

8-K 1 form8k.htm CURRENT REPORT

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

COMMISSION FILE NO.: 0-51688

Date of Report: January 29, 2014

BITZIO, INC.

(Exact name of registrant as specified in its charter)

Nevada

(State of other jurisdiction of
incorporation or organization)

16-1734022

(IRS Employer
Identification No.)

20151 S. Gilmore Street, Winnetka, CA

(Address of principal executive offices)

91306

(Zip Code)

(866) 824-7881

(Registrant's telephone number including area code)

548 Market Street, San Francisco, CA 94104

(Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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ITEM 2.03 CREATION OF A DIRECT FINANCIAL OBLIGATION**ITEM 3.02 UNREGISTERED SALE OF EQUITY SECURITIES**

On January 29, 2014 the Registrant sold a Promissory Note to The Victor Vinco Family Trust dated September 6, 2002 (the "Trust"). The purchase price was \$70,000. The principal amount of the Note is \$94,500, which is payable in instalments of \$18,900 on the 15th day of each month during the term of the Note. If the Registrant prepays at least \$90,000 by April 15, 2014, the remainder of the principal amount will be waived. The Note does not bear interest, except in the event of a default, at which time interest shall accrue at 18% per annum.

At the same time, the Registrant sold 2,500,000 common shares to the Trust for \$2,500.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITSExhibits

10-a Promissory Note dated January 29, 2014 issued to The Victor Vinco Family Trust dated September 6, 2002

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: February 18, 2014

BITZIO, INC.

By: */s/ Gordon McDougall*

Gordon McDougall
Chief Executive Officer

EX-10.A 2 ex10-a.htm EXHIBIT 10.A

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS, AND NEITHER THIS NOTE NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED, OR OTHERWISE TRANSFERRED UNLESS (1) A REGISTRATION STATEMENT WITH RESPECT THERETO IS EFFECTIVE UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR (2) THE COMPANY RECEIVES AN OPINION OF COUNSEL TO THE HOLDER OF THIS NOTE, WHICH COUNSEL AND OPINION ARE REASONABLY SATISFACTORY TO THE COMPANY, THAT THIS NOTE MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED, OR TRANSFERRED IN THE MANNER CONTEMPLATED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR APPLICABLE STATE SECURITIES LAWS.

**BITZIO INC.
Promissory Note**

\$94,500.00

**January 29, 2014
Los Angeles, California**

BITZIO, INC., a Nevada corporation (the “*Company*”), for value received, hereby promises to pay to The Victor Vinco Family Trust dated September 6, 2002, Troy Capell, Trustee, a trust with an address at 501 IS Reino Road, Apt. 115, Newbury Park, CA 91320 or registered assigns (the “*Holder*”), the principal amount of NINETY FOUR THOUSAND FIVE HUNDRED United States Dollars (US\$94,500) on the Maturity Date (as defined below), and to pay interest on the unpaid principal balance hereof at the rate (calculated on the basis of a 360-day year consisting of twelve 30-day months) of 0.0% per annum from the date hereof until the Maturity Date or the earlier repayment of this Note. Upon the execution hereof, the Holder shall fund \$70,000 to the Company. The difference between \$70,000 and the principal amount of shall be reported by the Company as original issue discount.

Accrued interest on the unpaid principal balance hereof shall be payable on the Maturity Date or upon the earlier repayment of this Note. In no event shall any interest to be paid hereunder exceed the maximum rate permitted by law. In any such event, this Note shall automatically be deemed amended to permit interest charges at an amount equal to, but no greater than, the maximum rate permitted by law.

1. Payments.

(a) Upon the execution hereof (such date, the “*Issue Date*”), the Holder shall fund \$70,000 which shall be used for production financing of E-Motion Apparel, and corporate expenses of the Company. The entire unpaid principal amount of this Note shall be paid in U.S. Dollars on the Maturity Date. Upon the payment in full of this Note, including, without limitation, the principal amount hereof, and all accrued and unpaid interest hereon, and any other amounts owing hereunder, the Holder shall surrender this Note to the Company for cancellation. The “*Maturity Date*” shall be June 15, 2014.

