

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

2018 FEB 06 1305  
CALENDAR/ROOM N  
TIME 00:00  
Breach of Contract

John P. Calamos, Sr., and  
John S. Koudounis,

Plaintiffs,

v.

EXIN Financial Services Holding, B.V.,

Defendant.

Case No.

FILED  
2018 FEB -6 PM 2:02  
DOROTHY B. BROWN  
CLERK OF CIRCUIT COURT  
LAW DIVISION

**COMPLAINT**

Plaintiffs John P. Calamos, Sr. ("Calamos" or "Lender") and John S. Koudounis ("Koudounis"), by and through their attorneys, Winston & Strawn LLP, respectfully submit this Complaint against Defendant EXIN Financial Services Holding, B.V. ("EXIN" or "Borrower"), and allege the following in support:

**NATURE OF THE ACTION**

1. This is a complaint for breach of contract and accounting caused by EXIN's failure to repay \$41,661,132.06, plus interest and certain dividends and disbursements, owed to Calamos, and Koudounis as assignee, under a series of eight borrowing agreements, and by EXIN's failure to provide requested financial, accounting, and regulatory records as required under those same agreements. Under three agreements in that series, dated November 30, 2016; June 14, 2017; and October 3, 2017 (the "Operative Agreements"<sup>1</sup>), EXIN's failures to fulfill its contractual obligations to Calamos and Koudounis represent separate and independent "Events of Default" by

<sup>1</sup> Plaintiffs' reference to the Operative Agreements as the primary basis for the claims alleged herein does not waive or forgo any rights related to additional potential "Events of Default" by EXIN that may have occurred under any of the eight borrowing agreements. Plaintiffs expressly reserve the right to pursue all available remedies under the eight borrowing agreements.

EXIN that entitle Calamos and Koudounis to enforce their contractual rights under the law to recover the total loan amount and to receive access to certain records, along with other damages.

### **THE PARTIES**

2. Plaintiff John P. Calamos, Sr. is a resident of DuPage County, Illinois.
3. Plaintiff John S. Koudounis is a resident of Cook County, Illinois.
4. On information and belief, Defendant EXIN is an insurance and financial services company formed under the laws of the Netherlands that conducts business in Europe, Asia, and the United States.

### **JURISDICTION AND VENUE**

5. EXIN is subject to general and specific personal jurisdiction in the State of Illinois.
6. EXIN knowingly and voluntarily submitted to jurisdiction in the State of Illinois under the express terms of the November 30, 2016 Amended and Restated Bridge Loan, Guaranty, and Security Agreement (the "November 30, 2016 Amended and Restated Bridge Loan"):

"The Borrower, Guarantor and the Lender irrevocably agree that the courts of the State of Illinois have exclusive jurisdiction and accordingly submit to the exclusive jurisdiction of the courts of the State of Illinois in relation to any matter arising in connection with this Agreement (including regarding its existence)."

(Ex. 1, November 30, 2016 Amended and Restated Bridge Loan, § 12.2.)<sup>2</sup>

7. In addition, EXIN possesses sufficient minimum contacts with the State of Illinois to render the exercise of personal jurisdiction by an Illinois court permissible under traditional notions of fair play and substantial justice, consistent with Section 2-209 of the Illinois Code of

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<sup>2</sup> As stated in Plaintiffs' Motion to File the Complaint Exhibits Under Seal, filed together with this Complaint, Exhibits 1-3 contain confidential, sensitive, and proprietary business plans, business methods, negotiated terms, and financial information and are therefore not filed herein. Plaintiffs will file these exhibits consistent with the Court's determination on Plaintiffs' Motion.

Civil Procedure, the Illinois Constitution, and the Constitution of the United States. (735 ILCS 5/2-209(a)-(c).)

8. Specifically, EXIN has purposefully availed itself of the benefits and protections of the State of Illinois, including by negotiating and executing eight borrowing agreements with Illinois counterparties, agreements which are “governed by and shall be construed in accordance with Illinois law.” (Ex. 1, Nov. 30, 2016 Amended and Restated Bridge Loan, § 12.1.)

9. Further, this cause of action arises from EXIN’s transaction of business within the State of Illinois, including but not limited to EXIN’s negotiation and execution of eight borrowing agreements with Illinois counterparties. (735 ILCS 5/2-209(a)(1).)

10. This cause of action also arises from EXIN’s making and performance of a contract substantially connected with the State of Illinois, namely, the eight borrowing agreements with Illinois counterparties. (735 ILCS 5/2-209(a)(7).)

11. Finally, EXIN is a corporation with ongoing business activities within the State of Illinois and is therefore subject to general personal jurisdiction in Illinois. (735 ILCS 5/2-209(b)(4).) Specifically, EXIN has an ongoing business relationship with Calamos, including but not limited to the eight borrowing agreements, and with a company headquartered in Naperville, Illinois (“Company X”), which EXIN touts as an investment partner based in Chicago.

12. Venue is proper in this Court pursuant to § 2-101 of the Illinois Code of Civil Procedure because EXIN is a nonresident of the State of Illinois. (735 ILCS 5/2-101.)

**FACTUAL ALLEGATIONS**  
**COMMON TO ALL CLAIMS FOR RELIEF**

13. The allegations set forth in the preceding paragraphs are incorporated herein by reference.

**A. The First Loan Agreement – February 26, 2016 Bridge Loan**

14. On February 26, 2016, Calamos and EXIN entered into the first in a series of eight borrowing agreements for the purpose of providing a revolving loan facility for EXIN to use for general corporate purposes.

