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Wayne, New Jersey 07470  
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Attorneys for Defendants  
Raymond Scott and David Mays

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

MY WAY PRODUCTIONS 2, LTD, )  
individually and as a member of Z & M )  
MEDIA, LLC and HIP HOP GLOBAL )  
MEDIA, LLC )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Z & M MEDIA, LLC; HIP HOP GLOBAL )  
MEDIA, LLC; RAYMOND SCOTT; and )  
DAVID MAYS, )  
 )  
Defendants. )  
 )  
 )  
\_\_\_\_\_ )

FILE NO. 2009-cv-01643-WJM-MF

CIVIL ACTION

**ANSWER, COUNTERCLAIM  
AND THIRD-PARTY  
COMPLAINT ON BEHALF  
OF DEFENDANTS RAYMOND  
SCOTT AND DAVID MAYS**

Defendants Raymond Scott, residing at 17100 North Bay Road, Sunny Isles,  
Florida, 33160, and David Mays, residing at 2561 N.E. 184<sup>th</sup> Terrace, Miami, FA 33160  
(hereinafter “Scott” and “Mays”), by and through their attorneys, Williams, Caliri, Miller  
& Otley, P.C., by way of Answer to the Plaintiff’s Amended Verified Complaint hereby  
say:

1.

Scott and Mays deny the allegations contained in this paragraph.

2.

a. Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph and, therefore, deny the allegations contained therein.

b. Scott and Mays admit the allegations contained in this subparagraph.

c. Scott and Mays admit the allegations contained in this subparagraph.

d. Scott and Mays admit the allegations contained in this subparagraph.

e. Scott and Mays deny the allegations contained in this subparagraph.

3.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

4.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein.

5.

Scott and Mays admit the allegations contained in this paragraph.

6.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein, and they assert that the agreements speak for themselves.

7.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein, except that they admit that a capital contribution was made and plaintiff received a membership interest.

8.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

9.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein, except that they admit that Z&M has other investors.

10.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

11.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein, except that they admit that they entered into employment agreements and assert that the agreements speak for themselves.

12.

Scott and Mays admit the allegations contained in this paragraph.

13.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

14.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein.

15.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

16.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

17.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and they assert that the correspondence speaks for itself.

18.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

19.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

20.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

21.

Scott and Mays deny the allegations contained in this paragraph.

22.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

23.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

24.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

25.

Scott and Mays have insufficient knowledge or information on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein.

26.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

27.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

28.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein.

29.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

30.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein.

31.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

32.

Scott and Mays deny the allegations contained in this paragraph.

33.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

34.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

35.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

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Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

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Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

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Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

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Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

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Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

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Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

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Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

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Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

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Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein.

45.

Scott and Mays deny the allegations contained in this paragraph.



46.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

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Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein.

48.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

49.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

50.

Scott and Mays deny the allegations contained in this paragraph.

51.

Scott and Mays deny the allegations contained in this paragraph.

52.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein, and they assert that the correspondence speaks for itself.

53.

Scott and Mays have insufficient information and knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein.

54.

Scott and Mays deny the allegations contained in this paragraph.

55.

Scott and Mays have insufficient information and knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained in this paragraph.

56.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

57.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

58.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

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Scott and Mays repeat and incorporate herein their answer to paragraph 6.

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Scott and Mays repeat and incorporate herein their answer to paragraph 6.

62.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

63.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

64.

Scott and Mays deny the allegations contained in this paragraph.

65.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

66.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

67.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

68.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

69.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

70.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

71.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

72.

Scott and Mays deny the allegations contained in this paragraph.

73.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

74.

Scott and Mays deny the allegations contained in this paragraph.

75.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

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Scott and Mays repeat and incorporate herein their answer to paragraph 6.

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Scott and Mays repeat and incorporate herein their answer to paragraph 6.

78.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

79.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

80.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein, and they assert that the resolution speaks for itself.

81.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein, and they assert that the promissory notes speak for themselves.

82.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein, and they assert that the promissory notes speak for themselves.

83.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein, and they assert that the promissory notes speak for themselves.

84.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

85.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein, and they assert that Exhibit J speaks for itself.

86.

Scott and Mays deny the allegations contained in this paragraph.

87.

Scott and Mays repeat their prior responses and incorporate the same herein.

88.

Scott and Mays deny the allegations contained in this paragraph.

89.

