SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DAMON DASH,	:	Index No. 157989/2014
Plaintiff,	:	
vs.	:	
LEE DANIELS, LEE DANIELS ENTERTAINMENT LTD., SIMONE SHEFFIELD, CANYON ENTERTAINMENT,	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF LEE DANIELS AND LEE DANIELS ENTERTAINMENT'S MOTION FOR A MORE DEFINITE STATEMENT

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Defendants Lee Daniels ("Daniels") and Lee Daniels Entertainment, Ltd. ("Daniels Entertainment") (collectively, "Defendants") respectfully submit this Memorandum of Law in Support of their Motion for a More Definite Statement pursuant to Civil Practice Law and Rule ("CPLR") § 3024(a).

I. PRELIMINARY STATEMENT

Muddled by indefinite allegations, the Verified Complaint ("Complaint") thwarts any meaningful ability to file a responsive pleading. While there are innumerable deficiencies, Plaintiff must minimally make more definite statements to address six (6) critical failings:

First, Plaintiff sues for breach of contract, but fails to identify which of the alleged multiple contracts was breached and how;

Second, Plaintiff sues for breach of a contract to which Plaintiff is not a party, but fails to allege facts to support Plaintiff's standing to sue on this contract;

Third, Plaintiff sues on an alleged personal guarantee made before the execution of a contract, but fails to allege how the alleged guarantee could survive the contract's "RISK OF INVESTMENT" clause (the exact opposite of a guarantee) or the contract's integration clause (which scrubs all alleged agreements made prior to execution);

Fourth, Plaintiff sues upon alleged oral modifications to a contract, but fails to allege any interpretable detail as to either the formation of this agreement or its specifics, much less how this purported modification is allowable given the predecessor contract's detailed integration clause requiring only written amendment executed by all parties;

Fifth, Plaintiff sues in this New York Court, but fails to allege facts which would overcome the contract's choice of Wilmington, Delaware as the venue for "any action on a claim arising" from the contract; and

Sixth, Plaintiff sues long after the statute of limitations expired, but fails to allege facts

enabling a viable claim made more than eight (8) years since the alleged acts occurred.

II. LEGAL ARGUMENT

A. The Legal Standard.

If a pleading fails to specify the allegations in a manner that provides sufficient notice to enable a responsive pleading to be framed, the court should require a more definite statement. *See* N.Y. C.P.L.R. § 3013 (McKinney 2014). Complaints which are either excessively vague or so unintelligible that they impede the defendant's ability to meaningfully respond are to be stricken and re-pled with greater clarity. *See Joseph v. Ervolina* 285 A.D. 1218, 1218 (4th Dep't 1955) ("The purpose of pleadings is to present and define the issues to be tried and determined, and not to confound and befog them."); *Foley v. D'Agostino,* 21 A.D.2d 60, 64 (1st Dep't 1964) (notwithstanding the liberal read that courts are directed to give complaints, a motion for definite statement is appropriate if the complaint is "so vague or ambiguous that a party cannot reasonably be required to frame a response"); *Tankoos v. Conford Realty Co*., 248 A.D. 614, 614 (2d Dep't 1936) ("Pleadings such as are here presented have been condemned in every department … We will assume that the complaint states causes of action, but it must be redrafted by the attorney, and not by the court.").

Motions for a more definite statement are especially warranted where the movant demonstrates the existence of a ***threshold*** issue that is either dispositive of, or will simplify, the matter. *See, e.g., Casanova v. Ulibarri*, 595 F.3d 1120, 1125 (10th Cir. 2010) ("[T]he preferable procedure when a specific date could support a dispositive defense motion is to require the plaintiff to provide a more definite statement …"). *See generally Isaacs v. Washougal Clothing Co.,* 233 A.D. 568 (4th Dep't 1931) ("Slovenly drawn pleadings tend to deceive the opposing party, confuse the issue, and unnecessarily consume the time of the court.")

