

SUM-110

**SUMMONS
Cross-Complaint
(CITACION JUDICIAL-CONTRADEMANDA)**

**NOTICE TO CROSS-DEFENDANT:
(AVISO AL CONTRA-DEMANDADO):**

**THIRD EYE CAPITAL CORPORATION, as
agent for STRATIVE CAPITAL LTD; and ROES 1-20, inclusive,
YOU ARE BEING SUED BY CROSS-COMPLAINANT:
(LO ESTÁ DEMANDANDO EL CONTRADEMANDANTE):**

HILL, SEE ATTACHED, ADDITIONAL PARTIES ATTACHMENT

CONFORMED COPY
OF ORIGINAL
Los Angeles Superior Court

AUG 17 2012

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

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the cross-complainant. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al contrademandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), o ondiéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

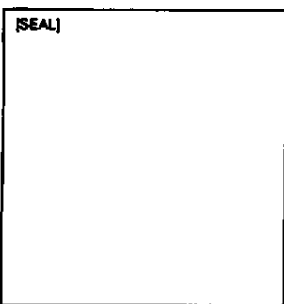
The name and address of the court is:
(El nombre y dirección de la corte es): Los Angeles Superior Court
111 North Hill Street
Los Angeles, California 90012

SHORT NAME OF CASE (from Complaint): (Nombre de Caso):
Third Eye Capital v. Hill & Brand, et al.
CASE NUMBER: (Número del Caso):
BC487234

The name, address, and telephone number of cross-complainant's attorney, or cross-complainant without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del contrademandante, o del contrademandante que no tiene abogado, es):
Hillary Arrow Booth; 12100 Wilshire Blvd., Suite 1000, Los Angeles, CA 90025; 310-641-1800

DATE: AUG 17 2012 Clerk, by JOHN A. CLARKE, Deputy
(Fecha) (Secretario) SHAUNYA WESLEY (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

1. as an individual cross-defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

SHORT TITLE: Third Eye Capital v. Hill & Brand, et al.	CASE NUMBER: BC487234
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

HILL & BRAND PRODUCTIONS 7, LLC, HILL & BRAND ENTERTAINMENT, LLC, FULL CIRCLE
RELEASING, LLC,

1 BOOTH LLP
 2 HILLARY ARROW BOOTH (SBN 125936)
 3 hbooth@boothllp.com
 4 12100 Wilshire Blvd., Suite 800
 Los Angeles, CA 90025
 Telephone: (310) 641-1800
 Facsimile: (310) 641-1818

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 OF ORIGINAL FILED
 Los Angeles Superior Court

AUG 17 2012

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

5 Attorneys for Cross-Complainants
 6 HILL & BRAND PRODUCTIONS 7, LLC,
 7 HILL & BRAND ENTERTAINMENT, LLC,
 8 FULL CIRCLE RELEASING, LLC

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

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

Case No.: BC487234

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

13 Plaintiffs,

14 v.

CROSS-COMPLAINT FOR:

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

1. FRAUD;
2. BREACH OF CONTRACT (failure to perform); and
3. BREACH OF CONTRACT (improper seizure of collateral)

27 Defendants.

28 HILL & BRAND PRODUCTIONS 7, LLC,
 HILL & BRAND ENTERTAINMENT, LLC,
 FULL CIRCLE RELEASING, LLC,

Cross-Complainants,

v.

THIRD EYE CAPITAL CORPORATION, as
 agent for STRATIVE CAPITAL LTD; and
 ROES 1-20, inclusive,

Cross-defendants.

1 Cross-Complainants allege:

2 **THE PARTIES**

3 1. Cross-complainant Hill & Brand Productions 7, LLC (“HB Productions 7” or
4 “Borrower”) is a limited liability company duly organized under the laws of the State of
5 California whose principal place of business is Los Angeles, California. HB Productions 7 was
6 formed for the purpose of producing the motion picture titled *Transylmania* f.k.a. *Dorm Daze 3*
(the “Picture”).

