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19 *Attorneys for Defendants*

20 JOHN C. DEPP, II; and EDWARD L. WHITE, as trustee of the Sweetzer
21 Trust and as trustee of the Mooh Investment Trust

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA

23 FOR THE COUNTY OF LOS ANGELES

24 BY FAX

25 THE MANDEL COMPANY, INC., d/b/a
26 THE MANAGEMENT GROUP, a
27 California corporation; JOEL L.
28 MANDEL, an individual; and ROBERT
MANDEL, an individual,,

Plaintiffs,

vs.

JOHN C. DEPP II, an individual;
EDWARD L. WHITE, as trustee of the
Sweetzer Trust and as trustee of the Mooh
Investment Trust; and DOES 1 through 50,
inclusive,

Case No.: BC682487 [Related to Case No.
BC646882]

Assigned to Hon. Teresa A. Beaudet – Dept. 50

DEFENDANTS' ANSWER TO PLAINTIFFS'
COMPLAINT

Complaint Filed: November 6, 2017
Trial Date: August 15, 2018

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

MAR 20 2018

Sherri R. Carter, Executive Officer/Clerk
By M. Soto, Deputy
Moses Soto

03/22/2018

1 **DEFENDANTS' ANSWER TO COMPLAINT**

2 Defendants John C. Depp, II and Edward L. White, as trustee of the Sweetzer Trust and as
3 trustee of the Mooh Investment Trust (collectively "Depp" or "Mr. Depp") hereby answer the
4 Complaint filed by Plaintiffs The Mandel Company, Inc., d/b/a The Management Group, Joel L.
5 Mandel, and Robert Mandel (collectively "TMG") as follows:

6 **GENERAL DENIAL**

7 Under Code of Civil Procedure section 431.30(d), Mr. Depp denies, generally and
8 specifically, each and every allegation contained in the Complaint and each and every cause of
9 action alleged against Mr. Depp.

10 Mr. Depp also denies, generally and specifically, that TMG is entitled to any equitable
11 relief, including judicial foreclosure, or that TMG has been damaged in any amount, or at all, by
12 reason of any alleged wrongful act or omission by Mr. Depp.

13 **AFFIRMATIVE DEFENSES**

14 Without admitting any of the allegations in the Complaint, and without waiving or
15 excusing the burden of proof of TMG, or admitting that Mr. Depp has any burden of proof, Mr.
16 Depp hereby asserts the following affirmative defenses:

17 **FIRST AFFIRMATIVE DEFENSE**

18 **(Failure to State a Claim)**

19 1. The Complaint, and the claims and cause of action alleged therein, fail to state a
20 cause of action against Mr. Depp upon which relief can be granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 **(Contracts Void, Invalid, and/or Unenforceable)**

23 2. Mr. Depp is informed and believes, and on that basis alleges, that the contracts,
24 obligations, and/or agreements as alleged in the Complaint are void, invalid, and/or unenforceable
25 for the reasons alleged in Mr. Depp's First Amended Complaint filed on May 26, 2017, in the
26 action entitled *John C. Depp, II et al. v. The Mandel Company, Inc., et al.*, Los Angeles Superior
27 Court Case No. BC646882 (the "Depp Action") which has been incorporated into this Answer by
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1 reference, including, without limitation, TMG's breaches of fiduciary duty, conflicts of interest,
2 and negligent and/or fraudulent conduct.