B. Plaintiff's Claim is an Unintelligible, Self-Contradicting Shell Game.

The Complaint reads just as a shell game is played. Plaintiff swishes around mention of several agreements – some written, some oral, some of an indefinite nature – and then asks Defendant and this Court to wager a guess as to under which agreement the breach lies. (*See* Complaint at ¶¶ 19-23, 31-39, 48-49). It is impossible to ascertain which alleged provision of which agreement the Defendants purportedly breached. This is especially true given that Complaint does not attach any of the written agreements, cites no specific provisions, makes opaque references to oral agreements, and improperly bundles all agreements into an unintelligible jumble of "promises and assurances."[1] To sufficiently plead a breach of contract claim, Plaintiff must identify the operative legal provisions.[2] *See Joseph*, 285 A.D. at 1218 ("The court should not be compelled to wade through a mass of verbiage and superfluous matter, in order to pick out an allegation here and there which, pieced together with other statements taken from another part of the complaint, will state a cause of action.").

The Complaint is also contradicted by the very facts on which it relies. For example, Plaintiff alleges that he agreed to forego his purported right to recoup his investment in the 2004 film, *The Woodsman,* by re-investing these funds in the 2005 film, *Shadowboxer*. (*Id.* at ¶¶ 31-34). Yet, the Complaint then forgets about this forbearance and incongruously alleges that the Defendants breached The Woodsman Agreement by "failing to compensate Damon in the

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[1] Paragraphs 23 and 39 are illustrative of Plaintiff's attempt to buttress his claims on unidentified "related agreements" and insufficiently articulated "promises."

- "Lastly, as per the terms of the Woodsman Agreement ***and related agreements and promises made a part thereof***, [Plaintiff's] principal investment was to be personally guaranteed with interest by [Daniels]" (emphasis added)."
- "Lastly, as per the terms of the Shadowboxer Agreement ***and related agreements***, specifically "The Woodsman" Agreement, and promises made a part thereof, [Plaintiff's] principal investment was to be personally guaranteed with interest by Lee [Daniels]" (emphasis added).

[2] Count One of the Complaint simply states that the Defendants "breached ***all three agreements***." (*Id.* at ¶ 86) (emphasis added).

amount of $2,000,000.00 plus interest despite due demand therefor." (*Compare* ¶ 86). Indeed, throughout the Complaint, Plaintiff intermittently alleges that The Woodsman Agreement was superseded by The Shadowboxer Agreement which, in turn, gave away to the indefinitely-described, alleged oral "McConnell Agreement." Yet, at the same time, the Plaintiff alleges that "all three agreements" were breached. (*Id.*, stating "[Defendants] have breached ***all*** three agreements."). Which is it? Plaintiff must specify.

C. <u>The Woodsman Agreement Defeats the Plaintiff's Claim</u>

Even though The Woodsman Agreement is the genesis of the parties' alleged relationship and the starting (and, in truth, the end) point for Plaintiff's alleged claims (*see* Complaint, ¶¶ 12-23), Plaintiff fails to attach The Woodsman Agreement to the Complaint. The reason for this omission is obvious: the agreement's plain language reveals the frivolity of Plaintiff's allegations. *See Mark Hampton, Inc. v. Bergreen*, 173 A.D. 2d 220, 221 (1st Dep't 1991) (factual allegations which are unequivocally contradicted by documentary evidence are not afforded the customary presumption of truth or favorable inferences normally extended on a motion to dismiss); *805 Third Ave. Co. v. M.W. Realty Associates*, 58 N.Y.2d 447 (1983) (factual allegations of complaint must withstand a review of the accompanying exhibits, as well as documents that either should have been attached as exhibits, or which are central to the plaintiff's claim).[3]

The gravamen of the claim is that Daniels personally guaranteed Plaintiff's investment in the motion picture business so that Plaintiff would never realize a loss. (*See* Complaint at ¶¶ 23,

[3] Documentary evidence may be considered if it is unambiguous and of undisputed authenticity. *See Fontanetta v. Doe*, 73 A.D.3d 78, 86 (2d Dep't 2010) (citing Siegel, Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 7B, CPLR C3211:10, at 21–22). *See also, Weiner v. King*, 43 Misc.3d 1203(A) (Sup. Ct. 2014) ("Where the motion to dismiss is based on documentary evidence, CPLR § 3211 (a)(1), the claim will be dismissed "if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law") (internal citations omitted).

