Operations for the portion of the DraftDay Business that the Company does not own. In the year ended June 30, 2016, Sportech invested an additional \$257 into the DraftDay Business in exchange for shares of Series A Preferred Stock of DDGG for \$1 per share. In connection with termination of the Sportech MSA at June 30, 2016 (see Note 6, Acquisitions), Sportech returned 4,200 shares of DDGG stock. The Company reduced non-controlling interest by \$378, which



represents the fair value of these shares.

## **12. Share-Based Payments**

### **Equity Incentive Plan**

The 2011 Executive Incentive Plan (the Plan) of the Company was approved on February 21, 2011 by the written consent of the holder of a majority of the Company's outstanding common stock. The Plan provides the Company the ability to grant to any officer, director, employee, consultant or other person who provides services to the Company or any related entity, options, stock appreciation rights, restricted stock awards, dividend equivalents and other stock-based awards and performance awards, provided that only employees are entitled to receive incentive stock options in accordance with IRS guidelines. The Company reserved 187,500 shares of common stock for delivery under the Plan. Pursuant to the Plan and the employment agreements, between February 15, 2011 and June 30, 2016, the Compensation Committee of the Company's Board of Directors authorized the grants of restricted stock and stock options described below.

### **Restricted Stock**

The per share fair value of RSUs granted with service conditions was determined on the date of grant using the fair market value of the shares on that date and is recognized as an expense over the requisite service period. This information does not include RSUs granted as part of the acquisitions of Wetpaint and Choose Digital.

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(amounts in thousands, except share and per share data)****12. Share-Based Payments - (continued)**

Description	Shares	Weighted Average Grant Date Fair Value
Nonvested at July 1, 2015	23,313	\$ 1,044.60
Granted	17,571	32.60
Vested	(19,138 )	944.60
Forfeited and canceled	(17,704 )	74.80
Nonvested at June 30, 2016	4,042	\$ 2,740.40

Compensation expense related to restricted stock was \$11,720 and \$23,562 for the years ended June 30, 2016 and 2015, respectively. As of June 30, 2016, there was \$59 in unrecognized share-based compensation costs related to restricted stock.

During the fourth of fiscal 2016, the Company recorded an out-of-period adjustment related to the correction of an error for fiscal 2015 that was deemed immaterial for adjustment to the fiscal 2015 financial statements. The impact of the correction to the fiscal 2015 full year results was to decrease Selling, general and administrative expenses and accrued expense by \$843. The adjustment was for erroneously recorded stock compensation expense on restricted stock units issued in connection with the Choose Digital acquisition. The Company corrected the error by decreasing accumulated deficit and accrued expenses by \$843 as of June 30, 2016.

**Stock Options**

The following table summarizes the Company's stock option activity for year ended June 30, 2016:

Description	Number of Options	Weighted average exercise price	Weighted average remaining contractual life (years)	Aggregate intrinsic value
Outstanding at July 1, 2015	59,091	\$ 223.80	8.97	\$ 21
Granted	11,767	6.60		
Exercised				
Forfeited and canceled	(24,803 )	68.60		

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Expired	(704 )	64.40		
Outstanding at June 30, 2016	45,351	238.40	8.53	
Exercisable at June 30, 2016	41,982	\$ 253.00	8.53	\$

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(amounts in thousands, except share and per share data)****12. Share-Based Payments - (continued)**

The Company accounts for stock options based on the fair market value on the date of grant, with the resulting expense recognized over the requisite service period. The fair value of each option award is estimated using the Black-Scholes option valuation model. Expected volatility is based on the historical volatility of the price of the Company's stock. The risk-free interest rate is based on U.S. Treasury Notes with a term equal to the expected life of the option. The Company uses historical data to estimate expected dividend yield, expected life and forfeiture rates. Options generally have an expiration of 10 years and vest over a period of 3 or 4 years. The fair value of options granted during the years ended June 30, 2016 and 2015 were estimated based on the following weighted average assumptions:

Description	Year Ended June 30,	
	2016	2015
Expected volatility	80 %	80 %
Risk-free interest rate	1.94 %	1.82 %
Expected dividend yield		
Expected life (in years)	6.50	6.50
Estimated fair value per option granted	\$ 6.60	\$ 42.20

Compensation expense related to stock options of \$147 and \$1,420 is included in the accompanying Consolidated Statements of Operations in Selling, general and administrative expenses for the years ended June 30, 2016 and 2015, respectively. As of June 30, 2016, there was approximately \$157 of unrecognized stock-based compensation cost related to stock options, which will generally be recognized over a four year period.

**13. Income Taxes**

For the years ended June 30, 2016 and 2015, the Company did not record an income tax benefit because it has incurred taxable losses and has no history of generating taxable income and therefore the Company cannot presently anticipate the realization of a tax benefit on its Net Operating Loss ( NOL ) carryforward. At June 30, 2016 the Company has an NOL carryforward of \$162.9 million, which will begin to expire in 2030. The Company has established a full valuation allowance against its deferred tax assets as of June 30, 2016 and 2015. Income tax expense for the years ended June 30, 2016 and 2015 was \$0 and \$0, respectively.

A reconciliation of the Company's statutory U.S. federal tax rate and its effective tax rate is as follows:

Description	Year Ended June 30,
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	2016	2015
Statutory U.S. federal tax rate	35.00 %	35.00 %
State and local income taxes net of federal benefit	10.37 %	10.37 %
Valuation allowance	(45.37)%	(45.37)%
Effective tax rate	%	%

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(amounts in thousands, except share and per share data)****13. Income Taxes - (continued)**

The components of deferred taxes as of June 30, 2016, are as follows:

Deferred tax assets:	(in thousands)
Share-based compensation	\$ 92,824
Start-up expenditures	4,799
Other	2,043
Operating loss carryforward	79,476
Total deferred tax assets	179,142
<u>Deferred tax liabilities:</u>	
Depreciation and amortization	(7,913 )
Valuation allowance	(171,229 )
Deferred tax asset, net	\$

The components of deferred taxes as of June 30, 2015, are as follows:

Deferred tax assets:	(in thousands)
Share-based compensation	\$ 86,546
Start-up expenditures	5,236
Other	1,575
Operating loss carryforward	71,616
Total deferred tax asset	164,973
<u>Deferred tax liabilities:</u>	
Depreciation and amortization	(6,156 )
Valuation allowance	(158,817 )
Deferred tax asset, net	\$

The Company has evaluated its income tax positions and has determined that it does not have any uncertain tax positions. The Company will recognize interest and penalties related to any uncertain tax positions through its income tax expense.

The Company may in the future become subject to federal, state and local income taxation though it has not been since its inception. The Company is not presently subject to any income tax audit in any taxing jurisdiction.

## 14. Related Party Transactions

### Shared Services Agreements

In an effort to economize on costs and be efficient in its use of resources, the Company entered into a shared services agreement with Circle Entertainment Inc. ( Circle ) as of February 15, 2011, pursuant to which it shares costs for legal and administrative services in support of Mitchell J. Nelson, its then-General Counsel and General Counsel to Circle. The shared services agreement provides, in general, for sharing of the applicable support provided by either company to Mr. Nelson in connection with his capacity as General Counsel, and an allocation generally based on the services provided by Mr. Nelson, which were initially estimated to be divided evenly between the companies. The Company is responsible for advancing the salary to Mr. Nelson for both companies and will be reimbursed by Circle for such salary and benefits (but not for any bonus, option or restricted share grant made by either company, which will be the responsibility of the company making such bonus, option or restricted share grant). The agreement provides for the Chief Executive Officer or President of each Company to meet periodically to assess whether the services have been

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(amounts in thousands, except share and per share  
data)****14. Related Party Transactions - (continued)**

satisfactorily performed and to discuss whether the allocation has been fair. The Audit Committee of each company's Board of Directors will then review and, if appropriate, approve the allocations made and whether payments need to be adjusted or reimbursed, depending on the circumstances. Because this transaction is subject to certain rules regarding affiliate transactions, the Audit Committee and a majority of the independent members of the Company's Board of Directors have approved the shared services agreement. This is deemed to be an affiliate transaction because Mr. Sillerman is the former Chairman, a Board member, and a greater than 10% stockholder of Circle and Mr. Nelson is Executive Vice President and General Counsel of Circle. For the years ended June 30, 2016 and June 30, 2015, the Company billed Circle \$14 and \$27, respectively. Such billings primarily relate to support consisting of legal and administrative services. These services are to be reviewed and, if appropriate, approved by Circle's Audit Committee and the Company's Audit Committee. The balance due from Circle as of June 30, 2016 and June 30, 2015 was \$0 and \$113, respectively. The Company wrote-off the accounts receivable balance of \$127 in the year ended June 30, 2016, the write-off appears as a bad debt expense on the Consolidated Statements of Operations.

The parties terminated the Circle Shared Services Agreement effective as of January 1, 2016. Circle is in the process of liquidation and any claim to be made under the Circle Shared Services Agreement will survive the termination of the Circle Shared Services Agreement.

The Company also entered into a shared services agreement with SFX Entertainment Inc. (SFX), pursuant to which it shares costs for services provided by several of the Company's and/or SFX's employees. Such employees will continue to be paid by their current employers, and SFX will reimburse the Company directly for its portion of such salary and benefits and Company will reimburse SFX directly for its portion of such salary and benefits (but not for any bonus, option or restricted share grant made by either company, which will be the responsibility of the company making such bonus, option or restricted share grant). The agreement provides for the Chief Executive Officer or President of each company to meet periodically to assess whether the services have been satisfactorily performed and to discuss whether the allocation has been fair. The Audit Committee of each company's Board of Directors will then review and, if appropriate, approve the allocations made and whether payments need to be adjusted or reimbursed, depending on the circumstances. The Company entered into an amendment (the Amendment) to the shared services agreement on January 22, 2015, pursuant to which the Company may provide additional services to SFX, and SFX may provide certain services to the Company. In particular, the shared services agreement provides that, in addition to services already provided, certain employees of the Company may provide human resources, content and programming, and facilities services to SFX, subject to reimbursement based on salary and benefits for the employees providing the services, plus 20% for miscellaneous overhead, based on a reasonable estimate of time spent. In addition, the Amendment provides that SFX may provide certain tax services to the Company, subject to reimbursement based on salary and benefits for the employees providing the services, plus 20% for miscellaneous overhead, based on a reasonable estimate of time spent.



