

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

OPEN RIVERS MEDIA GROUP INC.)
D/B/A OPEN RIVERS PICTURES,)
ALVIN WILLIAMS, AND TAMMY)
WILLIAMS,)
)
)
Plaintiffs,)

v.)

CIVIL ACTION
NO. 1:15-cv-00724-SCJ

SOUTHERN FILM REGIONAL)
CENTER LLC, DOMINIC “NIC”)
APPLEGATE, GATE INDUSTRIES LLC,)
MAURICE ANDERSON, RATLIFF)
ENTERTAINMENT LLC, AND)
THEOPHALUS RATLIFF,)
)
)
Defendants.)

DEFENDANTS’ MOTION FOR LEAVE OF COURT TO
FILE COUNTERCLAIMS DURING STAY

Defendants are filing this Motion out of an abundance of caution so that they can assert currently known, compulsory counterclaims in this civil action, within the applicable periods of limitations. In the absence of this requested relief, Defendants worry that the continuing stay of this action could potentially cause a limitations period to run on a counterclaim and thus prejudice Defendants’ ability to enforce their rights in this action.

Although this action was recently filed on March 11, 2015, it is already in a highly unusual procedural posture. Defendants responded to the Complaint by filing “Defendants’ Motion to Dismiss Plaintiffs’ Complaint for Failure to State a Claim upon Which Relief Can Be Granted Pursuant to Fed. R. Civ. P. 12(b)(6)” [Dkt. No. 7] (the “Motion to Dismiss”), on the ground that the Complaint is a vague and confusing “shotgun pleading” that prevents Defendants from knowing which parties are the subject of the specific allegations in the Complaint.

Plaintiffs took the unusual step of responding to the Motion to Dismiss by filing a response that included a Motion for Summary Judgment. [Dkt. Nos. 9, 13.] Finding that Motion for Summary Judgment to be improper, on April 17, 2015 the Court entered an Order [Dkt. No. 17] denying that Motion and staying all activity in this action while the Court considers the pending Motion to Dismiss.

Although Defendants believe that the stay is proper, they are concerned about their ability to timely assert currently known, compulsory counterclaims while this action is stayed. Attached hereto as Exhibit “1” are Defendants’ currently known, compulsory counterclaims. Defendants therefore request leave of Court to file Exhibit “1” as their counterclaims in this action, as of today’s date. Furthermore, because it is currently unclear if and when Defendants will need to answer a complaint filed by Plaintiffs, and whether that complaint will be amended or otherwise different

from the current Complaint, Defendants respectfully request that their future right to respond to any complaint after the current stay is not waived, prejudiced, or altered in any way by the requested filing of presently known, compulsory counterclaims.

WHEREFORE, Defendants respectfully request that the Court enter an Order granting the following relief:

- (1) Directing the Clerk to file the attached Counterclaims in this action, as of May 20, 2015;
- (2) Permitting Defendants an opportunity to file an answer, affirmative defenses, and additional counterclaims, after the Court has ruled on the Motion to Dismiss and lifted the present stay; and
- (3) Otherwise maintaining the present stay.

Attached hereto as Exhibit “2” is a proposed order granting the relief requested in this Motion.

Respectfully submitted this 20th day of May, 2015.

**LEWIS BRISBOIS BISGAARD
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/s/ Thomas C. Grant
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Counsel for Defendants

CERTIFICATE OF SERVICE

I have this day filed the foregoing **Defendants' Motion for Leave of Court to File Counterclaims During Stay** using the CM/ECF system and served a copy of same upon all parties to this matter by depositing a true and correct copy of the same via regular mail, addressed as follows:

Daniel Kane
Daniel Kane, P.C. & Associates
133 Nassau Street
Atlanta, GA 30303

Christopher L. Brown
Brown & Rosen LLC
100 State Street, Ste. 900
Boston, MA 02109

This 20th day of May, 2015.

**LEWIS BRISBOIS BISGAARD
& SMITH, LLP**

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/s/ Thomas C. Grant
THOMAS C. GRANT
Georgia State Bar No. 297455

Counsel for Defendants

EXHIBIT “1”
to
Defendants’ Motion for Leave

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Defendants.)

DEFENDANTS’ COUNTERCLAIMS

Defendants and Counterclaimants Southern Film Regional Center LLC (“SFRC”), Dominic Applegate (“Applegate”), Gate Industries LLC (“Gate”), Maurice Anderson (“Anderson”), Ratliff Entertainment LLC (“Ratliff Entertainment”) and Theophalus Ratliff (collectively, “Defendants” or “Counterclaimants”) file their Counterclaims in this civil action against Plaintiffs and Counterclaim Defendants Open Rivers Media Group, Inc. d/b/a Open Rivers

Pictures (“Open Rivers”), Alvin Williams (collectively, “Plaintiffs” or “Counterclaims Defendants”), and Tammy Williams, as follows.

I. ANSWER AND AFFIRMATIVE DEFENSES.

A. Answer.

Defendants have filed a pending “Motion to Dismiss Plaintiffs’ Complaint for Failure to State a Claim upon Which Relief Can Be Granted, Pursuant to Fed. R. Civ. P. 12(b)(6)” (the “Motion to Dismiss”) [Dkt. No. 7] because the Plaintiffs’ vague and confusing Complaint [Dkt. No. 1] is a “shotgun pleading.” Because the Motion to Dismiss remains pending, Defendants’ obligation to file an answer has been stayed. Fed. R. Civ. P. 12(a)(4). Furthermore, this Court has entered an Order [Dkt. No. 17] staying all activity in the case, pending its consideration of the Motion to Dismiss.

Defendants are filing this document for the sole purpose of timely stating their currently known, compulsory counterclaims, to be sure that the applicable statutes of limitations do not expire while this action is stayed. In doing so, Defendants do not waive their objections to the Complaint as a confusing and improper “shotgun pleading” that must be clarified before Defendants can file an informed response in the form of an answer.

However, to guard against any argument that Defendants may have somehow waived any position or argument by failing to respond to the Complaint contemporaneously with the filing of their counterclaims, Defendants state that to the extent that Defendants are required now to answer the Complaint, Defendants respond as follows to each of the allegations in the Complaint, for the reasons stated in the Motion to Dismiss: “Defendants lack the knowledge or information sufficient to form a belief about the truth of the allegations in the Complaint and therefore deny them.”

B. Affirmative Defenses.

Similarly, and out of an abundance of caution, Defendants state the following affirmative defenses to the allegations in the Complaint, to the extent that they may be required to state their affirmative defenses contemporaneously with their counterclaims:

First Affirmative Defense

Plaintiffs’ Complaint is an improper “shotgun pleading” that is too vague and confusing to be answered by Defendants, as explained in detail in the pending Defendants’ Motion to Dismiss Plaintiffs’ Complaint for Failure to State a Claim upon Which Relief Can Be Granted, pursuant to Fed. R. Civ. P. 12(b)(6) [Dkt. No. 7].

Second Affirmative Defense

Plaintiffs have failed to state any claim against Defendants upon which relief can be granted.

Third Affirmative Defense

Plaintiffs have failed to state purported claims for fraud, misrepresentation, and RICO with specificity as required by Fed. R. Civ. P. 9(b).

Fourth Affirmative Defense

Plaintiffs have breached the contracts upon which they seek relief.

II. COUNTERCLAIMS.

A. Introduction.

1.

Counterclaim Defendants fraudulently induced Counterclaimants to invest in and become involved with a proposed EB-5 investment opportunity that involved the purchase of an equity stake in Open Rivers and a proposed EB-5 project that Counterclaim Defendants' allege would have resulted in more than \$45 million in profits. Open Rivers had prior experience with, and knowledge of, EB-5 projects and therefore knew that EB-5 projects could only proceed and be approved by the United States Citizenship and Immigration Services ("USCIS") if they include a detailed business plan, approved by an economist, that identifies specific business

activities that will generate a specified number of jobs in a particular geographic region. Counterclaim Defendants were also aware that the proposed EB-5 project would require them to raise \$45 million in co-financing. Counterclaim Defendants misrepresented to Counterclaimants that Open Rivers had the capability to produce and distribute movies, shows, and other media projects that would attract \$45 million in co-financing. In addition, Counterclaim Defendants misrepresented the timetable and amount of profits to be earned by the investment that they were soliciting. Instead, as Counterclaimants came to learn, and contrary to Counterclaim Defendants' representations, Counterclaim Defendants actually lacked any concrete projects that could have supported the proposed EB-5 project.

2.

Because the equity investment that Counterclaim Defendants were soliciting is a security, Defendants have also committed securities fraud in violation of Federal and Georgia securities laws. Consequently, Counterclaimants are entitled to recover the funds that were invested in the proposed EB-5 project, as well as all lost profits and other damages.

B. Parties, Jurisdiction, and Venue.

3.

Ratliff Entertainment, LLC (“Ratliff Entertainment”) is a limited liability company formed in Georgia with its principal place of business in Georgia.

4.

Theophalus Ratliff is a resident of Georgia and an owner of Ratliff Entertainment.

5.

Maurice Anderson (“Anderson”) is a resident of Georgia who serves as a consultant and business manager for Mr. Ratliff and for Ratliff Entertainment.

6.

The Southern Film Regional Center, LLC (“SFRC”) is a limited liability company formed in Georgia with its principal place of business in Pennsylvania. SFRC consults with individuals and entities to assist them with application, for EB-5 projects.

