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Clerk of the Superior Court

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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

CV2009-010082

9 EXPLOSIVE PRODUCTIONS, LLC, a) No.
 California Limited Liability Company;)
 10 SB GREEN, LLC, an Arizona Limited) **COMPLAINT**
 Liability Company,)
 11)
 Plaintiffs,)
 12)
 v.)
 13)
 ORBITRON HOLDINGS, LLC, an)
 14 Arizona Limited Liability Company;)
 ERIC CROWN and JANE DOE)
 15 CROWN, husband and wife,)
 16)
 Defendants.)

17
 18 Plaintiffs Explosive Productions, LLC ("Explosive Productions") and SB Green, LLC
 19 ("SB Green"), by and through their undersigned counsel, submit this Complaint and allege as
 20 follows:

NATURE OF THE CASE

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 22 1. When Explosive Productions allowed 944 Media LLC ("944 Media") to join
 23 with it in producing a four-day party in connection with the 2008 Super Bowl, it relied on 944
 24 Media's representations that 944 Media intended the event as a profit making exercise for all

1 parties, that it would stay within the agreed budget when producing the event, and that the
2 event would only be expanded if justified by ticket and promotional sales.

3 2. What Explosive Productions later discovered — long after it and 944 Media
4 formed Plaintiff SB Green as the entity to produce the event, and indeed only on the final
5 evening of the event itself — is that 944 Media intended from the beginning to use the Super
6 Bowl event as a massive publicity campaign for its *944 Magazine*, regardless of whether the
7 event was profitable, to be paid for through Explosive Productions' financial support of SB
8 Green.

9 3. *944 Magazine* is a “lifestyle” magazine geared towards young “affluent, trend-
10 savvy, information-seeking style setters who live life to the fullest both locally and abroad.”
11 It's undisclosed goal was to fraudulently induce Explosive Productions to pay for *944*
12 *Magazine's* lavish, high-cost mega-party, filled with big-name celebrities. These Defendants
13 wanted *944 Magazine's* party be the “epicenter” of Super Bowl week activities for two
14 purposes. First, they wanted to use Explosive Production's money to promote *944 Magazine's*
15 reputation with business executives, the “Hollywood” crowd, and others. Second, Eric Crown
16 wanted the party venue for his personal social appetites.

17 4. 944 Media took the name of the party for itself, calling the event the “944 Super
18 Village,” when it was supposed to be selling the naming rights on behalf of SB Green. It also
19 took numerous other sponsorship opportunities for itself, and secretly gave away thousands of
20 tickets for its own benefit and to the detriment of SB Green and Explosive Productions. 944
21 Media lied to its partners in the weeks preceding the event, telling the other members of SB
22 Green that sales of tickets and sponsorships were so great that the event needed to be expanded
23 at considerable expense. Most insidiously, 944 Media's racial bias led to its refusal to allow
24 proper marketing of the event. 944 Media was, above all, concerned with its image with the
25 white and affluent audience it coveted. That bias caused 944 Media to insist that no
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1 advertising would be purchased if that advertising was directed, even partially, at Mexicans or
2 Latinos. 944 Media believed that attendance by Mexicans or Latinos would “destroy[] [the]
3 party” and “kill [the] event.”

4 5. Contrary to 944 Media’s pre-event pledges to its partners and its post-event press
5 release, the Super Bowl party was a financial disaster. While 944 Media boasted in a press
6 release of “selling out crowds nightly,” that was untruthful; fewer than 1,000 tickets were
7 actually sold. 944 Media simply gave away the other tickets, principally to its business
8 associates and to targets of the Defendants’ social interests, *944 Magazine’s* “model search”
9 candidates. Indeed, 944 Media gave away more than \$1,000,000 in VIP tickets to potential
10 magazine models alone, and Defendant Eric Crown, 944 Media’s top investor, took at least
11 \$180,000 worth of tickets and cabanas for his personal, social purposes.

12 6. Despite promising the other members of SB Green that the party’s expense
13 budget would only be expanded if the revenues received financially justified the expansion,
14 944 Media spent in excess of 150% of the budget to build the party, and that budget had been
15 expanded far beyond the original budget based on 944 Media’s representations as to high ticket
16 and sponsorship sales, while it alone knew that the total revenues were less than half of the
17 budgeted amount.

