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Dennis Prager

FILED
LOS ANGELES SUPERIOR COURT

NOV 08 2006

JOHN A. CLARKE, CLERK

BY A E LA FLEUR-CLAYTON, DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 DENNIS PRAGER, an individual,)
12 Plaintiff,)
13 v.)
14 THE PRAGER PERSPECTIVE, LLC, a)
California limited liability company; SCOTT)
15 WEBLEY, an individual, and Does 1 through 10,)
inclusive,)
16 Defendants.)

Case No. BC 357131
Assigned for All Purposes to:
Honorable Edward A. Ferns
Department 69

ANSWER OF CROSS-DEFENDANT
DENNIS PRAGER TO UNVERIFIED
CROSS-COMPLAINANTS THE PRAGER
PERSPECTIVE, LLC AND SCOTT
WEBLEY

18 THE PRAGER PERSPECTIVE, LLC, a)
California limited liability company; SCOTT)
19 WEBLEY, an individual,)
20 Cross-Complainants,)
21 v.)
22 DENNIS PRAGER, an individual; ROES 1-25,)
Inclusive,)
23 Cross-Defendants.)
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Complaint Filed: August 16, 2006
Trial Date: None set

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1 Cross-defendant Dennis Prager ("Prager"), for himself and for no other party, hereby
2 responds to the unverified cross-complaint (the "Cross-Complaint") filed against him by
3 defendants and cross-complainants Scott Webley ("Webley") and The Prager Perspective, LLC
4 ("TPP") (collectively, the "Cross-Complainants") as follows:

5 **GENERAL DENIAL**

6 1. Pursuant to section 431.30(d) of the California Code of Civil Procedure, Prager
7 denies generally and specifically each and every allegation and cause of action set forth in the
8 Cross-Complaint. Prager further denies that the Cross-Complainants have been injured or
9 damaged as alleged in their Cross-Complaint or otherwise by reason of any alleged conduct, act,
10 fault or omission on the part of Prager, and further denies that Cross-Complainants have been
11 damaged or injured in the sum or sums alleged, or in any other sum or sums whatsoever, or at all.

12 **AFFIRMATIVE DEFENSES**

13 For its affirmative defenses, Prager alleges:

14 **FIRST AFFIRMATIVE DEFENSE**

15 **(Failure To State A Cause Of Action)**

16 2. As a first affirmative defense, Prager alleges that neither the Cross-Complaint nor
17 any cause of action purported to be alleged in the Cross-Complaint state facts sufficient to
18 constitute a cause of action against Prager, and, as a result, Cross-Complainants are barred from
19 the recovery sought in their Cross-Complaint.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(Cross-Complainant's Failure To Perform And Breach Of Contract)**

22 3. As a second affirmative defense, Prager is informed and believes, and on that
23 basis alleges, that Cross-Complainants cannot recover on the purported breach of contract claim
24 because, among other reasons, to the extent there was any valid contract (whether written or
25 oral), Webley failed to perform fully all obligations required of him under any such contract
26 and/or breached material terms, provisions and/or conditions of any such contract.
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THIRD AFFIRMATIVE DEFENSE

(Offset)

4. As a third affirmative defense, Prager is informed and believes, and on that basis alleges, that he has been damaged by Webley’s conduct, including by, among other things, Webley’s breaches of his fiduciary duty owed to Prager and to TPP and his mismanagement of TPP. Therefore, to the extent Cross-Complainants recover any damages in this action, Prager is entitled to an offset against Cross-Complainants’ alleged damages.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

5. As a third affirmative defense, Prager alleges that, by reason of Webley’s actions and failures to act, and by reason of Prager’s reasonable reliance on these actions and inactions, the Cross-Complainants are estopped from raising each and every claim in their Cross-Complaint.

FIFTH AFFIRMATIVE DEFENSE

(Failure To State A Claim For Punitive Damages)

6. As a fifth affirmative defense, Prager alleges that the Cross-Complaint, and each and every cause of action purportedly stated in the Cross-Complaint, fail to state facts sufficient to support an award of punitive damages against Prager.

SIXTH AFFIRMATIVE DEFENSE

(Discharge Of Liability/Obligation And/Or Full Performance)

7. As a sixth affirmative defense, Prager alleges that he cannot be held liable to Cross-Complainants on the ground that, to the extent he owed to Cross-Complainants any duty or obligation, the duty or obligation was discharged and/or fully performed.

SEVENTH AFFIRMATIVE DEFENSE

(Partial Fault Of Third Parties)

8. As a seventh affirmative defense, Prager states that he is informed and believes, and on that basis alleges, that the acts, errors or omissions of third parties caused or contributed to the events and occurrences by which Cross-Complainants allege to have sustained injuries.