3 **THIRD AFFIRMATIVE DEFENSE**

4 **(Failure of Consideration)**

5 3. Mr. Depp alleges that with respect to any contracts, obligations, and/or agreements
6 as alleged in the Complaint, any duty or performance of Mr. Depp is excused by reason of failure
7 of consideration.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 **(Performance Excused)**

10 4. With respect to the claims and cause of action alleged in the Complaint, TMG is
11 barred from any recovery because Mr. Depp's obligations under the contracts and/or agreements
12 as alleged in the Complaint were waived, excused, and/or rendered moot, including without
13 limitation by TMG's breach of the alleged contracts and/or agreements, TMG's breach of the
14 implied covenant of good faith and fair dealing, the non-occurrence of a condition precedent,
15 and/or TMG's conduct as alleged in the Depp Action.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 **(Prevention of Performance)**

18 5. With respect to the claims and cause of action alleged in the Complaint, TMG is
19 barred from any recovery because TMG, its representatives, and/or its agents, and/or superseding
20 events frustrated and/or prevented Mr. Depp's performance under the contracts, obligations,
21 and/or agreements as alleged in the Complaint.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 **(Rescission)**

24 6. The Complaint, and the claims and cause of action alleged therein, are barred in
25 that, due to TMG's own conduct and/or the conduct of its agents and employees, Mr. Depp is
26 entitled to rescission of any alleged agreement(s).

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(Illegality of Contract)**

3 7. Mr. Depp is informed and believes, and on that basis alleges, that with respect to
4 any contracts, obligations, and/or agreements as alleged in the Complaint, any duty or
5 performance of Mr. Depp is excused by reason of illegality of contract.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 **(Forfeiture)**

8 8. If Mr. Depp has failed to perform any obligation owing to TMG, which Mr. Depp
9 denies, Mr. Depp should be relieved therefrom in order to avoid a forfeiture. Cal. Civ. Code §
10 3275.

11 **NINTH AFFIRMATIVE DEFENSE**

12 **(No Causation)**

13 9. Assuming, without admitting, for purposes of this affirmative defense only, that
14 TMG has suffered any damages, which Mr. Depp denies, then such damages, if any, were the
15 result of the actions, conduct, inaction, fault and/or negligence of persons or entities other than
16 Mr. Depp, thereby relieving Mr. Depp from any and all liability under the Complaint and barring
17 any recovery in this action against Mr. Depp.

18 **TENTH AFFIRMATIVE DEFENSE**

19 **(Statutes of Limitations)**

20 10. The Complaint, and the claims and cause of action alleged therein, are barred in
21 whole or in part by the applicable statute of limitations, including, but not limited to, those set
22 forth in California Code of Civil Procedure section 337 and California Commercial Code section
23 3118.

24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 **(Excuse)**

26 11. If Mr. Depp failed to perform any obligations allegedly owing to TMG, which Mr.
27 Depp denies, such performance was prevented or made impossible or otherwise excused as a
28 result of acts or omissions of TMG, its representatives, and/or its agents.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 **(Unjust Enrichment)**

3 12. Mr. Depp is informed and believes, and on that basis alleges, that having
4 prevented and hindered Mr. Depp from performing under the contracts, obligations, and/or
5 agreements alleged in the Complaint, and from obtaining the benefits thereof, TMG would be
6 unjustly enriched if allowed to obtain damages for the alleged breaches thereof.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 **(Laches)**

9 13. The Complaint, and the claims and cause of action alleged therein, are barred by
10 the doctrine of laches.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 **(Waiver)**

13 14. The Complaint, and the claims and cause of action alleged therein, are barred
14 because TMG has waived, relinquished, and/or abandoned its right to assert the claims and cause
15 of action alleged in the Complaint.

16 **FIFTEENTH AFFIRMATIVE DEFENSE**

17 **(Estoppel)**

18 15. The Complaint, and the claims and cause of action alleged therein, are barred by
19 the doctrine of estoppel.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 **(Unclean Hands)**

22 16. The Complaint, and the claims and cause of action alleged therein, are barred by
23 the doctrine of unclean hands.

24 **SEVENTEENTH AFFIRMATIVE DEFENSE**

25 **(Unconscionability)**

26 17. The Complaint, and the claims and cause of action alleged therein, are barred by
27 the doctrine of unconscionability.

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EIGHTEENTH AFFIRMATIVE DEFENSE

(Bad Faith)

18. Mr. Depp is informed and believes, and on that basis alleges, that TMG has acted in bad faith, illegally and/or in violation of its fiduciary duties, thereby causing or contributing to the alleged damages at issue.