15. The February 26, 2016 agreement, titled “Bridge Loan, Guaranty and Security Agreement” (the “February 26, 2016 Bridge Loan”), provided for an initial advance by Calamos of \$5,000,000.00 to EXIN and a second payment of \$10,000,000.00 shortly thereafter, for a total loan amount of \$15,000,000.00.

16. The February 26, 2016 Bridge Loan provided for a maturity date of six months after the date of the agreement (August 26, 2016), upon which EXIN was required to repay the loan amount.

17. The February 26, 2016 Bridge Loan was executed as of February 26, 2016, by John P. Calamos, Sr., as Lender; Robert Matthew Fairfield, for and on behalf of EXIN, the Borrower; and Robert Matthew Fairfield, as Guarantor.

18. Following execution of the February 26, 2016 Bridge Loan, Calamos performed his obligations under the contract and provided the loan amount of \$15,000,000.00 as specified under the agreement.

19. EXIN did not make any payments on the February 26, 2016 Bridge Loan.

**B. The Second Loan Agreement – August 26, 2016 Amendment to February 26, 2016 Bridge Loan**

20. On August 26, 2016 (the maturity date of the February 26, 2016 Bridge Loan), Calamos and EXIN entered into an agreement titled “First Amendment to Bridge Loan, Guaranty and Security Agreement,” which ratified the terms of the February 26, 2016 Bridge Loan and extended the maturity date for EXIN’s repayment of the loan to October 31, 2016.

21. The August 26, 2016 Amendment was executed as of August 26, 2016, by John P. Calamos, Sr., as Lender; Robert Matthew Fairfield, for and on behalf of EXIN, the Borrower; and Robert Matthew Fairfield, as Guarantor.

22. Following execution of the August 26, 2016 Amendment, Calamos performed his obligations under the contract and extended the maturity date of the February 26, 2016 Bridge Loan to October 31, 2016, as specified under the agreement.

23. EXIN again did not make any payments on the February 26, 2016 Bridge Loan, as amended.

**C. The Third Loan Agreement – November 30, 2016 Amended and Restated Bridge Loan**

24. On November 30, 2016 (one month after the maturity date of the February 26, 2016 Bridge Loan, as amended), Calamos and EXIN entered into an agreement titled “Amended and Restated Bridge Loan, Guaranty and Security Agreement,” which provided that “The Parties wish to amend and restate the Original Agreement so that the terms and conditions set out in this Agreement shall govern from the date hereof.” (Ex. 1, Nov. 30, 2016 Amended and Restated Bridge Loan, at 2 (emphasis added).)

25. The November 30, 2016 Amended and Restated Bridge Loan provided that Calamos would loan EXIN an additional \$15,000,000.00, bringing the total loan amount under the agreements to \$30,000,000.00. (*Id.*, §§ 2.1, 3.2, 3.3.)

26. The November 30, 2016 Amended and Restated Bridge Loan provided that EXIN was permitted to use the loan “for general corporate purposes and for the purchase of a 51% equity interest in [a separate entity (“Company Y”).]” (*Id.*, § 2.2.)



27. The November 30, 2016 Amended and Restated Bridge Loan extended the maturity date for EXIN's repayment of the total loan amount to 90 days from the date of execution, or February 28, 2017. (*Id.*, § 4.1.)

28. The November 30, 2016 Amended and Restated Bridge Loan, which superseded the February 26, 2016 Bridge Loan, also included the following relevant terms:

- a. "This Agreement secures the prompt payment and complete performance in full when due, whether at the stated maturity, by acceleration or otherwise, of all payment and other obligations of Borrower under or in connection with this Agreement or any other documents ancillary to this Agreement." (*Id.*, § 2.3 (emphasis added).)
- b. "Borrower agrees to furnish to Lender upon written request from Lender (a) certified financial statements setting forth the financial condition and results of operation of Borrower (financial statements shall include balance sheet, income statement and statement of cash flows and all notes thereto); and (b) such other financial information as Lender may from time to time reasonably request including, without limitation, financial reports filed by Borrower with regulatory agencies." (*Id.*, § 2.4 (emphasis added).)
- c. "Any Bank interest that may accrue on the balance of the Control Account shall be paid to the Lender less any applicable Bank charges and [that] any Dividends or Disbursements attributable to the 51% equity interest in [Company Y] shall be paid to the Lender." (*Id.*, § 3.4 (emphasis added).)
- d. "The Utilised Amounts will bear interest at the rate of eight percent (8%) per annum. Interest will accrue from day to day on the aggregate outstanding balance of the Utilised Amounts and shall be calculated on the basis of a year of 365 days and in each case shall be calculated on the basis of the actual number of days elapsed. Interest on the Utilised Amounts shall be calculated by reference to monthly interest periods and the Borrower shall either pay accrued interest on the last day of each month for such month or if accrued interest is not paid for any month, it will be compounded and added to the Utilised Amount." (*Id.*, §§ 6.1-6.3 (emphasis added).)
- e. "An event of default (each an 'Event of Default') will have occurred if: (a) subject to clause 6.3, Borrower fails to pay any amount due under this Agreement within (ten) 10 days of its due date; [or] (b) Borrower fails to perform or observe any of its obligations herein or Borrower fails to perform or observe any other term, covenant, agreement or condition contained in this Agreement or ancillary document within 30 days after Lender notifies Borrower of such failure . . . ." (*Id.*, § 7.1 (emphasis added).)