7 2. Cross-Complainant Hill & Brand Entertainment, LLC (“HB Entertainment” or
8 “Guarantor”) is a limited liability company organized under the laws of the State of California
9 whose principal place of business is Los Angeles, California.

10 3. Cross-Complainant Full Circle Releasing, LLC (“Full Circle Releasing”) is a
11 limited liability company organized under the laws of the State of California whose principal
12 place of business is Los Angeles, California.

13 4. Cross-Complainants are informed and believe, and on that basis allege, that
14 cross-defendant Third Eye Capital Corporation (“TEC”) is a corporation organized under the
15 laws of the Province of Ontario, whose principal place of business is Toronto, Ontario, Canada.

16 5. Cross-Complainants are informed and believe, and on that basis allege, that
17 cross-defendant Strative Capital Limited (“Strative”) is a corporation organized under the laws
18 of the Province of Ontario, with a principal place of business in Toronto, Ontario, Canada.

19 6. The true names and capacities of cross-defendants Roes 1 through 20, inclusive,
20 are presently unknown to cross-complainants, who therefore sue said cross-defendants by such
21 fictitious names. Cross-Complainants will seek leave to amend this cross-complaint to allege
22 the true names and capacities of cross-defendants Roes 1 through 20, inclusive, as soon as they
23 are ascertained. Cross-Complainants are informed and believe, and on that basis allege, that
24 each of cross-defendants Roes 1 through 20 participated in the acts and conduct alleged herein
and are liable to cross-complainants for the damages and other relief to which cross-
complainants are entitled.

25 7. At all times mentioned herein, cross-defendants, and each of them, were the
26 agents and/or co-conspirators of one or more of the other cross-defendants, as well as of other
27 entities or individuals, were acting with the course and scope of that agency and/or in
28 furtherance of the conspiracy among them, and each cross-defendant has aided one or more of

1 the other cross-defendants in committing the wrongful acts alleged herein, and is liable to cross-
2 complainants on that basis as well.

3 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

4 8. On or about May 14, 2009, Alex Kanayev, Vice President of cross-defendant
5 TEC ("Kanayev"), expressed his desire to HB Productions 7 for his company to invest funds
6 specifically for the prints and advertising ("P&A") for the release of the Picture. Timely P&A
7 are vital for the success of a motion picture release.

8 9. At the request of Kanayev, HB Productions 7 sent, both electronically and via
9 Federal Express, a comprehensive folder of documents outlining the particulars of the Picture,
10 including but not limited to details on the production of the Picture, the marketing plan, samples
11 of the marketing materials, details on the distribution team, Nielsen test scores, and a detailed
12 P&A budget of \$12.4m.

13 10. During the next eight days, Kanayev communicated regularly with HB
14 Productions 7, requesting additional information while further reviewing all submitted
15 materials. On May 22, 2009, Kanayev represented by email that he has received "a verbal
16 blessing from the Investment Committee and will send the Proposal over the weekend."

17 11. On Sunday, May 24, 2009, Kanayev emailed a detailed proposal from TEC
18 outlining the terms and conditions whereby TEC would consider loaning \$16m, which when
19 TEC's fees and an interest reserve were subtracted, would allow HB Productions 7 use of
20 \$11.88m for the P&A, an amount nearly equal to the submitted P&A budget.

21 12. HB Productions 7 further negotiated the outlined terms in the Proposal with
22 Kanayev. During this time period, Kanayev specified that the P&A funds will be delivered in
23 three tranches of \$4m each tranche, (with the last tranche being only slightly reduced to \$3.88m
24 to equal the \$11.88m figure due to the deduction of TEC's fees and interest reserve). Amidst
25 these negotiations, HB Productions 7 voiced its concern to Kanayev that according to the
26 proposed terms, TEC would earn all its fees after delivering only two of the three tranches, or
27 \$8m. Thus, TEC would be paid its exorbitant fees without having fully performed by delivering
28 all three tranches to HB Productions 7, even though such funds were critical to the success of
the release and the Picture. Kanayev recognized the risk should HB Productions 7 not receive
the full amount of the promised funds, and in order to further entice cross-complainants replied,

1 “After providing 8MM to you, your risk is much smaller than ours as our recoupment would be
2 in danger if the last tranche of 4MM not delivered on time.”

