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

12 THE PEOPLE OF THE STATE OF)
CALIFORNIA, by and through the California)
13 Corporations Commissioner,)

14 Plaintiff,)

15 v.)

16 BIG SKY MOTION PICTURES, L.L.C., a)
California limited liability company; SPRING)
17 BREAK '83 PRODUCTION, L.L.C., a)
California limited liability company; SPRING)
18 BREAK '83 DISTRIBUTION, L.L.C., a)
California limited liability company;)
19 SPRING BREAK '83, a business entity of)
unknown formation; RAND JAY CHORTKOFF,)
20 inclusive,)

21 Defendants.)
22)
23)
24)
25)
26)

Case No.: BC453611

**FIRST AMENDED COMPLAINT FOR
PERMANENT INJUNCTION; CIVIL
PENALTIES AND ANCILLARY RELIEF**

VIOLATION OF CALIFORNIA
CORPORATIONS CODE SECTION 25110
(UNQUALIFIED SALES OF SECURITIES)

VIOLATION OF CALIFORNIA
CORPORATIONS CODE SECTION 25401
(OMISSIONS IN THE OFFER AND SALE OF
SECURITIES)

VIOLATION OF DESIST AND REFRAIN
ORDER ISSUED BY THE CALIFORNIA
CORPORATIONS COMMISSIONER

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2 PRESTON DUFAUCHARD, California Corporations Commissioner (“Commissioner”),
3 acting to protect the public from unlawful offers and sales of unqualified securities by Defendants,
4 brings this action in the public interest in the name of the People of the State of California. The
5 People of the State of California allege as follows:

6 **JURISDICTION AND VENUE**

7 1. The Commissioner brings this action to enjoin Big Sky Motion Pictures, L.L.C., Spring
8 Break ’83 Production, L.L.C., Spring Break ’83 Distribution, L.L.C., Spring Break ’83, Rand Jay
9 Chortkoff (collectively, “DEFENDANTS”) from violating the provisions of the California Corporate
10 Securities Law of 1968 (“CSL”) (California Corporations Code section 25000 *et seq.*) and to request
11 necessary equitable and ancillary relief. The Commissioner is authorized to administer and enforce
12 the provisions of the CSL and the regulations thereunder at Title 10, California Code of Regulations.
13 (“CCR”).

14 2. The Commissioner brings this action pursuant to California Corporations Code section
15 25530 and California Government Code section 11180 *et seq.* in his capacity as head of the
16 California Department of Corporations.

17 3. DEFENDANTS, and each of them, have transacted business within Los Angeles County
18 and other counties in California. The violations of law described herein have occurred and will
19 continue to occur, unless enjoined, within Los Angeles County and elsewhere within the State of
20 California.

21 **DEFENDANTS**

22 4. DEFENDANT Big Sky Motion Pictures, L.L.C. (“Big Sky”) is or has been a California
23 limited liability company with its principal place of business located at 650 N. Bronson Avenue,
24 Suite B-128, Los Angeles, California 90004 and doing business in California. Big Sky is primarily in
25 the business of motion picture production.

26 5. DEFENDANT Spring Break ’83 Production, L.L.C. is a California limited liability
27 company with its principal place of business also at 650 N. Bronson Avenue, Suite B-128, Los
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1 Angeles, California 90004 and is doing business in California. DEFENDANT Spring Break '83
2 Distribution L.L.C. is also a California limited liability company with its principal place of business
3 also at 650 N. Bronson Avenue, Suite B-128, Los Angeles, California 90004 and is doing business in
4 California. Spring Break '83 Production, L.L.C. has or does participate in film production
5 partnership(s) with Spring Break '83 Distribution, L.L.C. (herein, collectively, "Spring Break").
6 Spring Break is managed by Big Sky and did or does engage in the development and production of
7 films in the media entertainment industry throughout the State of California.

8 6. Beginning in or about 2007, Big Sky participated as partner and promoter of the
9 development and production of a film commonly known as "Spring Break '83", (herein "Film"). The
10 Film involved the development and production of a motion picture purportedly concerning adolescent
11 or "teenage" experiences during spring vacation, commonly known as "spring break".

12 7. DEFENDANT Rand Jay Chortkoff ("Chortkoff") is an individual and believed to be a
13 resident of Los Angeles County. Chortkoff was conducting business in the County of Los Angeles
14 and elsewhere within California. Chortkoff is or was a representative of Big Sky, Spring Break, or the
15 Film. Specifically, Chortkoff did or does represent to others that he is the "executive producer" of the
16 Film at all times relevant to this Complaint.

