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Los Angeles Superior Court

AUG 17 2012

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY Deputy

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8 Attorneys for Defendants
9 HILL & BRAND PRODUCTIONS 7, LLC,
10 HILL & BRAND ENTERTAINMENT, LLC,
11 FULL CIRCLE RELEASING, LLC, SCOTT HILLENBRAND,
12 DAVID HILLENBRAND

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES

15 THIRD EYE CAPITAL CORPORATION, as
16 agent for STRATIVE CAPITAL, LTD.,

Case No.: BC487234

Assigned to Hon. Robert L. Hess, Dept. 24

17 Plaintiffs,

ANSWER TO COMPLAINT

18 v.

19 HILL & BRAND PRODUCTIONS 7, LLC;
20 HILL & BRAND ENTERTAINMENT, LLC;
21 FULL CIRCLE RELEASING, LLC; LARRY
22 GLEASON, an individual; SCOTT
23 HILLENBRAND, an individual; DAVID
24 HILLENBRAND, an individual; STEVE
25 ROCKABRAND, an individual; JOSEPH
26 CRAIG, an individual; GARY FABER, an
27 individual; Entertainment Research and
28 Marketing (ERm); PAUL WESTPHAL, an
individual; WESTPHAL ADVISORY
SERVICES; and DOES 1-10, inclusive,

Defendants.

29 Defendants HILL & BRAND PRODUCTIONS 7, LLC, HILL & BRAND
30 ENTERTAINMENT, LLC, FULL CIRCLE RELEASING, LLC, SCOTT HILLENBRAND,
31 DAVID HILLENBRAND responds to the unverified Complaint of Plaintiffs THIRD EYE
32 CAPITAL CORPORATION, as agent for STRATIVE CAPITAL, LTD. as follows:

1 **GENERAL DENIAL**

2 1. Pursuant to Code of Civil Procedure section 431.20(d), Defendants
3 generally deny each and every allegation contained in the Complaint and each purported cause
4 of action contained therein, and without limitation upon the generality of the foregoing,
5 specifically deny that Plaintiffs have been damaged in the sum or sums alleged, or in any way
6 at all, by reason of any act or omission on the part of any of the answering Defendants.

7 **AFFIRMATIVE DEFENSES**

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9 **FIRST AFFIRMATIVE DEFENSE**

10 (Failure to State Facts Sufficient to Support a Cause of Action)

11 1. Plaintiffs' complaint fails to state a claim upon which relief can be
12 granted and therefore Plaintiffs' complaint must be dismissed.

13
14 **SECOND AFFIRMATIVE DEFENSE**

15 (Economic Loss Rule -- Bar to Recovery)

16 2. Plaintiffs' complaint is barred by the Economic Loss Rule and therefore
17 Plaintiffs' complaint must be dismissed.

18
19 **THIRD AFFIRMATIVE DEFENSE**

20 (Application of New York Law)

21 3. The contract requires the application of New York law, and under such
22 law Plaintiffs must prove reasonable reliance on any alleged fraudulent statement, and is
23 required to specify with exact words stated and identify the party making the statements and the
24 basis of Plaintiffs' reasonable reliance, and Plaintiffs' complaint fails to comply with such law.

25
26 **FOURTH AFFIRMATIVE DEFENSE**

(No Personal Liability)

27 4. Scott Hillenbrand at all times mentioned in the complaint was Hill &
28 Brand Entertainment LLC, Chief Executive Officer, and was Hill & Brand Productions 7, LLC
President, and was Full Circle Releasing's Chief Executive Officer, and at no time did he act in

1 his individual capacity with respect to any of the allegations in the complaint and therefore
2 Plaintiffs' complaint against him must be dismissed.

3
4 **FIFTH AFFIRMATIVE DEFENSE**

(No Personal Liability)

5 5. David Hillenbrand at all times mentioned in the complaint was Hill &
6 Brand Entertainment LLC, President, and was Hill & Brand Productions 7, LLC Chief
7 Executive Officer, and was Full Circle Releasing's Chief Operating Officer and Chief Financial
8 Officer, and at no time did he act in his individual capacity with respect to any of the allegations
9 in the complaint and therefore Plaintiffs' complaint against him must be dismissed.

10
11 **SIXTH AFFIRMATIVE DEFENSE**

(Plaintiffs' Material Breach)

12 6. Plaintiffs materially breached the contract by not providing the funding
13 required by the contract, and by not timely providing the funding, which caused the economic
14 failure of the picture and the inability of the Defendants to pay, and as a result of Plaintiffs'
15 breach the Plaintiffs' complaint must be dismissed.

16
17 **SEVENTH AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

18 7. Plaintiffs failed to mitigate their alleged damages by, among other things,
19 failing to make timely payments as required by the contract, thus making repayment of the loan
20 impossible and increasing instead of mitigating their own damages.

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22 **EIGHTH AFFIRMATIVE DEFENSE**

(Usurious Interest)

23 8. The amount of interest claimed by Plaintiffs is usurious and therefore
24 Plaintiffs may not recover as alleged in the Complaint.