- f. "If an Event of Default has occurred and is continuing, the Lender may at any time, by giving notice to the Borrower: . . . (d) commence legal proceedings to enforce Borrower's performance of its obligations under this Agreement and/or exercise any other right or remedy then available to Lender at law or in equity." (*Id.*, § 7.2 (emphasis added).)
- g. "Without demanding payment pursuant to this Agreement, if an Event of Default has occurred and is continuing, the interest rate shall increase to the lesser of (i) twelve percent (12%) and (ii) the maximum amount allowed pursuant to applicable law. If an Event of Default has occurred, Borrower shall pay all costs, expenses and damages incurred by Lender because of the Event of Default or its actions under this clause, including, without limitation any collection agency and/or attorney fees and expenses, and any costs related to the enforcement of the guarantee set out in clause 8." (*Id.*, § 7.3 (emphasis added).)
- h. "BORROWER AND GUARANTOR WAIVE PRESENTMENT, DEMAND FOR PAYMENT, NOTICE OF DISHONOR, PROTEST, AND NOTICE OF PROTEST. . . . THE BORROWER AND GUARANTOR HEREBY WAIVE ANY DEFENSE, CAUSE OF ACTION, COUNTERCLAIM OR SETOFF, WHICH EXISTS AS OF THE DATE OF THIS AGREEMENT, TO ANY ACTION BY LENDER IN ENFORCING THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER GRANTING ANY FINANCIAL ACCOMMODATION TO THE BORROWER AND GUARANTOR." (*Id.*, § 12.3 (emphasis added).)

29. The November 30, 2016 Amended and Restated Bridge Loan was executed as of November 30, 2016, by John P. Calamos, Sr., as Lender; Robert Matthew Fairfield, for and on behalf of EXIN, the Borrower; and Robert Matthew Fairfield, as Guarantor. (*Id.* at 8.)

30. Following execution of the November 30, 2016 Amended and Restated Bridge Loan, Calamos performed his obligations under the contract, provided the additional \$15,000,000.00 loan amount, and extended the maturity date of the total loan amount to February 28, 2017, as specified under the agreement.

31. EXIN did not make any payments on the November 30, 2016 Amended and Restated Bridge Loan.

**D. The Fourth Loan Agreement – March 3, 2017 Amendment to November 30, 2016 Amended and Restated Bridge Loan**

32. On March 3, 2017 (three days after the maturity date of the November 30, 2016 Amended and Restated Bridge Loan), Calamos and EXIN entered into an agreement titled “First Amendment to Amended and Restated Bridge Loan, Guaranty and Security Agreement,” which ratified the terms of the November 30, 2016 Amended and Restated Bridge Loan; increased the loan amount by \$5,000,000.00 for a total loan amount of \$35,000,000.00; and extended the maturity date for EXIN’s repayment of the total loan amount to June 30, 2017.

33. The March 3, 2017 Amendment was executed as of March 3, 2017, by John P. Calamos, Sr., as Lender; Robert Matthew Fairfield, for and on behalf of EXIN, the Borrower; and Robert Matthew Fairfield, as Guarantor.

34. Following execution of the March 3, 2017 Amendment, Calamos performed his obligations under the contract, provided the additional \$5,000,000.00 loan amount, and extended the maturity date of the November 30, 2016 Amended and Restated Bridge Loan to June 30, 2017, as specified under the agreement.

35. EXIN again did not make any payments on the November 30, 2016 agreement, as amended.

**E. The Fifth Loan Agreement – June 14, 2017 Amendment to November 30, 2016 Amended and Restated Bridge Loan**

36. On June 14, 2017 (prior to the maturity date of the November 30, 2016 Amended and Restated Bridge Loan, as amended), Calamos and EXIN entered into an agreement titled “Second Amendment to Amended and Restated Bridge Loan, Guaranty and Security Agreement,” which ratified the terms of the November 30, 2016 Amended and Restated Bridge Loan; increased the loan amount by \$3,000,000.00 for a total loan amount of \$38,000,000.00; and extended the



maturity date for EXIN's repayment of the total loan amount to December 31, 2017. (Ex. 2, June 14, 2017 Amendment, at 1-2.)

37. The June 14, 2017 Amendment was executed as of June 14, 2017, by John P. Calamos, Sr., as Lender; Robert Matthew Fairfield, for and on behalf of EXIN, the Borrower; and Robert Matthew Fairfield, as Guarantor. (*Id.* at 2.)

38. Following execution of the June 14, 2017 Amendment, Calamos performed his obligations under the contract, provided the additional \$3,000,000.00 loan amount, and extended the maturity date of the November 30, 2016 Amended and Restated Bridge Loan to December 31, 2017, as specified under the agreement.

39. EXIN again did not make any payments on the November 30, 2016 Amended and Restated Bridge Loan, as amended.

**F. The Sixth Loan Agreement – July 24, 2017 Amendment to November 30, 2016 Amended and Restated Bridge Loan**

40. On July 24, 2017 (prior to the maturity date of the November 30, 2016 Amended and Restated Bridge Loan, as amended), Calamos and EXIN entered into an agreement titled "Third Amendment to Amended and Restated Bridge Loan, Guaranty and Security Agreement," which ratified the terms of the November 30, 2016 Amended and Restated Bridge Loan and increased the loan amount by \$2,000,000.00 for a total loan amount of \$40,000,000.00.