17 8. Plaintiff is informed and believes and on such information and belief alleges that, at all
18 relevant times, the DEFENDANTS named as officers, directors, agents or employees, acted in such
19 capacities in connection with the acts, practices and schemes of business set forth below.

20 9. Whenever any allegation is made in this Complaint to "DEFENDANTS" doing any act,
21 the allegation shall mean the act of each individual DEFENDANT acting individually, jointly and
22 severally and the conspiring of these DEFENDANTS to so act. Each DEFENDANT alleged to have
23 committed any act did so pursuant to and in furtherance of a common plan, scheme and conspiracy
24 and as the agent for each and every co-DEFENDANT.

25 10. Plaintiff is informed and believes and on such information and belief alleges that, at all
26 relevant times, each and every DEFENDANT, directly or indirectly controlled other co-
27 DEFENDANTS by knowingly inducing, or by knowingly providing substantial assistance to other
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1 co-DEFENDANTS, to violate the provisions of the CSL, as alleged in this Complaint within the
2 meaning of California Corporations Code section 25403.

3 11. Whenever any allegation is made in this Complaint to any of the entity DEFENDANTS
4 doing any act, the allegation shall mean acts done or authorized by the officers, directors, agents, or
5 employees of the corporate DEFENDANTS while actively engaged in the management, direction, or
6 control of the affairs of the corporate DEFENDANTS, and while acting within the course and scope
7 of their employment.

8 **STATEMENT OF FACTS**

9 12. DEFENDANTS violated the CSL beginning in or about October 2007, and continuing
10 thereafter, by offering and selling unqualified, non-exempt securities to members of the public in the
11 form of limited liability company interests in Big Sky or Spring Break.

12 13. Beginning in or about October 2007, Big Sky, Spring Break, the Film, and Chortkoff,
13 offered and sold securities in the form of limited liability company interests in Big Sky or Spring
14 Break.

15 14. DEFENDANTS offered and sold the above described limited liability company interests
16 in the State of California to investors by way of making general solicitations through telemarketing or
17 making "cold calls" in California and by distributing offering materials or other communications
18 through the mail.

19 15. DEFENDANTS offered and sold securities in Big Sky or Spring Break in California to
20 residents of the State of California and elsewhere for the purpose of raising capital to produce
21 entertainment films. Specifically, the purpose of the offerings was to fund the development and
22 production of the Film. In return, investors would recoup their capital investment and receive a
23 percentage return, based on their investment interest, from the profits of the Film.

24 16. These limited liability company interests were offered or sold in California in issuer
25 transactions. The Department of Corporations has not issued a permit or other form of qualification
26 authorizing any person to offer and sell these limited liability company interests in California. Thus,
27 the interests were sold in violation of California Corporations Code section 25110.
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1 17. In the interest of the public, for the protection of investors and consistent with the
2 purposes, policies, and provisions of the California Corporations Code, a Desist and Refrain Order
3 was issued on March 28, 2008 by Plaintiff against DEFENDANTS for violations of the CSL,
4 pursuant to California Corporations Code section 25532, mandating DEFENDANTS to cease from
5 the offer and sale of unqualified, non-exempt securities to members of the public (“Order”).
6 DEFENDANTS were personally and duly served with the Order on or about April 14, 2008.
7 DEFENDANTS did not request an administrative hearing on the merits of the Order. Therefore, the
8 Order is now final.

9 18. From or about April 2008 to at least 2010, DEFENDANTS continued to offer and sale
10 unqualified, non-exempt securities in either Big Sky or Spring Break to members of the public,
11 notwithstanding the Order.

12 19. DEFENDANTS failed to disclose the existence of the Order to investors after April 2008
13 while engaging in the offer and sale of unqualified, non-exempt securities to members of the public.

14 **FIRST CAUSE OF ACTION**
15 **OFFER AND SALE OF UNQUALIFIED, NON-EXEMPT SECURITIES**
16 **IN VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25110**
17 **(Against All DEFENDANTS)**

18 20. The Commissioner incorporates by reference paragraphs 1 through 20 of this Complaint
19 as though fully set forth herein.

20 21. California Corporations section 25110 provides, in pertinent part, that:

21 It is unlawful for any person to offer or sell in this state any security in an issuer
22 transaction . . . unless such sale has been qualified under section 25111, 25112, or
23 25113 . . . or unless such security is exempted or not subject to qualification under
24 Chapter 1 (commencing with section 25100) of this part.