The parties terminated the SFX Shared Services Agreement effective as of January 1, 2016. We continue to try to settle amounts remaining outstanding.

For the years ended June 30, 2016 and 2015, the Company billed SFX \$188 and \$978, net of amounts billed by SFX to the Company, respectively. The net balance due from SFX, including amounts related to the Sales Agency Agreement, discussed below, as of June 30, 2016 and June 30, 2015 was \$142 and \$146, respectively.

## **Sales Agency Agreement**

On January 22, 2015, the Company entered into a sales agency agreement (the Sales Agreement ) with SFX-94 LLC ( SFX-94 ), a subsidiary of SFX, pursuant to which the Company appoints SFX-94 as its exclusive sales agent for the sale of advertising and sponsorships. Pursuant to the Sales Agreement, the Company consented to SFX-94 s hiring of 25 members of the Company s sales team, and SFX-94 agreed that it will sell advertising and sponsorships on behalf of the Company during the term of the Sales Agreement.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 14. Related Party Transactions - (continued)

SFX-94 also agreed that it will maintain adequate staffing levels, generally consistent with staffing levels currently maintained by the Company, for the Company's sale of advertising and sponsorships. The Company will pay SFX-94 a 25% commission on sales made by SFX-94. For barter transactions, the Company will reimburse SFX-94 for any out of pocket and direct costs incurred by SFX-94 with respect to such barter sales (rather than the commission set forth above), and third party ad networks will be excluded from the Sales Agreement. For the years ended June 30, 2016 and 2015, the Company was billed \$424 and \$471, respectively in connection with the Sales Agreement. On September 22, 2015, the parties terminated the Sales Agreement, and the Company subsequently hired 8 members of the SFX sales team as of that date.

### Advertising Revenue

During the years ended June 30, 2016 and 2015, the Company provided certain advertising and related services to SFX and its subsidiaries. The total amount of net revenue was \$37 and \$487, respectively and such amounts were due from SFX at June 30, 2016 and 2015.

### Marketing Expense

During the year ended June 30, 2015, SFX, and certain subsidiaries of SFX, provided certain marketing and related services to the Company. The total amount of marketing expense was \$490 and such amount was due to SFX at June 30, 2015.

### DraftDay

In October 2015 the Company entered into an agreement with DDGG to expand its rewards catalog and offer to its users the opportunity to redeem Viggie points for entry to DDGG's fantasy sports contests. The Company agreed to pay DDGG the value of the entry fees for which points were redeemed. For the year ended June 30, 2016, \$39 worth of Viggie points were redeemed for DDGG contest entry fees.

### License Agreement

On March 10, 2014, the Company entered into an audio recognition and related loyalty program software license and services agreement with SFX. Pursuant to the terms of the license agreement, SFX paid the Company \$5,000 to license its audio recognition software and related loyalty platform for a term of ten years. The amount was deferred and is being amortized over the ten year period. For the years ended June 30, 2016 and 2015, the Company recognized

\$500 and \$500, respectively, of revenue related to this agreement.

## Lines of Credit

See Note 9, Loans Payable, for a description of certain loans which have been provided by related parties. In addition, see Note 16, Subsequent Events, for additional discussion of certain related party transactions.

As described in Note 9, Loans Payable, on December 3, 2015, the Company and SIC IV entered into a Subscription Agreement pursuant to which SIC IV subscribed for 437,500 shares of the Company's common stock at a price of \$9.40 per share. Accordingly, the aggregate purchase price for such shares was \$4,112. The Company and SIC IV agreed that SIC IV would pay the purchase price for such shares by reducing the amounts outstanding under the Line of Credit. As of December 3, 2015, there was \$8,675 in outstanding principal amount under the Line of Credit. Accordingly, the principal amount of the Line of Credit was therefore reduced to \$4,563.

## Secured Line of Credit

On January 27, 2016, Sillerman Investment Company VI LLC ( SIC VI ), an affiliate of Robert F.X. Sillerman, the Executive Chairman and Chief Executive Officer of the Company, entered into a secured revolving loan agreement (the Secured Revolving Loan ) with the Company and its subsidiaries, Wetpaint and Choose Digital (collectively, the Subsidiaries ), pursuant to which the Company can borrow up to

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 14. Related Party Transactions - (continued)

\$1,500. The Secured Revolving Loan bears interest at the rate of 12% per annum. In connection with the Secured Revolving Loan, the Company and the Subsidiaries have entered into a Security Agreement (the Security Agreement ) with SIC VI, under which the Company and the Subsidiaries have granted SIC VI a continuing security interest in all assets of the Company and the Subsidiaries, with the exception of the Company's interest in DraftDay Gaming Group, Inc. The Company intends to use the proceeds from the Secured Revolving Loan to fund working capital requirements and for general corporate purposes in accordance with a budget to be agreed upon by SIC VI and the Company. As of June 30, 2016, \$1,500 has been advanced thereunder. Because Mr. Sillerman is a director, executive officer and greater than 10% stockholder of the Company, a majority of the Company's independent directors approved the transaction.

### \$500 Line of Credit

The Company and its subsidiaries entered into a secured, revolving Line of Credit on March 29, 2016 with SIC VI (the Secured Revolving Line of Credit ), pursuant to which the Company can borrow up to \$500. The Secured Revolving Line of Credit bears interest at the rate of 12% per annum. In connection with the Secured Revolving Line of Credit, the Company and the Subsidiaries have entered into a Security Agreement (the Security Agreement ) with SIC VI, under which the Company and the Subsidiaries have granted SIC VI a continuing security interest in all assets of the Company and the Subsidiaries, with the exception of the Company's interest in DraftDay Gaming Group, Inc. The Company intends to use the proceeds from the Secured Revolving Line of Credit to fund working capital requirements and for general corporate purposes in accordance with a budget to be agreed upon by SIC VI and the Company. At June 30, 2016, \$500 had been advanced thereunder.

### Preferred Stock Conversion

Sillerman Investment Company III, LLC ( SIC III ), an affiliate of Robert F.X. Sillerman, the Company's Executive Chairman and Chief Executive Officer of the Company, owned 10,000 shares of Series C Convertible Redeemable Preferred Stock. On May 9, 2016 (the Exchange Date ), the Company and SIC III entered into a Subscription Agreement pursuant to which SIC III subscribed for 1,129,032 shares of the Company's common stock at a price of \$6.20 per share. Accordingly, the aggregate purchase price for such shares was \$7,000. The Company and SIC III agreed that SIC III would pay the purchase price for such shares by exchanging 7,000 shares of the Company's Series C Convertible Redeemable Preferred Stock owned by SIC III for the common stock (the Exchange ). All conditions of the Subscription Agreement have been satisfied, and therefore 1,129 shares of the Company's common stock were issued to SIC III. Mr. Sillerman and his affiliates now own more than 50% of the outstanding shares of the Company's common stock. The Company determined that this was a fair transaction and did not recognize any stock compensation expense in relation with the conversion.

## Related Approvals

Because the above transactions were subject to certain rules regarding affiliate transactions, the Company's Audit Committee and a majority of the independent members of the Company's Board of Directors approved each of these transactions.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 15. Fair Value Measurement

The Company values its assets and liabilities using the methods of fair value as described in ASC 820, *Fair Value Measurements and Disclosures* (ASC 820). ASC 820 establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. The three levels of fair value hierarchy are described below:

*Level 1* Quoted prices in active markets for identical assets or liabilities.

*Level 2* Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

*Level 3* Inputs that are generally unobservable and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability.

In determining fair value, the Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible, and considers counter-party credit risk in its assessment of fair value. Observable or market inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's assumptions based on the best information available. The Company has certain assets and liabilities that are required to be recorded at fair value on a recurring basis in accordance with accounting principles generally accepted in the United States, as described below.

The Company issued 1,068 warrants in connection with the May 10, 2012 PIPE. Each warrant has a sale price of \$8,800 and is exercisable into 1 share of common stock at a price of \$12,800 over a term of three years. Further, the exercise price of the warrants is subject to "down round" protection, whereby any issuance of shares at a price below the current price resets the exercise price equal to a the price of newly issued shares (the "Warrants"). In connection with the PIPE Exchanges the exercise price of the Warrants was reset to \$1,840 on September 16, 2013. The fair value of such warrants has been determined utilizing the Binomial Lattice Model in accordance with ASC 820-10. The fair value of the warrants when issued was \$5,281 and was \$443 as of June 30, 2013. 341 warrants were exchanged on September 16, 2013. The remaining 727 warrants were marked to market as of June 30, 2016 and 2015 to a fair value of \$10 and \$10, respectively. The Company recorded gains of \$0 and \$5 to other income, net in the Consolidated Statements of Operations for the years ended June 30, 2016 and June 30, 2015, respectively. The fair value of the warrant is classified as a long term liability on the Consolidated Balance Sheet as of June 30, 2016. The Company's warrants were classified as a Level 3 input within the fair value hierarchy because they were valued using unobservable inputs and management's judgment due to the absence of quoted market prices and inherent lack of liquidity.

The Company originally estimated the fair value of contingent consideration for the acquisition of Choose Digital to be \$2,570. On June 24, 2015, the Company determined that the maximum amount of consideration of \$4,792 should be recorded. As such, the Company adjusted the original estimate of consideration of \$2,570 to a final value of \$4,792. The increase of \$2,222 is recorded as an expense and included in Selling, general and administrative expenses in the accompanying Consolidated Statements of Operations for the year ended June 30, 2015. The fair value of the contingent consideration is no longer classified as a Level 3 input and the obligation is presented in accounts payable and accrued expenses on the Consolidated Balance Sheets at June 30, 2016 and 2015.

On February 8, 2016, the Company received Perk warrants as part of the consideration in the sale of the Viggle business. The carrying amount of Perk warrants held is marked-to-market on a quarterly basis using the Monte Carlo valuation model, in accordance with ASC 820. The changes to fair value are recorded in the income statement. The fair value of the warrants when issued was \$1,023. The warrants were marked to market as of June 30, 2016 to a fair value of \$648. The Company recorded a loss of \$376 to other income,

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(amounts in thousands, except share and per share  
data)****15. Fair Value Measurement - (continued)**

net in the Consolidated Statements of Operations for the year ended June 30, 2016. The fair value of the warrant is classified as an other asset on the Consolidated Balance Sheets as of June 30, 2016. The Perk warrants were classified as a Level 3 input within the fair value hierarchy because they were valued using unobservable inputs and management's judgment due to the absence of quoted market prices and inherent lack of liquidity.