7.

EB-5 projects relate to the Immigrant Investor Program, which is administered by the USCIS.

8.

Gate Industries, LLC (“Gate”) is a limited liability company formed in Georgia with its principal place of business in Pennsylvania. Gate is affiliated with SFRC.

9.

Dominic Applegate (“Applegate”) is a resident of Pennsylvania who is affiliated with SFRC and with Gate.

10.

Open Rivers Media Group, Inc. (“Open Rivers”) is a corporation formed in Georgia with its principal place of business in Georgia.

11.

Alvin Williams is a resident of Georgia and has been identified as the chief operating officer of Open Rivers.

12.

Tammy Williams is a resident of Georgia and has been identified as the chief executive officer of Open Rivers.

13.

Through their prior appearances in this civil action, the parties have agreed that this Court has subject matter jurisdiction and personal jurisdiction over this dispute and over the parties.

14.

The parties have also agreed that venue is proper in this Court.

C. General Allegations.

1. Open Rivers Had Knowledge and Experience with EB-5 Projects Involving the Entertainment Industry Before It Approached Counterclaimants for Investment.

15.

Alvin Williams is a local business person who has been involved with entertainment-related business ventures, including the production of movies, shows, and other media.

16.

Alvin Williams is the chief operating officer of Open Rivers and is an agent of Open Rivers.

17.

Before any of the Counterclaim Defendants became involved with the Counterclaimants, Open Rivers was familiar with EB-5 projects, including the

requirements for EB-5 projects and the process for obtaining and operating EB-5 projects.

18.

For instance, in or around mid-2013, Open Rivers (acting primarily through Alvin Williams) attempted to create and operate an EB-5 project that was associated with Alchemy Networks (the “Alchemy EB-5 Project”).

19.

Like the EB-5 project that is the subject of this civil action, the Alchemy EB-5 Project also involved the entertainment industry, and more particularly, a proposal to generate jobs and revenue by producing movies, TV shows, and other media for distribution.

20.

Alvin Williams was principally involved in the Alchemy EB-5 Project and was soliciting and working with others to undertake and fund the Alchemy EB-5 Project.

21.

Through Alvin Williams’ involvement in the Alchemy EB-5 Project, Open Rivers was aware that an EB-5 project must have a demonstrated ability to create a

specific number of jobs in a particular industry, and within a particular geographic area.

22.

Similarly, Open Rivers was also aware that, in order to be approved by the USCIS, an EB-5 project must have firm and established contractual and business relationships which show that a proposed project is viable and can produce revenue and jobs as represented on an application to the USCIS.

23.

Open Rivers was also aware from its involvement with the Alchemy EB-5 Project that the EB-5 application process must include a detailed report by an economist stating that the proposed project will likely generate revenues and jobs as represented by the applicant(s) seeking approval of the project from the USCIS.

24.

Open Rivers was also aware that information presented to the USCIS in support of an EB-5 project application had to be truthful and that the USCIS has recently sued and fined other EB-5 project applicants that have made fraudulent representations in support of an application.

25.

In or around September 2013, Open Rivers (through Alvin Williams) decided to cancel and withdraw from the Alchemy EB-5 Project, because of concerns about the accuracy and viability of the entertainment-related business that was to be the source of jobs and revenue for the Alchemy EB-5 Project.

26.

Specifically, in an email with the subject “Fraudulent EB-5,” sent by Alvin Williams on September 19, 2013, he explained the specific reasons for cancelling the Alchemy EB-5 Project, which included the following:

- (a) An inability to create the number of jobs stated in the EB-5 application;
- (b) Failure to “produce[] any original content in the state of Georgia, “as stated in the EB-5 business plan to contribute towards job creations;
- (c) Including in an EB-5 project application, “business relationships that never took place nor materialized”; and
- (d) Misrepresenting the liability or existence of real business transactions and opportunities, including a proposed business deal where in fact “[w]e never had a deal in place” that instead “was only a conversation.”

27.

Because of these problems, the Alchemy EB-5 Project ended without the required approval of the project by the USCIS.

28.

Ironically, the same problems would also plague the proposed Open Rivers EB-5 project because of Open Rivers' inability to identify viable projects and opportunities to fund and carry out the proposed EB-5 project.

29.

Upon information and belief, Open Rivers, through Alvin Williams, next planned to parlay its knowledge of EB-5 projects gained from its work with Alchemy Networks into a business deal with Ratliff Entertainment, wherein Ratliff Entertainment would fund another EB-5 project in the entertainment industry that would also involve the production and distribution of media, including movies and television shows.

30.

Specifically, in the aforementioned September 19, 2013 email from Alvin Williams, he stated as follows: "You are probably asking yourself, where is this coming from? *I was researching the EB-5 [sic] to understand how it works in order to prepare myself to present an EB-5 to an investor....*"

31.

Upon information and belief, the “investor” mentioned in that email was Ratliff Entertainment.

2. The Counterclaim Defendants Solicited Counterclaimants with Regard to Another EB-5 Project Involving the Entertainment Industry.

32.

In or around early July 2013, Anderson met with Alvin Williams. In an email that Alvin Williams sent to Anderson on July 18, 2013, Alvin Williams included an attached “bio” that identified himself as “Executive Vice President, Alchemy Networks.”

33.

Months later, in late November 2013 (just weeks after he advised in his September 15, 2013 email that he was “researching the EB-5...to prepare myself to present an EB-5 to an investor”), Alvin Williams began to include Theophalus Ratliff in emails regarding business opportunities and relationships regarding the film industry.

34.

These discussions included a documentary of Emmett Till. In a November 21, 2013 email that Alvin Williams sent to Anderson and Theophalus

Ratliff, Alvin Williams explained and emphasized the importance of having firm, established distribution channels for media. In response to a proposed viewing of the documentary that was aimed at generating publicity, Alvin Williams explained that, “if it doesn’t have a distribution, hosting a viewing is a waste of money.”

35.

By December 9, 2013, Alvin Williams was discussing production-related opportunities with Anderson and Theophalus Ratliff that involved possible tax savings, including an EB-5 project, with reference to Applegate of SFRC.

36.

Alvin Williams had attempted to work with SFRC previously, in relation to the failed Alchemy EB-5 Project.

37.

On or about December 12, 2013, Alvin Williams met with Theophalus Ratliff, Anderson, and Applegate at SFRC’s office in Atlanta to discuss Alvin Williams’ proposed business opportunity regarding Open Rivers.

38.

An agenda prepared for this meeting indicates that the Counterclaim Defendants were interested in a business deal in which Ratliff Entertainment would

own all or part of the proposed company, which would provide production-related service in the film and television industry.

39.

Alvin Williams and Open Rivers continued to solicit Counterclaim Defendants for investment and a proposed EB-5 project. On December 17, 2013, Alvin Williams sent a “one sheet” document to Anderson which was a prospectus for the EB-5 project that Open Rivers was proposing and soliciting. Among other things, the “one sheet” had an “Investors Compensation” section that listed proposed yields and compensation, based on a “\$100,000 plus investment.”

40.

In this “one sheet,” Counterclaim Defendants listed several “Key Stats” for the investment that they were soliciting, including a representation that Open Rivers had a “retail distribution” relationship with Urban Home Entertainment (“UHE”), as well as other distribution channels, including a relationship with Netflix and a “Cable Network Relationship.”

41.

In addition, in numerous conversations with Counterclaimants, Alvin Williams made specific, repeated representations that Open Rivers had established distribution relationships with companies including UHE and Netflix, to provide

confidence that Open Rivers could deliver with the distribution of films and shows that were to be the source of revenues for the investment opportunity that Open Rivers was presenting to Counterclaim Defendants.

42.

To further entice Counterclaimants into investing in or with Open Rivers, Alvin Williams sent an email to Anderson, on December 22, 2013, with specific representations about the expected profitability of the production projects proposed by Open Rivers. Alvin Williams attached to this email, another prospectus for investment (the “ROI Prospectus”) that made specific representations about the timing and profitability of the projects that Open Rivers would perform as part of the proposed EB-5 project.

43.

Attached hereto as Exhibit “A” is a true and correct copy of the ROI Prospectus.

44.

The ROI Prospectus included an “ROI [return on investment] Timeline” which represented that all investors would be able to take advantage of “favorable tax treatment if investment is made before December 31, 2013.” According to that timeline, work on production projects would begin within the first month following

investment and would be begin yielding a return, in the form of tax credits, by the second or third month. Overall, the timeline presented a four-month process that could (and would) be repeated, again and again, continuously generating profits as represented in the timeline by Open Rivers, Alvin Williams, and Tammy Williams.

45.