25 22. Commencing in or about October, 2007, the DEFENDANTS, and each of them, offered
26 and sold, or conspired with other co-DEFENDANTS, or directly or indirectly controlled other co-
27 DEFENDANTS by knowingly inducing, or by knowingly providing substantial assistance to other
28 co-DEFENDANTS to offer and sell securities in issuer transactions in the state of California.

1 23. The investments offered and sold by DEFENDANTS, and each of them, are "securities"
2 within the meaning of California Corporations Code section 25019 and case law thereunder. The
3 securities included, but are not limited to, limited liability company interests in Big Sky or Spring
4 Break.

5 24. The sales referred to herein, were "issuer transactions" within the meaning of California
6 Corporations Code sections 25010 and 25011.

7 25. DEFENDANTS "offered and sold" the securities referred to herein, "within the state" of
8 California within the meaning of California Corporations Code sections 25008 and 25017.

9 26. The Commissioner has not issued a permit or other form of qualification authorizing the
10 DEFENDANTS, and each of them, to offer and sell securities referred to herein in the State of
11 California.

12 27. The offer and sale of securities referred to herein are not exempt from the requirement of
13 qualification under California Corporations Code section 25110.

14 28. Unless enjoined by this Court, DEFENDANTS and each of them, will continue to violate
15 California Corporations Code section 25110.

16 **SECOND CAUSE OF ACTION**
17 **MISREPRESENTATION OR OMISSION OF MATERIAL FACTS**
18 **IN VIOLATION OF CORPORATIONS CODE SECTION 25401**
19 **(Against All DEFENDANTS)**

20 30. Plaintiff incorporates by reference paragraphs 1 through 29 of this Complaint as
21 though fully set forth herein.

22 31. Corporations Code section 25401 states:
23 It is unlawful for any person to offer or sell a security in this state or buy
24 or offer to buy a security in this state by means of any written or oral
25 communication which includes an untrue statement of a material fact or
26 omits to state a material fact necessary in order to make the statements
27 made, in the light of the circumstances under which they were made, not
28 misleading.

1 32. In connection with the offer and sale of the securities referred to herein,
2 DEFENDANTS omitted to state a material fact to some or all of the investors from at least April
3 2008. The omission includes, but is not necessarily limited to, the following:

4 A. DEFENDANTS omitted to disclose that on March 28, 2008, the California
5 Department of Corporations issued the Order against DEFENDANTS for offering to sell
6 unqualified, non-exempt securities in Big Sky or Spring Break to investors.

7 33. The omission referred to herein were "material facts" within the meaning of
8 Corporations Code section 25401, because they concerned matters that a "reasonable investor" would
9 consider important in deciding whether to invest.

10 34. DEFENDANTS' omissions of material fact took place "within the state" of California
11 within the meaning of Corporations Code section 25008.

12 35. Unless enjoined by this Court, DEFENDANTS will continue to violate Corporations
13 Code section 25401.

14 **THIRD CAUSE OF ACTION**
15 **VIOLATION OF PRIOR DESIST AND REFRAIN**
16 **ORDER ISSUED BY THE COMMISSIONER**
17 **(Against All DEFENDANTS)**

18 36. Plaintiff incorporates by reference paragraphs 1 through 35 of this Complaint as though
19 fully set forth herein.

20 37. Corporations Code section 25530 provides, in pertinent part, as follows:
21 (a) Whenever it appears to the commissioner that any person has
22 engaged or is about to engage in any act or practice constituting a
23 violation of any provision of this division or any rule or order
24 hereunder, the commissioner may in the commissioner's discretion
25 bring an action in the name of the people of the State of California in
26 the superior court to enjoin the acts or practices or to enforce
27 compliance with this law or any rule or order hereunder....

28 38. On March 28, 2008, the Commissioner issued an Order against DEFENDANTS for
violations of the CSL, pursuant to California Corporations Code section 25532, ordering
DEFENDANTS to immediately desist and refrain from the further offer or sale in the State of
California of securities in the form of limited liability interests in Big Sky or Spring Break, unless

1 and until qualification has been made under Corporations Code section 25110 or unless exempt.
2 DEFENDANTS were personally and duly served with the Order on or about April 14, 2008.
3 DEFENDANTS did not request an administrative hearing on the merits of the Order. Therefore, the
4 Order is now final.