41. The July 24, 2017 Amendment was executed as of July 24, 2017, by John P. Calamos, Sr., as Lender; Robert Matthew Fairfield, for and on behalf of EXIN, the Borrower; and Robert Matthew Fairfield, as Guarantor.

42. Following execution of the July 24, 2017 Amendment, Calamos performed his obligations under the contract and provided the additional \$2,000,000.00 loan amount, as specified under the agreement.

43. EXIN again did not make any payments on the November 30, 2016 Amended and Restated Bridge Loan, as amended.

**G. The Seventh Loan Agreement – September 18, 2017 Amendment to November 30, 2016 Amended and Restated Bridge Loan**

44. On September 18, 2017 (prior to the maturity date of the November 30, 2016 Amended and Restated Bridge Loan, as amended), Calamos and EXIN entered into an agreement titled “Fourth Amendment to Amended and Restated Bridge Loan, Guaranty and Security Agreement,” which ratified the terms of the November 30, 2016 Amended and Restated Bridge Loan and increased the loan amount by \$300,000.00 for a total loan amount of \$40,300,000.00.

45. The September 18, 2017 Amendment was executed as of September 18, 2017, by John P. Calamos, Sr., as Lender; Robert Matthew Fairfield, for and on behalf of EXIN, the Borrower; and Robert Matthew Fairfield, as Guarantor.

46. Following execution of the September 18, 2017 Amendment, Calamos performed his obligations under the contract and provided the additional \$300,000.00 loan amount, as specified under the agreement.

47. EXIN again did not make any payments on the November 30, 2016 Amended and Restated Bridge Loan, as amended.

**H. The Eighth Loan Agreement – October 3, 2017 Amendment to November 30, 2016 Amended and Restated Bridge Loan**

48. On October 3, 2017 (prior to the maturity date of the November 30, 2016 Amended and Restated Bridge Loan, as amended), Calamos and EXIN entered into an agreement titled “Fifth Amendment to Amended and Restated Bridge Loan, Guaranty and Security Agreement.” (Ex. 3, Oct. 3, 2017 Amendment.)

49. The October 3, 2017 Amendment was joined by Company X, which had previously agreed to “guarant[ee] up to \$15,000,000.00 in principal payments owed by Borrower to a third party lender.” (*Id.* at 2.)

50. The October 3, 2017 Amendment provided Calamos and Company X a security interest in certain EXIN collateral, specifically: “an irrevocable, first priority security interest in all of Borrower’s right, title and interest in and to Borrower’s present and future equity interest in [Company Y], together with any and all proceeds, cash flows, profits and liquidity derived therefrom . . . .” (*Id.* at 3.)

51. The October 3, 2017 Amendment ratified the terms of the November 30, 2016 Amended and Restated Bridge Loan, as amended, and increased the loan amount by \$1,361,132.06 for a total loan amount of \$41,661,132.06. (*Id.* at 1-3.)

52. The October 3, 2017 Amendment was executed as of October 3, 2017, by John P. Calamos, Sr., as Lender; Robert Matthew Fairfield, for and on behalf of EXIN, the Borrower; Robert Matthew Fairfield, as Guarantor; and John S. Koudounis, for and on behalf of Company X. (*Id.* at 5.)

53. Calamos performed his obligations under the October 3, 2017 Amendment, including by advancing the additional loan amount of \$1,361,132.06 prior to October 3, 2017. (*Id.* at 2.)

54. EXIN was obligated to repay the total loan amount of \$41,661,132.06, within ten days of the Maturity Date of December 31, 2017, under the Operative Agreements. (*See* Ex. 1, Nov. 30, 2016 Amended and Restated Bridge Loan; Ex. 2, June 14, 2017 Amendment; Ex. 3, Oct. 3, 2017 Amendment.)

55. EXIN failed to make any payments on the loan amount by the December 31, 2017 Maturity Date and has made no payments as of the date of this filing.

56. As set forth above, EXIN was also obligated under the Operative Agreements generally, and the November 30, 2016 Amended and Restated Bridge Loan specifically, to “furnish to Lender upon written request from Lender (a) certified financial statements setting forth the financial condition and results of operation of Borrower (financial statements shall include balance sheet, income statement and statement of cash flows and all notes thereto); and (b) such other financial information as Lender may from time to time reasonably request including, without limitation, financial reports filed by Borrower with regulatory agencies.” (Ex. 1, § 2.4 (emphasis added).)

57. Throughout the period covered by the eight borrowing agreements, Calamos, through Koudounis and other representatives, frequently requested that EXIN provide certain financial, accounting, and regulatory records of EXIN and Company Y. These requests were made in writing, as well as in person and telephonically during frequent conference calls held between EXIN and representatives of Calamos, including Koudounis.

58. From October 16 through October 19, 2017, Calamos representatives met with EXIN representatives at EXIN’s offices in Barcelona, Spain, for the purpose of requesting access to and reviewing EXIN’s books and records. During that visit, EXIN provided only some of the requested records and refused to give Calamos’ representatives access to certain records to which Calamos was entitled under the Operative Agreements.

59. October 18, 2017, is the last date on which EXIN provided any financial records requested by Calamos, and even then, only limited information was provided.

60. On October 23, 2017, EXIN wrote via email to a Calamos representative that financial records requested by Calamos, including a cash flow forecast and an analysis of \$15,000,000 in funds received by EXIN, could not be shared until they were approved by Robert Matthew Fairfield.

