

1 PRESTON DUFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 MARISA I. URTEAGA-WATKINS (SBN236398)
4 Corporations Counsel
1515 K Street, Suite 200
5 Sacramento, California 95814
6 Telephone: (916) 445-9626
Fax: (916) 445-6985

RECEIVED
MAR 16 2011
FILING WINDOW

7 Attorneys for Plaintiff

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

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

14 Plaintiff,

15 v.

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

22 Defendants.
23

Case No.: BC453611

**STIPULATION TO ENTRY OF FINAL
JUDGMENT OF PERMANENT
INJUNCTION, CIVIL PENALTIES, AND
ANCILLARY RELIEF**

Dept. 45, RM 529
Hon. Mel Red Recana

24
25 It is hereby stipulated by and between Plaintiff California Corporations Commissioner
26 ("Plaintiff" or the "Commissioner") and Defendants BIG SKY MOTION PICTURES, L.L.C.,
27 SPRING BREAK '83 PRODUCTION, L.L.C., SPRING BREAK '83 DISTRIBUTION, L.L.C.,
28 SPRING BREAK '83, RAND JAY CHORTKOFF, (collectively, "DEFENDANTS") as follows:

1 1. DEFENDANTS admit the jurisdiction of this Court over them and over the subject
2 matter of this action.

3 2. DEFENDANTS have been served with and have read the Complaint for
4 Permanent Injunction, Civil Penalties, and Ancillary Relief (hereinafter “Complaint”); this
5 Stipulation to Entry of Final Judgment of Permanent Injunction, Civil Penalties, and Ancillary
6 Relief Between Plaintiff and DEFENDANTS (hereinafter “Stipulation”); and the proposed Final
7 Judgment of Permanent Injunction, Civil Penalties, and Ancillary Relief Against DEFENDANTS
8 (hereinafter “Final Judgment”), attached hereto as “Exhibit 1”.

9 3. DEFENDANTS have waived entry of Findings of Fact and Conclusions of Law
10 under California Code of Civil Procedure section 632 and all rights to appeal the entry of the Final
11 Judgment.

12 4. DEFENDANTS have waived any claims known to DEFENDANTS against the
13 State of California or its agents, officers, or employees based on the facts underlying the present
14 action. DEFENDANTS have specifically waived any rights provided by California Civil Code
15 section 1542, which provides: “A general release does not extend to claims which the creditor
16 does not know or suspect to exist in his or her favor at the time of executing the release, which if
17 known by him or her must have materially affected his or her settlement with the debtor.”

18 5. If any paragraph, clause, or provision of this Stipulation or of the Final Judgment
19 entered thereto, or the application thereof, is held invalid or unenforceable, such decision shall
20 affect only the paragraph, clause or provisions so construed or interpreted, and the invalidity shall
21 not affect the provisions of the application of this Stipulation, or of the Final Judgment entered
22 thereto, which can be given effect without the invalid provisions or application, and to this end,
23 the provisions of the Stipulation, and of the Final Judgment entered thereto, are declared by
24 Plaintiff and DEFENDANTS to be severable.

25 6. This Stipulation may be executed in one or more separate counterparts, each of
26 which when so executed, shall be deemed an original. Such counterparts shall together constitute
27 and be one and the same instrument.

28 7. DEFENDANTS stipulate and agree that a Final Judgment as specified herein may

1 be entered against them. DEFENDANTS enter into this Stipulation voluntarily and without
2 coercion, and acknowledge that no promises, threats, or assurances have been made by Plaintiff or
3 any agents, officers, or employees thereof to induce them to enter into this Stipulation.

4 8. Plaintiff alleges the following:

5 A. At all relevant times, DEFENDANTS Big Sky Motion Pictures, L.L.C. ("Big
6 Sky"), and Spring Break '83 Production, L.L.C., Spring Break '83 Distribution, L.L.C., are or
7 were California limited liability companies with principal places of business located in Los
8 Angeles, California, and doing business in California. Defendant Rand Jay Chortkoff
9 ("Chortkoff") is an individual and believed to be a resident of Los Angeles County, conducting
10 business in the County of Los Angeles and elsewhere within California. Chortkoff is or was a
11 representative of Big Sky, Spring Break, or a film commonly known as "Spring Break '83",
12 (herein "Film"). Specifically, Chortkoff did or does represent to others that he is the "executive
13 producer" of the Film.