The ROI Prospectus also represented that the investment would yield a “potential ROI” during 2014-2016 as follows:

Potential ROI 2014

- Tax Credits = \$450,000
- Television Licensing = \$1,050,000.00
- Africa Television Licensing = \$105,000.00
- DVD Sales Projects 1 thru 4 (Red Box, Walmart, Target, etc) = 15,000 units each at \$4.50 per unit = \$67,500 x 4 = \$270,000
- Total 1st Year = \$1,875,000

Potential ROI 2015

- Domestic Television Licensing = \$200,000
- DVD Sales Projects 1 thru 4 (Red Box, Walmart, Target, etc) = 10,000 units each at \$4.50 per unit = \$45,000 x 4 = \$180,000
- DVD Sales Projects 5 thru 7 (Red Box, Walmart, Target, etc) = 15,000 units each at \$4.50 per unit = \$67,500 x 3 = \$202,500
- Total 2nd Year = \$582,500.00

Potential ROI 2016

- Domestic Television Licensing = \$100,000
- DVD Sales Projects 1 thru 4 (Walmart, Target, etc) = 5,000 units each at \$4.50 per unit = \$22,500 x 4 = \$90,000
- DVD Sales Projects 5 thru 7 (Walmart, Target, etc) = 10,000 units each at \$4.50 per unit = \$45,000 x 3 = \$135,000

- Total 3rd Year = \$325,000.00

Potential ROI in Three Years

- Total 1st Year = \$1,875,000
- Total 2nd Year = \$582,500.00
- Total 3rd Year = \$325,000.00
- Grand Total = \$2,782,500.00

(ROI Prospectus, p. 5.)

46.

Alvin Williams made further representations to Anderson regarding the ROI Prospectus, as follows:

- (a) In the “Special Notes” section of the ROI Prospectus that immediately followed the representations quoted above, Alvin Williams and Open Rivers represented that “*[t]he numbers used are very, very conservative*”; and
- (b) In the email which Alvin Williams sent to Anderson that attached the ROI Prospectus, Alvin Williams stated that “*[a]gain, these numbers are extremely modest.*”

47.

In keeping with Alvin Williams’ prior representations about the importance of having a strong and established distribution channel for the EB-5 project, on December 29, 2013, Alvin Williams sent an email to Anderson with the subject

“Distribution Deal” in which Alvin Williams stated that Open Rivers would distribute “all of our production” through UHE. (In fact, Open Rivers would not actually have a distribution agreement with UHE until more than two years later, on January 22, 2015, according to Open Rivers’ website.)

48.

On December 30, 2013, Alvin Williams directed his attorney, Chris Brown, to draft a “letter of agreement” to use for investment by Ratliff Entertainment in the venture that Williams was proposing on behalf of Open Rivers. Negotiations among the parties continued, however, because of concerns, *inter alia*, by Ratliff Entertainment about its need to have sufficient ownership and control over the proposed investment venture.

49.

The timing of investment returns to Ratliff Entertainment was an important issue in the discussions regarding Ratliff Entertainment’s investment in Open Rivers. In mid-January, 2014, Alvin Williams explained in emails to Anderson that Ratliff Entertainment would receive its money from the investment through money paid by distribution companies such as UHE. In addition, a proposed investment agreement from Open Rivers stated that Ratliff Entertainment would receive repayment of its initial \$100,000.00 investment, within two months.

50.

Alvin Williams further explained the timing of the investment proposed by Open Rivers through an “Open Rivers Pictures EB-5 Timeline” (the “ORP Timeline”), which represented that certain steps would occur during each week through February 10, 2014, at which time an EB-5 project application would be submitted to the USCIS for approval. Alvin Williams sent the ORP Timeline to Anderson by email on January 14, 2014.

51.

Based on the terms and intent of the investment as represented by Open Rivers, it was essential to have an approved EB-5 project promptly, so that additional investment could be obtained from foreign sources to fund the project’s production activities.

52.

On or about January 21, 2014, Ratliff Entertainment executed an Equity Participation Agreement memorializing the investment that Open Rivers, Alvin Williams, and Tammy Williams had solicited from Ratliff Entertainment. This agreement called for an initial \$130,000.00 investment by Ratliff Entertainment and assured Ratliff Entertainment that “repayment [of those funds] would be made within a 12-month period or sooner period.” Ratliff Entertainment promptly paid

\$100,000.00 to Open Rivers pursuant to Equity Participation Agreement. (Open Rivers accepted this payment and has refused to return it.)

53.

Also on January 21, 2014, Alvin Williams sent an email to Anderson and Theophalus Ratliff that included an attached “deck,” which was a thick promotional document to be used for discussion at a meeting regarding the EB-5 project. In this “deck,” Open Rivers made representations about numerous shows and other productions that the Williamses stated would be undertaken by Open Rivers to generate the investment required for the EB-5 project.

54.

When Open Rivers made representations about timing for the EB-5 project in the ORP Timeline, Alvin Williams knew about the process, timing, and requirements for a proper EB-5 project application, based in part upon his involvement with the Alchemy EB-5 Project, as well as the “research” that he mentioned in his September 19, 2013 email, referenced above.

55.

On January 21, 2014, Open Rivers signed an Engagement Agreement with SFRC which required Open Rivers to pay \$130,000.00 for SFRC’s assistance in

preparing an EB-5 project application. A true and correct copy of the Engagement Agreement is attached hereto as Exhibit “B.”

56.

Although Alvin Williams knew that the SFRC Engagement Agreement would require Open Rivers to pay a total of \$130,000.00 to SFRC, Alvin Williams misrepresented this amount to Anderson, Theophalus Ratliff, and Ratliff Entertainment as being only \$100,000.00.

57.

The copy of the Engagement Letter attached as Exhibit “A” to the Complaint is incomplete and does not include pages that list the \$130,000.00 price that Alvin Williams agreed to pay on behalf of Open Rivers.

58.

Alvin Williams knowingly misrepresented the total cost of SFRC’s fee for work on the EB-5 project application to Anderson and Ratliff Entertainment as being only \$100,000.00

59.

Based upon his knowledge and experience regarding EB-5 projects, Alvin Williams, and thus Open Rivers, had to know that it would not be possible to have a proper and complete EB-5 project application ready for submission to the

USCIS by the February 10, 2014 deadline that Open Rivers provided to Anderson and Ratliff Entertainment in the ORP Timeline.

60.

Among other things, this proposed timeline was totally unrealistic because, as Counterclaim Defendants would subsequently come to learn, Open Rivers totally lacked any specific, firm, and viable production projects that would need to be identified in detail in any EB-5 project application.

61.

The lack of specific, viable production projects would also be a major impediment to the solicitation of additional investors that would have to provide the \$45 million in co-financing that was required for the EB-5 project.

62.

Because of Open Rivers' inability to identify actual, specific production projects for the EB-5 project, Counterclaimants sought investment and involvement from Hollywood producer Reuben Cannon, whom Applegate introduced to Open Rivers, Alvin Williams, and Tammy Williams.

63.

Furthermore, despite Open Rivers' many representations about the importance and existence of distribution channels for media to be produced by

Open Rivers for the EB-5 project, including UHE and Netflix, Counterclaim Defendants ultimately came to learn that no such contracts existed.

64.

As time passed, Open Rivers, Alvin Williams, and Tammy Williams continued to miss their own promised deadlines that they had set and represented through, *inter alia*, the ORP Timeline and orally, through numerous conversations. Their failure to meet these deadlines, in turn, delayed work on the EB-5 project application, which was prerequisite for moving forward with the project, and obtaining funding and performing the business necessary to fund the returns that Open Rivers had promised to Ratliff Entertainment through the Equity Participation Agreement.

65.

As Open Rivers, Alvin Williams, and Tammy Williams continued to delay the project through their inability to meet their own promised deadlines, Counterclaim Defendants began to inquire about Open Rivers' ability to perform and fund the proposed EB-5 project, including their ability to prepare a detailed business plan that would be necessary both to obtain approval from the USCIS and to attract the \$45 million in co-financing that Open Rivers, Alvin Williams, and Tammy Williams knew was required for the project.

66.

For example, even though the ORP Timeline had represented that Open Rivers would have an operating agreement in place for the project by the week of February 3, 2014, Alvin Williams waited until April 17, 2014 before sending an initial, proposed draft operating agreement to Anderson for consideration. This operating agreement was poorly drafted, purported to be made under the Georgia Limited Liability Company Act (even though it was for Open Rivers, a corporation), and failed to provide for the substantial control and ownership interests that were supposed to be held by Ratliff Entertainment, based upon the parties' discussions and Open Rivers' representations to Counterclaimants.

67.

Among other things, Open Rivers kept Ratliff Entertainment and others out of the project, such that they were not involved in, or aware of, the specific status of Open Rivers' alleged contracts and opportunities that were essential to both the USCIS application for the EB-5 project and the viability of the project itself.

68.

Because of the importance to the project of having a firm and established distribution channel, Counterclaim Defendants began to inquire about the terms

and existence of the distribution channels that had been represented by Open Rivers, Alvin Williams, and Tammy Williams.

69.

On December 17, 2013, Alvin Williams had represented on a “one sheet” document that a “key stat” of the EB-5 project was that Open Rivers had a retail distribution agreement with UHE, as well as a “Netflix relationship.”

70.

On December 29, 2013, Alvin Williams had advised Counterclaim Defendants through an email to Anderson and Theophalus Ratliff, that there was a “distribution deal” and that “all” distribution for the proposed project would be done through UHE.

71.

However, on May 27, 2014, Alvin Williams sent an email to Applegate of SFRC stating, finally, “please find the executed distribution agreement with UHE Distribution as required to submit the EB-5 application.” This email misrepresented the attached document, which was neither a distribution agreement nor sufficiently definite to be submitted in support of a valid EB-5 project application to USCIS. Instead, Alvin Williams attached a two-page “deal memo” that simply stated proposed terms for a final forthcoming agreement with UHE.

72.