34, 39, 79(b), 82(e) and 83(e)). Plaintiff contends that Daniels first gave this personal guarantee in connection with Daniel's 2004 film, *The Woodsman*, and then allegedly reiterated this commitment in order to induce Plaintiff to roll over the profit that Plaintiff earned in connection with this movie into Daniel's next film, *Shadowboxer* and, thereafter, to induce Plaintiff not to initiate legal action. (*See* Complaint at ¶¶ 18, 23, 31-32, 34, 39, 46 and 48-49). Specifically, Plaintiff ***verified*** under oath: "After reviewing the script, and receiving promises and assurances that his principal investment would be ***personally guaranteed*** by Lee [Daniels], [Plaintiff] agreed to enter into a written agreement with Lee." (*Id*. at ¶ 18) (emphasis added); *see also*, *id.* at ¶ 23 ("Lastly, as per the terms of the Woodsman agreement and related agreements and promises made a part thereof, [Plaintiff's] principal investment was to be ***personally guaranteed*** with interest by [Daniels]") (emphasis added).

The plain language of The Woodsman Agreement memorializes a remarkably different story.[4] (*See* the Affirmation of James Sammataro, Esq. in Support of Motion for a More Definite Statement, hereinafter "Sammataro Aff.," Ex. 1). There is no personal guarantee. To the contrary, entitled "Risk of Investment," Paragraph 13.7 of the agreement – in all caps and bolded language – expressly warns that Plaintiff's investment was subject to all of the normal risks associated with an inherently risky film venture:

13.7 RISK OF INVESTMENT. EACH MEMBER IS FULLY AWARE OF THE INHERENT RISK OF ITS INVESTMENT IN THE COMPANY. THE COMPANY'S SOLE PURPOSE IS TO INVEST IN THE PRODUCTION OF THE PICTURE. THIS INVESTMENT IS EXTREMELY RISK AS ARE ALL INVESTMENTS IN MOTION PICTURES. THERE IS ABSOLUTELY NO CERTAINTY OR GUARANTY THAT:

A. THE PICTURE CAN BE COMPLETED;

B. THE PICTURE CAN BE COMPLETED WITHIN THE BUDGET;

[4] The Woodsman Agreement was entered into by Lee Daniels Entertainment and Dash Films, Inc. Notably, neither Plaintiff nor Daniels were parties to the agreement – a reality which casts doubt as to Plaintiff's standing.

C. A DISTRIBUTION ARRANGEMENT CAN BE FINALIZED FOR THE PICTURE;

D. A FORCE MAJEURE EVENT WILL NOT OCCUR WHICH COULD PREVENT COMPLETION OF THE PICTURE OR CAUSE THE COST OF COMPLETION OF THE PICTURE TO EXCEED THE BUDGET;

E. ANY PROFITS WILL BE REALIZED OR ANY CASH DISTRIBUTED TO ANY MEMBER; **OR**

F. THE PICTURE WILL BE SUCCESSFUL.

EACH MEMBER ACKNOWLEDGES THAT SUCH MEMBER HAS READ AND UNDERSTANDS THE "RISK FACTORS" EXHIBIT ATTACHED HERETO.

(*See* Ex. 1 to the Sammataro Aff.) (emphasis in original).

The referenced "Risk Factors" exhibit delineates four pages of additional risks that could potentially jeopardize Plaintiff's investment. (*Id.* at Ex. 1-A).

Critically, Paragraph 14.3 of The Woodman Agreement contains an "integration" or "entire agreement" clause, confirming, in pertinent part, that the agreement constitutes:

> the complete and exclusive statement of agreement among the Members with respect to the subject matter herein and therein and replace[s] and ***supersede[s]*** all prior written and oral agreements or statements by and among the Members or any of them. No representation, statement, condition or warranty not contained in this Agreement or the Article will be binding on the Members or have ***any force or effect whatsoever***.