3 13. On June 4, 2009, Kanayev emailed a fully executed Proposal outlining the terms
4 whereby TEC would loan the P&A. The amount agreed to be loaned remained unchanged at
5 \$16m, allowing for \$11.88m in net funds for the P&A. In reliance on these and other
6 representations, HB Productions 7 and HB Entertainment countersigned the Proposal and
7 emailed a fully executed pdf version of the document to TEC later that day.

8 14. Kanayev then required HB Productions 7 to pay the cost for Kanayev to fly to
9 Los Angeles and stay overnight at a nearby hotel, so Kanayev could continue his due diligence.
10 HB Productions 7 made arrangements for Kanayev to fly to Los Angeles on June 9, 2009 and
11 set aside two days for Kanayev to, among other related activities, meet in person with the
12 officers of HB Productions 7, the officers of Full Circle Releasing and its key contractors, along
13 with meeting the principals of key vendors integral to the release of the Picture, the marketing
14 plan and the P&A spend. Additionally, HB Productions 7 booked a screening room theatre at
15 its vendor Fotokem’s Burbank facility for Kanayev to screen the Picture in its entirety in a
16 professional theatre setting.

17 15. Satisfied with both the screening of the Picture in its entirety and all he saw in
18 Los Angeles as later expressed via email, Kanayev flew back to Toronto on June 11 2009.
19 During the following days, Kanayev continued to request additional information to conclude his
20 due diligence.

21 16. On June 22, 2009, Kanayev advised HB Productions 7 that the deal was
22 approved and emailed a proposed detailed Term Sheet. In order further to entice cross-
23 complainants to proceed with the transaction, Kanayev represented the amount agreed to be
24 loaned in the Term Sheet remained unchanged at \$16m, allowing for \$11.88m in net funds for
25 the P&A.

26 17. During the following days, the terms of the Term Sheet were negotiated further
27 between the parties and then on June 23, 2009, the fully negotiated Term Sheet was executed by
28 HB Productions 7, HB Entertainment and TEC. The amount agreed to be loaned in the Term
Sheet remained unchanged at \$16m, allowing for \$11.88m in net funds for the P&A.

18 18. TEC then required that HB Productions 7 place a \$10,000 retainer with the law
firm of TEC’s choosing to represent TEC in the creation of formal loan documents. HB

1 Productions 7 agreed to the retainer and loan documents were prepared and negotiated between
2 TEC's counsel and counsel for cross-complainant reflecting all material terms agreed to in the
3 Term Sheet including, but not limited to, the amount to be loaned of \$16m, allowing for
4 \$11.88m in net funds for the P&A.

5 19. In addition to the formal loan documents, TEC required HB Productions 7 to pay
6 the cost for a third party valuation to be performed on collateral agreed to be pledged by the
7 Guarantor as specified in the Proposal, the Term Sheet, and the formal loan documents. HB
8 Productions 7 submitted two proposed entities for TEC's consideration to perform the
9 valuation, both with the required professional expertise. After reviewing both entities, TEC
10 selected Westphal Advisory Services ("Westphal") to perform the valuation. At the request of
11 TEC, HB Productions 7 engaged Westphal. Westphal completed its valuation and issued its
12 report. TEC accepted such report and acknowledged it as a satisfied condition precedent to
13 close the loan transaction.

14 20. During this time period, the loan documents were completed and fully negotiated
15 by counsel for both parties to the satisfaction of cross-complainants and cross-defendants. The
16 amount agreed to be loaned in the completed loan documents remained unchanged at \$16m,
17 allowing for \$11.88m in net funds for the P&A. TEC then requested that the principals of HB
18 Productions 7 and Full Circle Releasing fly to Toronto for a face to face closing of the
19 transaction with two additional principals of TEC, Arif Bhalwani ("Bhalwani") and David
20 Alexander ("Alexander"). TEC also requested that HB Productions 7 rent a theatre in Toronto
21 and bring a 35mm print of the Picture with them to give Bhalwani and Alexander the same
22 opportunity to watch the Picture in a large theatre setting.