Moreover, this “deal memo” was materially deficient for the EB-5 project, even if it were an enforceable contract, because the deal memo failed to provide established distribution channels for the project regarding television, movie theaters, digital, and video on demand—all of which were crucial to both the approval and profitability of the agreed upon EB-5 project that was the subject of the Equity Participation Agreement. Based on Alvin Williams’ knowledge of EB-5 projects, he and Open Rivers were aware that the “deal memo” was too vague and non-specific to support a valid EB-5 project application or to attract the \$45 million in co-financing needed for the project. After all, these were the very same kinds of problems that had previously caused Alvin Williams and Open Rivers to cancel the Alchemy EB-5 Project.

73.

Accordingly, in a press release for the EB-5 project dated March 20, 2014, Ratliff is quoted as saying, “[r]ight now, there is a big demand for African-American content and that is the focus of Open Rivers Pictures—Digital, film and also television.” Open Rivers participated in creating the content of this press release. (A copy of this press release is attached as Exhibit “C” to the Complaint.)

74.

Moreover, the “deal memo” was dated significantly *after* Open Rivers and Alvin Williams had already made contrary oral and written representations about the existence of an allegedly sufficient “distribution deal” for the EB-5 project. Specifically, Alvin Williams did not sign the deal memo until January 27, 2014—after his December 17, 2013 “one sheet” sent by email, and after his December 29, 2013 email stating to Anderson that Open Rivers had a “distribution deal” that was sufficient to provide for “all” distribution required for the EB-5 project.

75.

In response to this discovery, SFRC withdrew from further work on the proposed EB-5 project because it was then apparent that Open Rivers, Alvin Williams, and Tammy Williams lacked the necessary relationships and capabilities that were necessary to support a successful EB-5 project application and to support the agreed-upon project that was needed to fund Open Rivers’ to Ratliff Entertainment under the Equity Participation Agreement.

76.

According to a blog post, dated January 22, 2015, that appears in the “archive” section of Open Rivers’ website, Open Rivers did not even have a

distribution agreement with UHE until that date.

(See <http://openriverspictures.com/open-rivers-pictures-uhe-annouce-new-home-entertainment-distribution-agreement/>.)

77.

Similarly, on June 2, 2014, counsel for Ratliff Entertainment sent a letter to Tammy Williams, on behalf of Open Rivers, rescinding the Equity Participation Agreement because of the fraud committed by and misrepresentations made by Open Rivers, Alvin Williams, and Tammy Williams. (A copy of this letter is attached as Exhibit “G” to the Complaint.)

78.

Among the problems that were caused by Open Rivers’ inability to perform as promised, and its misrepresentations, were that Open Rivers, Alvin Williams, and Tammy Williams created a hostile environment of mistrust among the parties by making false statements about certain persons affiliated with Counterclaim Defendants.

IV. CAUSES OF ACTION.

COUNTERCLAIM I

(Violation of Section 10(b) of the Exchange Act and Rule 10b-5)

79.

Counterclaim Defendants hereby incorporate by reference Paragraphs 3, 6, 7, 9-56, and 58-77 of these Counterclaims.

80.

Ratliff Entertainment brings this counterclaim pursuant to Section 10(b) of the Securities Act of 1934, 15 U.S.C. § 78(j) (“Section 10(b)”) and related Securities and Exchange Commission Rule 10b-5, 17 C.F.R. § 240.10b-5 (“Rule 10b-5”).

81.

Pursuant to Rule 10b-5, it is unlawful for any person, directly or indirectly:

- (1) To employ any device, scheme, or artifice to defraud;
- (2) To make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

- (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

82.

The Equity Participation Agreement is a “security” with respect to Section 10(b) and Rule 10b-5.

83.

Through the Equity Participation Agreement, Counterclaim Defendants sought to induce Ratliff Entertainment to purchase shares in, and receive profits from, an entity known as “Open River Pictures, Inc.”

84.

Among other things, Counterclaim Defendants made representations and solicitations to Counterclaimants seeking to induce Ratliff Entertainment to enter into the Equity Participation Agreement.

85.

Counterclaim Defendants failed to register the Equity Participation Agreement as a security, as required by law.

86.

Relying on representations made by Counterclaim Defendants, Ratliff Entertainment entered into the Equity Participation Agreement and has paid at least \$130,000.00 to Open Rivers.

87.

Counterclaim Defendants knowingly made untrue and misleading statements of fact to Ratliff Entertainment that were material to Ratliff Entertainment's decision to enter into the Equity Participation Agreement. These untrue and misleading statements include the following:

- (a) Misrepresentations about the timing of the EB-5 project, including
 - (1) the unrealistically short timeframe for preparing a sufficiently specific EB-5 project application with specific, viable production projects, and
 - (2) the timeframe for Ratliff Entertainment to receive payments from the projects;
- (b) Misrepresentations about the profitability of the EB-5 project based on alleged production opportunities that in fact were only theoretical and vague;

- (c) Misrepresentations about the existence of firm, established distribution channels for the media that was to be the sole source of profits and income for the EB-5 project; and
- (d) Misrepresentations about the extent to which Ratliff Entertainment would have control and input with respect to the EB-5 project.

88.

Counterclaim Defendants knew that their statements and representations to Ratliff Entertainment were false or misleading when Counterclaim Defendants made those statements and representations.

89.

Ratliff Entertainment reasonably relied upon Counterclaim Defendants' untrue and misleading statements of material fact with regard to Ratliff Entertainment's decision to enter into the Equity Participation Agreement.

90.

Counterclaim Defendants also knowingly failed to make statements of fact that they knew were (or would have been) material to Ratliff Entertainment's decision to enter into the Equity Participation Agreement, including the following:

- (a) Failing to adequately inform Ratliff Entertainment about the tenuous and non-existent status of established distribution contracts that were necessary for the EB-5 project; and
- (b) Failing to adequately inform Ratliff Entertainment that the production opportunities which were supposed to generate revenue for the project were simply vague ideas that had no specific plans or ability to attract investment.

91.

Ratliff Entertainment has been harmed by Counterclaim Defendants' misrepresentations and omissions of material fact by, *inter alia*, spending at least \$100,000.00 on an investment that Ratliff Entertainment reasonably expected to produce future profits, as well as the promised repayment of its initial investment within a year.

92.

Ratliff Entertainment is also entitled to recover lost profits based upon Open Rivers' representations, which would have been millions of dollars, in keeping with Open Rivers' claim that the demise of the EB-5 project cost them \$45 million in lost profits.

93.

Because of the Counterclaim Defendants' violation of Section 10(b) and Rule 10b-5, Ratliff Entertainment is entitled to recover damages from the Counterclaim Defendants that include, but are not limited to, all monies paid for or pursuant to the Equity Participation Agreement, rescission of that agreement, as well as actual damages including interest and attorney's fees.

94.

Each of the Counterclaim Defendants, including Alvin Williams, individually, and Tammy Williams, individually, is jointly and severably liable for all damages awarded to Ratliff Entertainment for this Counterclaim I.

COUNTERCLAIM II

(Violation of Section 12(a)(2) of the Securities Act of 1933)

95.

Counterclaim Defendants hereby incorporate by reference Paragraphs 3, 6, 7, 9-56, and 58-77 of these Counterclaims.

96.

Ratliff Entertainment brings this Counterclaim pursuant to Section 12(a)(2) of the Securities Act of 1933, 15 U.S.C. § 771(a)(2) ("Section 12(a)(2)").

97.

The Equity Participation Agreement is a “security” with respect to Section 12(a)(2).

98.

Through the Equity Participation Agreement, Counterclaim Defendants have sought to induce Ratliff Entertainment to purchase shares in, and receive profits from, an entity known as “Open River Pictures, Inc.”

99.

Counterclaim Defendants have provided prospectus material and other oral and written information to Ratliff Entertainment in which Counterclaim Defendants have made statements to Ratliff Entertainment regarding Ratliff Entertainments’ decision to enter into the Equity Participation Agreement.

100.

Pursuant to Section 12(a)(2),

Any person who--...offers or sells a security...by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing if such untruth or omission), and who shall not sustain the burdened of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable,....

101.

Counterclaim Defendants provided communications and representations to Ratliff Entertainment to solicit Ratliff Entertainment's investment in the Equity Participation Agreement, which communications contained untrue statements of material fact, including the following:

- (a) Misrepresentations about the timing of the EB-5 project, including (1) the unrealistically short timeframe for preparing a sufficiently specific EB-5 project application with specific, viable production projects, and (2) the timeframe for Ratliff Entertainment to receive payments from the projects;
- (b) Misrepresentations about the profitability of the EB-5 project based on alleged production opportunities that in fact were only theoretical and vague;
- (c) Misrepresentations about the existence of firm, established distribution channels for the media that was to be the sole source of profits and income for the EB-5 project; and
- (d) Misrepresentations about the extent to which Ratliff Entertainment would have control and input with respect to the EB-5 project.

102.

Counterclaim Defendants also provided oral and written communications and representations to Ratliff Entertainment to solicit Ratliff Entertainment's investment in the Equity Participation Agreement, which communications omitted material facts, including facts that were necessary to make the statements made by Counterclaim Defendants not misleading. These omission include the following:

- (a) Failing to adequately inform Ratliff Entertainment about the tenuous and non-existent status of established distribution contracts that were necessary for the EB-5 project; and
- (b) Failing to adequately inform Ratliff Entertainment that the production opportunities which were supposed to generate revenue for the project were simply vague ideas that had no specific plans or ability to attract investment.