5 39. Notwithstanding the receipt and knowledge of the Order, DEFENDANTS, from or
6 about April 2008 to at least 2010, continued to offer and sell securities in the State of California in
7 the form of limited liability interests in Big Sky or Spring Break that were or are not qualified under
8 Corporations Code 25110 or exempt from the requirement of qualification, and as such are in
9 violation of the Order. Unless enjoined by this Court, DEFENDANTS and each of them, will
10 continue to violate the Order.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS BIG SKY MOTION
13 PICTURES, L.L.C., SPRING BREAK '83 PRODUCTION, L.L.C., SPRING BREAK '83
14 DISTRIBUTION, L.L.C., SPRING BREAK '83, RAND JAY CHORTKOFF, inclusive, as follows:

15 **I. INJUNCTIVE RELIEF FOR THE VIOLATIONS**

16 For an Order of Permanent Injunction, pursuant to California Corporations Code section
17 25530, subdivision (a), restraining and enjoining BIG SKY MOTION PICTURES, L.L.C., SPRING
18 BREAK '83 PRODUCTION, L.L.C., SPRING BREAK '83 DISTRIBUTION, L.L.C., SPRING
19 BREAK '83, RAND JAY CHORTKOFF, inclusive, from, directly or indirectly:

20 1. Violating California Corporations Code section 25110 by offering to sell, selling,
21 arranging for the sale of, issuing, engaging in the business of selling, or negotiating for the sale of any
22 security of any kind unless such security or transaction is qualified;

23 2. Violating California Corporations Code section 25401 by offering to sell or selling
24 any security of any kind by means of any written or oral communication which includes any untrue
25 statement of material fact or omits to state any material fact necessary in order to make the statements
26 made, in the light of the circumstances under which they are made, not misleading; and
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28 3. Violating the Desist and Refrain Order issued on April 28, 2008 by the Commissioner

1 against BIG SKY MOTION PICTURES, L.L.C., SPRING BREAK '83 PRODUCTION, L.L.C.,
2 SPRING BREAK '83 DISTRIBUTION, L.L.C., SPRING BREAK '83, RAND JAY CHORTKOFF.

3 **II. RESCISSION AND RESTITUTION**

4 For a Final Judgment requiring BIG SKY MOTION PICTURES, L.L.C., SPRING BREAK
5 '83 PRODUCTION, L.L.C., SPRING BREAK '83 DISTRIBUTION, L.L.C., SPRING BREAK '83,
6 RAND JAY CHORTKOFF, inclusive, to rescind each and all of the unlawful transactions alleged in
7 this Complaint, pursuant to California Corporations Code section 25530, subdivision (b), as shall be
8 determined by this Court to have occurred, and further requiring BIG SKY MOTION PICTURES,
9 L.L.C., SPRING BREAK '83 PRODUCTION, L.L.C., SPRING BREAK '83 DISTRIBUTION,
10 L.L.C., SPRING BREAK '83, RAND JAY CHORTKOFF, to pay full restitution to each person
11 determined to have been subject to acts, practices, or transactions which constitute violations of the
12 Corporate Securities Law of 1968, in an amount of \$180,000.00 or according to proof, to six (6)
13 California investors

14 **III. CIVIL PENALTIES**

15 For a Final Judgment requiring BIG SKY MOTION PICTURES, L.L.C., SPRING BREAK
16 '83 PRODUCTION, L.L.C., SPRING BREAK '83 DISTRIBUTION, L.L.C., SPRING BREAK '83,
17 RAND JAY CHORTKOFF to pay the Department as a civil penalty for all acts in violation of the
18 Corporate Securities Law of 1968, pursuant to California Corporations Code section 25535, in an
19 amount of \$5,000.00.

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7 **IV. THIS COURT TO RETAIN JURISDICTION**

8 For an Order that this Court shall retain jurisdiction of this action in order to implement and
9 carry out the terms of all orders and decrees that may be entered herein or to entertain any suitable
10 application or motion by Plaintiff for additional relief within the jurisdiction of this Court.

11 **VI. OTHER RELIEF**

12 For such other and further relief as this Court may deem necessary and proper.

13 Dated: March 24, 2011

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15 PRESTON DuFAUCHARD
16 California Corporations Commissioner

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19 By: _____
20 MARISA I. URTEAGA-WATKINS
21 Corporations Counsel
22 Attorney for the People of California
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