61. On October 30, 2017, a Calamos representative wrote EXIN via email to again request the cash flow forecast and the analysis of \$15,000,000 in funds received by EXIN, along with certain financial statements for EXIN and Company Y. In response, EXIN stated that the cash flow forecast and analysis of funds were still awaiting Fairfield's approval and that the financial statements for EXIN and Company Y were in progress but not yet available.

62. On November 5, 2017, EXIN wrote via email to a Calamos representative, in response to additional requests, that the cash flow forecast and analysis of funds were still awaiting Fairfield's approval and that more time was needed to finalize the requested EXIN financial statements.

63. In conference calls held on November 15, 2017, and November 27, 2017, among other dates, Calamos representatives, including Koudounis, continued to request that EXIN provide the outstanding financial records of EXIN and Company Y, along with additional information to which Calamos was entitled under the Operative Agreements.

64. To date, EXIN has failed to provide numerous financial, accounting, and regulatory records and filings of EXIN and Company Y requested by Calamos and Koudounis, including but not limited to those cited above.

65. On February 5, 2018, Calamos and Koudounis executed an agreement titled "Assignment and Assumption of Loan," for which good and valuable consideration was exchanged and acknowledged by both parties. Under that agreement, Calamos assigned to Koudounis \$100,000.00 of the outstanding principal owed by EXIN under the November 30, 2016 Amended and Restated Bridge Loan, as amended, plus any and all accrued interest thereon, together with a proportionate interest and rights under the November 30, 2016 Amended and Restated Bridge Loan, as amended; and any proportionate right, title, and interest of Calamos in and to any receivables, payments, or claims thereunder; any dividends and distributions due to Calamos



thereunder; and any proportionate claims, rights of recovery, and any other claims against Borrower or Borrower's guarantor that Lender has or could have in connection therewith.

66. On February 6, 2018, prior to the filing of the instant Complaint, Calamos and Koudounis provided written notice to EXIN and Guarantor Robert Matthew Fairfield that EXIN had triggered at least two "Events of Default" pursuant to Section 7.1 of the November 30, 2016 Amended and Restated Bridge Loan, as amended. Specifically, Calamos and Koudounis notified EXIN that those defaults were triggered by EXIN's failure to make the required payment under Section 4.1 of the November 30, 2016 Amended and Restated Bridge Loan, as amended, within ten days of the December 31, 2017 Maturity Date, and by EXIN's failure to provide requested financial, accounting, and regulatory records as required under Section 2.4 of the November 30, 2016 Amended and Restated Bridge Loan, as amended. Calamos and Koudounis gave notice of EXIN's obligation to make immediate payment of all principal, interest, and other obligations or amounts currently owing under the agreement and to furnish all financial, accounting, and regulatory records previously requested, and expressly reserved their right to pursue all rights and remedies provided under the November 30, 2016 Amended and Restated Bridge Loan, as amended, at law, in equity or otherwise.

### **COUNT I**

#### **Breach of Contract for Failure to Repay Loan Amount (Asserted by Plaintiff Calamos)**

67. The allegations set forth in the preceding paragraphs are incorporated herein by reference.

68. The November 30, 2016 Amended and Restated Bridge Loan, as amended from time to time, including on June 14, 2017, and October 3, 2017, is a valid and enforceable contract.

69. There was good and valuable consideration in exchange for the November 30, 2016 Amended and Restated Bridge Loan and for each amendment thereto, which Calamos and EXIN acknowledged and agreed was sufficient. (Ex. 1; Ex. 2; Ex. 3.)

70. Calamos fully complied with the November 30, 2016 Amended and Restated Bridge Loan, as amended, and continues to fully comply.

71. EXIN materially breached the November 30, 2016 Amended and Restated Bridge Loan, as amended, when it failed to repay the funds loaned pursuant to the Agreement within ten days of the December 31, 2017 Maturity Date, as required by the Operative Agreements. (Ex. 1, §§ 2.3, 7.1(a); Ex. 2; Ex. 3.)

72. EXIN continues to be in breach of the November 30, 2016 Amended and Restated Bridge Loan, as amended.

73. EXIN's breach was willful and intentional, and has caused Plaintiff Calamos significant damages as noted below.

74. As a result of EXIN's breach, Plaintiff Calamos has sustained significant damages of not less than \$41,661,132.06, the total loan amount owed by EXIN, plus interest and certain dividends and disbursements; has had to incur and continues to incur significant costs and expenses; and will in the immediate future incur additional significant costs and expenses to enforce the terms of the November 30, 2016 Amended and Restated Bridge Loan, as amended, including by way of the instant litigation.

**WHEREFORE**, Plaintiff John P. Calamos, Sr. prays the Court to enter an order providing for the following relief:

A. Judgment in Calamos' favor for \$41,661,132.06, the total loan amount owed by EXIN, plus interest and certain dividends and disbursements, as provided under the November 30, 2016 Amended and Restated Bridge Loan, as amended;

- B. Pre-judgment and post-judgment interest at the highest rate allowable under the law;
- C. Additional compensatory damages caused by EXIN, in an amount to be determined at trial;
- D. Costs, expenses, and damages incurred by Calamos because of EXIN's default, including without limitation any collection agency and/or attorney fees and expenses, as provided under the November 30, 2016 Amended and Restated Bridge Loan, as amended; and
- E. Such other and further relief as the Court may deem just and proper.