(*Id.*) (emphasis added). Consequently, even if Daniels had made a prior, oral promise to personally guarantee Plaintiff's investment (which he did not), this representation is of no legal "force or effect whatsoever." Further, given Paragraph 14.16's express mandate that: "All amendments to this Agreement ***shall be in writing*** and signed by all of the Members," to be legally enforceable, any alleged post-agreement guarantee to Plaintiff's investment in *The Woodsman* needs to contained in a signed legal instrument executed by ***all*** of the Members of The Woodsman, LLC. *Id.* at ¶ 14.16 (emphasis added).

The Woodsman Agreement raises considerable questions as to the plausibility of the Complaint – including whether it is objectionably frivolous and, therefore, sanctionable. Consequently, before the Defendants and this Court are forced to expend considerable time, resources and energy on this matter, the Court should exercise its inherent authority and require the Plaintiff to specifically articulate the basis for its claim (including whether he is, in fact, suing for an alleged breach of The Woodsman and Shadowboxer Agreements), and to attach all of the alleged written documents that supports his claim to an amended complaint, including any written documents that purport to amend The Woodsman Agreement. *See Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 363-64 (2d Cir. 2000) (per curiam) (noting that court's broad inherent powers, including the authority to *sua sponte* dismiss frivolous actions); *Revson v. Cinque & Cinque,* P.C., 221 F.3d 59, 78 (2d Cir. 2000) (noting the court inherent power "to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases"). *See generally*, *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) ("A complaint is based on an indisputably meritless legal theory if the claim lacks an arguable basis in law or when a dispositive defense clearly exists on the face of the complaint.").

A more definite statement is required to address the patent deficiencies of the allegations in light of the "risk" and "integration" clauses. Without it, the allegations contained in the Complaint are frivolous verging on fantastical.

D. <u>The Woodsman Agreement Reveals the Existence of Several Threshold Issues</u>.

A more definite statement is especially warranted given the existence of three threshold issues that are dispositive of the matter:

- ***Plaintiff's Standing***: Plaintiff is ***not*** a party to The Woodsman Agreement (*see* Ex. 1 to the Sammataro Aff.).[5]

[5] "Standing is 'an aspect of justiciability which, when challenged, must be considered at the outset of any litigation.'" *Cortlandt Street Recovery Corp. v. Hellas Telecommunications, S.A.R.L.*, 2014 WL 4650231, 2014 N.Y.

- ***This Court's Jurisdiction***: The Woodsman Agreement provides for exclusive jurisdiction in "the state and federal courts sitting in Wilmington, Delaware … [for] any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement …" (*id.* at ¶ 14.10); and

- ***The Statute of Limitations***: Plaintiff became a party to The Woodsman Agreement on May 2, 2003 (*see* Ex. 2 to the Sammataro Aff.) and, if the Complaint is properly comprehended, the agreement was breached shortly after the film's release in December of 2004 (*see* Complaint at ¶¶ 24, 28 (noting that *The Woodsman* theatrical release ended in March 2005), and sometime before the release of *Shadowboxer* in July of ***2006***. (*Id*. at ¶ 40). Given that these events occurred more than ***eight years*** prior to Plaintiff's filing of his Summons With Notice [D.E. 1], they are seemingly barred by the statute of limitations.

To adjudicate standing, jurisdiction as well as whether Plaintiff's claims are time-barred, this Court needs to be provided with the relevant provisions of The Woodsman and Shadowboxer Agreements,[6] as well as the specifics of the alleged subsequent oral modification. A more definite statement by Plaintiff is not only warranted, but is the preferred procedural mechanism to evaluate whether this action should proceed any further.