1 As a result, Prager is entitled to a judicial determination of the proportion of fault or culpability
2 of each third person or entity who proximately caused Cross-Complainants' alleged injuries, if
3 any, and recovery against Prager, if any, should be reduced or barred accordingly in proportion
4 to that fault.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 **(Exclusive Fault Of Third Parties)**

7 9. As an eighth affirmative defense, Prager states that he is informed and believes,
8 and on that basis alleges, that the purported damages, if any, of which Cross-Complainants
9 complain were caused solely, directly and proximately by the acts, errors or omissions of third
10 parties, and not by Prager. These other persons or entities are solely responsible and liable for
11 the purported damages, if any, alleged by Cross-Complainants.

12 **NINTH AFFIRMATIVE DEFENSE**

13 **(Intervening Or Superseding Cause)**

14 10. As a ninth affirmative defense, Prager states that he is informed and believes, and
15 on that basis alleges, that the purported damages, if any, of which Cross-Complainants complain
16 are the result of actions of third parties constituting an intervening or superseding cause
17 precluding any liability on the part of Prager.

18 **TENTH AFFIRMATIVE DEFENSE**

19 **(Speculative Damages)**

20 11. As a tenth affirmative defense, Prager alleges that the damages, if any, that Cross-
21 Complainants claim in the Cross-Complaint are speculative.

22 **ELEVENTH AFFIRMATIVE DEFENSE**

23 **(Lack Of Damages)**

24 12. As an eleventh affirmative defense, Prager alleges that Cross-Complainants are
25 precluded from recovering on the Cross-Complaint as a result of Prager's information and belief
26 that Cross-Complainants did not suffer any damages directly or proximately caused or
27 foreseeably resulting from any conduct, acts or omissions by Prager.

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TWELFTH AFFIRMATIVE DEFENSE

(Failure To Mitigate Damages)

13. As a twelfth affirmative defense, Prager is informed and believes, and on that basis alleges, that Cross-Complainants have failed to mitigate damages, if any, and to the extent of this failure to mitigate, any judgment or relief awarded to Cross-Complainants should be reduced or barred accordingly.

THIRTEENTH AFFIRMATIVE DEFENSE

(Justification And Privilege)

14. As a thirteenth affirmative defense, Prager alleges that he cannot be held liable to Cross-Complainants on the ground that all acts and/or omissions of Prager that Cross-Complainants allege caused them damages, including, any alleged failure to perform any duties or any alleged breach of any duties, were privileged and/or justified.

FOURTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

15. As a fourteenth affirmative defense, Prager is informed and believes, and on that basis alleges, that each and every purported cause of action or claim alleged against Prager is barred in whole or in part by the equitable doctrine of unclean hands due to Webley's own improper conduct.

FIFTEENTH AFFIRMATIVE DEFENSE

(Prevention Of Performance)

16. As a fifteenth affirmative defense, Prager denies that he breached or failed to perform any material obligations entitling Cross-Complainants to the requested relief. However, in the alternative, to the extent Prager failed to perform and/or breached any of his obligations or duties, if any, owed to Cross-Complainants, or either of them, Prager is informed and believes, and on that basis alleges, that he failed and/or breached those alleged duties or obligations by reason of Cross-Complainants' prevention of the performance by Prager of the material obligations.

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SIXTEENTH AFFIRMATIVE DEFENSE

(Excusal Of Performance)

17. As a sixteenth affirmative defense, Prager alleges that he performed each and every obligation and condition he was required to perform pursuant to any agreements he may have had with Cross-Complainants, or either of them, and pursuant to any obligations he owed to Cross-Complainants, or either of them, except as the performance was excused by Cross-Complainants' breaches or other actions or omissions.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Lack Of Causation)

18. As a seventeenth affirmative defense, Prager alleges that Cross-Complainants' damages, if any, were not a result of or caused by any acts or omissions of Prager or his agents or employees. Therefore, Cross-Complainants are barred from asserting any cause of action against Prager.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Bad Faith)

19. As an eighteenth affirmative defense, Prager states that he is informed and believes, and on that basis alleges, that Cross-Complainants filed and served the Cross-Complaint in bad faith and that the causes of action alleged against Prager are frivolous, thereby entitling Prager to an award of reasonable attorneys' fees and costs pursuant to section 128.5 of the California Code of Civil Procedure.