**COUNT II**  
**Breach of Contract for Failure to Repay Loan Amount**  
**(Asserted by Plaintiff Koudounis)**

75. The allegations set forth in the preceding paragraphs are incorporated herein by reference.

76. The November 30, 2016 Amended and Restated Bridge Loan, as amended from time to time, including on June 14, 2017, and October 3, 2017, is a valid and enforceable contract.

77. There was good and valuable consideration in exchange for the November 30, 2016 Amended and Restated Bridge Loan and for each amendment thereto, which Calamos and EXIN acknowledged and agreed was sufficient. (Ex. 1; Ex. 2; Ex. 3.)

78. Calamos, and Koudounis as assignee, fully complied with the November 30, 2016 Amended and Restated Bridge Loan, as amended, and continue to fully comply.

79. EXIN materially breached the November 30, 2016 Amended and Restated Bridge Loan, as amended, when it failed to repay the funds loaned pursuant to the Agreement within ten days of the December 31, 2017 Maturity Date, as required by the Operative Agreements. (Ex. 1, §§ 2.3, 7.1(a); Ex. 2; Ex. 3.)

80. EXIN continues to be in breach of the November 30, 2016 Amended and Restated Bridge Loan, as amended.

81. EXIN's breach was willful and intentional, and has caused Plaintiff Koudounis significant damages as noted below.

82. As a result of EXIN's breach, Plaintiff Koudounis has sustained significant damages of not less than \$100,000, the portion of the total loan amount owed by EXIN and assigned to Koudounis, plus proportionate interest and certain dividends and disbursements; has had to incur and continues to incur significant costs and expenses; and will in the immediate future incur additional significant costs and expenses to enforce the terms of the November 30, 2016 Amended and Restated Bridge Loan, as amended, including by way of the instant litigation.

**WHEREFORE**, Plaintiff John S. Koudounis prays the Court to enter an order providing for the following relief:

A. Judgment in Koudounis' favor for \$100,000, the portion of the total loan amount owed by EXIN and assigned to Koudounis, plus proportionate interest and certain dividends and disbursements, as provided under the November 30, 2016 Amended and Restated Bridge Loan, as amended;

B. Pre-judgment and post-judgment interest at the highest rate allowable under the law;

C. Additional compensatory damages caused by EXIN, in an amount to be determined at trial;

D. Costs, expenses, and damages incurred by Koudounis because of EXIN's default, including without limitation any collection agency and/or attorney fees and expenses, as provided under the November 30, 2016 Amended and Restated Bridge Loan, as amended; and

E. Such other and further relief as the Court may deem just and proper.

**COUNT III**  
**Breach of Contract for Failure to Provide Requested Financial, Accounting, and  
Regulatory Records**  
**(Asserted by Plaintiff Calamos)**

83. The allegations set forth in the preceding paragraphs are incorporated herein by reference.

84. The November 30, 2016 Amended and Restated Bridge Loan, as amended from time to time, including on June 14, 2017, and October 3, 2017, is a valid and enforceable contract.

85. There was good and valuable consideration in exchange for the November 30, 2016 Amended and Restated Bridge Loan, and for each amendment thereto, which Calamos and EXIN acknowledged and agreed was sufficient. (Ex. 1; Ex. 2; Ex. 3.)

86. Calamos fully complied with the November 30, 2016 Amended and Restated Bridge Loan, as amended, and continues to fully comply.

87. As set forth above, on numerous occasions over the course of the contractual relationship, including but not limited to on or about October 16-19, 2017; October 23, 2017; October 30, 2017; November 5, 2017; November 15, 2017; and November 27, 2017, Calamos, through Koudounis and other representatives, requested certain financial, accounting, and regulatory records of EXIN and Company Y to which they were entitled under Section 2.4 of the November 30, 2016 Amended and Restated Bridge Loan, as amended. (Ex. 1, § 2.4.)

88. EXIN materially breached the November 30, 2016 Amended and Restated Bridge Loan, as amended, when it failed to provide the requested financial, accounting, and regulatory records of EXIN and Company Y, in whole or in part, as required by the agreement. (Ex. 1, §§ 2.4, 7.1(b).)



89. EXIN continues to be in breach of the November 30, 2016 Amended and Restated Bridge Loan, as amended, as EXIN has yet to provide the requested financial, accounting, and regulatory records of EXIN and Company Y.

90. EXIN's breach was willful and intentional, and has caused Plaintiff Calamos significant damages as noted below.

91. As a result of EXIN's breach, Plaintiff Calamos has sustained significant damages, has had to incur and continues to incur significant costs and expenses, and will in the immediate future incur additional significant costs and expenses to enforce the terms of the November 30, 2016 Amended and Restated Bridge Loan, as amended, including by way of the instant litigation.

**WHEREFORE**, Plaintiff John P. Calamos, Sr. prays the Court to enter an order providing for the following relief:

A. Compensatory damages resulting from EXIN's breach, in an amount to be determined at trial;

B. Pre-judgment and post-judgment interest at the highest rate allowable under the law;

C. Costs, expenses, and damages incurred by Calamos because of EXIN's default, including without limitation any collection agency and/or attorney fees and expenses, as provided under the November 30, 2016 Amended and Restated Bridge Loan, as amended; and

D. Such other and further relief as the Court may deem just and proper.

**COUNT IV**  
**Breach of Contract for Failure to Provide Requested Financial, Accounting, and**  
**Regulatory Records**  
**(Asserted by Plaintiff Koudounis)**

92. The allegations set forth in the preceding paragraphs are incorporated herein by reference.

93. The November 30, 2016 Amended and Restated Bridge Loan, as amended from time to time, including on June 14, 2017, and October 3, 2017, is a valid and enforceable contract.