E. The Alleged "McConnell Agreement" Further Illustrates the Need for a More <u>Definite Statement</u>.

Although far from clear, the Complaint seems to suggest that the parties subsequently amended their agreements through an oral agreement reached between Daniels and Plaintiff's then-agent, Michael McConnell:

> Through McConnell and/or McConnell's agency, in sum and substance, [Daniel's] offer to settle his debts with [Plaintiff] was as follows: in exchange for keeping quiet about being owed money, to avoid bad press in light of [Daniels'] upcoming projects, and foregoing prompt payment on the personal guaranty, Lee, [sic] and Lee Daniels Entertainment, promised [Plaintiff], both orally, and ***in writing***, that [Plaintiff] would be given a producer credit and partial ownership right to any and all of [Daniels'] projects –

Slip. Op. 24268 (Sup. Ct. Sept. 16, 2014) (*citing Society of the Plastic Ind., Inc. v. County of Suffolk*, 77 N.Y.2d 761, 772 (1991)). *See also*, *Stark v. Goldberg*, 297 A.D.2d 203, 204 (1st Dep't 2002) ("[s]tanding goes to the jurisdictional basis of a court's authority to adjudicate a dispute …").

[6] In that The Woodsman Agreement was the template for The Shadowboxer Agreement, these same barriers likely foreclose most, if not all, of Plaintiff's claims relating to *Shadowboxer*.

> *i.e.,* current and future TV shows and/or films – until [Daniels] paid [Plaintiff] back the $2,000,000.00 plus interest that [Plaintiff] originally invested with [Daniels] ("McConnell Agreement").

(*Id.* at ¶ 48) (emphasis added). This verified allegation begs the question: where's the written promise? Once again, the alleged writing is conspicuously absent, leaving open questions regarding the most fundamental of details of the supposed McConnell Agreement, including:

- ***The When***: the date or approximate date in which the parties purportedly negotiated and reached a meeting on the minds on the alleged terms of the agreement;
- ***The Who***: was the Plaintiff actually a party to the Agreement, or (as was the case with The Woodsman Agreement) was it Dash Films? And did Mr. McConnell possess the requisite legal authority to definitively bind Plaintiff to any agreement?
- ***The What***: identify language in the purported McConnell Agreement that operates to supersede and extinguish The Woodsman and Shadowboxer Agreements; and
- ***The Where***: in which state(s) this alleged agreement was purportedly negotiated[7] – a critical fact given that the choice of law analysis may well give rise to a claim-defeating statute of limitations defense.

See Banco Esprito Santo de Investimento S.A. v. Citibank, N.A., 2003 WL 23018888, at *4-5 (S.D.N.Y. Dec. 22, 2003) (dismissing breach of contract claim where there were insufficient facts to support the formation of an oral contract).

The lack of any meaningful detail regarding the McConnell Agreement[8] – including whether it is the sole operative agreement or somehow a complement to The Woodsman and Shadowboxer Agreements – warrants a more definite statement. *See e.g., Deep v. Urbach, Kahn & Werlin LLP*, 19 Misc. 3d 1142(A) (Sup. Ct. 2008) (granting motion for a more definite

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[7] According to both industry press and a reported decision involving Mr. McConnell's legal dispute with his former agency, Mr. McConnell principally worked out of Los Angeles during this period of time. *See McConnell v. Innovative Artists Talent and Literary Agency, Inc.*, 175 Cal.App.4th 169, 96 Cal.Rptr.3d 1 Cal.App. 2 Dist. (2009); http://www.hollywoodreporter.com/news/innovative-duo-show-fortitude-149088.

[8] The Complaint is equally deficient in describing The Shadowboxer Agreement, failing to provide: (i) the date of this written agreement, (ii) the identity of the parties; and (iii) the specific provisions which were allegedly breached. (*Compare* Complaint at ¶¶ 35-47). Further, consistent with his *modus operandi*, Plaintiff does not attach The Shadowboxer Agreement to his Complaint.

statement where plaintiff alleged breach of contract but "fail[ed] to disclose any details regarding the alleged contract(s)"); *Certain Underwriters at Lloyd's, London v. William M. Mercer, Inc.*, 7 Misc. 3d 1008(A) (Sup. Ct. 2005) (merely pleading that a contract was breached, without setting forth the particular nature of the transactions, occurrences, or series of transactions or occurrences or the nature of the claimed breach violates CPLR § 3013); *Posner v. Minnesota Mining & Mfg. Co.*, 713 F. Supp. 562, 563 (E.D.N.Y. 1989) ("Although the existence of a contract is alleged, plaintiffs fail to set forth any specific information as to when the agreement was made, the terms of the agreement upon which liability is predicated, or any other evidence supporting the formation of an agreement.").

