

ORIGINAL

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2 MICHAEL J. PLONSKER (STATE BAR NO. 101235)
3 CHARLES J. HARDER (STATE BAR NO. 184593)
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FILED
LOS ANGELES SUPERIOR COURT
AUG 12 1999
JOHN A. CLARKE, CLERK
E. Nolan
BY E. NOLAN, DEPUTY

Attorneys for Defendants THE IRV SCHECHTER COMPANY
and JOHN GOLDSMITH

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

11 JIM KEESHEN and JIM KEESHEN)
12 PRODUCTIONS, INC.,)

13 Plaintiffs,)

14 vs.)

15 SETH McFARLANE; FOX)
16 BROADCASTING COMPANY; THE IRV)
17 SHECHTER COMPANY; JOHN)
18 GOLDSMITH; and DOES 1)
19 through 100, inclusive,)

20 Defendants.)

CASE NO. BC211205

ANSWER TO UNVERIFIED
COMPLAINT BY DEFENDANTS
THE IRV SCHECHTER COMPANY
AND JOHN GOLDSMITH

21 Defendants THE IRV SCHECHTER COMPANY and JOHN GOLDSMITH
22 (hereinafter referred to as "Defendants") hereby answer the unverified Complaint of
23 Plaintiff JIM KEESHEN and JIM KEESHEN PRODUCTIONS, INC. (hereinafter
24 "Plaintiffs") as follows:

GENERAL DENIAL

25 1. Under the provisions of Code of Civil Procedure §431.30, these answering
26 Defendants deny generally and specifically each and every allegation contained in the
27 Complaint and puts Plaintiff to its proof on each and every allegation contained therein.
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CLERK OF COURT
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SEPARATE AFFIRMATIVE DEFENSES

2. In further answer, these answering Defendants allege as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

3. The Complaint filed Plaintiffs fails to state facts sufficient to constitute a cause of action against these answering Defendants.

SECOND AFFIRMATIVE DEFENSE

(Estoppel)

4. As a result of Plaintiffs' conduct in relation to the matters alleged in the Complaint, Plaintiffs are estopped from asserting any claims against these answering Defendants.

THIRD AFFIRMATIVE DEFENSE

(Waiver)

5. By the conduct and actions relating to each of the alleged causes of action stated in the Complaint, Plaintiffs have waived all claims, if any, against these answering Defendants.

FOURTH AFFIRMATIVE DEFENSE

(Failure of Consideration)

6. These answering Defendants allege that any obligations to perform, if any, were excused by Plaintiffs' failure to provide any consideration under the terms of any alleged agreement sued upon, and such consideration was a condition precedent to the performance of these answering Defendants' obligations.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

7. The Complaint, and each and every alleged cause of action stated therein, are barred by the applicable statute of limitations.

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SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

8. The alleged causes of action contained in the Complaint are barred by the doctrine of "unclean hands."

SEVENTH AFFIRMATIVE DEFENSE

(Set Off)

9. Any alleged obligations of these answering Defendants to Plaintiffs should be offset by any damages caused by Plaintiffs to these answering Defendants.

EIGHTH AFFIRMATIVE DEFENSE

(Plaintiff's Default)

10. Plaintiffs have no recourse under the alleged agreements between the parties because Plaintiffs, and each of them, are in material breach of said agreements.

NINTH AFFIRMATIVE DEFENSE

(Laches)

11. Plaintiffs are barred by the doctrine of laches from any recovery because Plaintiffs failed to timely notify these answering Defendants of the alleged claims and any alleged damages purportedly suffered by Plaintiffs, thereby preventing these answering Defendants from having a timely opportunity to investigate and/or mitigate the damages, if any, resulting from Plaintiffs' alleged claims, although these answering Defendants deny having a duty to so investigate and/or mitigate any such damages.

TENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

12. Plaintiffs' failure to take reasonable steps to mitigate their alleged losses, all of which are specifically denied, bar Plaintiffs' asserted damages claim in this action.

ELEVENTH AFFIRMATIVE DEFENSE

(Excuse of Defendants' Performance)

13. Defendants' performance under the alleged agreements was excused by Plaintiffs' failure to perform.

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TWELFTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

14. Plaintiffs' alleged damages, if any, were caused by Plaintiffs' own negligence and/or the negligence of third parties, therefore, Plaintiffs' claims against Defendants are barred.

THIRTEENTH AFFIRMATIVE DEFENSE

(Prevention of Performance)

15. If these answering Defendants have failed to fully perform any obligations required of them (which these answering Defendants deny), such performance was prevented, excused and/or frustrated by the acts of Plaintiffs and/or their authorized agents and/or other parties, or by operation of law. Therefore, Plaintiffs' claims against Defendants are barred.

FOURTEENTH AFFIRMATIVE DEFENSE

(Superseding Intervening Cause)

16. Any alleged damages suffered on the part of Plaintiffs were a direct and proximate result of a superseding intervening cause on the part of third parties and/or the Plaintiffs themselves, such that the intervening superseding cause bars any recovery by Plaintiffs against these answering Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

(Lack of Standing)

17. Plaintiffs lacks any standing to pursue an action against these answering Defendants for the claims alleged in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

(Defendants' Full Performance)

18. Defendants have performed all of the conditions, covenants and promises on their part to be performed under the purported contracts, except those which have been excused or prevented by the conduct and actions of Plaintiffs.


1 WHEREFORE, these answering Defendants, THE IRV SCHECHTER COMPANY
2 and JOHN GOLDSMITH, for themselves, and themselves only, pray for judgment as
3 follows:

- 4 1. That Plaintiffs take nothing by way of their Complaint;
5 2. That the Complaint filed herein be dismissed with prejudice;
6 3. That Judgment be entered in favor of these answering Defendants awarding
7 costs; and
8 4. That the Court award such other and further relief as the court deems just and
9 proper.

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DATED: August 12, 1999

LAVELY & SINGER
PROFESSIONAL CORPORATION
JOHN H. LAVELY
MICHAEL J. PLONSKER
CHARLES J. HARDER

By: 
CHARLES J. HARDER
Attorneys for Defendants THE IRV
SCHECHTER COMPANY
and JOHN GOLDSMITH

PROOF OF SERVICE

1013A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2049 Century Park East, Suite 2400, Los Angeles, California 90067-2906.

On **August 12, 1999**, I served the foregoing document described as: ANSWER TO UNVERIFIED COMPLAINT BY DEFENDANTS THE IRV SHECHTER COMPANY AND JOHN GOLDSMITH on the interested parties in this action by placing:

the true copies -OR- the original document thereof enclosed in sealed envelopes addressed as follows:

Scott Carr, Esq.
GREENE, BROILLET, TAYLOR,
WHEELER & PANISH
100 Wilshire Blvd., Suite 2100
Santa Monica, CA 90407

BY MAIL:

I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.


VIA PERSONAL SERVICE:

I delivered said document to the offices of the addressee(s), via hand delivery.

I caused such document to be delivered to the offices of the addressee(s), via hand delivery.

VIA FACSIMILE: I caused such document to be delivered to the offices of the addressee(s) via facsimile, pursuant to California Rules of Court Rule 2009.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed **August 12, 1999**, at Los Angeles, California.


H. Hancock