(b) Subject to Section 1(d) hereof, interest on this Note, during the period from the Issue Date through the Maturity Date, shall accrue on the principal amount of this Note, at a rate equal to 0.0% per annum (“*Initial Interest Rate*”) and, subject to Section 1(d) hereof, shall be payable in arrears on the Maturity Date. Interest shall be computed on the basis of a 360-day year applied to actual days elapsed. Notwithstanding the foregoing any anything in this Note to the contrary, upon the occurrence, and during the continuation, of an Event of Default, the Initial Interest Rate shall be increased by 18% per annum to 18% per annum and shall be payable to the Holder on demand.

(c) If the Maturity Date falls on a day that is not a Business Day (as defined below), the payment due on the Maturity Date will be made on the next succeeding Business Day with the same force and effect as if made on the Maturity Date. “*Business Day*” means any day which is not a Saturday or Sunday and is not a day on which banking institutions are generally authorized or obligated to close in the City of Los Angeles, California.

(d) (i) The Company may, at its option, prepay all or any part of the principal of this Note, without payment of any premium or penalty.

(ii) Notwithstanding anything herein to the contrary, the Company shall be required to pay to the Holder by the 15th Calendar Day following the end of each calendar month beginning on February 15, 2014 an amount equal to \$18,900 by check to be applied to the balance due under this Note.

(iii) Notwithstanding anything herein to the contrary, the Company shall repay this Note in its entirety upon the receipt a minimum of three hundred thousand dollars (\$300,000) from any equity or equity derivative securities, exclusive of any existing committed fundings.

(iv) Notwithstanding anything herein to the contrary, in the event payments under this Section 1(d) in the aggregate total no less than \$90,000 on or prior to April 15, 2014, the remaining principal balance shall be forgiven and this Note shall be considered paid in full.

(v) All payments on this Note shall be applied first to accrued interest hereon and the balance to the payment of principal hereof.

(e) Payments of principal of, and interest on, this Note shall be made by check sent to the Holder’s address set forth above or to such other address as the Holder may designate for such purpose from time to time by written notice to the Company, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Alternatively, payment of principal of, and interest on, this Note may be made by electronic wire transfer in accordance with instructions provided by the Holder to the Company with at least ten Business Days’ prior notice.

(f) The obligations to make the payments provided for in this Note are absolute and unconditional and not subject to any defense, set-off, counterclaim, rescission, recoupment, or adjustment whatsoever. The Company hereby expressly waives demand and presentment for payment, notice of non-payment, notice of dishonor, protest, notice of protest, bringing of suit, and diligence in taking any action to collect any amount called for hereunder, and shall be directly and primarily liable for the payment of all sums owing and to be owing hereon, regardless of and without any notice, diligence, act, or omission with respect to the collection of any amount called for hereunder.

2. Ranking of Note.

This Note constitutes unsecured indebtedness of the Company. Holder acknowledges the senior lien position from 112359 Factor Fund LLC as reported in the Company's filings.

3. Covenants.

The Company covenants and agrees with the Holder that, so long as any amount remains unpaid on the Note, unless the consent of the Holder is obtained or except as otherwise provided herein, the Company:

(a) Shall not pay any dividend or make any distribution on, or purchase, redeem, or retire, any shares of its capital stock or any warrants, options, or other rights to reacquire any such shares, except that the Company may pay dividends payable solely in shares of its capital stock.

(b) Shall deliver to the Holder:

(i) as soon as available, and in any event within 45 days after the end of each quarter of each fiscal year of the Company, consolidated statements of income and cash flow of the Company, for such period and for the period from the beginning of the respective fiscal year to the end of such period, the related consolidated balance sheet of the Company and its subsidiaries as at the end of such period, and an inventory listing as of the end of such period;

(ii) as soon as available and in any event within 90 days after the end of each fiscal year of the Company, consolidated statements of income and cash flow of the Company for such fiscal year, and the related consolidated balance sheet of the Company and its subsidiaries as at the end of such fiscal year;

(iii) promptly after the Company shall obtain knowledge of such, written notice of all legal or arbitral proceedings, and of all proceedings by or before any governmental or regulatory authority or agency, and each material development in respect of such legal or other proceedings, affecting the Company and its subsidiaries, except proceedings which, if adversely determined, would not have a material adverse effect on the Company and its subsidiaries taken as a whole; and

(iv) promptly after the Company shall obtain knowledge of the occurrence of any Event of Default (as hereinafter defined) or any event which with notice or lapse of time or both would become an Event of Default (an Event of Default or such other event being a "*Default*"), a notice specifying that such notice is a "*Notice of Default*" and describing such Default in reasonable detail, and, in such Notice of Default or as soon thereafter as practicable, a description of the action the Company has taken or proposes to take with respect thereto.