In February 2016, the Company received 1,370,000 shares of Perk stock, which is publicly traded on the Toronto Stock Exchange, as part of the consideration in the sale of assets described in the Perk Agreement. These securities are short-term marketable securities, and have been classified as available-for-sale securities. Pursuant to ASC 320-10, Investments - Debt and Equity Securities, the Company's marketable securities are marked to market on a quarterly basis, with unrealized gains and losses recorded in equity as Other Comprehensive Income/Loss.

The cost and market value of the Perk shares at June 30, 2016 were as follows:

	June 30, 2016	
	Cost	Market
Current:		
Perk shares	\$ 2,708	\$ 2,495
Total	\$ 2,708	\$ 2,495

The cost of the Perk shares of \$2,708 represents the fair value of the shares on the issuance date, February 8, 2016. The market value of the Perk shares of \$2,495 represents the fair value of the stocks on June 30, 2016. The gross unrealized loss was \$361 and the foreign exchange gain was \$148 for the year ended June 30, 2016, respectively.

On September 30, 2016, the Company simultaneously entered into a Securities Purchase Agreement with Perk, and closed the sale to Perk of the remaining shares of Perk common stock, warrants, and right to be issued additional shares of common stock (under certain conditions) received as consideration under the closing of the Perk Agreement (see Note 16, Subsequent Events).

**Non-financial Assets and Liabilities that are Measured at Fair Value on a Nonrecurring Basis**

On a nonrecurring basis, the Company uses fair value measures when analyzing asset impairment. Long-lived assets and certain identifiable intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If it is determined such indicators are present and the review indicates that the assets will not be fully recoverable, based on undiscounted estimated cash flows over the



remaining amortization periods, their carrying values are reduced to estimated fair value. Measurements based on undiscounted cash flows are considered to be Level 3 inputs. During the fourth quarter of each year, the Company evaluates goodwill and indefinite-lived intangibles for impairment at the reporting unit level. For each acquisition, the Company performed a detailed review to identify intangible assets and a valuation is performed for all such identified assets. The Company used several market participant measurements to determine estimated value. This approach includes consideration of similar and recent transactions, as well as utilizing discounted expected cash flow methodologies, and/or revenue or earnings before interest, taxes, depreciation and amortization ( EBITDA ) multiples, among other methods. The amounts allocated to assets acquired and liabilities assumed in the acquisitions were determined using Level 3 inputs. Fair value for property and equipment was based on other observable transactions for similar property and equipment. Accounts receivable represents the best estimate of balances that will ultimately be collected, which is based in part on allowance for doubtful accounts reserve criteria and an evaluation of the specific receivable balances.

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(amounts in thousands, except share and per share data)****15. Fair Value Measurement - (continued)**

Where goodwill has been allocated to a reporting unit and part of the operation within that unit is disposed of, the goodwill associated with the disposed operation is included in the carrying amount of the operation when determining the gain or loss on disposal. Goodwill disposed in these circumstances is measured based on the relative values of the disposed operation and the portion of the reporting units retained. The relative fair value of each reporting unit is established using discounted expected cash flow methodologies, and/or revenue or EBITDA multiples, or other applicable valuation methods, which are considered to be Level 3 inputs.

The following table presents a reconciliation of assets measured at fair value on a recurring basis using unobservable inputs (level 3):

	(in thousands)
Balance at July 1, 2015	\$
Perk warrants	1,023
Unrealized losses for the period including in other income (expense), net	(375 )
Balance at June 30, 2016	\$ 648

The following table presents a reconciliation of liabilities measured at fair value on a recurring basis using unobservable inputs: (level 3):

	(in thousands)
Balance at July 1, 2015	\$ 10
Additions to Level 3	
Balance at June 30, 2016	\$ 10

**16. Subsequent Events****Secured Revolving Loan**

On June 27, 2016, SIC VI entered into a secured revolving loan agreement (the Secured Revolving Loan ) with the Company and its subsidiaries, pursuant to which the Company can borrow up to \$1,200. The Secured Revolving Loan bears interest at the rate of 12% per annum and matures on December 31, 2016, barring any events of default or a change of control of the Company. Since June 30, 2016 and through the date of this filing, an additional \$315 had

been advanced thereunder. As a result of the exchange agreement referred to in Note Exchange Agreement below, this loan has been satisfied.

## **Exchange Agreement**

On July 8, 2016, the Company and SIC III, SIC IV and SIC VI, each an affiliate of Mr. Sillerman, entered into an Exchange Agreement pursuant to which, subject to adjustment, (i) 3,000 shares of the Company's Series C Preferred Stock owned by SIC III are to be exchanged for 890,898 shares of the Company's common stock and (ii) all of the debt held by Mr. Sillerman and such affiliates is to be exchanged for 5,066,654 shares of the Company's common stock. Issuance of the shares is conditioned upon approval of the Company's shareholders (see Shareholder Approval in this section), the closing of an offering of the Company's common stock in the amount of at least \$10,000, approval of its Listing of Additional Shares application with NASDAQ, the Company shall not be subject to any bankruptcy proceeding, and various other conditions. The exchange price shall be equal to the lesser of \$5.20 and the price at which the Debentures can be exchanged for shares of the Company's common stock. The Company received an independent valuation with respect to the original exchange that the exchange price of \$5.20 reflects fair value. Any additional change is subject to the receipt by the Company of an updated fair value determination. The agreement provides for termination in the event the conditions are not satisfied by March 31, 2017. At the date of this filing, this transaction has not yet closed.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 16. Subsequent Events - (continued)

### Amended Exchange Agreement/Amended Grid Note

On July 18, 2016, SIC III, SIC IV and SIC VI, LLC entered into an amendment to the Exchange Agreement relating to the exchange of debt and shares of the Series C Preferred Stock of the Company for shares of the Company's common stock. The Exchange Agreement modified the Grid Note to provide that SIC IV shall be entitled to repayment of up to \$2,000 of the outstanding principal balance of the Grid Note and the Company shall be entitled to draw up to an additional \$5,000. \$4,291 remains available to draw under the Grid Note and at the date of this filing, the current balance is \$1,609.

### Note Exchange Agreement

On August 22, 2016, the Company and SIC III, SIC IV, and SIC VI, each an affiliate of Mr. Sillerman, entered into a Note Exchange Agreement pursuant to which \$30,175, which represents all of the outstanding principal and accrued interest of the Note, the Loans, the Secured Revolving Loan, the Secured Revolving Promissory Note, the Secured Revolving Promissory Note II, and the Secured Revolving Promissory Note III (all described and defined in Note 9, Loans Payable) other than \$900 of debt held by SIC IV pursuant to that certain Line of Credit Grid Promissory Note dated as of June 11, 2015 (see Grid Note ), was exchanged for 30,175 shares of the Company's Series C Preferred Stock (see Amendment to Certificate of Designation of Series C Preferred Stock in this section.) The exchange price is \$1,000 per share. The Note Exchange Agreement provides for the newly issued shares to be held subject to the obligations to convert the shares into common stock on the terms and on the conditions set forth in the Exchange Agreement, and subject to the additional obligations set forth in the Subordination Agreement and the Lockup Agreements. The Grid Note remains subject to the Exchange Agreement.

### Rant Acquisition

On July 12, 2016, the Company and RACX, completed an acquisition pursuant to an Asset Purchase Agreement with Rant, Inc., pursuant to which RACX has acquired the assets of Rant used in the operation of Rant's Rant.com independent media network and related businesses.

In consideration for the purchase of the Rant Assets, the Company (i) delivered a Secured Convertible Promissory Note to Rant in the amount of \$3,000; (ii) assumed \$2,000 of liabilities of Rant and (iii) issued to Rant 4,435 shares of Company Series E Convertible Preferred Stock.

## Private Placement

On July 12, 2016, the Company closed a private placement (the **Private Placement**) of \$4,444 principal amount of convertible debentures (the **Debentures**) and common stock warrants (the **Warrants**). The Debentures and Warrants were issued pursuant to a Securities Purchase Agreement, dated July 12, 2016 (the **Purchase Agreement**), by and among us and certain accredited investors within the meaning of the Securities Act of 1933, as amended (the **Purchasers**). Upon the closing of the Private Placement, we received gross proceeds of \$4,000 before placement agent fees and other expenses associated with the transaction. \$1,162 of the proceeds was used to repay the Grid Note.

The Debentures mature on the one-year anniversary of the issuance date thereof. The Debentures are convertible at any time at the option of the holder into shares of the the Company's common stock at an initial conversion price of \$6.2660 per share (the **Conversion Price**). Based on such initial Conversion Price, the Debentures will be convertible into up to 780,230 shares of common stock. If we issue or sell shares of our common stock, rights to purchase shares of our common stock, or securities convertible into shares of our common stock for a price per share that is less than the Conversion Price then in effect, the Conversion Price then in effect will be decreased to equal such lower price. The adjustments to the Conversion Price will not apply to certain exempt issuances, including issuances pursuant to certain employee benefit plans or for certain acquisitions. In addition, the Conversion Price is subject to adjustment upon stock

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# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 16. Subsequent Events - (continued)

splits, reverse stock splits, and similar capital changes. However, in no event will the Conversion Price be less than \$0.10 per share. The Debentures are secured by a first priority lien on substantially all of our assets in accordance with a security agreement.

The Debentures bear interest at 10% per annum with interest payable upon maturity or on any earlier redemption date. At any time after the issuance date, we will have the right to redeem all or any portion of the outstanding principal balance of the Debentures, plus all accrued but unpaid interest at a price equal to 120% of such amount. The holders of Debentures shall have the right to convert any or all of the amount to be redeemed into common stock prior to redemption. Subject to certain exceptions, the Debentures contain customary covenants against incurring additional indebtedness and granting additional liens and contain customary events of default. Upon the occurrence of an event of default under the Debentures, a holder of Debentures may require us to pay the greater of (i) the outstanding principal amount, plus all accrued and unpaid interest, divided by the Conversion Price multiplied by the daily volume weighted average price or (ii) 115% of the outstanding principal amount plus 100% of accrued and unpaid interest. Pursuant to the Debentures, we are required to make amortizing payments of the aggregate principal amount, interest, and other amounts outstanding under the Debentures. Such payments must be made beginning three months from the issuance of the Debentures and on the monthly anniversary through and including the maturity date. The Amortization Amount is payable in cash or in shares of our common stock pursuant to the conversion mechanism contained in the Debentures.