94. There was good and valuable consideration in exchange for the November 30, 2016 Amended and Restated Bridge Loan, and for each amendment thereto, which Calamos and EXIN acknowledged and agreed was sufficient. (Ex. 1; Ex. 2; Ex. 3.)

95. Calamos, and Koudounis as assignee, fully complied with the November 30, 2016 Amended and Restated Bridge Loan, as amended, and continue to fully comply.

96. As set forth above, on numerous occasions over the course of the contractual relationship, including but not limited to on or about October 16-19, 2017; October 23, 2017; October 30, 2017; November 5, 2017; November 15, 2017; and November 27, 2017, Calamos, through Koudounis and other representatives, requested certain financial, accounting, and regulatory records of EXIN and Company Y to which they were entitled under Section 2.4 of the November 30, 2016 Amended and Restated Bridge Loan, as amended. (Ex. 1, § 2.4.)

97. EXIN materially breached the November 30, 2016 Amended and Restated Bridge Loan, as amended, when it failed to provide the requested financial, accounting, and regulatory records of EXIN and Company Y, in whole or in part, as required by the agreement. (Ex. 1, §§ 2.4, 7.1(b).)

98. EXIN continues to be in breach of the November 30, 2016 Amended and Restated Bridge Loan, as amended, as EXIN has yet to provide the requested financial, accounting, and regulatory records of EXIN and Company Y.

99. EXIN's breach was willful and intentional, and has caused Plaintiff Koudounis significant damages as noted below.

100. As a result of EXIN's breach, Plaintiff Koudounis has sustained significant damages, has had to incur and continues to incur significant costs and expenses, and will in the

immediate future incur additional significant costs and expenses to enforce the terms of the November 30, 2016 Amended and Restated Bridge Loan, as amended, including by way of the instant litigation.

**WHEREFORE**, Plaintiff John S. Koudounis prays the Court to enter an order providing for the following relief:

- A. Compensatory damages resulting from EXIN's breach, in an amount to be determined at trial;
- B. Pre-judgment and post-judgment interest at the highest rate allowable under the law;
- C. Costs, expenses, and damages incurred by Koudounis because of EXIN's default, including without limitation any collection agency and/or attorney fees and expenses, as provided under the November 30, 2016 Amended and Restated Bridge Loan, as amended; and
- D. Such other and further relief as the Court may deem just and proper.

**COUNT V**  
**Accounting**  
**(Asserted by Plaintiff Calamos)**

101. The allegations set forth in the preceding paragraphs are incorporated herein by reference.

102. As set forth above, on numerous occasions over the course of the contractual relationship, including but not limited to on or about October 16-19, 2017; October 23, 2017; October 30, 2017; November 5, 2017; November 15, 2017; and November 27, 2017, Calamos, through Koudounis and other representatives, requested certain financial, accounting, and regulatory records of EXIN and Company Y to which they were entitled under Section 2.4 of the November 30, 2016 Amended and Restated Bridge Loan, as amended. (Ex. 1, § 2.4.)

103. EXIN was required to provide the requested financial, accounting, and regulatory records of EXIN and Company Y under the November 30, 2016 Amended and Restated Bridge Loan, as amended. (*Id.*)

104. Calamos and Koudounis' requests for EXIN's financial, accounting, and regulatory records of EXIN and Company Y have gone unanswered by EXIN.

105. There is no remedy at law available to Calamos by which he can gain access to the necessary and requested financial, accounting, and regulatory records of EXIN and Company Y that are in the possession, custody, or control of EXIN. Furthermore, without such records, it is impossible for Calamos to accurately determine the value, and location of, the funds and collateral owed by EXIN, together with all applicable interest and certain dividends and disbursements, that he is entitled to under the November 30, 2016 Amended and Restated Bridge Loan, as amended.

106. Additionally, it is absolutely certain that without access to the requested financial, accounting, and regulatory records of EXIN and Company Y, Calamos will not be able to determine if or when EXIN has further breached its obligations under the November 30, 2016 Amended and Restated Bridge Loan, as amended; for instance, to determine when and how the funds advanced by Calamos to EXIN were used, and whether such funds were in fact used for the purposes set forth in the borrowing agreements.

107. Therefore, this Court's equitable power is required for Calamos to obtain the accounting to which he is entitled and to prevent further injury to Calamos as a result of EXIN's ongoing failure to provide accurate and complete financial, accounting, and regulatory records.

**WHEREFORE**, Plaintiff John P. Calamos, Sr. prays the Court to enter an order providing for the following relief:

A. Order that EXIN immediately provide Calamos: (i) a copy of the most recent audit reports prepared by an independent public accountant, reflecting in reasonable detail EXIN's

financial condition (or, in the event such audited reports are not available, certified financial reports reflecting in reasonable detail EXIN's financial condition); (ii) immediate access to all records, accounts, and data of EXIN or its officers related to the November 30, 2016 Amended and Restated Bridge Loan, as amended; and (iii) immediate access to the audited and/or certified financial statements of Company Y, along with any and all records related to the proceeds, cash flows, profits, and liquidity derived from EXIN's 51% equity interest in Company Y, as required by the November 30, 2016 Amended and Restated Bridge Loan, as amended, and the October 3, 2017 Amendment in particular; and

B. Such other and further relief as the Court may deem just and proper.

**COUNT VI**  
**Accounting**  
**(Asserted by Plaintiff Koudounis)**

108. The allegations set forth in the preceding paragraphs are incorporated herein by reference.

109. As set forth above, on numerous occasions over the course of the contractual relationship, including but not limited to on or about October 16-19, 2017; October 23, 2017; October 30, 2017; November 5, 2017; November 15, 2017; and November 27, 2017, Calamos, through Koudounis and other representatives, requested certain financial, accounting, and regulatory records of EXIN and Company Y to which they were entitled under Section 2.4 of the November 30, 2016 Amended and Restated Bridge Loan, as amended. (Ex. 1, § 2.4.)