23 21. On or about July 10, 2009, counsel for cross-defendants emailed to all concerned
24 that as the documents had been approved by all parties, signature pages for the loan documents
25 and all related documents had been prepared and were being sent via federal express to Toronto
26 for the parties to execute, and to the Los Angeles office of Full Circle Releasing for the
27 signature of principal Steve Rockabrand who would not be traveling to Toronto.

28 22. HB Productions 7 booked travel for officers David Hillenbrand, Scott
Hillenbrand, and President of Theatrical Distribution for Full Circle Releasing Larry Gleason.
HB Productions 7 rented a theatre in Toronto to screen the Picture, as requested, and all three
packed their bags to depart for Toronto.

1 23. Prior to the principals of HB Productions 7 and Full Circle Releasing departing
2 Los Angeles, Kanayev contacted HB Productions 7 and requested that HB Productions 7
3 quickly create two additional hypothetical P&A budgets – one for an \$8.5m spend; the other for
4 \$10.5m. Kanayev requested HB Productions 7 email these two hypothetical budgets along with
5 the original approved \$12.4m budget that the executed Proposal, executed Term Sheet, and
6 fully negotiated loan documents had been based upon. Kanayev indicated to HB Productions 7
7 that he did not know what was going to happen next.

8 24. While at the airport in Burbank, on Sunday July 12, 2009, David Hillenbrand,
9 CEO of HB Productions 7, received a call from Kanayev on his cell phone, whereby Kanayev
10 informed him that TEC will be changing the deal and reducing the loan amount to allow for a
11 use of P&A funds of only \$8.5m.

12 25. While traveling to Toronto, David and Scott Hillenbrand each contemplated the
13 amount spent to date by HB Productions 7 in reliance on the promises of cross-defendants and
14 as required by cross-defendants to conclude the transaction, including but not limited to several
15 thousand dollars in legal fees to negotiate the Proposal; several thousand dollars to bring
16 Kanayev to Los Angeles, pay for his hotel and spend two days with him on his due diligence
17 trip; several thousand dollars in legal fees to negotiate the Term Sheet; \$50,000 for attorneys'
18 fees to represent the Borrower in the negotiation of the loan documents; \$50,000 inclusive of
19 the \$10,000 retainer for cross-defendants attorneys' fees to be paid by Borrower to prepare and
20 negotiate the loan documents; \$7,500 paid to Westphal for its valuation report; several thousand
21 dollars paid to Intelysis to perform background checks on all principals of Borrower and Full
22 Circle Releasing as part of the conditions precedent requirement.

23 26. David Hillenbrand, Scott Hillenbrand and Larry Gleason arrived in Toronto and
24 screened the Picture for Bhalwani, Alexander, and Kanayev. Cross-defendants enjoyed the
25 screening and lead David and Scott Hillenbrand and Larry Gleason to a restaurant to have
26 dinner and discuss the transaction. At dinner, David and Scott Hillenbrand and Larry Gleason
27 reiterated the importance of having the agreed upon \$11.88m for P&A funds in order to ensure
28 the success of the release of the Picture, as had been agreed upon when TEC executed the
Proposal; as agreed upon when TEC executed the Term Sheet; and as agreed upon in the loan
documents that had been prepared for signature by all parties in Toronto. However, Bhalwani,
Alexander and Kanayev suddenly expressed disagreement that the previously agreed upon

1 amount was needed. Upon the insistence by David and Scott Hillenbrand and Larry Gleason,
2 TEC agreed as its final "offer" that the Borrower could request \$2m in additional P&A funds,
3 for a total of \$10.5m in use of P&A funds, with such request to be granted at the sole discretion
4 of TEC, and such request to be made only at a specified time close to the release of the Picture,
5 with the final surprise caveat that the cost of the \$2m in P&A funds to the Borrower would now
6 be \$6m rather than as represented in the executed Proposal, the executed Term Sheet and the
fully negotiated and agreed upon loan documents.