On July 20, 2016, we and the Purchasers entered into an Amendment to Securities Purchase Agreement and Consent to Modify Debentures (the Amendment and Consent ). The Amendment and Consent provides that, while the Debentures are outstanding, Mr. Sillerman will guarantee that we shall have \$1,000 available in our commercial bank account or otherwise available in liquid funds. At any time when our available funds fall below \$1,000, Mr. Sillerman will provide (the Sillerman Guaranty ) the amounts necessary to make-up the shortfall in an aggregate amount not to exceed \$6,000; however, the first \$5,000 of the guaranty shall be provided by drawing down on our Line of Credit with SIC IV. Any remaining amounts, up to a maximum aggregate of \$1,000 million shall be provided by Sillerman. In connection with the Sillerman Guaranty, the Company s independent directors approved a fee of \$100 as compensation for providing such guaranty.

As a part of the Private Placement, we issued Warrants to the Purchasers providing them with the right to purchase up to an aggregate of 354,650 shares of the Company s common stock at an initial exercise price of \$6.5280 per share. Subject to certain limitations, the Warrants are exercisable on any date after the date of issuance and the exercise price for the Warrant is subject to adjustment for certain events, such as stock splits and stock dividends. If we issue or sell shares of our common stock, rights to purchase shares of our common stock, or securities convertible into shares of our common stock for a price per share that is less than the conversion price of the Debentures, the exercise price of

the Warrants will be decreased to a lower price based on the amount by which the conversion price of the Debentures was reduced due to such transaction. The foregoing adjustments to the exercise price for future stock issues will not apply to certain exempt issuances, including issuances pursuant to certain employee benefit plans or for certain acquisitions. In addition, the exercise price is subject to adjustment upon stock splits, reverse stock splits, and similar capital changes. The Warrants will expire 5 years from the initial issuance date.

In addition, we issued to Aegis Capital Corporation ( Aegis ), the placement agent in connection with the Private Placement, Warrants providing them with the right to purchase up to an aggregate of 53,200 shares of our common stock at initial exercise price of \$6.5280 per share. The Warrants issued to Aegis contain substantially the same terms as the Warrants issued to the Purchasers.

The Purchasers shall not have the right to convert the Debentures or exercise the Warrants to the extent that such conversion or exercise would result in such Purchaser being the beneficial owner in excess of 4.99% of our common stock. In addition, the Purchasers have no right to convert the Debentures or exercise the

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# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 16. Subsequent Events - (continued)

Warrants if the issuance of the shares of common stock upon such conversion or exercise would exceed the aggregate number of shares of our common stock which we may issue upon conversion of the Note and exercise of the Warrant without breaching our obligations under NASDAQ listing rules. Such limitation does not apply if our shareholders approve such issuances. We intend to promptly seek shareholder approval for issuances of shares of common stock issuable upon conversion of the Debentures and exercise of the Warrants.

In connection with the Private Placement, we and the Purchasers entered into a Registration Rights Agreement under which we were required, on or before 30 days after the closing of the Private Placement, to file a registration statement with the Securities and Exchange Commission (the "SEC") covering the resale of the shares of our common stock issuable pursuant to the Debentures and Warrants and to use commercially reasonable efforts to have the registration declared effective as soon as practicable, but in no event later than 90 days after the filing date. We will be subject to certain monetary penalties, as set forth in the Registration Rights Agreement, if the registration statement is not filed, does not become effective on a timely basis, or does not remain available for the resale (subject to certain allowable grace periods) of the Registrable Securities, as such term is defined in the Registration Rights Agreement.

Also in connection with the Private Placement, certain stockholders of ours have executed Lock-Up Agreements, pursuant to which they have agreed not to sell any shares of our common stock until the later of (i) six months following the issuance of the Debentures or (ii) 90 days following the effectiveness of a resale registration statement filed pursuant to the requirements of the Registration Rights Agreement.

## Amendment to Certificate of Designation of Series C Preferred Stock

On August 22, 2016, the Company amended the terms of the Series C Preferred Stock. The amendment provided that the Series C Preferred Stock is no longer convertible into common stock by its terms (though the Series C Preferred Stock held by Mr. Sillerman remains subject to the Exchange Agreement described above) and is no longer redeemable by holder five years after issuance. As amended, the rights, preferences, privileges and restrictions of the shares of Series C Preferred Stock and the qualifications, limitations and restrictions thereof are summarized as follows:

The shares of Series C Convertible Redeemable Preferred Stock have a stated value of \$1,000 per share. Each holder of a share of Series C Convertible Redeemable Preferred Stock shall be entitled to receive dividends ( "Dividends" ) on such share equal to twelve percent (12%) per annum (the "Dividend Rate" ) of the Stated Value before any Dividends shall be declared, set apart for or paid upon any junior stock or parity stock. Dividends on a share of Series C Preferred Stock shall accrue daily at the Dividend Rate, commence accruing on the issuance date thereof, compound annually, be computed on the basis of a 360-day year consisting of twelve 30-day months and be



convertible into common stock in connection with the conversion of such share of Series C Preferred Stock. The Company may redeem any or all of the outstanding Series C Preferred Stock at any time at the then current Stated Value plus accrued Dividends thereon plus a redemption premium equal to the Stated Value multiplied by 6%. However, no premium shall be due on the use of up to 33% of proceeds of a public offering of common stock at a price of \$5.00 or more per share.

The shares of Series C Preferred Stock are senior in liquidation preference to all shares of capital stock of the Company unless otherwise consented to by a majority of the holders of shares of Series C Preferred Stock.

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# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 16. Subsequent Events - (continued)

The shares of Series C Preferred Stock shall have no voting rights except as required by law. The consent of the holders of a majority of the shares of Series C Preferred Stock is necessary for the Company to amend the Series C certificate of designation. The Series C Preferred Stock is no longer convertible into common stock, except in accordance with the Exchange Agreement.

### Shareholder Approval

Pursuant to the Information Statement on Form 14C filed by the Company on August 19, 2016, the holder of a majority of the Company's issued and outstanding shares has authorized the issuance of shares for the following transactions:

A recapitalization plan involving the conversion of \$34,800 of debt held by SIC III, SIC IV and SIC VI, each an affiliate of the Company's Chairman and Chief Executive Officer and the conversion of 3,000 shares of the Company's Series C Preferred Stock into up to 21,739,892 shares of the Company's common stock;

The issuance of up to 3,722,224 shares of common stock issuable upon the conversion of debentures and warrants issued in connection with a private placement of convertible debentures;

The issuance of up to 9,484,691 shares of common stock upon the conversion of shares of our outstanding Series E Convertible Preferred Stock and convertible notes issued to Rant, Inc.; and

The issuance of up to 470,247 shares of common stock pursuant to an agreement with MGT Sports, Inc. to retire the debt owed by the Company to MGT Sports, Inc. by converting such debt into common stock of the Company.

Such approval became effective on behalf of the Company's shareholders on September 15, 2016.

As a result, there could be dilution of our shareholders if those conversions are effectuated. Mr. Sillerman now has voting control of the Company and, to the extent he also converts in accordance with his exchange agreements, he will remain majority shareholder.

In addition, as set forth in the Information Statement, the majority shareholder also authorized the Board of Directors to effectuate the Reverse Stock Split (see below.)

### MGT Note

On October 10, 2016, the Company satisfied the MGT Note through the issuance of 136,304 shares of its common stock and payment of interest of \$16.

## Reverse Stock Split

On September 16, 2016, the Company effected a reverse stock split (the Reverse Stock Split ) whereby shareholders are entitled to receive one share for each 20 shares of common stock of the Company. Shareholders entitled to a fractional share will receive cash in lieu of fractional shares. As a result of the Reverse Stock Split, the Company has 3,023,701 shares of common stock outstanding as of September 16, 2016. The Reverse Stock Split was approved by the Company's Board of Directors on September 9, 2016, in part, to enable the Company to regain and maintain compliance with the minimum closing bid price of \$1.00 per share for continued listing on NASDAQ.

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## Function(x) Inc.

# NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (amounts in thousands, except share and per share data)

## 16. Subsequent Events - (continued)

### Potential NASDAQ Delisting

On August 26, 2016, Company received formal notification from NASDAQ indicating that, but for the \$1.00 bid price requirement, the Company has demonstrated compliance with all requirements for continued listing on NASDAQ including the \$2,500 stockholders' equity requirement. As previously disclosed, the NASDAQ Hearings Panel required that the Company, on or before August 22, 2016, make a public filing with the SEC indicating that it had regained compliance with the minimum stockholders' equity requirement, among other things. The Company had until September 30, 2016 to have its common stock meet such minimum. As a result of the reverse 1 for 20 stock split effectuated on September 16, 2016, trading in such stock has met the NASDAQ \$1.00 minimum bid price requirement and the Company believes confirmation from NASDAQ should be forthcoming shortly.

### Legal Proceedings

On September 9, 2016, CFGI, LLC, a former provider of consulting services to the Company, has filed suit in the New York County Supreme Court to collect approximately \$200 owed by the Company to CFGI. The Company intends to defend its interests in this matter. Settlement discussions are underway.

A Complaint (Index #654984/2016) was filed by Andy Mule, on behalf of himself and others similarly situated, in the Supreme Court of the State of New York. The Complaint, which names the Company, each of its current directors, and President, as a former director, as defendants, claims a breach of fiduciary duty relating to the terms of a proposed conversion of debt and preferred shares into common equity by Mr. Sillerman and/or his affiliates. The Complaint seeks unspecified damages and such relief as the Court may deem appropriate. The Company accepted service on October 4, 2016, and has agreed to respond by November 14, 2016. The Company believes that this claim is without merit.

### Appointment of President and Chief Operating Officer

On August 1, 2016, the Company entered into an employment agreement with Birame Sock, who has become the Company's President and Chief Operating Officer.

### Appointment of Chief Financial Officer

On July 5, 2016, the Company entered into an employment agreement with Michelle Lancken, who has become the Company's Chief Financial Officer.

## **Sale of Perk, Inc. Shares**

On September 30, 2016, the Company sold to Perk the remaining shares (1,013,068) of Perk common stock, the warrants for additional shares, and the right to the Earn-Out Shares received from Perk on the sale of the Viggle rewards business on February 8, 2016. The Company received \$1,300 from Perk as consideration therefor. The execution of the Securities Purchase Agreement and closing were simultaneous.