14 B. Commencing in or about October, 2007, the DEFENDANTS, and each of them,
15 offered and sold, or conspired with other co-DEFENDANTS, or directly or indirectly controlled
16 other co-DEFENDANTS by knowingly inducing, or by knowingly providing substantial
17 assistance to other co-DEFENDANTS to offer and sell limited liability company interests in Big
18 Sky or Spring Break.

19 C. The interests offered and sold by DEFENDANTS, and each of them, are
20 "securities" within the meaning of California Corporations Code section 25019 and case law
21 thereunder.

22 D. The sales referred to herein, were "issuer transactions" within the meaning of
23 California Corporations Code sections 25010 and 25011.

24 E. DEFENDANTS "offered and sold" the securities referred to herein, "within the
25 State" of California within the meaning of California Corporations Code sections 25008 and
26 25017.

27 F. The Commissioner did not and has not issued a permit or other form of
28 qualification authorizing the DEFENDANTS, and each of them, to offer and sell securities

1 referred to herein in the State of California.

2 G. The offer and sale of securities referred to herein are not exempt from the
3 requirement of qualification under California Corporations Code section 25110.

4 H. Plaintiff issued a Desist and Refrain Order on March 28, 2008 against
5 DEFENDANT for violations of the CSL, pursuant to California Corporations Code section 25532,
6 mandating DEFENDANT to cease from the offer and sale of unqualified, non-exempt securities to
7 members of the public (“Order”). DEFENDANTS were personally served with the Order on or
8 about April 14, 2008. DEFENDANTS did not request an administrative hearing on the merits of
9 the Order. Therefore, the Order is now final.

10 I. Notwithstanding the Order, DEFENDANTS continued to offer and sell
11 securities to California residents without disclosing the existence of the Desist and Refrain Order
12 from at least April 2008 to 2010.

13 9. DEFENDANTS neither admit nor deny the foregoing allegations.

14 10. THE PARTIES HERETO STIPULATE TO THE ENTRY OF A FINAL
15 JUDGMENT PROVIDING THAT:

16 A. DEFENDANTS and their agents, employees, attorneys in fact in their capacities as
17 such, and all persons acting in concert or participating with them, shall be and are hereby
18 permanently enjoined from engaging in, committing, aiding and abetting, substantially assisting,
19 or performing directly or indirectly, by any means whatsoever, any of the following acts:

20 (1) Violating California Corporations Code (“Corporations Code”) section 25110
21 by offering to sell, selling, arranging for the sale of, issuing, engaging in the business of selling, or
22 negotiating for the sale of any security of any kind, unless such security or transaction is qualified
23 or exempt; provided, however, that the exemption from qualification described in Corporations
24 Code section 25102, subdivision (f), shall not be available to DEFENDANTS. Nothing herein,
25 however, shall limit, restrict or change DEFENDANTS’ right to sell, arrange for the sale of, issue,
26 engage in the business of selling, or negotiate for the sale of any security so long as such security
27 or transaction otherwise is qualified or exempt under other Corporations Code provisions and/or
28 the federal securities laws, including, but not limited to, Corporations Code section 25102.1 and

1 Regulation D of the Securities Act of 1933, as amended;

2 (2) Violating the Desist and Refrain Order issued by the Commissioner on March
3 28, 2009, by offering and selling unqualified, non-exempt securities in violation of Corporations
4 Code section 25110;

5 (3) Offering or selling, or buying or offering to buy, securities in California by
6 means of any written or oral communication which includes an untrue statement of a material fact
7 or omits to state a material fact necessary in order to make the statements made, in the light of the
8 circumstances under which they were made, not misleading in violation of Corporations Code
9 section 25401; and

10 (4) Removing, destroying, mutilating, concealing, altering, transferring, or
11 otherwise disposing of, in any manner, any books, records, computer programs, computer files,
12 computer printouts, correspondence, brochures, manuals, or any other document or "writing" of
13 any kind as defined under California Evidence Code section 250, relating to the transactions and
14 course of conduct as alleged in the Complaint filed in this action, that are in the possession,
15 custody, or control of DEFENDANTS, for a period of three (3) years from the date of the entry of
16 the Final Judgment.