18 7. Of course, while the event resulted in a devastating loss to Plaintiffs, the party
19 was a great “success” from 944 Media’s point of view. As it gloats in a press release, the party
20 and surrounding publicity generated more than 740 million media impressions worldwide for
21 944 Media, *944 Magazine*, and the “944 Super Village.” And, best of all (from 944 Media’s
22 perspective), this massive marketing benefit to the 944 brand was largely at the cost of
23 Explosive Productions.

24 8. Defendant Eric Crown (“Crown”) and one of his companies, Defendant Orbitron
25 Holdings LLC (“Orbitron”), are major investors in and/or members of 944 Media. Even after
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1 944 Media's existence as a legal entity was terminated, unbeknownst to Plaintiffs, right before
2 the Super Bowl event was to occur, Crown, Orbitron, and the other promoters and member of
3 944 Media continued to act as 944 Media, as if it were still an existing legal entity. As such,
4 under Arizona law, they are liable for the actions of 944 Media.

5 9. Non-parties 944 Media, Marc Lotenberg, and ML Media, Inc. are part of a
6 separate arbitration proceeding brought by Plaintiffs relating to the same facts and issues at
7 issue in this case. Defendants refused Plaintiffs' demand that they participate in that same
8 arbitration and in doing so waived any right to demand that Plaintiffs' claims against them be
9 arbitrated.

10 **PARTIES, JURISDICTION AND VENUE**

11 10. Explosive Productions is a California limited liability company.

12 11. SB Green is an Arizona limited liability company. It was incorporated on
13 October 11, 2007. As the Managing Member of SB Green, Explosive Productions has the
14 authority to cause SB Green to bring the claims of SB Green raised in this action.

15 12. Upon information and belief, Defendant Orbitron is an Arizona limited liability
16 company. The members of Orbitron are Defendant Eric Crown and Timothy Crown. The
17 Managing Member of Orbitron is Anchor Management LLC, the members of which are Eric
18 Crown and Timothy Crown. Orbitron Holdings was one of two members of 944 Media, an
19 Arizona limited liability company, and is currently one of two members of 944 Media LLC, a
20 Delaware limited liability company.

21 13. Upon information and belief, Defendant Eric Crown, an individual, is a resident
22 of Arizona. Since 2005, Eric Crown has been a major and active investor in 944 Media LLC.
23 Indeed, 944 Media has bragged in at least one press release that it is "[p]ublicly backed by Tim
24 and Eric Crown, founders of Insight.com (ranked 537 on the Fortune 1000 list)."
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1 14. Upon information and belief, Defendant Jane Doe Crown, whose name is
2 unknown to the Plaintiffs, is a resident of Maricopa County, Arizona and is the spouse of
3 Defendant Eric Crown. Jane Doe Crown is being sued solely for community property
4 purposes. Upon information and belief, all of the actions taken by Defendant Eric Crown
5 described herein were taken for the benefit of his marital community.

6 15. This Court has personal jurisdiction over the parties hereto.

7 16. Venue is proper in Maricopa County.

8 17. All conditions precedent to this action on the part of Plaintiffs, if any, have been
9 satisfied, waived, or are futile.

10 **ORBITRON'S AND CROWN'S LIABILITY FOR 944 MEDIA'S ACTIONS**

11 18. Plaintiffs reallege and incorporate by reference the allegations set forth in the
12 preceding paragraphs of the complaint as though fully set forth herein.

13 19. Upon information and belief, non-party 944 Media was at one time an Arizona
14 limited liability company. The members of 944 Media were Orbitron and ML Media, Inc.

15 20. The original members of Plaintiff SB Green were Plaintiff Explosive
16 Productions, 944 Media, and South Bridge Restaurant Group, LLC ("South Bridge").
17 Explosive Productions and 944 Media each had a 47.5% interest in SB Green and South Bridge
18 had a 5% interest. South Bridge has since withdrawn as a member of SB Green.

19 21. Unbeknownst to Explosive Productions until well after the events described
20 herein, 944 Media filed Articles of Termination, and thus ceased to exist, on January 28, 2008,
21 during the midst of the events that give rise to this lawsuit.

22 22. 944 Media did not inform Plaintiffs of its termination and Plaintiffs did not learn
23 of 944 Media's termination until well after the events giving rise to the claims at issue in this
24 lawsuit.

1 23. Nonetheless, Defendants and others, including Marc Lotenberg and the other
2 employees of 944 Media, continued to act in the name of 944 Media as if 944 Media were an
3 existing entity and led Plaintiffs to reasonably believe that it was continuing as an existing
4 company.