NINETEENTH AFFIRMATIVE DEFENSE

(Fraud and Deceit)

19. The Complaint, and the claims and cause of action alleged therein, are barred due to TMG's own fraudulent and deceitful conduct as alleged in the Depp Action relating to the transactions referenced in the Complaint.

TWENTIETH AFFIRMATIVE DEFENSE

(Duress, Fraud, Undue Influence, Mistake)

20. The Complaint, and the claims and cause of action alleged therein, are barred because any contracts, obligations, and/or agreements alleged in the Complaint, if entered into by Mr. Depp, were so entered as a result of duress, fraud, undue influence, and/or mistake.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Attorneys' Fees)

21. TMG's claims alleged in its Complaint do not allow for the recovery of attorneys' fees and, as such, any request by TMG for attorneys' fees is improper as TMG is not entitled to recovery of such fees.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

22. Mr. Depp is informed and believes, and on that basis alleges, that at all times relevant, TMG has failed, neglected and refused to mitigate damages, if any, thus barring, or at least reducing, any recovery to which TMG might be entitled in this lawsuit.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(Consent)

23. With respect to the claims and cause of action alleged in the Complaint, TMG is barred from any recovery because TMG expressly or impliedly consented to the alleged acts and omissions by Mr. Depp that allegedly give rise to TMG's claims and cause of action.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Ratification)

24. With respect to the claims and cause of action alleged in the Complaint, TMG is barred from any recovery because TMG ratified the alleged acts and omissions by Mr. Depp that allegedly give rise to TMG's claims and cause of action.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to Do Equity)

25. With respect to the claims and cause of action alleged in the Complaint, TMG failed to do equity in the matters alleged therein and is therefore barred from any equitable relief, and any recovery sought by TMG must be diminished or barred by reason thereof.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Set-off)

26. With respect to the claims and cause of action alleged in the Complaint, TMG is barred from any recovery, in whole or in part, because Mr. Depp is entitled to an offset, including without limitation by any amounts TMG received from Mr. Depp, by any amounts TMG received from third parties, and by any amounts owed to Mr. Depp by TMG as a result of TMG's misconduct, as further alleged in the Depp Action.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

27. The Complaint, and the claims and cause of action alleged therein, are barred due to the availability of an adequate remedy at law, thereby barring the equitable relief requested by TMG.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No License)

28. Mr. Depp is informed and believes, and on that basis alleges, that TMG was not licensed as a financial lender under California Financial Code section 22000 *et seq.* which bars TMG's recovery, if any, in whole or in part.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Reservation of Right to Assert Additional Defenses)

29. Mr. Depp reserves the right to assert additional defenses in the event discovery and/or further analysis indicates that additional unknown and/or unstated defenses would be applicable.

PRAYER

WHEREFORE, MR. DEPP prays for relief on the Complaint as follows:

1. That TMG take nothing under its Complaint and be afforded no relief;
2. That TMG's claims be dismissed with prejudice in their entirety and that judgment be entered in favor of Mr. Depp;
3. For costs of suit;
4. For attorneys' fees to the extent allowed by law; and
5. For such other and further relief as the Court deems just and proper.

Dated: March 20, 2018

MANATT, PHELPS & PHILLIPS LLP

Matthew P. Kanny KPC

MATTHEW P. KANNY

Attorneys for Defendants
JOHN C. DEPP, II; and EDWARD L. WHITE, as trustee of the Sweetzer Trust and as trustee of the Mook Investment Trust

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DEMAND FOR JURY TRIAL

Defendants hereby demand trial by jury for this matter.

Dated: March 20, 2018

MANATT, PHELPS & PHILLIPS LLP

Matthew P. Kanny / kx

MATTHEW P. KANNY

Attorneys for Defendants
JOHN C. DEPP, II; and EDWARD L. WHITE, as
trustee of the Sweetzer Trust and as trustee of the
Mooch Investment Trust

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Deadline

03/22/2018