103.

Ratliff Entertainment has been damaged as a result of the untrue and/or incomplete prospectus material and other representations made by Counterclaim Defendants, as described above.

104.

Ratliff Entertainment is entitled to recover damages from each of the Counterclaim Defendants for this Counterclaim II in an amount to be determined by a jury at trial.

COUNTERCLAIM III

(Sale of Security in Violation of the Georgia Uniform Securities Act of 2008)

105.

Counterclaim Defendants hereby incorporate by reference Paragraphs 3, 6, 7, 9-56, and 58-77 of these Counterclaims.

106.

The Georgia Uniform Securities Act of 2008, O.C.G.A. § 10-5-1, *et seq.*, governs the marketing, purchase, and sale of securities in the State of Georgia.

107.

Through the Equity Participation Agreement, Counterclaim Defendants sought to induce Ratliff Entertainment to purchase shares in, and receive profits from, an entity known as “Open River Pictures, Inc.,” located in Fayetteville, Georgia.

108.

According to the Corporations Division of the Georgia Secretary of State, there is no entity named “Open Rivers Pictures” that has been registered to do business in Georgia.

109.

Among other things, Counterclaim Defendants made representations and solicitations to Counterclaimants seeking to induce Ratliff Entertainment to enter into the Equity Participation Agreement.

110.

The Equity Participation Agreement is a “security” as defined by O.C.G.A. § 10-5-2(31).

111.

Counterclaim Defendants failed to register the Equity Participation Agreement as a security, as required by O.C.G.A. § 10-5-20.

112.

Based on representations made by Counterclaim Defendants, Ratliff Entertainment entered into the Equity Participation Agreement and has paid at least \$100,000.00 to Open Rivers.

113.

Counterclaim Defendants are liable to Ratliff Entertainment with regard to the Equity Participation Agreement, pursuant to O.C.G.A. § 10-5-58(b), because they sold an unregistered security in violation of O.C.G.A. § 10-5-20.

114.

Counterclaim Defendants are also liable to Ratliff Entertainment in regard to the Equity Participation Agreement, pursuant to O.C.G.A. § 10-5-58(b), because they participated in the marketing, solicitation, and eventual sale of a security to Ratliff Entertainment, both by making untrue statements of material fact and by failing to disclose material facts to Ratliff Entertainment.

115.

Counterclaim Defendants knowingly made untrue statements of fact to Ratliff Entertainment that were material to Ratliff Entertainment's decision to enter into the Equity Participation Agreement. These untrue and misleading statements include the following:

- (a) Misrepresentations about the timing of the EB-5 project, including
 - (1) the unrealistically short timeframe for preparing a sufficiently specific EB-5 project application with specific, viable production

projects, and (2) the timeframe for Ratliff Entertainment to receive payments from the projects;

- (b) Misrepresentations about the profitability of the EB-5 project based on alleged production opportunities that in fact were only theoretical and vague;
- (c) Misrepresentations about the existence of firm, established distribution channels for the media that was to be the sole source of profits and income for the EB-5 project; and
- (d) Misrepresentations about the extent to which Ratliff Entertainment would have control and input with respect to the EB-5 project.

116.

Ratliff Entertainment reasonably relied upon Counterclaim Defendants' untrue and misleading statements of material fact when Ratliff Entertainment decided to enter into the Equity Participation Agreement.

117.

Counterclaim Defendants also knowingly failed to make statements of fact that they knew or reasonably should have known were (or would have been) material to Ratliff Entertainment's decision to enter into the Equity Participation Agreement, including the following:

- (a) Failing to adequately inform Ratliff Entertainment about the tenuous and non-existent status of established distribution contracts that were necessary for the EB-5 project; and
- (b) Failing to adequately inform Ratliff Entertainment that the production opportunities which were supposed to generate revenue for the project were simply vague ideas that had no specific plans or ability to attract investment.

118.

Counterclaim Defendants failed to disclose facts to Ratliff Entertainment that Counterclaimants knew, or should have known, were material to Ratliff Entertainment's decision to enter into the Equity Participation Agreement.

119.

Ratliff Entertainment has been harmed by the Counterclaim Defendants' untrue statements of material fact by, *inter alia*, spending at least \$100,000.00 on an investment that Ratliff Entertainment reasonably expected to produce millions of dollars of profits, as well as the repayment of his initial investment within a year.

120.

Ratliff Entertainment has also been harmed by the Counterclaim Defendants' omissions of material fact by, *inter alia*, spending at least \$100,000.00 on an investment that Ratliff Entertainment reasonably expected to produce future profits, as well as the promised repayment of his initial investment within a year.

121.

Furthermore, Ratliff Entertainment reasonably relied upon the Counterclaim Defendants' misrepresentations about the investment opportunity presented by the Equity Participation Agreement by, *inter alia*, devoting substantial time, attention, and expenses, and by delaying or foregoing its consideration and pursuit of other investment opportunities.

122.

Because of the Counterclaim Defendants' violation of the Georgia Uniform Securities Act, Ratliff Entertainment is entitled to recover damages from the Counterclaim Defendants that include, but are not limited to, all monies paid for, or pursuant to, the Equity Participation Agreement, as well actual damages including interest and attorney's fees.

123.

Each of the Counterclaim Defendants, including Alvin Williams, individually, and Tammy Williams, individually, is jointly and severally liable for all damages awarded to Ratliff Entertainment under O.C.G.A. § 10-5-58(b), pursuant to O.C.G.A. § 10-5-58(g).

COUNTERCLAIM IV

(Fraud)

124.

Counterclaim Defendants hereby incorporate by reference Paragraphs 3-56 and 58-77 of these Counterclaims.

125.

Counterclaim Defendants knowingly made false representations to Counterclaimants in an attempt to induce Counterclaimants to invest and otherwise participate in a business venture involving the production and distribution of movies and television shows, and investment through an EB-5 fund.

126.

These false representations by Counterclaim Defendants include, but are not limited to, the following:

- (a) Misrepresentations about the timing of the EB-5 project, including
 - (1) the unrealistically short timeframe for preparing a sufficiently specific EB-5 project application with specific, viable production projects, and
 - (2) the timeframe for Ratliff Entertainment to receive payments from the projects;
- (b) Misrepresentations about the profitability of the EB-5 project based on alleged production opportunities that in fact were only theoretical and vague;
- (c) Misrepresentations about the existence of firm, established distribution channels for the media that was to be the sole source of profits and income for the EB-5 project; and
- (d) Misrepresentations about the extent to which Ratliff Entertainment would have control and input with respect to the EB-5 project.

127.

Counterclaim Defendants knew that their representations to Defendants were false, when Counterclaim Defendants made those representations.

128.

Counterclaimants reasonably and justifiably relied upon Counterclaim Defendants' misrepresentations by, *inter alia*, spending time, effort, and money in

pursuit of what Counterclaim Defendants had represented as a profitable business opportunity.

129.

Also, Ratliff Entertainment reasonably and justifiably relied upon Counterclaim Defendants' misrepresentations by agreeing to execute and participate in the Equity Participation Agreement, and to invest at least \$100,000.00.

130.

Counterclaimants have been damaged by their reasonable and justifiable reliance on Counterclaim Defendants' misrepresentations, in ways that include, but are not limited to, legal and professional expenses, as well as lost profits and opportunities.

131.

Counterclaimants have suffered far in excess of millions of dollars in damages due to Counterclaim Defendants' fraud. The amount of Counterclaimants' damages for such fraud will be determined by a jury at trial.

COUNTERCLAIM V

(Negligent Misrepresentation)

132.

Counterclaim Defendants hereby incorporate by reference Paragraphs 3-56 and 58-77 of these Counterclaims.

133.

Counterclaim Defendants have negligently supplied information to Counterclaimants regarding investment opportunities and ventures, including but not limited to the investment described in the Equity Participation Agreement.

134.

Counterclaim Defendants have negligently supplied this information to Counterclaimants in an attempt to induce Counterclaimants to invest in ventures and business opportunities offered and promised by Counterclaim Defendants.

135.

Because Counterclaim Defendants made negligent misrepresentations to Counterclaimants for the purpose of inducing Counterclaimant to invest in such ventures and opportunities, it was foreseeable to Counterclaim Defendants that each of Counterclaimants would rely upon those misrepresentations.

136.

Counterclaimants reasonably and justifiably relied upon the negligent misrepresentations made by Counterclaim Defendants.

137.

Counterclaimants have each suffered economic injury proximately caused from their reliance upon Counterclaim Defendants' negligent misrepresentations.

138.

Counterclaimants' damages caused by the Counterclaim Defendants' negligent misrepresentations include but are not limited to lost profits and investment returns of greater than \$1 million.

COUNTERCLAIM VI

(Breach of Contract—EB5 Engagement Agreement)

139.

Counterclaim Defendants hereby incorporate by reference Paragraphs 6-28, 35-37, 47, 50, 53, 55-57, 59-66, and 68-76 of these Counterclaims.

140.

Open Rivers entered into an Engagement Agreement with SFRC.

141.

Attached hereto as Exhibit “B” is a true and correct copy of the Engagement Agreement.

142.

Tammy Williams executed the Engagement Agreement on behalf of Open Rivers.

143.

Pursuant to the Engagement Agreement, SFRC agreed to assist Open Rivers with a proposed EB-5 project on the terms and conditions set forth in the Engagement Agreement.

144.