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1 **NINTH AFFIRMATIVE DEFENSE**

2 (Plaintiffs' Fraudulent Inducement)

3 9. Plaintiffs are barred from enforcing the contract as Defendants' consent
4 was fraudulently induced by Plaintiffs' false representations and promises, including but not
5 limited to their promise to loan \$12.4 million dollars, and the representation that such amount
6 was approved, but later reducing the amount to only \$8.5 million in loans.

7 **TENTH AFFIRMATIVE DEFENSE**

8 (Failure of Consideration)

9 10. There has been a failure of consideration through the fault of the
10 Plaintiffs by their failure to pay funds required by the contract and agreed upon, and therefore
11 Plaintiffs' purported contract is void and/or unenforceable and should be rescinded.

12 **EVENENTH AFFIRMATIVE DEFENSE**

13 (Failure of conditions Precedent)

14 11. Plaintiffs failed to fulfill the conditions precedent to Defendants' duty to
15 perform in accordance with the contract, and therefore Defendants had and have no obligation
16 to perform and Plaintiffs' are barred from enforcing the contract or obtaining the damages they
17 seek.

18 **TWELTH AFFIRMATIVE DEFENSE**

19 (Excuse)

20 12. The alleged default of Defendants was and is excused as a consequence
21 of Plaintiffs' material breaches of their own contractual duties.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 (Plaintiffs' Willful Misconduct)

24 13. The Complaint, and each cause of action stated therein, is barred in
25 whole or in part due to Plaintiffs' willful misconduct.

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FOURTEENTH AFFIRMATIVE DEFENSE

(Failure of Consideration)

14. Defendants' actions were ratified, consented to, acquiesced, and excused due to Plaintiffs and/or its agents, assigns, principals and/or representative's conduct, actions, and/or failure to act.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for relief as follows:

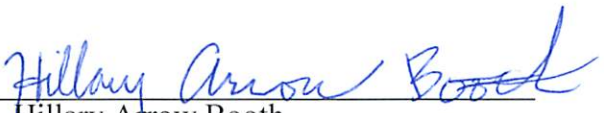
1. That Plaintiffs take nothing from these answering Defendants by the Complaint;
2. That Plaintiffs' Complaint be dismissed as to these answering Defendants;
3. That Defendants be awarded judgment in this action;
4. That Defendants be awarded their costs of suit and attorney's fees; and
5. For such other and further relief as the court deems just and proper.

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury in the above-entitled action.

DATED: August 17, 2012

BOOTH LLP

By: 
Hillary Arrow Booth
Attorneys for Defendants
HILL & BRAND PRODUCTIONS 7, LLC,
HILL & BRAND ENTERTAINMENT, LLC,
FULL CIRCLE RELEASING, LLC, SCOTT
HILLENBRAND, DAVID HILLENBRAND

1 **PROOF OF SERVICE - CCP §§ 1013a, 2015.5**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss

4 I am employed in the County of Los Angeles, State of California. I am over the
5 age of 18 and not a party to the within action; my business address is 12100 Wilshire Blvd., Suite
800, Los Angeles, CA 90025.

6 On the date set forth below, I served the foregoing document described as
7 follows: **ANSWER TO COMPLAINT** on the interested party in this action by placing ___ the
original/ X a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

8 SEE ATTACHED SERVICE LIST

9 [X] **BY MAIL** I deposited such envelope(s) in the mail at Los Angeles, California. I am
10 readily familiar with the firm's practice of collection and processing of correspondence
11 for mailing. Under that practice it would be deposited with the U.S. Postal Service on
that same day with postage thereon fully prepaid at Los Angeles, California, in the
ordinary course of business.

12 [] **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the
13 offices of the addressee by our messenger service.

14 [] **BY FACSIMILE:** The above-referenced document (together with all exhibits and
15 attachments thereto) was transmitted via facsimile transmission from (310) 641-1818 to
the addressee(s) as indicated on the attached mailing list on said date and the transmission
was reported as completed and without error.

16 [] **BY ELECTRONIC TRANSMISSION:** The above-referenced document (was sent via
17 electronic transmission to the addressee(s)' email address as indicated on the attached
service list.

18 [] **BY FEDERAL EXPRESS:** I am readily familiar with Booth LLP's business practices
19 of collecting and processing items for pickup and next business day delivery by Federal
Express. I placed such sealed envelope(s) for delivery by Federal Express to the offices
20 of the addressee(s) as indicated on the attached mailing list on the date hereof following
ordinary business practices.

21 [X] **STATE:** I declare under penalty of perjury that the foregoing is true and correct.

22 [] **FEDERAL:** I declare that I am employed in the office of a member of the bar of this
23 court at whose direction the service was made.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct and that this declaration was executed on August 17, 2012 at Los
Angeles, California.

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27 Alinda Turner
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SERVICE LIST

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THIRD EYE CAPITAL CORPORATION, as
agent for STRATIVE CAPITAL, LTD.