17 B. DEFENDANTS shall offer to and shall repurchase the securities or make
18 restitution and rescind the transactions in full on the following terms and conditions;

19 (1) OPTION A - REPURCHASE: Pursuant to Corporations Code section 25507,
20 subd. (b), and California Code of Regulations ("Code of Regulations") section 260.507,
21 DEFENDANTS shall securities:

22 (a) Pursuant to Corporations Code section 25507(b), and Code of
23 Regulations section 260.507, DEFENDANTS shall submit an application for approval as to form
24 of an offer to repurchase securities to the Securities Regulation Division of the Department of
25 Corporations within thirty (30) calendar days after the Court's entry of Final Judgment.

26 (b) The offer shall be accompanied by all of the information required under
27 Corporations Code section 25507 and Code of Regulations section 260.507, including, but not
28 limited to, a disclosure informing the offeree of the allegations made in the Complaint describing

1 the current status of DEFENDANTS business operations. While the repurchase offer is pending,
2 DEFENDANTS agree not to otherwise communicate with the offeree without the consent or
3 participation of the Department of Corporations.

4 (c) If DEFENDANTS fail to fully comply with either Corporations Code
5 section 25507(b) or Code of Regulations section 260.507 and, after given adequate opportunity to
6 cure any material issues of noncompliance, such failure results in a repurchase offer not being
7 approved by the Securities Regulation Division or otherwise results in a failure to complete the
8 repurchase offer as described in subparagraph (a) above, DEFENDANTS shall immediately pay a
9 civil penalty of \$1,000,000.00 to the Department of Corporations and immediately repurchase the
10 securities in the original principal amount of the investment, including interest of 7% per annum,
11 from all California residents who purchased securities noted herein. If DEFENDANTS fail to
12 complete the repurchase offer, DEFENDANTS shall be jointly and severally liable for the civil
13 penalty of \$1,000,000.00.

14 (d) DEFENDANTS shall complete the repurchase offer and repurchase
15 the securities/rescind the transaction as to the specific California residents herein referenced
16 pursuant to Corporations Code section 25507(b) and Code of Regulations section 260.507 no later
17 than sixty (60) calendar days after the Court’s entry of Final Judgment.

18 (e) DEFENDANTS shall submit proof of the completion of the offer no
19 later than seventy (70) calendar days after the Court’s entry of Final Judgment. DEFENDANTS
20 shall provide any and all information requested to the Plaintiff to verify the transactions herein
21 referenced.

22 (f) DEFENDANTS must repurchase the securities/rescind the California
23 investor transactions in the following amount to the following California investors. The following
24 names have been abbreviated in the interest of privacy:

- 25 • K.D. - two units.....\$60,000.00
- 26 • T.R. – one unit\$30,000.00
- 27 • T.D. – one unit.....\$30,000.00
- 28 • D.P. – one half unit...\$15,000.00

- M.B. – one unit\$30, 000.00
- C.R. – one half unit...\$15,000.00

Total: \$180,000.00

(2) OPTION B - RESTITUTION: Pursuant to Corporations Code section 25530, DEFENDANTS shall make restitution to and rescind the transactions with the California investors named herein.

(a) DEFENDANTS shall make restitution in full in the amounts herein specified to California investors named herein within one hundred twenty (120) calendar days after the Court’s entry of Final Judgment.