SFRC attempted to work with Open Rivers on the proposed EB-5 project that was the subject of, and contemplated by, the Engagement Agreement.

145.

Despite repeated requests for documents and information needed for the EB5 project, made by SFRC and its representatives to Open Rivers, Open Rivers consistently failed to provide the requested and necessary documents and information.

146.

These requested documents and the requested information was necessary for the progress and accomplishment of the EB5 project contemplated by the Engagement Agreement.

147.

Open Rivers' failure to provide necessary and repeatedly requested documents and information to SFRC made it impossible to accomplish the contemplated EB5 project.

148.

Open Rivers breached the Engagement Agreement by failing to fully cooperate with SFRC towards the accomplishment of the contemplated EB5 project.

149.

Open Rivers also breached the Engagement Agreement by failing to pay the full price of \$130,000.00 as expressly stated in the Engagement Agreement.

150.

Open Rivers' breach of the Engagement Agreement has proximately caused harm to SFRC, including but not limited to the loss to SFRC of millions of dollars

in fees and receipts that SFRC should, and would, have received over the life of the contemplated EB5 project.

151.

Open Rivers' breach of the Engagement Agreement has also proximately caused harm to SFRC by requiring SFRC to spend substantial time and expense trying to accomplish the contemplated EB5 project that was ultimately made impossible to Open Rivers' failure to comply with the terms and conditions of the Engagement Agreement.

152.

SFRC is therefore entitled to recover from Open Rivers all damages proximately caused by Open Rivers' breach of the Engagement Agreement. These damages include at least \$4.5 million in interest fees that SFRC and/or Gate would have received from the EB-5 project and at least \$4.5 million in administration fees.

COUNTERCLAIM VII

(Breach of Contract—Equity Participation Agreement)

153.

Counterclaim Defendants hereby incorporate by reference Paragraphs 3, 5-7, 9-30, 32-56, 59-66, and 68-77 of these Counterclaims.

154.

Ratliff Entertainment brings this Counterclaim VII in the event that it has been found *not* to have rescinded the Equity Participation Agreement due to fraud by Counterclaim Defendants.

155.

Open Rivers solicited Ratliff Entertainment to induce Ratliff Entertainment to invest in Open Rivers.

156.

Toward that end, Ratliff Entertainment and Open Rivers executed the Equity Participation Agreement.

157.

Ratliff Entertainment has given notice to Open Rivers that Ratliff Entertainment has rescinded the Equity Participation Agreement, due to fraud committed by Counterclaim Defendants, as described in the counterclaims alleged in this civil action.

158.

Pursuant to the Equity Participation Agreement, Ratliff Entertainment has paid at least \$100,000.00 to Open Rivers.

159.

Open Rivers has breached the Equity Participation Agreement in ways that include, but are not limited to, Open Rivers' inability to complete—or even move forward with—the EB-5 project that was to be the foundation for Ratliff Entertainment's ability to recover the payments and profits that were suppose to be paid to Ratliff Entertainment under the agreement.

160.

Open Rivers also breached the Equity Participation Agreement by providing misleading and false information and assurances to Ratliff Entertainment that Open Rivers could perform under the Equity Participation Agreement, including Open Rivers' ability to timely obtain and carry out the production and other projects that were to be the source of funds to be received by Ratliff Entertainment under the agreement.

161.

Open Rivers' breach of the Equity Participation Agreement has proximately harmed Ratliff Entertainment by, *inter alia*, preventing Ratliff Entertainment from obtaining millions of dollars of profits and other income and payments due to it under the agreement, which profit and other income and payments include repayment of the \$100,000.00 paid by Ratliff Entertainment to Open Rivers, and

millions of dollars of profits and other payments to which Ratliff Entertainment was entitled under the Equity Participation Agreement.

COUNTERCLAIM VIII

(Breach of Implied Covenant of Good Faith and Fair Dealing)

162.

Counterclaim Defendants hereby incorporate by reference Paragraphs 3-56 and 58-78 of these Counterclaims.

163.

Open Rivers is a party to contracts with certain of the Counterclaimants, including the Equity Participation Agreement and the Engagement Agreement.

164.

In addition to the express terms and conditions of these two agreements, there is an implied covenant of good faith and fair dealing in each agreement that requires each of the parties to these agreements to act in good faith and deal fairly with the other parties.

165.

Counterclaim Defendants have breached these implied covenants of good faith and fair dealing with respect to the Equity Participation Agreement and the Engagement Agreement.

166.

Counterclaim Defendants' breaches of these implied covenants in the Equity Participation Agreement have proximately caused harm to Ratliff Entertainment.

167.

Counterclaim Defendants' breaches of these implied covenants in the Engagement Agreement have proximately caused harm to SFRC.

168.

Ratliff Entertainment and SFRC are entitled to recover from Counterclaim Defendants all damages due to Open Rivers' breaches of the implied covenant of good faith and fair dealing, in an amount to be determined at trial.

COUNTERCLAIM IX

(Attorney's Fees Pursuant to O.C.G.A. § 13-6-11)

169.

Counterclaim Defendants hereby incorporate by reference Paragraphs 3-6, 8-31, and 33-78 of these Counterclaims.

170.

In addition to Counterclaimants' rights to recover their attorney's fees for this action from Counterclaim Defendants pursuant to the counterclaims stated

above, Counterclaimants are also entitled to recover their attorney's fees incurred in this action pursuant to O.C.G.A. § 13-6-11.

171.

Counterclaimants are entitled to recover their attorney's fees incurred in this action pursuant to O.C.G.A. § 13-6-11, because Counterclaim Defendants have acted in bad faith, have been stubbornly litigious, and have caused Counterclaimants unnecessary trouble and expense.

WHEREFORE, Counterclaimants and Defendants pray

- (a) That this Court enter judgment in favor of Counterclaimants in an amount to be determined by a jury at trial;
- (b) That all costs of this action, including reasonable attorney's fees, be awarded to Counterclaimants;
- (c) That this case (including all claims and counterclaims) be tried before a jury as requested by Plaintiffs in their Complaint; and
- (d) That Counterclaimants be awarded such other and further relief as the Court deems proper.

Respectfully submitted this 20th day of May, 2015.

**LEWIS BRISBOIS BISGAARD
& SMITH, LLP**

1180 Peachtree Street, N.E.
Suite 2900
Atlanta, GA 30309
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Email:
thomas.grant@lewisbrisbois.com

/s/ Thomas C. Grant
THOMAS C. GRANT
Georgia State Bar No. 297455

Counsel for Defendants

CERTIFICATE OF SERVICE

I have this day filed the foregoing (proposed) **Defendants' Counterclaims** using the CM/ECF system and served a copy of same upon all parties to this matter by depositing a true and correct copy of the same via regular mail, addressed as follows:

Daniel Kane
Daniel Kane, P.C. & Associates
133 Nassau Street
Atlanta, GA 30303

Christopher L. Brown
Brown & Rosen LLC
100 State Street, Ste. 900
Boston, MA 02109

This 20th day of May, 2015.

**LEWIS BRISBOIS BISGAARD
& SMITH, LLP**

1180 Peachtree Street, N.E.
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/s/ Thomas C. Grant
THOMAS C. GRANT
Georgia State Bar No. 297455

Counsel for Defendants

EXHIBIT “A”
to
Defendants’ Counterclaims

DEMO & BUYING POWER

The information listed below is spruced from The Nielsen Company 2012, State of the African American Consumer.

Mission and Strategy

Create content that enforces positive images to support the targeted demographics viewing choices.

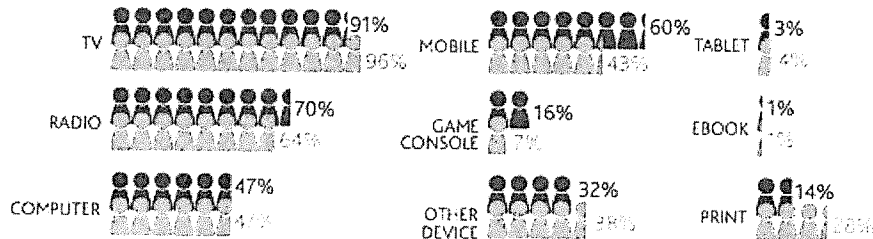
Target Demo Graphic

- Multicultural 18 to 54
- Incoming and Buying Power
 - Average house-hold is \$47,290 with 35% earning \$50,000 or more
 - Overall agreedged household income level of \$695.6 billion
 - By 2015 will have a collective buying power estimated to reach \$1.1 trillion by 2015
 - 10% of African American household earn \$100,00 or more

How Blacks Spend Time By Generation

You have to review the habits based on two generation; 1. Baby Boomers (lite Green) 2. Milliniels (Dark Green)

MEDIA CONSUMPTION



Computers, smartphone, tablets, internet and television remain the predominant forms of access to media content. Business and content providers have many options to connect and reinforce their marketing and brand image, as African Americans are heavy users of social media and consumers of video content.

The average African-America viewer watches almost six and half hours of television a day which includes live TV and DVR playback. Older generations like Abby Boomers watch much more television than younger generations (millennial and kids)

Summary

The multicultural population is not a homogenous group. There, ORP deep undestaning of the difference in life experiences, age, geographical location, cultural

background and income will impact our success growth and separate us from the competition by serving this demographics with a multi-platform strategy. Collectively, the African MAfrican population is 43 million strong. Whether a single mother, Baby Boomer or millennial our consumer entertainment dollar matter.