## **Additional Investment in DraftDay Gaming Group, Inc.**

Since July 1, 2016 and through October 11, 2016, in accordance with the Series A Preferred Stock agreement, the Company transferred an additional \$144 to the DDGG subsidiary.

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**Shares of  
Common Stock**

**PROSPECTUS**

*Joint Book-Running Managers*

**Aegis Capital Corp.**

**Laidlaw & Company (UK) Ltd.**

, 2017

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Set forth below is an estimate of the approximate amount of the fees and expenses payable by us in connection with the issuance and distribution of the securities being offered.

Expense	Amount
SEC Registration Fee	\$1,404.72
NASDAQ Listing Fee	2,000
FINRA Filing Fee	2,820.31
Printing and Engraving Expenses	10,000
Legal Fees and Expenses	375,000
Accounting Fees and Expenses	70,000
Transfer Agent and Registrar Fees and Expenses	5,000
Miscellaneous Fees and Expenses	5,000
Total	\$471,225.03

**Item 14. Indemnification of Directors and Officers**

Section 102 of the Delaware General Corporation Law permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of a Delaware corporate law or obtained an improper personal benefit.

Section 145 of the Delaware General Corporation Law provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

As permitted by the Delaware General Corporation Law, our bylaws and certificate of incorporation provide that we will indemnify and hold harmless any of our officers, directors, employees or agents and reimburse such persons for any and all judgments, fines, liabilities, amounts paid in settlement and expenses, including attorney's fees, incurred



directly or indirectly in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, for which such persons served in any capacity at the request of us, to which such person is, was or is threatened to be made a party by reason of the fact that such person is, was or becomes a director, officer, employee or agent of us; provided that, (i) such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of us, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful and (ii) no indemnification is payable if a court having jurisdiction determined such indemnification to be unlawful. Additionally, no indemnification will be made in respect of any claim, issue or matter as to which such person was determined to be liable to us, unless and only to the extent that the court in which the action was brought determines that such person is fairly and reasonably entitled to indemnity for such expenses which the court deems proper.

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We do not believe that such indemnification affects the capacity of such person acting as our officer, director or control person.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers or controlling persons pursuant to the foregoing provisions, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

## **Item 15. Recent Sales of Unregistered Securities**

### **Issuance to SIC and SIC II to Restructure Debt and Equity Securities**

On September 16, 2013, the Company, Sillerman Investment Company LLC ( SIC ) and Sillerman Investment Company II LLC ( SIC II ) entered into a series of transactions to restructure certain of the Company's outstanding debt and equity securities. The transactions are designed to reduce the Company's outstanding debt and aid the Company in future capital raising efforts. There was no underwriter involved in any of these transactions. As a consequence of these transactions, the Company issued a total of 33,320 shares of its Series A Convertible Redeemable Preferred Stock to SIC, 21,364.2 shares of its Series B Convertible Preferred Stock to SIC, and warrants to purchase 5,000,000 shares of the Company's common stock at \$0.69 per share to SIC II. The Company received no cash proceeds from these transactions. These transactions are more particularly described in Note 6, Loans Payable and Note 8, Stockholders' Equity (Deficit) to the Consolidated Financial Statements of the Company for the quarter ended September 30, 2013 included in this Quarterly Report on Form 10-Q. In addition, all of the securities issued in the following transactions were issued in transactions exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(a)(2) thereunder and Rule 506 of Regulation D promulgated thereunder.

### **LOC Investors Exchange Agreement I**

On November 25, 2013, as part of a PIPE Exchange, the Company and the LOC Investors entered into exchange agreements pursuant to which the LOC Investors agreed to exchange: (a) a total of 191,000 shares of the Company's Common Stock and (b) warrants to purchase 191,000 shares of the Company's common stock that they had received in the PIPE Transactions for: (i) a total of 955 shares of Series A Convertible Preferred Stock and (ii) a total of 439.3 shares of Series B Convertible Preferred Stock. As a condition of such exchange, the LOC Investors committed to fund a total of \$955 under the New \$25 Million Line of Credit, and the Company drew on those commitments on November 25, 2013. The debt to the LOC Investors is subordinate to the Company's Term Loan Agreement with Deutsche Bank Trust Company Americas. As part of such draw, the Company also issued to the LOC Investors warrants to purchase 955,000 shares of the Company's Common Stock at \$1 per share. These warrants are exercisable for 5 years. The Series A Convertible Preferred Stock, the Series B Convertible Preferred Stock and the warrants issued to the LOC Investors were issued in a transaction exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(a)(2) thereunder and Rule 506 of Regulation D promulgated thereunder.

On December 16, 2013, the Company, and Viggie Merger Sub Inc., a Delaware corporation and wholly-owned subsidiary of Viggie ( Merger Sub ), entered into an Agreement and Plan of Merger (the Merger Agreement ) with Wetpaint.com, Inc., a Delaware corporation ( Wetpaint ), certain stockholders of Wetpaint (solely with respect to Articles 1, 5 and 6 and Subsection 11.1) and Shareholder Representative Services LLC, a Colorado limited liability company (solely in its capacity as the Stockholders' Agent), pursuant to which Wetpaint became a wholly-owned subsidiary of the Company. In connection with this transaction, the Company issued 43,273,691 shares of the Company's Common Stock to the former shareholders of Wetpaint. The Common Stock was issued in a transaction exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(a)(2) thereunder and

Rule 506 of Regulation D promulgated thereunder.

## **LOC Investors Exchange Agreement II**

On November 25, 2013, as part of a PIPE Exchange, the Company and the LOC Investors entered into exchange agreements pursuant to which the LOC Investors agreed to exchange: (a) a total of 2,388 shares of the Company's Common Stock and (b) warrants to purchase 2,388 shares of the Company's common stock that they had received in the PIPE Transactions for: (i) a total of 955 shares of Series A Convertible Preferred Stock and (ii) a total of 439.3 shares of Series B Convertible Preferred Stock. As a condition of such

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exchange, the LOC Investors committed to fund a total of \$955 under the New \$25 Million Line of Credit, and the Company drew on those commitments on November 25, 2013. The debt to the LOC Investors is subordinate to the Company's Term Loan Agreement with Deutsche Bank Trust Company Americas. As part of such draw, the Company also issued to the LOC Investors warrants to purchase 11,938 shares of the Company's Common Stock at \$80 per share. These warrants are exercisable for 5 years. The Series A Convertible Preferred Stock, the Series B Convertible Preferred Stock and the warrants issued to the LOC Investors were issued in a transaction exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(a)(2) thereunder and Rule 506 of Regulation D promulgated thereunder.

On December 16, 2013, the Company, and Viggle Merger Sub Inc., a Delaware corporation and wholly-owned subsidiary of Viggle ( Merger Sub ), entered into an Agreement and Plan of Merger (the Merger Agreement ) with Wetpaint.com, Inc., a Delaware corporation ( Wetpaint ), certain stockholders of Wetpaint (solely with respect to Articles 1, 5 and 6 and Subsection 11.1) and Shareholder Representative Services LLC, a Colorado limited liability company (solely in its capacity as the Stockholders' Agent), pursuant to which Wetpaint became a wholly-owned subsidiary of the Company. In connection with this transaction, the Company issued 540,921 shares of the Company's Common Stock to the former shareholders of Wetpaint. The Common Stock was issued in a transaction exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(a)(2) thereunder and Rule 506 of Regulation D promulgated thereunder.

### **SIC IV Subscription Agreement**

As reported on the Company's Current Report on Form 8-K filed on December 7, 2015, on December 3, 2015, the Company and SIC IV entered into a Subscription Agreement pursuant to which SIC IV subscribed for 8,750,000 shares of the Company's common stock at a price of \$0.47 per share. Accordingly, the aggregate purchase price for such shares was \$4,112,000. The form of Subscription Agreement was attached as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on December 7, 2015.

### **MGT Sports Exchange Agreement**

As previously reported on the Company's Current Report on Form 8-K filed on March 30, 2016, the Company entered into an exchange agreement with MGT Sports, Inc. ( MGT Sports ), pursuant to which the Company issued 2,748,353 shares of its common stock and 110 shares of its Series D Preferred Stock in exchange for a reduction of \$934 in principal amount of a promissory note the Company owed to MGT. The shares of Series D Preferred Stock were convertible into 366,630 shares of the Company's common stock, and MGT converted all 110 shares on April 13, 2016, so that there are no shares of Series D Preferred Stock that remain outstanding, and MGT was issued an additional 366,630 shares of common stock. On October 10, 2016, we satisfied the MGT Note through the issuance of 136,304 shares of our common stock and payment of interest of \$16.

All such shares issued to MGT were issued in a transaction exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(a)(2) thereunder and Rule 506 of Regulation D promulgated thereunder.

On April 25, 2016, the Company also entered into an exchange agreement with Kuusamo Capital Ltd. ( Kuusamo ), pursuant to which the Company issued 207,887 shares of its common stock to Kuusamo in exchange for a reduction of \$71 in principal amount of a promissory note the Company owed to Kuusamo.

All such shares issued to Kuusamo were issued in a transaction exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(a)(2) thereunder and Rule 506 of Regulation D promulgated thereunder.

## **Sillerman Advisor Private Offering**

On May 27, 2016, Reaz Islam, an advisor to Robert F.X. Sillerman, the Company's Executive Chairman and Chief Executive Officer, purchased 666,667 shares of the Company's common stock at a total purchase price of \$200 pursuant to the Subscription Agreement for the private offering.

## **Private Placement**

As described elsewhere in this prospectus, on July 12, 2016, the Company closed a private placement of \$4,444,460 principal amount of Convertible Debentures (the "Debentures") and Common Stock Purchase

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Warrants (the Warrants ). The Debentures and Warrants were issued pursuant to a Securities Purchase Agreement, dated July 12, 2016, (the Purchase Agreement ) between the Company and certain accredited investors within the meaning of the Securities Act of 1933, as amended (the Purchasers ). As a part of the Private Placement, the Company issued Warrants to the Purchasers. The Purchasers have received warrants providing them with the right to purchase up to an aggregate of 7,092,957 shares of the Company s common stock at an initial exercise price of \$0.3264 per share. In addition, the Company issued to Aegis Capital Corporation, the placement agent in connection with the Private Placement, warrants providing them with the right to purchase up to an aggregate of 1,063,944 shares of the Company s common stock at an initial exercise price of \$0.3264 per share. The warrants issued to Aegis Capital Corporation contain substantially the same terms as the warrants issued to the Purchasers. Upon the closing of the private placement, the Company received gross proceeds of \$4.0 million before placement agent fees and other expenses associated with the transaction.