7 27. Cross-Complainants are informed and believe, and on that basis allege that,
8 notwithstanding the oral and written representations that cross-defendants made to cross-
9 complainants, as alleged herein (and including the promises and representations made in the
10 executed Proposal, the executed Term Sheet and the fully negotiated and agreed to loan
11 documents prepared for signature in Toronto), cross-defendants did not intend to fulfill their
12 representations and promises to cross-complainants at the time that they made them. To the
13 contrary, cross-defendants made these representations without any intention of fulfilling these
14 representations or of fully performing their obligations. Instead, cross-defendants intended only
15 selectively to meet certain of their obligations. Cross-defendants made these false
16 representations to induce Borrower to spend large sums of money to negotiate a transaction
17 based on cross-defendants' false promises, so that Borrower would be forced to accept the
18 renegotiated terms for the arrangement after the fact to make it even more favorable to cross-
19 defendants. Furthermore, cross-defendants made these false representations to induce
20 Guarantor to pledge additional collateral in the form of its interests in a Film Library. At no
21 time prior to cross-complainants reliance on cross-defendants' representations did cross-
defendants inform cross-complainants of their secret intent.

22 28. In furtherance of this scheme, having forced cross-complainants to accept the
23 changed terms, cross-defendants still had no intention of fulfilling their obligations in
24 accordance with the final executed loan documents at the time the documents were signed.
25 Numerous times, cross-defendants did not advance the funds in the amount requested, or on the
26 date funds were scheduled to be advanced, and failed to come even close to resembling the
27 three tranches of \$4m as originally agreed upon, or in any manner or timing specified in the
28 loan documents. Instead, Cross-Defendants continued to insist upon renegotiation of the
amounts to be advanced and when and if they were to be advanced. Cross-defendants' conduct

1 and false promises repeatedly harmed the marketing plan and release of the Picture, and harmed
2 cross-complainants' reputation with its vendors who began demanding their scheduled
3 payments, and forced cross-complainants' vendors to forego contracted media purchases due to
4 the late and/or insufficient payments.

5 29. Then, on or about September 29, 2009, Borrower requested in writing the
6 anticipated additional \$2m in P&A funding, agreed to at the meeting in Toronto and as
7 specified in the executed Loan Agreement. TEC approved the request verbally and in writing,
8 and on October 9 2009 confirmed again while acknowledging the timing of the advance,
9 "advance of \$2M is scheduled for Wednesday [October 14th]." On the day of the draw, October
10 14, 2009, when the \$2m wire was scheduled to be sent to purchase a fully negotiated media buy
11 package by Borrower's vendor Palisades Media ("Palisades"), Kanayev emailed, "1MM out of
12 2MM optional advance (subject to TEC approval) has been approved for wiring now, please
13 change borrowing notice to reflect whom should we send it as we are processing right now plus
14 notice should reflect 1M fees to TEC (so total 2M)." In order not to lose the media package
15 ordered and ready to be purchased, cross-complainants had an immediate phone conference
16 with TEC who then forced Borrower, in order to have the \$2m wire go to Palisades as planned
17 and contracted, to put in writing that, despite the fact that cross-defendants had already
18 approved the \$2m increase, and despite the fact that TEC had not advanced yet \$1.5m of the
19 original \$8.5m, that TEC would retain "optionality" on a final \$1m yet to be advanced, as
20 requested. Unbeknownst to the Borrower at the time, TEC intended not to advance this \$1m
21 but instead to use the promise of this \$1m to renegotiate the terms several times yet again.

22 30. Then, on or about November 1, 2009 cross-complainants notified cross-
23 defendants that the reduced P&A spend from the originally submitted budget was (1) negatively
24 affecting the Picture's awareness levels as measured by the tracking agencies relied upon in the
25 industry to gauge potential box office results prior to a film's opening; (2) that the competition
26 had increased their P&A spending and were pulling further away in the tracking measures; and
27 (3) that increasing the media purchase up to the level as originally planned, submitted and
28 approved, was strongly recommended. Cross-defendants stated in response that they would
advance an additional \$2m if and only if the Borrower was able to pledge additional collateral
of at least \$5m, and cross-defendants stated that if Borrower did in fact pledge such collateral,
cross-defendants would also waive the "optionality" on the \$1m promised previously yet still

1 withheld, and would make such funds immediately available for the media purchase. TEC
2 stated that conversely, if the Borrower did not agree to bring the \$5m in additional collateral,
3 then not only would TEC not agree to the additional \$2m increase, but would also retain
4 “optionality” on the \$1m still owed, in further breach of the agreement and the approval
5 previously granted, and TEC would not be able to advise when, and if, it would release the
6 funds for the marketing campaign at all.