5 24. After the termination of 944 Media, *944 Magazine* continued to be produced.
6 Upon information and belief, at or around the time 944 Media was terminated, the individuals
7 and entities owning and controlling 944 Media purported to create a new Delaware entity, also
8 called 944 Media LLC, and to transfer to it the assets of the Arizona entity of the same name,
9 including *944 Magazine*.

10 25. However, to this date, 944 Media has never effectuated a transfer of its
11 membership interest in SB Green to anyone else. Ignoring the fact that 944 Media, the Arizona
12 entity, and 944 Media, the Delaware entity, are entirely separate, Defendants and the other
13 member and promoters of 944 Media continued to act as if 944 Media (Arizona) were still in
14 existence.

15 26. Indeed, the Operating Agreement of SB Green (“Operating Agreement”)
16 provides requirements and conditions precedent for a member of SB Green to sell, transfer, or
17 assign any portion of its membership interest. 944 Media never acted in accordance with these
18 requirements and conditions precedent with respect to any transfer of its interest in SB Green,
19 to 944 Media LLC of Delaware, or to anyone else.

20 27. Section 14.1 of the Operating Agreement states, in part: “If any Member (“the
21 selling Member”) desires to sell, transfer or assign any portion of his Membership interest, he
22 shall, within ten days after receipt of a bona fide offer from a third party to purchase such
23 interest, give notice of such offer to the other Members. Those Members shall have the option,
24 exercisable during a redemption period of 30 days after notice, to purchase at the price and on
25 the terms offered by the selling Member.” Explosive Productions was never provided with
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1 notice of any intent by 944 Media to transfer, sell, or assign its membership interest in SB
2 Green, nor was it given an option to acquire said interest.

3 28. Section 14.7 of the Operating Agreement provides other conditions precedent to
4 a transfer of a membership interest in SB Green. Included among these are:

- 5 a. "14.7.1. A duly executed and acknowledged written instrument of
6 assignment is filed with [SB Green];" and
7 b. "14.7.4 The transferor and transferee agree in writing to indemnify and
8 hold the Members and the Company harmless for, from, and against any
9 loss, liability, claim or expense arising out of the Transfer".

10 Upon information and belief, 944 Media never acted in accordance with these provisions, and
11 thus never transferred, sold, or assigned its interest in SB Green.

12 29. The Operating Agreement also provides: "14.7 Additional and Substitute
13 Members. No person shall be admitted as a Member of [SB Green] after the date of formation
14 of [SB Green] without the written consent or approval of a Majority in interest [sic] of the
15 Members at the time of such admission, which consent may be withheld in the Members' sole
16 and absolute discretion. Notwithstanding the foregoing, an assignee of a Member may only be
17 admitted as a substitute Member upon the written consent of a Majority in Interest of the non-
18 transferring Members, which consent may be withheld in the Members' sole and absolute
19 discretion." 944 Media never obtained the written consent required by § 14.7 of the Operating
20 Agreement with respect to any transfer, sale or assignment of its membership interest in SB
21 Green. Thus, it never effectuated an assignment, transfer or sale of such interest.

22 30. The promoters of 944 Media – Marc Lotenberg and Eric Crown – and its
23 members – Orbitron and ML Media, Inc. – continued to act as if 944 Media were in existence
24 after its termination and continued to act as 944 Media. Plaintiffs were not informed of 944
25 Media's termination, and reasonably believed that it still existed.

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31. Arizona Revised Statutes § 29-652 provides: "Unauthorized assumption of power. All persons who assume to act as a limited liability company without authority to do so are jointly and severally liable for all debts and liabilities incurred by the persons so acting."

32. Pursuant to Arizona Revised Statutes § 29-652, as well as pursuant to principles under the common law regarding the personal liability of those who purport to act on behalf of corporate entities that are not in existence, Defendants are jointly and severally liable for the actions of 944 Media described herein because they acted in the name of 944 Media as if it were an existing entity under the law even after 944 Media had been terminated.

GENERAL ALLEGATIONS

33. Plaintiffs reallege and incorporate by reference the allegations set forth in the preceding paragraphs of the complaint as though fully set forth herein.

34. Steve Weiner ("Weiner") and Ira Klein ("Klein") of Explosive Productions traveled to Arizona in August 2007 and reached a verbal agreement with the City of Scottsdale to host a multi-day party during the time period of the Super Bowl on a lot near Stetson Canal. R-Entertainment arranged the meeting that led to the agreement.