The issuance and sale of the securities issued in connection with the Financing has not been registered under the Securities Act. The Securities were sold in reliance upon exemptions from registration under Rule 506 of Regulation D under the Securities Act. Such securities may not be offered or sold in the United States absent registration under or exemption from the Securities Act and any applicable state securities laws. In determining that the issuance of the securities in the Financing qualified for an exemption under Rule 506 under the Securities Act, we relied on the following facts: the securities were offered to two institutional investors and we did not use general solicitation or advertising to market the securities; each of the investors represented that it was an accredited investor as defined in the rules and regulations under the Securities Act and that it was acquiring the securities for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof; and the securities issued were restricted securities.

## **August Exchange Agreement**

As described elsewhere in this prospectus, on August 22, 2016, the Company and SIC III, SIC IV, and SIC VI, each an affiliate of Sillerman, entered into a Note Exchange Agreement pursuant to which \$30,175,000, representing all of the outstanding principal and accrued interest of certain notes held by SIC III, SIC IV, and SIC VI (the Sillerman Notes ) other than \$900,000 of debt held by SIC IV pursuant to that certain Line of Credit Grid Promissory Note dated as of June 11, 2015, was exchanged for 30,175 shares of our Series C Preferred Stock. The exchange price is \$1,000 per share. The Note Exchange Agreement provides for the newly issued shares to be held subject to the obligations to convert the shares into common stock on the terms and on the conditions set forth in the Exchange Agreement, and subject to the additional obligations set forth in the Subordination Agreement and the Lockup Agreements. The \$900,000 of debt that remained outstanding and future advances under the Grid Note will also remain subject to the Exchange Agreement.

The shares issued under the Note Exchange Agreement were issued in a transaction exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(a)(2) thereunder and Rule 506 of Regulation D promulgated thereunder.

## **Trade Payables**

During 2016, \$165,397 of debt payable to certain trade creditors was exchanged for 38,088 shares of Company common stock.

All shares issued to trade creditors were issued in a transaction exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(a)(2) thereunder and Rule 506 of Regulation D promulgated thereunder.



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**Item 16. Exhibits**

Financial Statement Schedules

All financial statement schedules are omitted because they are not applicable or the required information is shown in the financial statements or notes thereto.

Exhibits

The documents set forth below are filed herewith or incorporated herein by reference to the location indicated.

Exhibit  
Number

- 1.1 Underwriting Agreement\*
- 3.1 Certificate of Incorporation<sup>(1)</sup>
- 3.2 By-Laws<sup>(2)</sup>
- 4.3 Form of Warrant<sup>(3)</sup>
- 5.1 Opinion of Reed Smith LLP\*
- 10.1 Function(x) 2011 Executive Incentive Plan.<sup>(4)</sup>
- 10.2 Employment Agreement, dated February 16, 2011, between Function(x) Inc. and Robert F.X. Sillerman<sup>(5)</sup>
- 10.3 Shared Services and Reimbursement Agreement, dated February 15, 2011, between Circle Entertainment Inc. and Function(x) Inc.<sup>(6)</sup>
- 10.4 Promissory Note, dated February 8, 2011, between Robert F.X. Sillerman and Function(x) Inc.<sup>(7)</sup>
- 10.5 Asset Purchase Agreement, dated September 29, 2011, among Mobile Messaging Solutions (MMS), Inc., Watchpoints, Inc. and Function(x) Inc.<sup>(8)</sup>
- 10.6 Form of Unit Subscription Agreement for the Registrant's private placement in August of 2012<sup>(9)</sup>
- 10.7 MMS Registration Rights Agreement<sup>(10)</sup>
- 10.8 Line of Credit Agreement dated December 23, 2011 between Function(x) Inc. and TIPPT Media Inc.<sup>(11)</sup>
- 10.9 Stockholders Agreement dated December 23, 2011 among Function(x) Inc., TIPPT Media Inc. and the other stockholders named therein.<sup>(12)</sup>
- 10.10 Loyalize Asset Purchase Agreement dated December 31, 2011 among Function(x) Inc., FN(x) I Holding Corporation and Trusted Opinion Inc.<sup>(13)</sup>
- 10.11 Amended and Restated Promotional Services Agreement, dated as of December 21, 2011, by and among TIPPT Media Inc., The 100 Mile Group, LLC and Jesse Itzler<sup>(14)</sup>
- 10.12 Form of Line of Credit Grid Promissory Note<sup>(15)</sup>
- 10.13 Form of Unit Subscription Agreement with respect to the registrant's private placement in May of 2012<sup>(16)</sup>
- 10.14 Form of Warrant issued in the registrant's private placement in May of 2012<sup>(7)</sup>
- 10.15 Limited Recourse Promissory Note issued by Tippt LLC in favor of the registrant, dated as of May 14, 2012<sup>(18)</sup>
- 10.16 Amended and Restated Promissory Note issued by Tippt Media Inc. in favor of the registrant, dated as of May 14, 2012<sup>(19)</sup>



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- 10.17 Amended and Restated Stockholders Agreement, by and among Tipt Media, Inc., the registrant and the other stockholders of Tipt Media, Inc.<sup>(20)</sup>
- 10.18 Form of Line of Credit Grid Promissory Note dated as of June 29, 2012, issued by the registrant in favor of Sillerman Investment Company LLC<sup>(21)</sup>

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Exhibit Number	
10.19	Employment Agreement between Function(x) Inc. and John Small, dated as of August 16, 2011 <sup>(22)</sup>
10.20	Consulting Agreement between Viggle Inc. and Benjamin Chen, dated as of September 12, 2011 <sup>(23)</sup>
10.21	Employment Agreement, dated May 11, 2011 between Function(x) Inc. and Gregory Consiglio, as amended <sup>(24)</sup>
10.22	Amended and Restated Line of Credit Agreement, dated October 25, 2012, between Viggle Inc. and Sillerman Investment Company LLC <sup>(25)</sup>
10.23	Agreement and Plan of Merger, dated as of November 16, 2012 <sup>(26)</sup>
10.24	Amended and Restated Line of Credit Grid Promissory Note, dated as of December 3, 2012, between Viggle Inc. and Sillerman Investment Company LLC <sup>(27)</sup>
10.25	Amended and Restated Line of Credit Grid Promissory Note, dated as of December 12, 2012, between Viggle Inc. and Sillerman Investment Company LLC <sup>(28)</sup>
10.26	Amended and Restated Line of Credit Grid Promissory Note, dated as of January 4, 2012, between Viggle Inc. and Sillerman Investment Company LLC <sup>(29)</sup>
10.27	Line of Credit Grid Promissory Note, dated as of February 11, 2013, between Viggle Inc. and Sillerman Investment Company II, LLC <sup>(30)</sup>
10.28	Term Loan Agreement, dated as of March 11, 2013, between Viggle Inc. and Deutsche Bank Trust Company Americas <sup>(31)</sup>
10.29	Guarantee Warrant <sup>(32)</sup>
10.30	\$25,000,000 Line of Credit Note, dated as of March 11, 2013, between Viggle Inc. and Sillerman Investment Company II LLC <sup>(33)</sup>
10.31	Exchange Agreement, dated as of March 11, 2013, between Viggle Inc. and Sillerman Investment Company LLC <sup>(34)</sup>
10.32	8% Note, dated as of March 11, 2013, between Viggle Inc. and Sillerman Investment Company LLC <sup>(35)</sup>
10.33	Security Agreement for the \$25,000,000 Line of Credit Note, dated as of March 11, 2013 <sup>(36)</sup>
10.34	Security Agreement for the 8% Note, dated as of March 11, 2013 <sup>(37)</sup>
10.35	Subordination Agreement dated as of March 11, 2013 <sup>(38)</sup>
10.36	Rescission Agreement dated as of September 16, 2013 <sup>(39)</sup>
10.37	Waiver, dated as of September 16, 2013 <sup>(39)</sup>
10.38	Certificate of Elimination <sup>(39)</sup>
10.39	Certificate of Designations of the Series A Convertible Preferred Stock <sup>(39)</sup>
10.40	Certificate of Designations of the Series B Convertible Preferred Stock <sup>(39)</sup>
10.41	Exchange Agreement, dated as of September 16, 2013 <sup>(39)</sup>
10.42	Warrant <sup>(39)</sup>
10.43	PIPE Exchange Agreement <sup>(39)</sup>
10.44	Form of Subordination Agreement <sup>(40)</sup>
10.45	Form of Exchange Agreement for LOC Investors <sup>(41)</sup>
10.46	Form of Commitment Letter under New \$25,000,000 Line of Credit <sup>(42)</sup>
10.47	Agreement and Plan of Merger, dated as of December 16, 2013, by and among Viggle Inc., Viggle Merger Sub Inc., wetpaint.com, Inc., certain stockholders of wetpaint.com, Inc. (solely with respect to Articles 1, 5 and 6 and Subsection 11.1) and the Shareholder Representative Services LLC (solely in its capacity as the Stockholders Agent) <sup>(43)</sup>