7 31. Desperate for the Picture to succeed, Borrower was able to secure an additional
8 guarantor in the form of Nevada First Corporation and Bonavia Timber (collectively,
9 “Bonavia”), who, looking for an opportunity to become involved in the film business, agreed to
10 put up land holdings in its portfolios to guarantee the \$5m in collateral required by cross-
11 defendants in order to increase the available funds for the P&A by \$2m and for the \$1m being
12 held hostage by cross-defendants to be released as previously promised. The loan documents
13 were amended to reflect the increase and guarantee by Bonavia, and the Borrower, Bonavia and
14 cross-defendants executed the relevant documents, including but not limited to the Omnibus
15 Amendment. Borrower submitted the borrowing certificate to call for the needed funds to
16 arrive to Palisades among other vendors no later than Thursday, November 19, 2009 the stated
17 deadline to secure the critical media buy prior to the Thanksgiving holiday. On Thursday,
18 cross-defendants advised they would not be sending funds on Thursday, but “hopefully on
19 Friday, but Monday latest.” Palisades continued to advise that late payments would cause
20 inventory to be lost. Funds did not arrive on Friday. On Monday, partial funds are received,
21 with the remainder received by Palisades on Tuesday, who then advised that the commercials
22 that were scheduled to begin running on Thursday (Thanksgiving) would now be unable to
23 begin running until Saturday in some markets, with most airings not beginning until Sunday,
24 due to the late arrival of funds. The untimeliness of the funding also affected the shipment of
25 release prints to the theatres, as the prints were not able to be released from cross-complainants’
26 laboratory vendor, Fotokem, due to it not receiving its scheduled payment, requiring an
27 emergency meeting between HB Productions 7 and the CEO of Fotokem, who was reluctant to
28 authorize the release from the laboratory as final payment had not arrived as promised, further
damaging Borrower’s relationship with its long-term vendor.

32. On November 25 2009, Borrower submitted the final borrowing certificate for
the remaining \$2m in P&A funds for the campaign in accordance with the approved, submitted

1 budget. TEC did not advance the funds when requested, in further breach of the agreement.
2 Attorneys for cross-complainants send an email to counsel for cross-defendants making clear
3 that the delayed, late, and insufficient payments were having a negative impact on the release of
4 the Picture. Counsel for cross-defendants emailed cross-defendants, urging their clients to
5 perform. On December 1, 2009, TEC wired \$125,331.57, a partial and late payment, in breach
6 of the agreement. On December 2, 2009 TEC wired \$664,084.14, a partial and late payment, in
7 breach of the agreement. On December 3, 2009 TEC wired \$199,235.55, a partial and late
8 payment, in breach of the agreement. TEC then informed Borrower that it was unilaterally
9 holding back \$2,017.50 to go to their attorneys, \$8,771 was being held back to go to the title
10 insurance company that issued the report on the land pledged by Bonavia as collateral. The
11 total amount of funds wired from December 1st through December 3rd equaled \$1m rather than
12 the requested total of \$2m as properly requested in accordance with the budget and borrowing
13 certificate.

13 33. In reliance on the promises made by TEC and the representations made
14 throughout the time period, Borrower contracted for services with its vendors working on the
15 release of the film, utilizing its good name and reputation, and in securing credit terms from
16 those vendors under which the vendors would not require up-front payment, but only payment
17 on account later in time. At all relevant times, cross-complainants were not aware that cross-
18 defendants intended to pay only those vendors who insisted on payment before providing
19 services. As to the remainder of the vendors, cross-defendants intended not to pay them,
20 leaving the vendors to look to cross-complainants for payment. Cross-defendants never
21 disclosed this secret intent to cross-complainants prior to cross-complainants reliance on these
22 representations.