35. In the weeks that followed, 944 Media approached R-Entertainment and expressed its interest in using the same property for the same type of Super Bowl event. R-Entertainment then introduced 944 Media to Explosive Productions and the three arranged for a meeting, also attended by South Bridge, in Los Angeles to discuss a potential joint event.

36. During a telephone conversation on or about August 31, 2007, Mark Lotenberg of 944 Media discussed with Weiner a vision for the event. They both agreed that the facilities built should initially be modest and that expansion would occur only if warranted by actual demand. Following this conversation, Reed Glick of R-Entertainment told Weiner that Eric Crown would be attending the meeting in Los Angeles. When Weiner enquired who Crown was, Glick told him that Crown owned *944 Magazine*.

1 37. On September 10, 2007, Weiner and Klein of Explosive Productions met in Los
2 Angeles with Marc Lotenberg, Steve Kushnir, Joe Kleiman, Carley Harrill and Sonny Smith of
3 944 Media, as well as Fred Unger of South Bridge and Reed Glick and Kerry Dunne of R-
4 Entertainment. The group discussed their vision for the Super Bowl project. Weiner and Klein
5 stated that they wanted to produce a three-day event to be called the "Football Nest." They
6 suggested that the new entity trademark the "Football Nest" name, prepare a website, and
7 obtain sponsors and vendors. The event would feature celebrities, autograph sessions,
8 auctions, casino tables, food, and private cabanas. Weiner and Klein emphasized that it was
9 Explosive Productions goal to make a sizable profit from the event, and it was imperative that
10 any plan relating to the event make economic sense. Lotenberg and Kushnir were both
11 emphatic that 944 Media shared the same primary objective. Both represented that 944 Media
12 intended, first and foremost, to make a profit. Lotenberg and Kushnir each represented that
13 944 Media would stay within a budget approved by the group when producing the event.
14 Lotenberg and Kushnir each represented that any expense or any expansion of the event would
15 only occur if justified by the event's revenues and that 944 Media would not spend more of the
16 group's funds on the event than financially justified. These statements were untrue at the time
17 they were made; 944 Media had no intention of adhering to them.

18 38. Contrary to its representations to Explosive Productions, 944 Media's principal
19 objective was not to make a profit. With numerous celebrities and corporate executives in
20 town for the Super Bowl, and with the attention of the world's media focused on the
21 surrounding events, 944 Media intended above all to promote its *944 Magazine* brand and its
22 image through relentless marketing and through the production of an epic event, with little or
23 no regard to the expenses incurred or to the interests of SB Green or its other members. The
24 second intent was to attract and party with as many aspiring "models" as possible.
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39. Indeed, months later, in January 2008, in a television interview with Fox Business Channel, which Explosive Productions became aware of only after the Super Bowl event, Marc Lotenberg confessed that, from the very beginning, 944 Media looked upon the Super Village as a huge *944 Magazine* publicity exercise for itself:

HOST: You know [the 944 Super Village], is great publicity for *944 Magazine* and the hopes for your business endeavors.

MARC LOTENBERG: The beginning interest out of the entire thing was the big P.R. push, the big blow-up about the magazine in all the other markets we're opening. And that's what we really were focusing on.

40. Similarly, on or about January 17, 2008, Steve Kushnir described 944 Media's intentions concerning the event in a press release, of which Explosive Productions became aware only after the Super Bowl event: "Hosting the Super Bowl offers an opportunity for international exposure in our own backyard and we are taking full advantage of it. The 944 Super Village will combine elements of international dance music, rock 'n' roll, hip-hop and pop culture in a festival-style atmosphere that will guarantee our footprint to be the epicenter of all activity the week leading up to the Super Bowl."

41. At no point before, during or after the September 10, 2007, meeting in Los Angeles did 944 Media disclose to Explosive Productions that gaining maximum positive publicity and image enhancement for *944 Magazine* and creating personal social opportunities, were 944 Media's actual goals, regardless of the cost to Explosive Productions and SB Green and regardless of the impact on Explosive Productions and SB Green.

42. Based on 944 Media's representations, Explosive Productions agreed that 944 Media could join with it in producing the Super Bowl event in Scottsdale. The group agreed to form a limited liability company – SB Green – for purposes of the event. They agreed that Explosive Productions and 944 Media would each take a 47.5% ownership interest in SB

1 Green and South Bridge would hold a 5% membership stake. The members of SB Green
2 executed the SB Green Operating Agreement.