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Exhibit Number	
10.48	Promissory Note, dated as of December 11, 2013, issued by Viggle Inc. to Sillerman Investment Company II LLC <sup>(44)</sup>
10.49	Second Amendment, dated as of December 16, 2013, by and between Viggle Inc. and Deutsche Bank Trust Company Americas, and its successors and assigns <sup>(45)</sup>
10.50	Amended and Restated Viggle Inc. 2011 Executive Incentive Plan <sup>(46)</sup>
10.51	Revolving Loan Agreement <sup>(47)</sup>
10.52	Stockholders Agreement, dated as of January 29, 2014, by and among the registrant, Nancy Lee, as representative and former stockholders of Dijit Media, Inc. <sup>(48)</sup>
10.53	Amended Form of Warrant for May 2012 PIPE Transaction <sup>(49)</sup>
10.54	Third Amendment, dated as of February 13, 2014, by and between Viggle Inc. and Deutsche Bank Trust Company Americas, and its successors and assigns <sup>(50)</sup>
10.55	Form of Certificate of Amendment to Articles of Incorporation <sup>(51)</sup>
10.56	Fourth Amendment, dated as of March 11, 2014, by and between Viggle Inc. and Deutsche Bank Trust Company Americas, and its successors and assigns <sup>(52)</sup>
10.57	Pledge and Security Agreement, dated as of March 11, 2014, by and between Viggle Inc. and Deutsche Bank Trust Company Americas, and its successors and assigns <sup>(53)</sup>
10.58	Software License and Services Agreement, dated as of March 10, 2014, by and between Viggle Inc. and SFX Entertainment, Inc. <sup>(54)</sup>
10.59	Amendment to Articles of Incorporation of Viggle Inc. <sup>(55)</sup>
10.60	Amendment to the Employment Agreement of Robert F.X. Sillerman <sup>(56)</sup>
10.61	Form of Amendment to the Employment Agreements of Gregory Consiglio, John Small and Kevin Arrix <sup>(57)</sup>
10.62	Form of Exchange Agreement with Holders of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock <sup>(58)</sup>
10.63	Agreement and Plan of Merger, dated as of June 24, 2014, by and among Viggle Inc., Viggle Merger Sub III Inc., Choose Digital Inc., certain stockholders of Choose Digital Inc., and (solely with respect to Articles 1, 5 and 6 and Subsection 10.1) Amossyklein Family Holdings, LLLP (solely in its capacity as the Stockholders Agent) <sup>(59)</sup>
10.64	Certificate of Designation of Series C Preferred Stock <sup>(60)</sup>
10.65	Securities Purchase Agreement dated October 24, 2014 by and between the Company and Sillerman Investment Company III, LLC <sup>(61)</sup>
10.66	Line of Credit Promissory Note, dated as of October 24, 2014 issued by the Company in favor of Sillerman Investment Company III, LLC <sup>(62)</sup>
10.67	Form of Warrant issuable pursuant to the Securities Purchase Agreement <sup>(63)</sup>
10.68	Registration Rights Agreement, dated as of October 24, 2014, by and between the Company and Sillerman Investment Company III LLC <sup>(64)</sup>
10.69	Fifth Amendment to Term Loan Agreement, dated as of October 24, 2014, by and between the Company and Deutsche Bank Trust Company Americas <sup>(65)</sup>
10.70	Subordination Agreement, dated as of October 24, 2014, by and between Sillerman Investment Company III LLC and Deutsche Bank Trust Company Americas, and acknowledged by the Company <sup>(66)</sup>
10.71	Sales Agency Agreement dated January 22, 2015 by and between the Company and SFX-94 LLC <sup>(67)</sup>
10.72	Amended and Restated Shared Services Agreement <sup>(68)</sup>
10.73	Amendment to the Employment Agreement between the Company and Greg Consiglio <sup>(69)</sup>



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Exhibit Number	
10.74	Amendment to the Employment Agreement between the Company and Kevin Arrix <sup>(70)</sup>
10.75	Line of Credit Grid Promissory Note, dated as of June 11, 2015, by and between the Company and Sillerman Investment Company IV LLC <sup>(71)</sup>
10.76	Forbearance Agreement dated as of July 31, 2015 by and between Viggle Inc. and AmossyKlein Family Holdings, LLLP <sup>(72)</sup>
10.77	Asset Purchase Agreement by and among by and among MGT Sports, Inc., MGT Capital Investments, Inc., DraftDay Gaming Group, Inc., and Viggle Inc., dated as of September 8, 2015 <sup>(73)</sup>
10.78	Stockholders Agreement of DraftDay Gaming Group, Inc., dated as of September 8, 2015 <sup>(74)</sup>
10.79	Form of Promissory Note between Viggle Inc. and MGT Sports, Inc. <sup>(75)</sup>
10.80	Separation Agreement between Viggle Inc. and Kevin Arrix <sup>(76)</sup>
10.81	Amended and Restated Employment Agreement between Viggle Inc. and Olga Bashkatova <sup>(77)</sup>
10.82	Subscription Agreement dated December 3, 2015 between Viggle Inc. and Sillerman Investment Company IV LLC <sup>(78)</sup>
10.83	Asset Purchase Agreement, dated as of December 13, 2015, by and between Viggle Inc. and Perk.com Inc. <sup>(79)</sup>
10.84	Credit Agreement, dated as of December 13, 2015, by and between Viggle Inc. and Perk.com Inc. <sup>(80)</sup>
10.85	Amendment to Amended and Restated Certificate of Incorporation <sup>(81)</sup>
10.86	Amendment to Employment Agreement of Mitchell J. Nelson <sup>(82)</sup>
10.87	Secured Revolving Promissory Note dated January 27, 2016 between DraftDay Fantasy Sports Inc. and Sillerman Investment Company VI LLC <sup>(83)</sup>
10.88	Security Agreement dated January 27, 2016 between DraftDay Fantasy Sports Inc. and Sillerman Investment Company VI LLC <sup>(84)</sup>
10.89	Certificate of Designation of Series D Preferred Stock <sup>(85)</sup>
10.90	Form of Exchange Agreement between DraftDay Fantasy Sports Inc. and MGT Sports, Inc. <sup>(86)</sup>
10.91	Secured Revolving Promissory Note dated March 29, 2016 between DraftDay Fantasy Sports Inc. and Sillerman Investment Company VI LLC <sup>(87)</sup>
10.92	Security Agreement dated March 29, 2016 between DraftDay Fantasy Sports Inc. and Sillerman Investment Company VI LLC <sup>(88)</sup>
10.93	Binding Term Sheet between DraftDay Fantasy Sports Inc. and Rant Inc. <sup>(89)</sup>
10.94	Secured Revolving Promissory Note dated April 29, 2016 between DraftDay Fantasy Sports Inc. and Sillerman Investment Company VI LLC <sup>(90)</sup>
10.95	Security Agreement dated April 29, 2016 between DraftDay Fantasy Sports Inc. and Sillerman Investment Company VI LLC <sup>(91)</sup>
10.96	Subscription Agreement, dated as of May 9, 2016, by and between DraftDay Fantasy Sports Inc. and Sillerman Investment Company III LLC <sup>(92)</sup>
10.97	Amendment No. 1 to the Forbearance Agreement dated as of May 12, 2016, by and between DraftDay Fantasy Sports Inc. and AmossyKlein Family Holdings, LLLP <sup>(93)</sup>
10.98	Secured Revolving Promissory Note dated May 16, 2016 between DraftDay Fantasy Sports Inc. and Sillerman Investment Company VI LLC <sup>(94)</sup>
10.99	Security Agreement dated May 16, 2016 between DraftDay Fantasy Sports Inc. and Sillerman Investment Company VI LLC <sup>(95)</sup>
10.100	Exchange Agreement dated June 14, 2016 between DraftDay Fantasy Sports Inc. and MGT Sports, Inc. <sup>(96)</sup>



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Exhibit Number	
10.101	Secured Revolving Promissory Note dated June 27, 2016 between DraftDay Fantasy Sports and Sillerman Investment Company VI LLC <sup>(97)</sup>
10.102	Security Agreement dated June 27, 2016 between DraftDay Fantasy Sports Inc. and Sillerman Investment Company VI LLC <sup>(98)</sup>
10.103	Convertible Promissory Note dated June 27, 2016 between DraftDay Fantasy Sports Inc. and Reaz Islam <sup>(99)</sup>
10.104	Employment Agreement between DraftDay Fantasy Sports Inc. and Michelle Lanken <sup>(100)</sup>
10.105	Asset Purchase Agreement between Function(x) Inc. and Rant, Inc. <sup>(101)</sup>
10.106	Certificate of Designation of Series E Preferred Stock <sup>(102)</sup>
10.107	Secured Convertible Note between Function(x) Inc. and Rant, Inc. <sup>(103)</sup>
10.108	Note Purchase Agreement between Function(x) Inc. and Rant, Inc. <sup>(104)</sup>
10.109	Security Agreement between Function(x) Inc. and Rant, Inc. <sup>(105)</sup>
10.110	Subordination Agreement between Function(x) Inc., Sillerman Investment Company III LLC, Sillerman Investment Company IV LLC, Sillerman Investment Company VI LLC and Rant, Inc. <sup>(106)</sup>
10.111	Intercreditor Agreement between Function(x) Inc., Sillerman Investment Company III LLC, Sillerman Investment Company IV LLC, Sillerman Investment Company VI LLC and Rant, Inc. <sup>(107)</sup>
10.112	Securities Purchase Agreement dated July 8, 2016 <sup>(108)</sup>
10.113	Security Agreement dated July 8, 2016 between Function(x) Inc. and holders of Debentures <sup>(109)</sup>
10.114	Registration Rights Agreement dated July 8, 2016 <sup>(110)</sup>
10.115	Form of Debenture <sup>(111)</sup>
10.116	Form of Warrant <sup>(112)</sup>
10.117	Form of Lock-Up Agreement <sup>(113)</sup>
10.118	Exchange Agreement dated July 8, 2016 between Function(x) Inc. and Sillerman Investment Company III LLC, Sillerman Investment Company IV LLC, and Sillerman Investment Company VI LLC <sup>(114)</sup>
10.119	Amendment to Securities Purchase Agreement and Consent to Modify Debentures dated July 20, 2016 <sup>(115)</sup>
10.120	Amendment to Subordination Agreement dated July 20, 2016 <sup>(116)</sup>
10.121	Amendment to Exchange Agreement dated July 20, 2016 <sup>(117)</sup>
10.122	Employment Agreement of Birame Sock <sup>(118)</sup>
10.123	Amended and Restated Certificate of Designations of the Series C Preferred Stock of Function(x) Inc. <sup>(119)</sup>
10.124	Note Exchange Agreement dated August 22, 2016 between Function(x) Inc., Sillerman Investment Company III LLC, Sillerman Investment Company IV LLC and Sillerman Investment Company VI LLC <sup>(120)</sup>
10.125	Amendment to Certificate of Incorporation of Function(x) Inc. <sup>(121)</sup>
10.126	Securities Purchase Agreement between Function(x) Inc. and Perk Inc. <sup>(122)</sup>
10.127	Waiver Agreement between Function(x) Inc. and Barry Honig, as collateral agent <sup>(123)</sup>
10.128	License Agreement between Function(x) Inc. and Bajaar, LLC <sup>(124)</sup>
14.1	Code of Business Conduct and Ethics <sup>(125)</sup>