Scott and Mays deny the allegations contained in this paragraph.

90.

Scott and Mays deny the allegations contained in this paragraph.

91.

Scott and Mays have insufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein.

92.

Scott and Mays deny the allegations contained in this paragraph.

93.

Scott and Mays deny the allegations contained in this paragraph.

94.

Scott and Mays repeat their prior responses and incorporate the same herein.

95.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations in this paragraph, and, therefore, deny the allegations contained therein.

96.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

97.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

98.

Scott and Mays deny the allegations contained in this paragraph.

99.

Scott and Mays deny the allegations contained in this paragraph.

100.

Scott and Mays repeat their prior responses and incorporates them herein.

101.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

102.

Scott and Mays deny the allegations contained in this paragraph.

103.

Scott and Mays deny the allegations contained in this paragraph.

104.

Scott and Mays deny the allegations contained in this paragraph.

105.

Scott and Mays deny the allegations contained in this paragraph.

106.

Scott and Mays repeat their prior responses and incorporate the same herein.

107.

Scott and Mays deny the allegations contained in this paragraph.



108.

Scott and Mays deny the allegations contained in this paragraph.

109.

Scott and Mays deny the allegations contained in this paragraph.

110.

Scott and Mays repeat their prior responses and incorporate the same herein.

111.

Scott and Mays deny the allegations contained in this paragraph.

112.

Scott and Mays deny the allegations contained in this paragraph.

113.

Scott and Mays deny the allegations contained in this paragraph.

114.

Scott and Mays deny the allegations contained in this paragraph.

115.

Scott and Mays deny the allegations contained in this paragraph.

116.

Scott and Mays repeat their prior responses and incorporate the same herein.

117.

Scott and Mays deny the allegations contained in this paragraph.

118.

Scott and Mays deny the allegations contained in this paragraph.

119.

Scott and Mays deny the allegations contained in this paragraph.

120.

Scott and Mays deny the allegations contained in this paragraph.

121.

Scott and Mays deny the allegations contained in this paragraph.

122.

Scott and Mays deny the allegations contained in this paragraph.

123.

Scott and Mays repeat their prior responses and incorporate the same herein.

124.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore, deny the allegations contained therein.

125.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained in this paragraph.

126.

Scott and Mays deny the allegations contained in this paragraph.

127.

Scott and Mays deny the allegations contained in this paragraph.

128.

Scott and Mays deny the allegations contained in this paragraph.

129.

Scott and Mays deny the allegations contained in this paragraph.

130.

Scott and Mays repeat their prior responses and incorporate the same herein.

131.

Scott and Mays deny the allegations contained in this paragraph.

132.

Scott and Mays deny the allegations contained in this paragraph.

133.

Scott and Mays deny the allegations contained in this paragraph.

134.

Scott and Mays deny the allegations contained in this paragraph.

135.

Scott and Mays repeat their prior responses and incorporate the same herein.

136.

Scott and Mays deny the allegations contained in this paragraph.

137.

Scott and Mays deny the allegations contained in this paragraph.

138.

Scott and Mays deny the allegations contained in this paragraph.

139.

Scott and Mays deny the allegations contained in this paragraph.

140.

Scott and Mays deny the allegations contained in this paragraph.

141.

Scott and Mays deny the allegations contained in this paragraph.

142.

Scott and Mays deny the allegations contained in this paragraph.

143.

Scott and Mays deny the allegations contained in this paragraph.

144.

Scott and Mays repeat their prior responses and incorporate the same herein.

145.

Scott and Mays repeat and incorporate herein their answer to paragraph 6.

146.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

147.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

148.

Scott and Mays deny the allegations contained in this paragraph.

149.

Scott and Mays deny the allegations contained in this paragraph.

150.

Scott and Mays repeat their prior responses and incorporate the same herein.

151.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

152.

Scott and Mays deny the allegations contained in this paragraph.

153.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and therefore deny the allegations contained therein.

154.

Scott and Mays deny the allegations contained in this paragraph.

155.

Scott and Mays deny the allegations contained in this paragraph.

156.

Scott and Mays repeat their prior responses and incorporate the same herein.

157.

Scott and Mays deny the allegations contained in this paragraph, except to admit their execution of the Promissory Notes.

158.

Scott and Mays have insufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein, and they assert that the promissory notes speak for themselves.

159.