23 34. The foregoing conduct, misrepresentations, and false promises of Cross-
24 Defendants, and each of them, directly and proximately caused Borrowers to suffer damages as
25 alleged below.

26 **FIRST CAUSE OF ACTION**

27 [For Fraudulent Inducement – Against TEC and Strative]

28 35. Cross-defendants refer to and incorporate herein by reference each and every
allegation contained in paragraphs 1 through 34, inclusive, above.

1 36. At the time that cross-defendants made the representations and promises that
2 induced cross-complainants to sign the Proposal, and at the time that cross-defendants made the
3 representations and promises that induced cross-complainants to sign the Term Sheet, and at the
4 time that cross-defendants made the representations and promises that induced cross-
5 complainants to fund the cost of the loan documents reflecting the agreed terms from the
6 Proposal and Term Sheet, and at the time that cross-defendants made the representations and
7 promises that induced cross-complainants to sign the final loan documents and then agree to the
8 later changes required by cross-defendants, cross-defendants knew the representation were false
9 at the time they were made, and cross-defendants had no intention of fulfilling their promises or
10 of performing their obligations as set forth in the Proposal, Term Sheet or fully negotiated loan
11 documents. To the contrary, at the times they made these representations and signed the
12 Proposal, Term Sheet and fully negotiated loan documents, cross-complainants are informed
13 and believe, and on that basis allege, that cross-defendants intended to force cross-complainants
14 to renegotiate the terms after the fact to make it more favorable to cross-defendants, and to
15 continue to renegotiate to make it more favorable to cross-defendants by withholding advances
16 and funds that had already been agreed to be made, and to exploit cross-defendants' name and
17 reputation, to secure favorable credit terms with vendors for services necessary for the release
18 of the Picture, but for which services cross-defendants never intended to pay.

19 37. HB Productions 7 and HB Entertainment (and their principals) were unaware of
20 the falsity of cross-defendants' representations and were unaware of the falsity of the promises
21 and the secret intention not to perform, and, in justifiable reliance on the representations and
22 false promises, they signed the Proposal, the Term Sheet, and then signed the loan documents,
23 under duress, after they were changed materially after the fact, having previously been fully
24 negotiated in accordance with the material terms of the Proposal and Term Sheet. HB
25 Productions 7's reliance was reasonable in that it had no reason to believe that cross-defendants
26 did not intend to fulfill their obligations to HB Productions 7 contrary to cross-defendants'
27 representations. HB Productions 7 would not have signed the Proposal, would not have signed
28 the Term Sheet, would not have agreed to fund the cost of the loan documents, among other
costs, and would not have allowed cross-defendants to exploit its name and reputation, and the
name and reputation of its principals in contracting with vendors, and would not have signed
the final loan documents had it known the true facts.

1 38. As a direct and proximate result of cross-defendants' fraudulent inducement as
2 alleged herein, cross-complainants have suffered damages in an amount as nearly can be
3 estimated of no less than \$100,000,000.

4 39. Through its conduct as alleged herein, cross-defendants, and each of them, have
5 been guilty of oppression, fraud, and/or malice, and, by reason thereof, in addition to its actual
6 damages, cross-complainants are entitled to recover damages for the sake of example, and by
7 way of punishing cross-defendants, and each of them, in an amount to be proven at trial.

8
9 **SECOND CAUSE OF ACTION**

10 [For Breach of Contract – Against TEC and Strative]

11 44. Cross-complainants refer to and incorporate herein by reference each and every
12 allegation contained in paragraphs 1 through 43, inclusive, above.

13 45. Should the Loan Agreement alleged herein be found by the Court to be a valid
14 and enforceable contract, Borrower and Guarantor allege as follows.

15 46. Borrower and Guarantor have performed all terms and conditions of the Loan
16 Agreement and Omnibus Amendment, except as excused by cross-defendants' breaches of the
17 Loan Agreement and Omnibus Amendment or other conduct.