F. Plaintiff's Claims for Breach of the Duty of Good Faith and Fair Dealing, Promissory Estoppel, Unjust Enrichment, or Conversion also Violate CPLR § 3013.

Because the four other causes of action are either dependent upon or derivative of Plaintiff's indefinite breach of contract claim, Defendants cannot meaningfully respond to these claims without a threshold clarification as to which contracts are at issue, and how they have been purportedly breached. *See, e.g. Metropolitan Life Ins. Co. v. RJR Nabisco, Inc.,* 716 F. Supp. 1504, 1516, n. 20 (S.D.N.Y. 1989) ("[the implied covenant does not create new contractual rights, instead it] ensures that the parties to a contract perform the substantive, bargained-for terms of their agreement," and the parties are not unfairly denied "express, explicitly bargained-for benefits."); *Sutton Associates v. Lexis-Nexis*, 196 Misc. 2d 30, 34 (Sup. Ct. 2003) (granting motion to dismiss claim for breach of the duty of good faith and fair dealing where plaintiff failed to identify any specific contract provision actually breached by defendant) (internal citations omitted); *Brown v. Brown*, 12 A.D.3d 176 (3d Dep't 2004) (claims for promissory estoppel and unjust enrichment properly dismissed where merely duplicative of

insufficiently pleaded breach of contract causes of action).[9]

Stated simply, the defects contained in the breach of contract claim infects the entirety of the Complaint. Plaintiff's claims for breach of the duty of good faith and fair dealing and unjust enrichment further necessitate a more definite statement for additional, independent reasons.

1. The Breach of The Duty of Good Faith and Fair Dealing Claim Lacks <u>Meaningful Detail until it alleges a specific Contract</u>.

New York law recognizes an implied covenant of good faith and fair dealing in every contract. *See Rowe v. Great Atlantic & Pacific Tea Co*., 46 N.Y.2d 562, 569 (1978)); *New York Univ. v. Continental Ins. Co*., 87 N.Y.2d 308, 318 (1995). This covenant "embraces a pledge that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *511 W. 232nd Owners Corp. v. Jennifer Realty Co*., 98 N.Y.2d 144, 153 (2002).

A claim for breach of the implied covenant of good faith and fair dealing will not, however, lie if the obligations to be implied are inconsistent with the terms of the parties' agreement. *See Gill v. Bowne Global Solutions, Inc*., 8 A.D.3d 339, 340 (2d Dep't 2004); *Fitzgerald v. Hudson Nat. Golf Club*, 11 A.D.3d 426, 428 (2004) ("The plaintiff's cause of action to recover damages for breach of the implied covenant of good faith and fair dealing also was properly dismissed because the plaintiff was seeking to imply an obligation of the defendants which was inconsistent with the terms of the contract."). Consequently, in order to be able to meaningfully respond to Plaintiff's breach of the duty of good faith and fair dealing claim, Defendants need to first be advised as to precisely ***which*** agreement (or agreements) Plaintiff is suing under.

[9] The entirety of Plaintiff's conversion claim is premised upon certain alleged rights purportedly belonging to him "pursuant to the terms of the Woodsman Agreement and Shadowboxer Agreement, and McConnell Agreement." (Complaint at ¶ 113).

Plaintiff's breach of the duty of good faith and fair dealing claim is premised upon the following contention:

> Despite acknowledging, orally, and in writing, that Plaintiff had fully performed as per the terms of the Woodsman Agreement, the Shadowboxer Agreement, and McConnell Agreements, instead of compensating Plaintiff as per those terms, [the Defendants] sought, and still seek, additional consideration beyond the terms of those agreements.
>
> These demands for additional consideration were made in bad faith and constitute a breach of the duties of good faith and fair dealing implied in express contracts.

(Compl., ¶¶ 89-90).