ROI Timeline

Please note, all investors will be able to take immediate advantage of I.R.S. Tax Code 181 if investment is made before December 31, 2013.

<http://besttaxbreak.net>

Month 1 -

- Investment Approved
- Artwork of first 5 projects initiated
- Selling begins targeting retail, television and streaming services
- Hiring and production teams begin
- All contracts to are issued and finalized to the below and above the line team members
- Tax Credit application is submitted (producing an initial three projects qualifies for \$500k threshold to receive 30% tax credit, which is a return of a potential \$150,000 on investment Please note, a \$2mm investment received 30% tax credit which is \$600K return. The going rate is \$0.75 to \$0.85 on the dollar)

Month 2

- Pre-production begins
- Development for 4th project begins
- Set Construction begins
- Casting finalized for first three projects and rehearsal begins
- Classes begins at Pinewood studios to start projects 6 & 7
- Bundled pitch begins with pay TV (HBO, Showtime, Starz, etc.)
- Begin selling tax credits to go back to paying initial investment to angel investors. Potential \$135,000.

Month 3

- Principle production begins on film #1 (Day 1 thru 15)
- Principle production begins on film #2 (Day 16 thru 30)
- Domestic negotiation for TV Licensing agreement process begins for all 7 films. Potential \$150,000 per film x 7 films = \$1,050,000.00 divided by 3 payments
 - Deposit at signing of agreement
 - Once principle photography has begun
 - On completion of film
- (Africa) Per territory international negotiation for TV Licensing agreement process begins for all 7 films. Potential \$15,000 per film x 7 films = \$105,000.00 flat rate.
- Retail initial orders returned from distributor on first three projects.
- Submit Tax Incentive application for projects #4 thru #7

Month 4

- Principle production begins on Film #3 (Day)

- Projects 6 & 7 are identified to go into production
- Artwork and development begins for projects 6 & 7
- Retail initial orders returned from distributor on project #4.
- Start selling tax credits to go back to paying angle investors. Potential \$315,000.00

Month 5 thru 10

The rest of the calendar just repeats the process.

Potential ROI 2014

- Tax Credits = \$450,000
- Television Licensing = \$1,050,000.00
- Africa Television Licensing = \$105,000.00
- DVD Sales Projects 1 thru 4 (Red Box, Walmart, Target, etc) = 15,000 units each at \$4.50 per unit = $\$67,500 \times 4 = \$270,000$
- Total 1st Year = \$1,875,000

Potential ROI 2015

- Domestic Television Licensing = \$200,000
- DVD Sales Projects 1 thru 4 (Red Box, Walmart, Target, etc) = 10,000 units each at \$4.50 per unit = $\$45,000 \times 4 = \$180,000$
- DVD Sales Projects 5 thru 7 (Red Box, Walmart, Target, etc) = 15,000 units each at \$4.50 per unit = $\$67,500 \times 3 = \$202,500$
- Total 2nd Year = \$582,500.00

Potential ROI 2016

- Domestic Television Licensing = \$100,000
- DVD Sales Projects 1 thru 4 (Walmart, Target, etc) = 5,000 units each at \$4.50 per unit = $\$22,500 \times 4 = \$90,000$
- DVD Sales Projects 5 thru 7 (Walmart, Target, etc) = 10,000 units each at \$4.50 per unit = $\$45,000 \times 3 = \$135,000$
- Total 3rd Year = \$325,000.00

Potential ROI in Three Years

- Total 1st Year = \$1,875,000
- Total 2nd Year = \$582,500.00
- Total 3rd Year = \$325,000.00
- Grand Total = \$2,782,500.00

Special Notes

- Residual Revenue will continue to be generated up to 10 years.
- The numbers used are very, very conservative; for example, Walmart alone can order 15,000 units as an initial order per title. Another example is Redbox can place a 7,500 initial order per title at \$4.50 per dvd. Between Walmart and Redbox alone each title can sell 22,500 units in the first year, unless positioned to retail at the end of the year and those sales will carry over.
- All titles will have a family theme or inspirational theme that will allow the DVD to be sold into the Christian Book Sellers associations, which can generate an additional, 10,000 units per title at \$3.50 per until.

Title To Be Produced

- Michael Matthews
 - I Need A Man
 - Wicked Ways
 - No Place To Lay My Head
 - Mama Don't
- Open Rivers Pictures
 - First Lady
 - With Your Grown Self
 - Marriage Boot Camp
- Pinewood/Open Rivers Film Academy
 - TBD Based On Class
 - TBD Based On Class

Open Rivers Partners

- UHE Retail and Television Distribution
- River Wood/Pine Wood Studio Film maker curriculum

○ Month 5

- Principle Production Begins on Film #4
- Principle Production begins on film #5
- Retail initial orders returned from distributor on project #5.

Month 6

- Principle Production Begins on Film #6

Month 7

- Principle production begins on film #7

EXHIBIT “B”
to
Defendants’ Counterclaims



Engagement Agreement

THIS ENGAGEMENT AGREEMENT (the "Agreement"), is made and entered effective as of January __, 2014, by and between , Open Rivers Pictures (referred to herein as "Client") and Southern Film Regional Center - Atlanta LLC (referred to herein as the "Company").

RECITALS

- A. Client desires to retain the services of the Company to assist with the proposed EB-5 Project incorporated herein by reference ("**Project**");
- B. Company is willing to accept such engagement on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereby agree as follows:

1. **Engagement.** Client hereby engages the Company to perform the Services (as defined herein) subject to the terms and conditions of this Agreement, and the Company hereby accepts such engagement for and in consideration of the terms and conditions hereinafter provided.
2. **Term.** The term of this Agreement shall commence on the date set forth above and shall continue until terminated in accordance with Section 9 hereof.
3. **Services.** Company will perform only those services set forth in the "EB-5 Critical Path and Timeline." The Client shall have no expectation that the Company will provide services beyond those set forth, unless the Company and the Client amend the Engagement Agreement in writing or execute a separate agreement with respect to any such additional services.
4. **Limitations on Authority.** Without the express written consent from Client, the Company shall have no apparent or implied authority to pledge the credit of Client, bind Client under any contract, agreement, note, or sell, mortgage or otherwise dispose of any assets of Client.
5. **Confidential.**
 - a. **Restrictive Covenant.** Except in the course of performing Company's obligations under this Agreement or pursuant to written authorization from Client, or as required by law, Company, during the Term of this Agreement and at all times after its expiration and/or termination, shall hold in confidence and shall not: (a) directly or indirectly reveal, report, publish, disclose or transfer Confidential Information to any person or entity; or (b) use any Confidential Information for any purpose other than for the benefit of Client; or (c) assist any person or entity other than Client to secure any benefit from the Confidential Information. For purposes of this Agreement, "Confidential Information" shall be defined as any and all non-public information pertaining to Client provided to Company and/or non-public, data and information relating to the Client, it assets, finances, and/or business. The Company's obligation of confidentiality do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Company; (b) discovered or created by the Company before disclosure of Client; (c) learned by Company through legitimate means other than from the Client or Client's representatives; or (d) is disclosed by Company with Client's prior written approval.



6. **Indemnification.**

- a. **Company.** Company hereby agrees to and shall defend, release, indemnify and hold Client and its affiliates, directors, officers, members, shareholders, employees, agents and customers and the successors and assigns of each, harmless from and against any and all claims, suits, liabilities, costs and expenses, including, without limitation, reasonable attorney’s fees and expenses, in connection with any act or omission of Company, its employees and/or agents in connection with the provision of the Services.
- b. **Client.** Client hereby agrees to and shall defend, release, indemnify and hold Company and its affiliates, directors, officers, members, shareholders, employees, agents and customers and the successors and assigns of each, harmless from and against any and all claims, suits, liabilities, costs and expenses, including, without limitation, reasonable attorney’s fees and expenses, in connection with any act or omission of Client, its employees and/or agents in connection with the Project.

- 7. **Notices.** All notices, demands, requests or other communications which may be or are required to be given, served or sent by one party to the other party pursuant to this Agreement shall be in writing and shall be hand delivered or mailed by overnight courier with delivery confirmation, or by certified mail, return receipt requested, postage prepaid, or sent by telefax with delivery confirmation addressed as follows:

If to Client:

If to Company:

Southern Film Regional Center LLC
455 Glen Iris Drive, Suite B
Atlanta, GA 30308

Each party may designate by notice in writing a new address or additional address to which any notice, demand, request or communication may thereafter be delivered, given or sent. Documents delivered by hand shall be deemed to have been received upon delivery; documents sent by facsimile shall be deemed to have been received when the confirmation answer back is received; and documents sent by mail shall be deemed to have been received upon their receipt, or at such time as delivery is refused by the addressee upon presentation.

8. **Termination.**

- a. **For Cause by Either Party.** If either party shall breach any material term or provision of this Agreement, then the other party, in addition to its other rights and remedies, shall have the right to terminate this Agreement upon written notice to the other, provided such breach is not remedied within thirty (30) days of written notice specifying such breach. Either party shall further have the right to terminate this Agreement immediately upon written notice to the other party upon the occurrence of any of the following in regard to the other party: (i) filing of a petition in bankruptcy; (ii) adjudication as bankrupt; (iii) making any assignment or similar arrangement for the benefit of creditors; or (iv) appointment of a receiver.