(c) The Company shall utilize the proceeds of the loan evidenced by this Note for production financing and for working capital purposes related to corporate activities.

4. Events of Default.

The occurrence of any of the following events shall constitute an event of default (each, an “*Event of Default*”):

(a) A default in the payment of the principal amount of the Note, when and as the same shall become due and payable.

(b) A default in the payment of any accrued and unpaid interest on the Note, when and as the same shall become due and payable, which default shall continue for two business days after the date fixed for the making of such interest payment.

(c) A default in the performance, or a breach, of any of the covenants of the Company contained in Sections 1 or 3 of this Note.

(d) A default in the performance, or a breach, of any other covenant or agreement of the Company in this Note and continuance of such default or breach for a period of 30 days after receipt of notice from the Holder as to such default or breach or after the Company had or should have had knowledge of such default or breach.

(e) Any representation, warranty, or certification made by the Company in or pursuant to this Note shall prove to have been false or misleading as of the date made in any material respect.

(f) A final judgment or judgments for the payment of money in excess of \$100,000 in the aggregate shall be rendered by one or more courts, administrative or arbitral tribunals or other bodies having jurisdiction against the Company and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within 60 days from the date of entry thereof, and the Company shall not, within such 60-day period, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal.

(g) The entry of a decree or order by a court having jurisdiction adjudging the Company bankrupt or insolvent, or approving a petition seeking reorganization, arrangement, adjustment, or composition of or in respect of the Company, under federal bankruptcy law, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, and the continuance of any such decree or order unstayed and in effect for a period of 60 days; or the commencement by the Company of a voluntary case under federal bankruptcy law, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under federal bankruptcy law or any other applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, or similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action.

5. Remedies Upon Default.

(a) Upon the occurrence of an Event of Default referred to in Section 4(a), (b), (c), (d), (e) or (f), the Holder, by notice in writing given to the Company, may declare the entire principal amount then outstanding of, and the accrued interest on, this Note to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately, without presentation, demand, protest, or other formalities of any kind, all of which are expressly waived by the Company.

Upon the occurrence of an Event of Default referred to in Section 4(g), the principal amount then outstanding of, and the accrued interest on, this Note shall automatically become immediately due and payable without presentment, demand, protest, or other formalities of any kind, all of which are hereby expressly waived by the Company.

(b) The Holder may institute such actions or proceedings in law or equity as it shall deem expedient for the protection of its rights and may prosecute and enforce its claims against all assets of the Company, and in connection with any such action or proceeding shall be entitled to receive from the Company payment of the principal amount of this Note plus accrued interest to the date of payment plus reasonable expenses of collection, including, without limitation, attorneys' fees and expenses.

6. Transfer.

(a) Any Notes issued upon the transfer of this Note shall be numbered and shall be registered in a note register as they are issued. The Company shall be entitled to treat the registered holder of the Note on the note register as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in such Note on the part of any other person, and shall not be liable for any registration or transfer of Notes which are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with the actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration or transfer, or with the knowledge of such facts that its participation therein amounts to bad faith. This Note shall be transferable only on the books of the Company upon delivery thereof duly endorsed by the Holder or by his duly authorized attorney or representative, or accompanied by proper evidence of succession, assignment, or authority to transfer. In all cases of transfer by an attorney, executor, administrator, guardian, or other legal representative, duly authenticated evidence of his or its authority shall be produced. Upon any registration of transfer, the Company shall deliver a new Note or Notes to the person entitled thereto. This Note may be exchanged, at the option of the Holder thereof, for another Note, or other Notes of different denominations, of like tenor and representing in the aggregate a like principal amount, upon surrender to the Company or its duly authorized agent. Notwithstanding the foregoing, the Company shall have no obligation to cause Notes to be transferred on its books to any person if, in the opinion of counsel to the Company, such transfer does not comply with the provisions of the Securities Act and the rules and regulations thereunder.