Scott and Mays have insufficient information or knowledge to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein.

160.

Scott and Mays deny the allegations contained in this paragraph.

161.

Scott and Mays repeat their prior responses and incorporate the same herein.

162.

Scott and Mays deny the allegations contained in this paragraph.

163.

Scott and Mays deny the allegations contained in this paragraph.

164.

Scott and Mays deny the allegations contained in this paragraph.

165.

Scott and Mays repeat their prior responses and incorporate the same herein.

166.

Scott and Mays have insufficient information or knowledge on which to form a belief as to the truth of the allegations contained in this paragraph, and, therefore, deny the allegations contained therein.

167.

Scott and Mays deny the allegations contained in this paragraph.

168.

Scott and Mays deny the allegations contained in this paragraph.

169.

Scott and Mays deny the allegations contained in this paragraph.

**WHEREFORE**, Defendants Raymond Scott and David Mays demand judgment dismissing Plaintiff's Amended Verified Complaint and any and all claims against them with prejudice, along with costs, attorneys' fees, interest and all other relief deemed just and equitable by the Court.

**AFFIRMATIVE DEFENSES**

1) The affirmative defenses set forth in the answer of Z&M and HHG are repeated and incorporated herein.

2) This lawsuit is illegal in that it has not been properly authorized by the members of the Plaintiff corporation.

3) This law suit was instituted in bad faith and for an illicit purpose, namely to enable Plaintiff and Michael Misick to unlawfully seize control of Z&M and HHG and

their assets and income, oust the majority members Scott and Mays, and then sell the companies in order to obtain funds for Michael Misick's defense in his criminal investigation and likely criminal prosecution by the British government.

4) No bond or other security was provided or offered by Plaintiff before it obtained Temporary Restraining Orders, which bond or other security is required by Rule 65 of the Federal Rules of Civil Procedure prior to any restraining order being issued. The Temporary Restraining Orders must be vacated and no preliminary injunction or restraining order may be issued until a bond or other security in a proper amount has been posted.

5) Plaintiff is barred from relief by its unclean hands.

6) Plaintiff is barred from relief by its failure to join or notify the other members of the Defendant companies. These other members are indispensable parties to this lawsuit, and their rights and interests have been and are being damaged by Plaintiff's failure.

7) Scott and Mays have acted properly and have not materially breached any of their duties and obligations. Plaintiff is not entitled to any relief against them.

8) Scott and Mays and the other members of the Defendant companies will suffer irreparable harm if the relief sought by Plaintiff is granted, especially the demand that Scott and Mays be ousted as managers of the Defendant companies and "complete control" of the operation of the Defendant companies during this litigation is granted to Plaintiff, a company controlled by Michael Misick. Retaining Scott and Mays as employees of the Defendant companies is necessary for their proper operation. Their



ouster would be an unmitigated disaster for the Defendants and the other members of the Defendant companies, and would be an appalling miscarriage of justice.

**WHEREFORE**, Defendants Scott and Mays demand judgment, dismissing Plaintiff's Amended Verified Complaint, and any and all claims against them with prejudice, along with costs, attorneys' fees, interest and all other relief deemed fair and equitable by the Court.

### **COUNTERCLAIM**

Defendants Raymond Scott and David Mays file this Counterclaim for damages and other relief against Plaintiff.

#### **Count One**

##### **Fraud**

1. Z & M Media, LLC (Z&M) and Hip Hop Global Media, LLC (HHG) are limited liability companies incorporated in New Jersey.

2. On information and belief, Plaintiff My Way (hereinafter referred to as "Plaintiff") is a corporation incorporated in Turks and Caicos.

3. Scott and Mays decided to publish a bi-weekly magazine in the Hip Hop industry. Scott and Mays are pioneers in the field of Hip Hop journalism and have an excellent reputation throughout the industry.

4. In 2006, Mr. and Mrs. Michael Misick decided to invest in this enterprise. Z&M and HHG were formed to carry on the business. Scott and Mays were the majority members and the Misicks were to be minority members of Z&M and HHG. Scott was employed by Z&M as the Chief Brand Executive. Mays was employed by Z&M as its

Chief Executive Officer and Manager. The parties entered into operating agreements, employment contracts and a confidential investment agreement.

5. Z&M began publishing the magazine, the Hip Hop Weekly. Despite severe economic conditions in the magazine industry, Hip Hop Weekly has been successful. The magazine is the bible of the Hip Hop industry and is read throughout the United States. It has a readership estimated to be one million people.