- b. **Termination Without Cause.** Either party may terminate this Agreement without cause for any reason or no reason at any time by giving thirty (30) days prior written notice to the other party.
9. **Assignment.** Neither this Agreement nor any interest herein or any rights hereunder shall be sold or assigned by either party without prior written notice to and consent of the other party. For purposes of this provision, assignment shall be deemed to include any change of control or transfer by operation of law.
10. **Miscellaneous.**
- a. **Waiver.** The provisions of this Agreement may be waived, altered, amended or repealed, in whole or in part, only on the written consent of the parties.
- b. **Governing Law; Severability.** This Agreement is entered into in Georgia and shall be construed in accordance with and governed by the substantive laws of the State of Georgia without regard to the conflict of laws provisions thereof. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, and if any provision of this Agreement is held illegal, invalid or void, such provision may be changed to the extent reasonably necessary to make it valid and enforceable and the remainder of this Agreement shall not be affected or impaired thereby.
- c. **Entire Agreement.** This Agreement, together with all exhibits now and hereafter attached hereto, represent the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety any and all prior written or oral agreements, side letter, proposal, bid, or the like with respect thereto.
- d. **Use of Facsimile Machine and PDF.** The parties agree that for purposes of negotiating and finalizing this Agreement, any signed documentation, including this Agreement and any subsequent amendments, transmitted by facsimile machine and PDF shall be treated in all manners and in all respects as an original document and shall have the same binding legal effect as an original contract. The signature of any party shall be considered for these purposes as an original signature. At the request of either party, any facsimile and PDF document shall be re-executed by both parties in an original form.
- e. **Severability.** Should any part of this Agreement for any reason be declared invalid, such a decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement shall have been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties hereto that they would have executed the remaining portion of this Agreement without including herein any such part, parts or portions which may for any reason be hereafter declared invalid.
- f. **Force Majeure.** The obligations of the parties hereto shall be excused during such time as, and to the extent that, performance is prevented by any occurrence or act which is not due to their fault or negligence, including (without limitation) riots, fire, war, terrorism, acts of God, and any ruling, ordinance, law or regulation of any governmental body having jurisdiction over and party.



IN WITNESS WHEREOF, Client and Company have caused this Engagement Agreement to be executed by their duly authorized officer or representative effective as of the date first set forth above.

Company:

By: 

Name: Nic Applegate

Title: Managing Member

Date: 22 November 2013

Client:

By: _____

Name: _____

Title: _____

Date: _____



APPENDIX (A)

EB-5 Project Timeline and Estimated Costs

The timeline below reflects the estimated projection for the preparation and filing of the proposed EB-5 Project application. Our estimates are based off of previous experiences, and are as accurate as possible, though the timelines may be subject to minor changes as a result of variables that are out of our control, such as the complexity of the project, as well as the turnaround of information.

USCIS EB-5 Project

- Phase I – one week: Engage Edward Beshara and Beshara P.A. as acting immigration attorney for the project.
- Phase II – two weeks: Assessment of the Project
 - This will include the feasibility study, as well as the collecting of additional information, data, and research that will be required to move forward with the Project business plan. Initially, the Project is anticipated to incorporate elements of entertainment co-financing, as well as construction and development.
- Phase III – two weeks: Business Plan Preparation for the Economist
 - During this time, we will complete in-depth drafts of the Project Business Plan. The Economist will need this prior to commencement of the Economic Study.
- Phase IV – three weeks: Conducting of Economic Study, and Drafting of Securities Documents
 - In regard to the first element of this Phase; it will be during this time that the Economist will conduct the actual Economic Study and compile the findings into the final Economic Report.
 - In regard to the second element of this Phase; it will be during this time that we will draft the requisite Securities Documents for the Project (Confidential Private Placement Memorandum, Operating Agreement, Subscription Agreement, and Jobs Allocation Addendum). These documents will not be finalized until Phase V, as they will need to include data from the Economic Report.
- Phase V – four weeks: Implementation of Data, Completion of Documents, and Preparation for Filing
 - During this time, we will be implementing the data from the Economic Report into the Business Plan and Securities Documents, which upon completion, we will issue for final review and approval. Additionally, we will be preparing the necessary forms and documentation needed for submission to the USCIS. Once the aforementioned items are complete, the application for the EB-5 Project will be submitted to the USCIS for approval.



APPENDIX (B)

Estimated Costs

The table below reflects an accurate estimate of the projected range of expenses associated with the preparation and filing of the proposed EB-5 Project, to be geographically located in the state of Georgia. Initially, the Project is anticipated to incorporate elements of entertainment co-financing, as well as construction and development. Please note that the estimated expenses are subject to change as a result of variables that are out of our control. The approximate length of time of the application preparation process is three months, and the payment schedule will reflect the specific project.

EB-5 PROJECT: ESTIMATED COSTS		
SERVICE	ESTIMATED COST	DESCRIPTION
Immigration Attorney	\$45,000 <i>*Payable in (3) equal installments</i>	This will cover the cost of the first step analysis for the Regional Center Project (\$15,000), as well as the preparation and filing of the EB-5 Project (\$30,000)
Securities Attorney	\$35,000 to \$50,000 <i>*Payable in (3) equal installments</i>	Drafting of requisite EB-5 compliant securities documents. Amount can fluctuate depending on whether you use EB-5 securities attorney or retain your own, as well as the complexity of the Project.
Economist	\$22,000 to \$30,000 <i>*Payable in (2) equal installments</i>	This will cover the cost of the Economic and Feasibility Study. This will need to be completed for the Project Application. This price range is padded to allow for the designation of the Project Census tract as an EAZone.
Project Business Planner	\$15,000 to \$20,000 <i>*Payable in (2) equal installments</i>	Cost of the requisite EB-5 compliant Project Business Plan
Escrow Set-Up	\$2,000 <i>*Payable in (1) installment</i>	This will entail the establishment of the Project Escrow Account as mandated by the U.S.C.I.S).
Filing Fees	\$6,230 <i>*Payable in (1) installment, due upon submission</i>	Cost to submit Form I-924, Application for Regional Center Designation, to the U.S. Department of Homeland Security
TOTAL:	\$125,230 to \$153,230	

***Please note that in the event of the issuance of a USCIS Request For Evidence ("RFE"), additional costs may be incurred. The Client will be solely responsible for covering the additional necessary expenditures to adequately address the matter.

EXHIBIT “2”
to
Defendants’ Motion for Leave

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

OPEN RIVERS MEDIA GROUP INC.)
D/B/A OPEN RIVERS PICTURES,)
ALVIN WILLIAMS, AND TAMMY)
WILLIAMS,)
)
)
Plaintiffs,)

v.)

CIVIL ACTION
NO. 1:15-cv-00724-SCJ

SOUTHERN FILM REGIONAL)
CENTER LLC, DOMINIC “NIC”)
APPLEGATE, GATE INDUSTRIES LLC,)
MAURICE ANDERSON, RATLIFF)
ENTERTAINMENT LLC, AND)
THEOPHALUS RATLIFF,)
)
)
Defendants.)

**ORDER GRANTING DEFENDANTS’ MOTION FOR LEAVE OF COURT
TO FILE COUNTERCLAIMS DURING STAY**

This action currently stayed pending the Court’s consideration of Defendants’ Motion to Dismiss [Dkt. No. 7], pursuant to this Court’s Order [Dkt. No. 17], entered on April 17, 2015.

Defendants have filed “Defendants’ Motion for Leave of Court to File Counterclaims During Stay” (“Defendants’ Motion for Leave”) in which they request leave of Court to file currently known, compulsory counterclaims in response to the

Complaint. Although Defendants' obligation to answer the Complaint has been stayed pursuant to this Court's Order in Fed. R. Civ. P. 12(a)(4), Defendants have expressed concern about timely asserting currently known, compulsory counterclaims, before any applicable statutes of limitations run, while the stay is in effect.

Defendants have filed as Exhibit "1" to Defendants' Motion for Leave a proposed pleading that contains Defendants' currently known, compulsory counterclaims, and have asked this Court to direct the Clerk of the Court to file that pleading, as of May 20, 2015.

The Court hereby GRANTS Defendants' Motion for Leave and directs the Clerk to file the pleading attached as Exhibit "1" to that motion as Defendants' current counterclaims in this action, with a filing date of May 20, 2015.

Defendants have challenged the clarity and propriety of the Complaint in a pending Motion to Dismiss in which Defendants claim that the Complaint is too vague and confusing to be answered. Defendants have no immediate obligation to answer Plaintiff's Complaint, therefore. It is presently unknown if and when Defendants will need to respond to Plaintiffs' Complaint. Furthermore, based upon the allegations in Defendants' Motion to Dismiss, it is possible that Defendants will ultimately be required to respond, if at all, to a different and amended complaint than is currently filed on the docket in this action. Accordingly, the Court finds that the Clerk's filing

of Defendants' Counterclaims will not prejudice or prevent Defendants' right to answer and state compulsory and permissive counterclaims, once Defendants are faced with a complaint in this action, after this Court has ruled on the Motion to Dismiss and has lifted the present stay, which will remain in effect.

So ORDERED, this _____ day of May, 2015.

The Honorable Steve C. Jones
United States District Judge

Drafted and Proposed by:

Thomas C. Grant
Georgia State Bar No. 297455

**LEWIS BRISBOIS BISGAARD
& SMITH, LLP**

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