This conclusory allegation falls far short of the requirements of CPLR § 3013, as the Complaint (once again) fails to attach the alleged, supporting written documents, and additionally fails to: (a) identify which specific contractual provisions have been impaired; (b) specify the benefits that the Defendants improperly withheld; (c) provide any meaningful detail as to the "additional consideration" that was demanded, (d) describe how the alleged demand deprived Plaintiff of his right to enjoy the benefits his bargain (whatever they might be), or (e) articulate how the Defendants acted in "bad faith." The absence of these details renders the claim excessively vague and impede the Defendants' ability to meaningfully respond.

2. The Unjust Enrichment Claim Lacks Meaningful Detail Until it Alleges a Specific Benefit that was Conferred.

To state a claim for unjust enrichment under New York law, a claimant must plead: (1) that one party was enriched; (2) at another party's expense; and (3) equity and good conscience require restitution. *See Violette v. Armonk Associates, L.P.,* 872 F. Supp. 1279, 1282 (S.D.N.Y. 1995); *Van Brunt v. Rauschenberg,* 799 F. Supp. 1467, 1472 (S.D.N.Y. 1992). The fact that a party benefits from performance does not, alone, make that party liable in quantum meruit. *See Int'l Customs Assocs., Inc. v. Ford Motor Co.,* 893 F. Supp. 1251, 1258 (S.D.N.Y. 1995); *Shortcuts Editorial Servs., Inc. v. Kaleidoscope Sports & Entm't, LLC,* 706 N.Y.S.2d 572, 573

(1st Dep't 2000) (same). The essential inquiry in any action for unjust enrichment or restitution is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered. *See Paramount Film Distrib. Corp. v. State*, 30 N.Y.2d 415, 421 (1972).

What benefit did Plaintiff allegedly bestow upon the Defendants such that it would be unconscionable to allow them to retain it? It is not clear. Plaintiff vaguely asserts that the Defendants "were enriched by Plaintiff's continued investments in their films and high praise for Lee as a producer and filmmaker …" (Compl., ¶ 107) without specifically alleging whether the benefit is his monetary investment (which would merely be duplicative of his contract claim) or the more amorphous "high praise" (which would likely not qualify as bargained for "enrichment," or rise to level where good conscience mandates redress). Here too, the Complaint fails to provide the Defendants with adequate notice of the alleged wrong to which they might adequately frame a response.

III. CONCLUSION

For the reasons set forth herein, this Court should grant the Defendants' Motion for a More Definite Statement and issue an order directing Plaintiff – under the threat of prospective sanctions should the allegations prove frivolous[10] – to serve an amended complaint with a more definite statement of the allegations supporting the first, second, third, fourth, and fifth causes of action asserted against the Defendants.

[10] This warning is imperative given the objectively frivolous nature of the Complaint's allegations against the co-defendants, Simone Sheffield and Canyon Entertainment. [*See* D.E. 10].

Dated: New York, New York
November 12, 2014

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Damon Dash vs. Lee Daniels, Lee Daniels Entertainment Ltd., Simone Sheffield, Canyon Entertainment

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Exhibit 2

THE WOODSMAN, LLC
c/o Irwin M. Rappaport, P.C.
735 N. Orange Grove Ave., Los Angeles, CA 90046

May 2, 2003

Lee Daniels Entertainment, Ltd.
39 W. 131st St.
Harlem, NY 10037
Attn: Lee Daniels

Brook Lenfest
c/o 401 City Avenue, Suite 812
Bala Cynwyd, PA 19004

Dash Films, Inc.
c/o Assante Business Management
280 Park Avenue, 5th floor East
New York, NY 10017
Attn: Damon Dash

Gentlemen:

Reference is hereby made to that certain Operating Agreement for The Woodsman, LLC, dated as of March 19, 2003.

1. Pursuant to Paragraph 5.2 of the Operating Agreement and subject to the terms and conditions specified below, Brook Lenfest ("Lenfest") and Lee Daniels Entertainment, Ltd. ("LDE"), hereby admit Dash Films, Inc. ("Dash"), as an additional Member of the Company upon the same terms and conditions as apply to Lenfest his capacity as a Member.