110. EXIN was required to provide the requested financial, accounting, and regulatory records of EXIN and Company Y under the November 30, 2016 Amended and Restated Bridge Loan, as amended. (*Id.*)

111. Calamos and Koudounis' requests for EXIN's financial, accounting, and regulatory records of EXIN and Company Y have gone unanswered by EXIN.



112. There is no remedy at law available to Koudounis by which he can gain access to the necessary and requested financial, accounting, and regulatory records of EXIN and Company Y that are in the possession, custody, or control of EXIN. Furthermore, without such records, it is impossible for Koudounis to accurately determine the value, and location of, the proportion of the funds and collateral owed by EXIN, together with all applicable interest and certain dividends and disbursements, that he is entitled to as assignee under the November 30, 2016 Amended and Restated Bridge Loan, as amended.

113. Additionally, it is absolutely certain that without access to the requested financial, accounting, and regulatory records of EXIN and Company Y, Koudounis will not be able to determine if or when EXIN has further breached its obligations under the November 30, 2016 Amended and Restated Bridge Loan, as amended; for instance, to determine when and how the funds advanced by Calamos to EXIN were used, and whether such funds were in fact used for the purposes set forth in the borrowing agreements.

114. Therefore, this Court's equitable power is required for Koudounis to obtain the accounting to which he is entitled and to prevent further injury to Koudounis as a result of EXIN's ongoing failure to provide accurate and complete financial, accounting, and regulatory records.

**WHEREFORE**, Plaintiff John S. Koudounis prays the Court to enter an order providing for the following relief:

A. Order that EXIN immediately provide Koudounis: (i) a copy of the most recent audit reports prepared by an independent public accountant, reflecting in reasonable detail EXIN's financial condition (or, in the event such audited reports are not available, certified financial reports reflecting in reasonable detail EXIN's financial condition); (ii) immediate access to all records, accounts, and data of EXIN or its officers related to the November 30, 2016 Amended and Restated Bridge Loan, as amended; and (iii) immediate access to the audited and/or certified financial

statements of Company Y, along with any and all records related to the proceeds, cash flows, profits, and liquidity derived from EXIN's 51% equity interest in Company Y, as required by the November 30, 2016 Amended and Restated Bridge Loan, as amended, and the October 3, 2017 Amendment in particular; and

B. Such other and further relief as the Court may deem just and proper.

**PRAYER FOR RELIEF**  
**(All Counts)**

**WHEREFORE**, Plaintiffs John P. Calamos, Sr. and John S. Koudounis pray the Court to enter an order providing for the following relief under all Counts stated above:

A. Order that EXIN immediately provide Calamos and Koudounis: (i) a copy of the most recent audit reports prepared by an independent public accountant, reflecting in reasonable detail EXIN's financial condition (or, in the event such audited reports are not available, certified financial reports reflecting in reasonable detail EXIN's financial condition); (ii) immediate access to all records, accounts, and data of EXIN or its officers related to the November 30, 2016 Amended and Restated Bridge Loan, as amended; and (iii) immediate access to the audited and/or certified financial statements of Company Y, along with any and all records related to the proceeds, cash flows, profits, and liquidity derived from EXIN's 51% equity interest in Company Y, as required by the November 30, 2016 Amended and Restated Bridge Loan, as amended, and the October 3, 2017 Amendment in particular;

B. Judgment in Calamos' and Koudounis' favor for \$41,661,132.06, the total loan amount owed by EXIN, plus interest and certain dividends and disbursements, as provided under the November 30, 2016 Amended and Restated Bridge Loan, as amended;

C. Pre-judgment and post-judgment interest at the highest rate allowable under the law;

D. Additional compensatory damages caused by EXIN, in an amount to be determined at trial;

E. Costs, expenses, and damages incurred by Calamos and Koudounis because of EXIN's defaults, including without limitation any collection agency and/or attorney fees and expenses, as provided under the November 30, 2016 Amended and Restated Bridge Loan, as amended; and

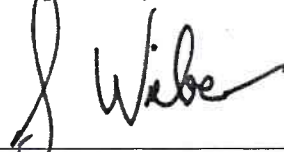
F. Such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Calamos and Koudounis request a trial by jury on all contested issues of fact.

Dated: February 6, 2018

Respectfully submitted,



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*Attorneys for Plaintiffs John P. Calamos, Sr.  
and John S. Koudounis*

## **EXHIBIT 1**

[To be filed under seal]

Amended and Restated Bridge Loan, Guaranty, and Security Agreement  
Dated November 30, 2016

## **EXHIBIT 2**

[To be filed under seal]

Second Amendment to Amended and Restated Bridge Loan, Guaranty and Security Agreement  
Dated June 14, 2017



### **EXHIBIT 3**

[To be filed under seal]

Fifth Amendment to Amended and Restated Bridge Loan, Guaranty and Security Agreement  
Dated October 3, 2017