NINETEENTH AFFIRMATIVE DEFENSE

(Uncertainty)

20. As a twenty-second affirmative defense, Defendant alleges that, under section 430.10(f) of the California Code of Civil Procedure, each and every cause of action alleged in the Complaint is ambiguous and unintelligible in that it does not allege with sufficient specificity the grounds upon which Defendant is alleged to be responsible, in whole or in part, for Plaintiff's alleged damages.

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TWENTIETH AFFIRMATIVE DEFENSE

(Unconstitutionality Of Punitive Damages)

21. As a twentieth affirmative defense, Prager alleges that the Cross-Complaint, to the extent that it seeks punitive or exemplary damages pursuant to section 3294 of the California Civil Code or otherwise, or any forfeiture, violates Prager's right to protection from excessive fines as provided in the Eighth Amendment of the United States Constitution and Article I, Section 17 of the Constitution of the State of California, and violates Prager's right to substantive due process as provided in the Fifth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of California, and therefore fails to state any claim for punitive or exemplary damages or for forfeiture.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Violation Of Contract Clauses)

22. As a twenty-first affirmative defense, Prager is informed and believes, and on that basis alleges, that the recovery of punitive damages would be violative of the United States Constitution and the Constitution of the State of California in that the imposition of punitive damages would violate the contract clauses contained therein.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Waiver)

23. As a twenty-second affirmative defense, Prager alleges that the Cross-Complaint, and each of its alleged causes of action, is barred in whole or in part by the equitable doctrine of waiver.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Uncertainty)

24. As a twenty-third affirmative defense, Prager alleges that, under section 430.10(f) of the California Code of Civil Procedure, each and every cause of action alleged in the Cross-Complaint is ambiguous and unintelligible in that it does not allege with sufficient specificity the grounds upon which Prager is alleged to be responsible, in whole or in part, for Cross-Complainants' alleged damages.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Additional Defenses)

25. Prager may have additional affirmative defenses of which he is not fully aware and which may become known during the course of discovery and investigation. Accordingly, Prager reserves the right to assert additional affirmative defenses after they are ascertained.


PRAYER FOR RELIEF

WHEREFORE, Cross-defendant Dennis Prager prays for judgment as follows:

- 1. For judgment that the Cross-Complainants take nothing by their Cross-Complaint and that the Cross-Complaint be dismissed with prejudice;
- 2. For costs of suit incurred in this action, including reasonable attorneys' fees, to the extent authorized by law, equity or contract; and
- 3. For such other and further relief as this Court may deem just and proper.

Dated: November 7, 2006

Respectfully submitted,
TROY & GOULD
Professional Corporation

By: 
Sharon R. Gold
Attorneys for Plaintiff Dennis Prager

TROY & GOULD

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action. My business address is 1801 Century Park East, 16th Floor,
6 Los Angeles, California 90067-2367.

7 On November 7, 2006, I served the foregoing document described as **ANSWER OF
8 CROSS-DEFENDANT DENNIS PRAGER TO UNVERIFIED CROSS-COMPLAINT OF
9 CROSS-COMPLAINANTS THE PRAGER PERSPECTIVE, LLC AND SCOTT
10 WEBLEY** on all interested parties by placing true copies thereof enclosed in a sealed envelope
11 addressed as follows:

12 David S. Olson, Esq.
13 Alisa S. Edelson, Esq.
14 Kulik, Gottesman, Mouton & Siegel
15 15303 Ventura Boulevard, Suite 1400
16 Sherman oaks, CA 91403

- 17 **BY MAIL AS FOLLOWS:** I am "readily familiar" with the firm's practice of
18 collecting and processing correspondence for mailing. Under that practice, it is
19 deposited with the U.S. Postal Service on that same day with postage thereon fully
20 prepaid at Los Angeles, California in the ordinary course of business. I am aware that
21 on motion of the party served, service is presumed invalid if postal cancellation date
22 or postage meter date is more than one day after the date for mailing in affidavit.
- 23 **BY PERSONAL SERVICE:** I delivered such envelope by hand to the offices of the
24 addressee.
- 25 **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be
26 delivered to _____ for delivery to the below address(es).
- 27 **BY FACSIMILE MACHINE:** I caused the above-referenced document(s) to be
28 transmitted to the below-named persons at the appropriate facsimile telephone
numbers.

Executed on November 7, 2006, at Los Angeles, California.

- 22 (State) I declare under penalty of perjury under the laws of the State of California
23 that the above is true and correct.
- 24 (Federal) I declare that I am employed in the office of a member of the bar of this
25 court at whose direction the service was made.

26 Janice Mills
27 Print Name

26 *Janice Mills*
27 Signature

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COURT REPORTER