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Exhibit  
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- 21.1 List of Subsidiaries<sup>(126)</sup>
- 23.1 Consent of BDO USA LLP\*
- 23.2 Consent of Reed Smith LLP (included in Exhibit 5.1)\*

- (1) Incorporated by reference to Exhibit D to the registrant's Proxy Statement on Schedule 14D filed on August 16, 1994. Amendments thereto are incorporated by reference to the Registrant's Current Report on Form 8-K filed on February 16, 2011 and to the Registrant's Current Report on Form 8-K filed on June 7, 2012. In addition, the Certificate of Designations for the registrant's Series C Convertible Preferred Stock, the only class of preferred stock outstanding, is incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K filed on October 27, 2014
- (2) Incorporated by reference to the registrant's Exhibit E to Proxy Statement on Schedule 14A filed on August 16, 1994
  - (3) Incorporated by reference to the registrant's registration statement on Form S-1 filed on May 25, 2011
  - (4) Incorporated by reference to the registrant's Current Report on Form 8-K filed on February 22, 2011
- (5) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on February 16, 2011
- (6) Incorporated by reference to Exhibit 10.7 to the registrant's registration statement on Form S-1/A filed on October 7, 2011
- (7) Incorporated by reference to Exhibit 10.8 to the registrant's registration statement on Form S-1/A filed on October 7, 2011
- (8) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on October 3, 2011
- (9) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on August 26, 2011
- (10) Incorporated by reference to Exhibit 10.13 to the registrant's Registration Statement on Form S-1/A filed on November 23, 2011
- (11) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on December 29, 2011.
- (12) Incorporated by reference to Exhibit 10.2 to the registrant's Current report on Form 8-K filed on December 29, 2011.
- (13) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on January 4, 2012
- (14) Incorporated by reference to Exhibit 10.18 to the registrant's registration statement on Form S-1/A filed on April 5, 2012
- (15) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on April 9, 2012
- (16) Incorporated by reference to Exhibit 10.1 to the registrant's Quarterly Report on Form 8-K filed on May 15, 2012
- (17) Incorporated by reference to Exhibit 10.2 to the registrant's Quarterly Report on Form 8-K filed on May 15, 2012
- (18) Incorporated by reference to Exhibit 10.3 to the registrant's Quarterly Report on Form 8-K filed on May 15, 2012
- (19) Incorporated by reference to Exhibit 10.4 to the registrant's Quarterly Report on Form 8-K filed on May 15, 2012
- (20) Incorporated by reference to Exhibit 10.5 to the registrant's Quarterly Report on Form 8-K filed on May 15, 2012
- (21) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on July 6, 2012

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- (22) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on September 14, 2012
- (23) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on September 14, 2012
- (24) Incorporated by reference to Exhibit 13.2 to the registrant's Quarterly Report on Form 10-Q filed on May 12, 2011. An amendment to the agreement is incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on November 5, 2012
- (25) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on November 5, 2012
- (26) Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed on November 19, 2012
- (27) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on December 7, 2012
- (28) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on December 17, 2012
- (29) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on January 11, 2013
- (30) Incorporated by reference to Exhibit 10.35 to the registrant's Quarterly Report on Form 10-Q filed February 14, 2013
- (31) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on March 15, 2013
- (32) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on March 15, 2013
- (33) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on March 15, 2013
- (34) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K/A filed on March 19, 2013
- (35) Incorporated by reference to Exhibit 10.5 to the registrant's Current Report on Form 8-K filed on March 15, 2013
- (36) Incorporated by reference to Exhibit 10.6 to the registrant's Current Report on Form 8-K filed on March 15, 2013
- (37) Incorporated by reference to Exhibit 10.7 to the registrant's Current Report on Form 8-K filed on March 15, 2013
- (38) Incorporated by reference to Exhibit 10.8 to the registrant's Current Report on Form 8-K filed on March 15, 2013
- (39) Incorporated by reference to the Exhibits 10.36, 10.37, 10.38, 10.39, 10.40, 10.41, 10.42 and 10.43 to the registrant's Annual Report on Form 10-K filed on September 17, 2013
- (40) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on December 2, 2013
- (41) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on December 2, 2013
- (42) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on December 2, 2013
- (43) Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed on December 16, 2013
- (46) Incorporated by reference to Exhibit 2.2 to the registrant's Current Report on Form 8-K filed on December 16, 2013
- (44) Incorporated by reference to Exhibit 2.3 to the registrant's Current Report on Form 8-K filed on December 16, 2013
- (46) Incorporated by reference to the registrant's Preliminary Information Statement on Schedule 14C filed on January 10, 2014

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- (47) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on February 6, 2014
- (48) Incorporated by reference to Exhibit 1.1 to the Schedule 13D/A filed on February 10, 2014
- (49) Incorporated by reference to Exhibit 10.1 to the registrant's Quarterly Report on Form 10-Q filed on February 10, 2014
- (50) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on February 20, 2014
- (51) Incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K filed on March 10, 2014
- (52) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on March 14, 2014
- (53) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on March 14, 2014
- (54) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on March 14, 2014
- (55) Incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K filed on March 18, 2014
- (56) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on March 18, 2014
- (57) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on March 18, 2014
- (58) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on March 24, 2014
- (59) Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed on June 25, 2014
- (60) Incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K filed on October 27, 2014
- (61) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on October 27, 2014
- (62) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on October 27, 2014
- (63) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on October 27, 2014
- (64) Incorporated by reference to Exhibit 10.4 to the registrant's Current Report on Form 8-K filed on October 27, 2014
- (65) Incorporated by reference to Exhibit 10.5 to the registrant's Current Report on Form 8-K filed on October 27, 2014
- (66) Incorporated by reference to Exhibit 10.6 to the registrant's Current Report on Form 8-K filed on October 27, 2014
- (67) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on January 23, 2015
- (68) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on January 23, 2015
- (69) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on January 23, 2015
- (70) Incorporated by reference to Exhibit 10.4 to the registrant's Current Report on Form 8-K filed on January 23, 2015
- (71) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on June 12, 2015
- (72) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on August 6, 2015

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- (73) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on September 9, 2015
- (74) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on September 9, 2015
- (75) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on September 9, 2015
- (76) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on October 2, 2015
- (77) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on October 27, 2015
- (78) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on December 7, 2015
- (79) Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed on December 14, 2015
- (80) Incorporated by reference to Exhibit 2.2 to the registrant's Current Report on Form 8-K filed on December 14, 2015
- (81) Incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K filed on January 28, 2016
- (82) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on January 28, 2016
- (83) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on February 2, 2016
- (84) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on February 2, 2016
- (85) Incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K filed on March 30, 2016
- (86) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on March 30, 2016
- (87) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on March 30, 2016
- (88) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on March 30, 2016
- (89) Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed on April 29, 2016
- (90) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on May 3, 2016
- (91) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on May 3, 2016
- (92) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on May 13, 2016
- (93) Incorporated by reference to Exhibit 10.78 to the registrant's Quarterly Report on Form 10-Q filed on May 16, 2016
- (94) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on May 20, 2016
- (95) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on May 20, 2016
- (96) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on June 17, 2016
- (97) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on June 30, 2016
- (98) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on June 30, 2016

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- (99) Incorporated by reference to Exhibit 10.9 to the registrant's Current Report on Form 8-K filed on June 30, 2016
- (100) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on July 6, 2016
- (101) Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (102) Incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (103) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (104) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (105) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (106) Incorporated by reference to Exhibit 10.4 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (107) Incorporated by reference to Exhibit 10.5 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (108) Incorporated by reference to Exhibit 10.6 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (109) Incorporated by reference to Exhibit 10.7 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (110) Incorporated by reference to Exhibit 10.8 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (111) Incorporated by reference to Exhibit 10.9 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (112) Incorporated by reference to Exhibit 10.10 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (113) Incorporated by reference to Exhibit 10.11 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (114) Incorporated by reference to Exhibit 10.12 to the registrant's Current Report on Form 8-K filed on July 13, 2016
- (115) Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed on July 26, 2016
- (116) Incorporated by reference to Exhibit 2.2 to the registrant's Current Report on Form 8-K filed on July 26, 2016
- (117) Incorporated by reference to Exhibit 2.3 to the registrant's Current Report on Form 8-K filed on July 26, 2016
- (118) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on August 3, 2016
- (119) Incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K filed on August 22, 2016
- (120) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on August 22, 2016
- (121) Incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K filed on September 16, 2016
- (122) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on October 6, 2016
- (123) Incorporated by reference to Exhibit 99.1 to the registrant's Current Report on Form 8-K filed on November 14, 2016
- (124) Incorporated by reference to Exhibit 99.1 to the registrant's Current Report on Form 8-K filed on November 25, 2016

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- (125) Incorporated by reference to Exhibit 14.1 to the registrant's Information Statement on Form S-1/A filed on October 7, 2011
- (126) Incorporated by reference to Exhibit 21.1 to the registrant's Annual Report on Form 10-K filed on October 12, 2016

\*

Filed herewith

## Item 17. Undertakings

The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933; To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.
  - (ii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
  - (iii) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering. That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities: The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
    - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424,
    - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used to referred to by the undersigned registrant;
    - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
    - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (2)
- (3)
- (4)
- (5)
- (6)

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Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer (h) or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(i) The undersigned registrant hereby undertakes that:

For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of (1) prospectus filed by the registrant pursuant to Rule 424(b) (1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that (2) contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of New York, State of New York on January 19, 2017.

**FUNCTION(X) INC.**

By:

/s/ Robert F.X. Sillerman

Date: January 19, 2017

Robert F.X. Sillerman  
*Chief Executive Officer*

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
/s/ Robert F.X. Sillerman	Executive Chairman and Chief Executive Officer <i>(Principal Executive Officer)</i>	January 19, 2017
Robert F.X. Sillerman /s/ Michelle Lanken	Chief Financial Officer	January 19, 2017
Michelle Lanken *	President	January 19, 2017
Birame Sock /s/ Brian Rosin	Chief Operating Officer	January 19, 2017
Brian Rosin *	Director, Executive Vice President and Secretary	January 19, 2017
Mitchell J. Nelson *	Director	January 19, 2017
Frank Barnes *	Director	January 19, 2017
Michael Meyer *	Director	January 19, 2017
Peter Horan	Director	January 19, 2017

\* By: /s/ Mitchell J. Nelson

Mitchell J. Nelson  
Attorney-in-Fact

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