(b) Restitution shall be made to the California investors named herein. Defendants, when issuing Restitution monies, must make full disclosure of the proceedings herein to such California investors. At minimum, such disclosure shall include a copy of the D&R order and a copy of a fully executed Stipulation between the parties hereto.

i. If DEFENDANTS fail to make full restitution within the stipulated terms set forth herein, and, after given adequate opportunity to cure any material issues, DEFENDANTS shall immediately pay a civil penalty of \$1,000,000.00 to the Department of Corporations. If DEFENDANTS fail to make complete restitution, DEFENDANTS shall be jointly and severally liable for the civil penalty of \$1,000,000.00.

ii. DEFENDANTS shall submit proof of the completion of the offer no later than one hundred thirty (130) calendar days from the date of the Final Judgment. DEFENDANTS shall provide any and all information requested for the Plaintiff to verify the transactions herein referenced.

iii. DEFENDANTS must make restitution to the California investors herein referenced in the amount stated. The following names have been abbreviated in the interest of privacy:

- K.D. - two units.....\$60,000.00
- T.R. – one unit\$30,000.00

- T.D. – one unit.....\$30,000.00
- D.P. – one half unit...\$15,000.00
- M.B. – one unit\$30, 000.00
- C.R. – one half unit...\$15,000.00

Total: \$180,000.00

C. DEFENDANTS shall pay a civil penalty in the amount of \$5,000.00 to the Department of Corporations within sixty (60) calendar days after the Court’s entry of Final Judgment. DEFENDANTS shall be jointly and severally liable for the civil penalties;

D. DEFENDANTS acknowledge that the entry of the Final Judgment pursuant to this Stipulation shall not preclude any other federal, state, or county agency from initiating any other prosecution based upon the allegations contained in the Complaint or based on any other acts by DEFENDANTS which may violate California or federal law; and

E. DEFENDANTS agree and acknowledge that nothing in this Stipulation or in the Final Judgment in this matter shall preclude the Commissioner or his agents, officers, or employees, to the extent authorized by law, from referring any evidence or information regarding this matter to any district attorney or any other state or federal law enforcement official, or from assisting, or cooperating with regards to any investigation and/or action brought by any other federal, state, or county agency. DEFENDANTS further agree and acknowledge that nothing in this Stipulation or in the Final Judgment in this matter shall bind or otherwise prevent any other federal, state, or county agency from performing its duties.

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. The parties agree that the Commissioner shall amend the original Complaint solely to remove the alias "GREGORY MARTIN" from the caption and throughout the Complaint.

12. The parties stipulate and agree that this Court shall retain jurisdiction of this action in order to implement and enforce the terms of this Stipulation and entry of the Final Judgment pursuant thereto, and to entertain any suitable application or motion for additional relief or modification or any order made herein within the jurisdiction of the Court.

Plaintiff THE PEOPLE OF THE STATE OF CALIFORNIA,
by and through PRESTON DuFAUCHARD, California
Corporations Commissioner

Dated: 3/8/2011 By: _____
ALAN S. WEINGER
Deputy Commissioner

Defendant BIG SKY MOTION PICTURES, L.L.C

Dated: 2/24/11 By: _____
RAND JAY CHORTKOFF
Managing Member

Dated: 2/25/11 By: _____
MARS CALLAHAN
Managing Member

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendant SPRING BREAK '83 PRODUCTION, L.L.C.

Dated: 2/24/11

By: _____

RAND JAY CHORTKOFF
Managing Member

Dated: 2/25/11

By: _____

MARS CALLAHAN
Managing Member

Defendant SPRING BREAK '83 DISTRIBUTION, L.L.C.

Dated: 2/24/11

By: _____

RAND JAY CHORTKOFF
Managing Member

Dated: 2/25/11

By: _____

MARS CALLAHAN
Managing Member

Defendant SPRING BREAK '83

Dated: 2/24/11

By: _____

RAND JAY CHORTKOFF
Member

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 2/25/11

By: _____
MARS CALLAHAN
Member

Defendant RAND JAY CHORTKOFF

Dated: 2/24/11

RAND JAY CHORTKOFF