6. Crucial to the success of Z&M and HHG is that their members be precluded from transferring their membership units to third-parties without the consent of all the principal members in the enterprise, namely Scott, Mays and the Misicks. If transfers to third-parties were freely permitted, then the third-parties, perhaps competitors of Z&M and HHG, would as a member of Z&M and HHG have access to their confidential business information and be in a position to harass and oppress the other members. To prevent this, extensive restrictions on such transfers were put in the agreements.

7. Prior to the final execution of the agreements, the attorney for the Misicks advised Scott and Mays that the Misicks in executing the documents intended to use a corporate form, and that Plaintiff had been formed for that purpose. The agreements were thereafter executed by Plaintiff instead of the Misicks, although the Misicks were the real parties in interest.

8. In negotiating and entering into the agreements, Michael Misick intentionally led Scott and Mays to believe: a) the only members of the Plaintiff corporation were Mr. and Mrs. Misick; b) Mr. and Mrs. Misick each had 50% of the membership units of the plaintiff; c) the restrictions on transfer in the agreements would bind the Plaintiff and preclude the Plaintiff from transferring any of its membership units to third parties.

9. Unknown to Scott and Mays, Plaintiff at the time the agreements were entered into had a third member. The third member was either Charles Misick or Windsor East LTD (a corporation which on information and belief is controlled by Charles Misick). Consequently, the restrictions on transfers to third parties had been breached by Michael Misick and plaintiff at the very beginning of the enterprise.

10. Michael Misick and Plaintiff intentionally concealed the membership interest of this third-party from Scott and Mays, and intentionally led Scott and Mays to believe they were entering into a business relationship with only the Misicks.

11. Michael Misick and Plaintiff so acted with a fraudulent intent to deceive Scott and Mays. The fraudulent intent was to permit Michael Misick and Plaintiff the right to freely transfer some or all of their membership interest in Z&M and HHG to third parties by simply transferring to the third parties membership units in Plaintiff. Scott and Mays, however, would remain bound by the restrictions on transfers in the agreements.

12. Scott and Mays reasonably relied on the fraudulent actions and conduct of Michael Misick.

13. The fraudulent actions and conduct of Michael Misick and Plaintiff has harmed and has the potential to harm Scott and Mays as set forth in the following paragraphs.

14. Scott and Mays are informed and believe that Plaintiff believes the restrictions on transfers in the agreements do not prevent Plaintiff from transferring its membership units to anyone they choose. Scott and Mays disagree. However, to the extent that Plaintiff's belief has merit, it gives Plaintiff and Michael Misick a great opportunity to harass and oppress Scott and Mays. For example, Plaintiff could sell or

threaten to sell its membership units to a competitor of Z&M and HHG, who would thereby become a member of Z&M and HHG, have access to their confidential business information and thereby severely harm Scott and Mays.

15. Plaintiff and Michael Misick have used the membership interest of this third-party to harass and oppress Scott and Mays by the institution of this law suit. Mrs. Misick has informed Mays that she did not authorize this law suit and wants it dismissed. If she has a 50% interest in Plaintiff, as Scott and Mays were led by Michael Misick to believe, then this law suit has not been properly authorized by members of Plaintiff having a majority interest and the law suit should be dismissed. However, Mays has been informed by counsel for Plaintiff that the law suit cannot be dismissed or withdrawn without the approval of Charles Misick and he will not approve.

16. Scott and Mays have been harmed as a direct result of the fraudulent and wrongful actions and conduct of Michael Misick and Plaintiff by embroiling Scott and Mays in an expensive and burdensome law suit in which Plaintiff and Michael Misick aided by this third-party seek to seize control of Z&M and HHG and oust Scott and Mays.

17. As shown in the following paragraphs, the filing of this law suit was in bad faith and for an illicit purpose.

18. Plaintiff had the right under the agreements to inspect and copy all of Z&M's "accounts, books and other documents." Without exercising that right, Plaintiff began this law suit in a complaint with false and speculative allegations of fact. If Plaintiff had exercised its right of inspection, it would have discovered that Z&M and HHG were being properly operated by Scott and Mays, and, therefore, a law suit would be without

merit. Plaintiff's instituting this law suit without exercising its right of inspection is evidence of its bad faith and its illicit purpose.