2. Dash hereby agrees to be a Member of the Company and, accordingly, agrees to all of the terms and conditions of the Operating Agreement (attached hereto and incorporated herein by this reference), as amended by Paragraph 3 below. In furtherance thereof, Dash agrees to make a Capital Contribution to the Company of One Million Nine Hundred Thousand Dollars ($1.9 million) of which $747,807 shall be payable concurrently with the execution hereof and shall constitute the entirety of the 30 April request for Funding Week ending 10 May 2003, as provided in the approved cash flow schedule ("Approved Cash Flow Schedule") attached hereto and incorporated herein and into the Operating Agreement by this reference.

3. Dash and Lenfest hereby agree that the balance of their respective Capital Contributions (i.e., $1,152,193 for Dash, $500,000 for Lenfest) shall be payable on a pro rata basis with one another in accordance with the Approved Cash Flow Schedule.

4. The Approved Cash Flow Schedule is hereby approved by Dash, Lenfest and LDE.

5. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members agree to amend the Operating Agreement as follows.

Except as modified by the following, the Operating Agreement remains unchanged and fully effective.

a. The first sentence of Paragraph 6.1 (b) is deleted and replaced with the following: "Daniels, or any affiliate thereof, shall have the right to act as the sales agent for the Picture in the domestic and/or foreign markets, and shall be entitled to receive a fee equal to 5% of the gross amount of the sale or license revenue generated by Daniels in its capacity as sales agent (whether in the form of advance or minimum guarantee) in the domestic market, and/or 15% of the gross amount of the sale or license revenue generated by Daniels in its capacity as sales agent (whether in the form of advance or minimum guarantee) in the foreign market, plus reimbursements of actual, out-of-pocket costs of sales, marketing, and promotion of the Picture in connection with such sale or license ("Reimbursements"), provided that the aggregate amount of such Reimbursements shall not exceed $100,000 unless otherwise agreed by all the Members, not to be unreasonably withheld."

b., Paragraph 6.4, line 12: delete "In association with" and replace with "presents". Accordingly, the credit shall read substantially in the form of "Dash Films Presents." Add the following to the end of such Paragraph: "Such 'presents' credit shall appear in any excluded advertising (other than award, congratulatory or similar ads naming only the honoree) whenever credit is given to Lee Daniels Entertainment."

c. The following shall be added to Paragraph 3.6: "Dash Films, Inc., c/o Assante Business Management, 280 Park Avenue, 5th floor east, New York, NY, 10017."

d. The following shall be added to Paragraph 6.1(b) at the end of such paragraph: "In the event, with Manager's prior written approval, Dash directly sells or licenses the Picture to any distributor, then Dash shall be entitled to receive the sales agency fee otherwise payable to Daniels under the first sentence of this Paragraph 6.1(b). Dash shall not solicit any potential buyers or licensees of the Picture or otherwise present itself as a sales representative or sales agent for the Picture, without the Manager's prior written approval."

e. In Paragraph 6.1(c), line 2, the following shall be added after "Daniels": "or Lisa Cortez"

f. In Paragraph 6.1(d), line 5, the following shall be added after "Daniels": "or Lisa Cortez"

ACCEPTED & AGREED:
LEE DANIELS ENTERTAINMENT, LTD.

Lee Daniels, President

Brook Lenfest

DASH FILMS, INC.

Damon Dash, President

APPROVED CASH FLOW SCHEDULE

Pre-Production, Production and Wrap (commencing with Week ending 10 May)

30 April request for Funding Week ending 10 May -- $747,807

7 May request for Funding Week ending 17 May --- $407,636.
14 May request for Funding Week ending 24 May -- $293,669.
21 May request for Funding Week ending 31 May -- $222,394
28 May request for Funding Week ending 7 June --- $146,955
4 June request for Funding Week ending 14 June --- $106,124
11 June request for Funding Week ending 21 June --- $66,534
18 June request for Funding Week ending 28 June --- $17,909

Post Production: $391,072

All Funding is required the Friday prior to the week ending date for example we would need the funding for Weekending 10 May by 2 May.