(b) The Holder acknowledges that he has been advised by the Company that this Note has not been registered under the Securities Act, that this Note is being issued on the basis of the statutory exemption provided by Section 4(2) of the Securities Act or Regulation D promulgated thereunder, or both, relating to transactions by an issuer not involving any public offering. The Holder acknowledges that it has been informed by the Company of, or is otherwise familiar with, the nature of the limitations imposed by the Securities Act and the rules and regulations thereunder on the transfer of securities. In particular, the Holder agrees that no sale, assignment or transfer of this Note shall be valid or effective, and the Company shall not be required to give any effect to any such sale, assignment or transfer, unless (i) the sale, assignment, or transfer of this Note is registered under the Securities Act, it being understood that this Note is not currently registered for sale and that the Company has no obligation or intention to so register the Note, or (ii) this Note is sold, assigned, or transferred in accordance with all the requirements and limitations of Rule 144 under the Securities Act, it being understood that Rule 144 is not available at the time of the original issuance of this Note for the sale of this Note and that there can be no assurance that Rule 144 sales will be available at any subsequent time, or (iii) such sale, assignment, or transfer is otherwise exempt from registration under the Securities Act.

7. Miscellaneous.

(a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be mailed by certified mail, return receipt requested, or by FedEx, Express Mail or similar overnight delivery or courier service or delivered (in person or by telecopy or similar telecommunications equipment) against receipt to the party to whom it is to be given, (i) if to the Company, at its address, BITZIO, INC., 20152 S. Gilmore Street, Winnetka, CA, 91306 Attention: Gordon McDougall, (ii) if to the Holder, at its address set forth on the first page hereof, or (iii) in either case, to such other address as the party shall have furnished in writing in accordance with the provisions of this Section 7(a). Notice to the estate of any party shall be sufficient if addressed to the party as provided in this Section 7(a). Any notice or other communication given by certified mail shall be deemed given at the time of certification thereof, except for a notice changing a party's address, which shall be deemed given at the time of receipt thereof. Any notice given by other means permitted by this Section 7(a) shall be deemed given at the time of receipt thereof.

(b) Upon receipt of evidence satisfactory to the Company of the loss, theft, destruction, or mutilation of this Note (and upon surrender of this Note if mutilated), the Company shall execute and deliver to the Holder a new Note of like date, tenor, and denomination.

(c) No course of dealing and no delay or omission on the part of the Holder in exercising any right or remedy shall operate as a waiver thereof or otherwise prejudice the Holder's rights, powers or remedies. No right, power, or remedy conferred by this Note upon the Holder shall be exclusive of any other right, power, or remedy referred to herein or now or hereafter available at law, in equity, by statute or otherwise, and all such remedies may be exercised singly or concurrently.

(d) This Note may be amended only by a written instrument executed by the Company and the Holder hereof. Any amendment shall be endorsed upon this Note, and all future Holders shall be bound thereby.

(e) (i) This Note has been negotiated and consummated in the State of New York and shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to principles governing conflicts of law.

(ii) THE COMPANY HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA AND OF THE FEDERAL COURTS SITTING IN THE STATE OF CALIFORNIA. THE COMPANY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY MUST BE LITIGATED EXCLUSIVELY IN ANY SUCH STATE OR FEDERAL COURT THAT SITS IN THE CITY OF LOS ANGELES, AND ACCORDINGLY, THE COMPANY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH LITIGATION IN ANY SUCH COURT.

(iii) THE COMPANY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE. THE COMPANY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE HOLDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE HOLDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE HOLDER HAS BEEN INDUCED TO ENTER INTO THIS NOTE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7(e)(iii).

(iv) In the event that any suit or action is instituted to enforce any provision in this Note, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Note, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

* * * * *

IN WITNESS WHEREOF, the Company has caused this Note to be executed and dated the day and year first above written.

BITZIO, INC.

By: /s/ Gordon McDougall

Name: Gordon McDougall

Title: Chief Executive Officer

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