19. As further evidence of Plaintiff's bad faith and illicit purpose, Plaintiff at the outset of this law suit, obtained a restraining order and sought - and still seeks - a preliminary injunction ousting Scott and Mays and turning over to Plaintiff "complete control" of Z&M and HHG. Plaintiff, holding only a minority interest, sought - and still seeks - this extraordinary relief based on speculative and false allegations in its complaint.

20. The following is further evidence of bad faith and an illicit purpose. The complaint was purportedly verified by Michael Misick. However, the verification was patently invalid. Further the complaint was in pertinent part based only on information and belief. A properly verified complaint based on personal knowledge and not on information and belief is a prerequisite under settled principles of law to seeking and obtaining a restraining order or a preliminary injunction.

21. As further evidence of bad faith and an illicit purpose, Plaintiff did not comply with or even mention in its moving papers the mandatory requirement of Rule 65 of the Federal Rules of Civil Procedure that a bond must be posted before a restraining order or preliminary injunction can be issued. Restraining orders have been issued in this matter but no bond has been posted.

22. The following is further evidence of bad faith and illicit purpose. In March, 2009, Michael Misick resigned as Premier of Turks and Caicos, a British territory, in the face of a report by the British government in which, we are informed and believe, Michael Misick is charged with corruption in office. Very recently, the British Governor

of Turks and Caicos selected a Special Prosecutor and a Senior Investigating Officer to begin a criminal investigation into Michael Misick's corrupt conduct.

23. The illicit purpose of Michael Misick and Plaintiff in instituting this law suit was and is to obtain control of Z&M and HHG and their assets and income, oust Mays and Scott, and then sell the companies in order to obtain funds for Michael Misick's defense in the criminal investigation and likely criminal prosecution by the British government.

24. Scott and Mays have been damaged by the fraudulent and wrongful actions and conduct of Plaintiff and Michael Misick.

## **COUNT 2**

### **Breach of Contract**

1. The allegations contained in Count 1 are repeated and incorporated herein.
2. Furnishing a third-party with a membership interest in Plaintiff without the knowledge and consent of Scott and Mays constitutes a breach by Plaintiff of the operating and investment agreements.
3. Scott and Mays have been damaged by the breach.

## **COUNT 3**

### **Breach Of Fiduciary Duty**

1. The allegations contained in Counts 1 and 2 are repeated and incorporated herein.
2. As a member of Z&M and HHG, Plaintiff owes a fiduciary duty to Z&M, HHG and its other members, including Scott and Mays. The duty requires Plaintiff to act primarily for the benefit of Z&M, HHG and its members and in their best interest.

3. Plaintiff has breached its fiduciary duty by failing to act primarily for the benefit of Z&M, HHG and its members and in their best interest.

4. Scott and Mays have been damaged by the breach.

#### **COUNT 4**

##### **Breach Of The Covenant Of Good Faith And Fair Dealing**

1. The allegations contained in Counts 1, 2 and 3 are repeated and incorporated herein.

2. Plaintiff's actions and conduct constitute a breach of the covenant of good faith and fair dealing.

3. Scott and Mays have been damaged by the breach.

#### **COUNT 5**

##### **Judicial Expulsion Of Plaintiff Pursuant To N.J.S.A. 42:2B-24(B)(3).**

1. The allegations contained in Counts 1, 2, 3 and 4 are repeated and incorporated herein.

2. Plaintiff's wrongful and fraudulent actions and conduct have adversely and materially affected the business of Z&M and HHG.

3. Plaintiff has willfully, persistently and fraudulently committed breaches of the operating and investment agreements.

4. Plaintiff's wrongful and fraudulent actions and conduct have made it not reasonably practicable to carry on the business of Z&M and HHG with the Plaintiff remaining as a member.

5. Plaintiff's wrongful actions and conduct have damaged Scott and Mays, Z&M and HHG.

6. Plaintiff should be judicially expelled as a member of Z&M and HHG pursuant to the above statute.

**WHEREFORE**, Scott and Mays request a judgment in their favor against Plaintiff as follows:

- a) For compensatory and punitive damages together with costs, counsel fees and interest.
- b) Expulsion of Plaintiff from Z&M and HHG pursuant to N.J.S.A.42:2B-24b (3).
- c) A declaratory judgment that the issuance or transfer of a membership unit to a third-party was invalid and contrary to the operating and investment agreements.
- d) An injunction barring Plaintiff from transferring any of its membership units to anyone without the written consent of Scott and Mays.