18 47. Through its conduct as alleged herein, cross-defendants have materially
19 breached the Loan Agreement and Omnibus Amendment, including the covenant of good faith
20 and fair dealing implied therein in at least the following respects:

21 a) By failing to pay the costs of the P&A budget to support the release of
22 the Picture in the amounts agreed to and promised.

23 b) By failing to pay vendors from whom cross-complainants had secured
24 credit terms for services necessary for the release of the Picture, using cross-complainants'
25 name and the name of cross-complainants' principals, damaging those names and reputations in
26 the motion picture industry.

27 c) By failing to perform as agreed and as required under the contract
28 causing the Picture to fail due to insufficient advertising and late payments to vendors.

48. As a direct and proximate result of cross-defendants' conduct as alleged herein,
cross-complainants have suffered damages in an amount as nearly can be estimated of no less

1 than \$100,000,000.

2
3 **THIRD CAUSE OF ACTION**

4 [Breach of Contract for improperly seizing collateral]

5 49. Cross-complainants refer to and incorporate herein by reference each and every
6 allegation contained in paragraphs 1 through 48, inclusive, above.

7 50. As a result of the Cross-defendants' material breaches as alleged herein, the
8 Cross-defendants were not entitled to declare the Borrowers in default, and were not entitled to
9 conduct a seizure of all collateral pledged, or to foreclose on the Picture, or to foreclose on the
10 collateral pledged by the Guarantor, or to foreclose on the collateral pledged by Bonavia.

11 51. Knowing that they had materially breached the agreement, cross-defendants
12 nevertheless declared the Borrowers in default, conducted a seizure of all collateral pledged,
13 foreclosed on the Picture, foreclosed on the collateral pledged by the Guarantor, and foreclosed
14 on the collateral pledged by Bonavia.

15 52. This wrongful conduct done in breach of the agreement directly and proximately
16 caused damages to the cross-complainants in the approximate amount of no less than
17 \$7,000,000. As a result of the improper seizure, cross-complainants are entitled to a
18 preliminary and permanent injunction requiring the return of the improperly seizure collateral,
19 including the Picture, and/or for the imposition of a constructive trust requiring the protection
20 and return of such assets.

21 WHEREFORE, Cross-complainants pray for judgment against cross-defendants,
22 and each of them, as follows:

23 On the First Cause of Action:

- 24 1. For damages in an amount no less than \$100,000,000.00 according to proof; and
25 2. For punitive damages in an amount to be proven at trial.

26 On the Second Cause of Action:

- 27 3. For damages in an amount no less than \$100,000,000.00, according to proof;
28 4. For interest at the maximum legal rate;
5. For recovery of the attorneys' fees incurred by cross-complainants.

On the Third Cause of Action:

6. For damages in the sum of no less than \$100,000,000.00 according to proof;
7. For interest at the maximum legal rate;
8. For recovery of the attorneys' fees incurred by cross-complainants; and
9. For a preliminary and permanent injunction, and/or constructive trust.

On All Causes of Action:

10. For costs and expenses of this action; and
11. For such other and further relief as the Court may deem just and proper.

DATED: August 17, 2012

BOOTH LLP

By: 
Hillary Arrow Booth
Attorneys for Cross-Complainants HILL &
BRAND PRODUCTIONS 7, LLC, HILL &
BRAND ENTERTAINMENT, LLC, FULL
CIRCLE RELEASING, LLC

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: **CROSS-COMPLAINT FOR: (1) FRAUD; (2) BREACH OF CONTRACT (failure**
8 **to perform); and (3) BREACH OF CONTRACT (improper seizure of collateral)** 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:

9 SEE ATTACHED SERVICE LIST

10 [X] **BY MAIL** I deposited such envelope(s) in the mail at Los Angeles, California. I am
11 readily familiar with the firm's practice of collection and processing of correspondence
12 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.

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

15 [] **BY FACSIMILE:** The above-referenced document (together with all exhibits and
16 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.


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

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

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

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

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

27 
28 Alinda Turner

SERVICE LIST

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agent for STRATIVE CAPITAL, LTD.