Dated: July 14, 2009

Williams, Caliri, Miller & Otley, PC  
Attorneys for Defendants-Counterclaimants-  
Third-Party Plaintiffs  
Raymond Scott and David Mays

By: /s/ *Burrell Ives Humphreys*  
Burrell Ives Humphreys

**THIRD PARTY COMPLAINT AGAINST MICHAEL MISICK**

**COUNT 1**

**Setting Aside The Corporate Shield**

1. The allegations contained in the counterclaim are repeated and incorporated herein.



2. The actions and conduct of Plaintiff set forth in the counterclaim are directed and controlled by its principal, Michael Misick, and should be considered as his actions and conduct.

3. The fraudulent and wrongful actions and conduct of Michael Misick and the injustice resulting therefrom warrant the setting aside of the corporate shield and a finding that Michael Misick is individually liable for the fraudulent and wrongful actions and conduct of Plaintiff.

## **COUNT 2**

### **Tortious Interference with Contractual Rights and Economic Advantages**

1. The allegations contained in the Counterclaim and in Count 1 of this Third Party Complaint are repeated and incorporated herein.

2. Michael Misick has intentionally, wrongfully and with malice and without justification tortiously interfered with the contractual rights and economic advantages of Scott, Mays, Z&M and HHG.

3. Scott, Mays, Z&M and HHG have been damaged by Michael Misick's wrongful and tortious conduct.

**WHEREFORE** Scott and Mays request a judgment in their favor against Michael Misick as follows.

a) Compensatory and punitive damages together with costs, counsel fees and interest.

b) Expulsion of Plaintiff from Z&M and HHG pursuant to N.J.S.A.42:2B-24b  
(3).

c) A declaratory judgment that the issuance or transfer of a membership unit to a third-party was invalid and contrary to the operating and investment agreements.

d) An injunction barring Plaintiff from transferring any of its membership units to anyone without the written consent of Scott and Mays.

Dated: July 14, 2009

Williams, Caliri, Miller & Otley, PC  
Attorneys for Defendants-Counterclaimants-  
Third-Party Plaintiffs  
Raymond Scott and David Mays

By: /s/ **Burrell Ives Humphreys**  
Burrell Ives Humphreys

### **JURY DEMAND**

Defendants Scott and Mays hereby demand trial by jury on all issues.

Dated: July 14, 2009

Williams, Caliri, Miller & Otley, PC  
Attorneys for Defendants-Counterclaimants-  
Third-Party Plaintiffs  
Raymond Scott and David Mays

By: /s/ **Burrell Ives Humphreys**  
Burrell Ives Humphreys

### **DESIGNATION OF TRIAL COUNSEL**

Please be advised that Burrell Ives Humphreys, Esq. is hereby designated as trial counsel on behalf of Defendants Raymond Scott and David Mays in the above captioned matter.

Dated: July 14, 2009

Williams, Caliri, Miller & Otley, PC  
Attorneys for Defendants-Counterclaimants-  
Third-Party Plaintiffs  
Raymond Scott and David Mays

By: /s/ **Burrell Ives Humphreys**  
Burrell Ives Humphreys

**CERTIFICATION OF FILING AND SERVICE**

I hereby certify that the within pleading was filed via ECF with the U.S. District Court, District of New Jersey, and copies were set to all counsel known of record on the below date.

Dated: July 14, 2009

Williams, Caliri, Miller & Otley, PC  
Attorneys for Defendants-Counterclaimants-  
Third-Party Plaintiffs  
Raymond Scott and David Mays

By: /s/ *Burrell Ives Humphreys*  
Burrell Ives Humphreys

**CERTIFICATION**

I certify to the best of my knowledge that this matter is not the subject of any other action pending in any Court or any arbitration proceeding, and that no other action or arbitration proceeding is presently contemplated by the answering Defendants; and that these Defendants do not presently know of any other parties who should be joined in this action, except that as set forth in Scott and Mays' Sixth Affirmative Defense, Plaintiff must join other members of the Defendant companies.

Dated: July 14, 2009

Williams, Caliri, Miller & Otley, PC  
Attorneys for Defendants-Counterclaimants-  
Third-Party Plaintiffs  
Raymond Scott and David Mays

By: /s/ *Burrell Ives Humphreys*  
Burrell Ives Humphreys