3 43. Upon information and belief, Defendant Eric Crown also viewed the Super Bowl
4 event differently than SB Green and Explosive Productions. Eric Crown is a founder and
5 former CEO of Insight Enterprises and is a multi-millionaire. Upon information and belief, he
6 became an investor in 944 Media and *944 Magazine* primarily for social reasons, rather than as
7 an enterprise to make a profit. Indeed, upon information and belief, Eric Crown and/or
8 Orbitron have lost money on his investment in 944 Media.

9 44. *944 Magazine* is a "lifestyle" magazine, which has described itself as "a full-
10 color, glossy, 200-plus page print publication catering to the tastemakers and trendsetters of the
11 21 to 38-year-old crowd, focusing on entertainment, lifestyle, art, music, culture, society and
12 events." 944 Media throws regular parties in connection with its business. Upon information
13 and belief, Eric Crown's primary interest in 944 Media and *944 Magazine* was the access it
14 gave him to young, attractive models and other women, whom he hoped to date.

15 45. Upon information and belief, Eric Crown is actively involved in 944 Media's
16 business dealings, acts on behalf of 944 Media, and is viewed as being a critical part of 944's
17 "team." Upon information and belief, he has invested more than \$1 million dollars in 944
18 Media and related entities and often participates in executive meetings and the decision making
19 process of 944 Media. Indeed, upon information and belief, 944 Media's supposed leader,
20 Marc Lotenberg, oftentimes is required to gain the approval of Eric Crown before proceeding
21 with a course of action. Upon information and belief, Eric Crown has forced 944 Media to hire
22 certain executives approved by Crown, including former CFO Bryan Domar and accountant
23 Jim Kebert, the latter of whom Crown intended to act as a spy for him to keep an eye on the
24 Super Bowl project. Upon information and belief, Eric Crown had a 944 business card with
25 his name on it. Upon information and belief, Eric Crown has used his business contacts in
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1 publishing and other industries to help 944 Media's business. In addition, upon information
2 and belief, Eric Crown often hosts parties associated with 944 Media and *944 Magazine*.
3 Indeed, as one example, in connection with the Super Bowl event, Mr. Crown hosted, at his
4 home, a three day/three night event referred to as "House of Hennessy at Super Bowl XLII
5 presented by *944 Magazine* and Tao Nightclub."

6 46. Due to its location in Arizona and its existing sizable staff, 944 Media took the
7 lead in the day-to-day arrangements for SB Green's Super Bowl event. Explosive Productions
8 participated actively in regular planning meetings and provided insights and suggestions on the
9 production of the event. While 944 Media was more involved in the day-to-day preparations,
10 from the beginning, Explosive Productions and South Bridge made clear that staying within the
11 established budget for the Super Bowl event was of paramount importance.

12 47. Section 8.2 of the Operating Agreement provides: "[a]ll Members agree to make
13 best efforts to stay within the established budget."

14 48. Section 11.5 of the Operating Agreement provides:

15 General Limitations on Duties and Powers of Member. Except
16 as otherwise specifically provided in this Agreement, no
17 Member shall have authority without the written consent or
18 ratification of a Majority in Interest of the Members, to (a) do
19 any act in contravention of the Agreement; . . . or (d) possess
Company Property or assets, or assign their rights in specific
Company Property or assets, for other than a Company
purpose.

20 49. As a member of SB Green, 944 Media owed fiduciary duties to SB Green and
21 Explosive Productions. 944 Media's fiduciary obligations of loyalty to SB Green and its
22 members and its duty of good faith required that 944 Media restrain itself from converting or
23 misappropriating SB Green's property and opportunities for itself. 944 Media's fiduciary
24 duties also required it to act in the best interest of SB Green when preparing for and executing
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1 the Super Bowl party, rather than putting its own interests first to the detriment of SB Green
2 and Explosive Productions.

3 50. Serving the best interests of SB Green and the other members of SB Green would
4 require marketing the event to a broad audience so as to sell as many tickets and generate as
5 much revenue as possible. However, unbeknownst to Explosive Productions, 944 Media
6 lacked interest in serving the best interests of SB Green or its other members; it wanted to
7 promote its *944 Magazine* brand. 944 Media's self-interested actions with respect to event
8 tickets had devastating financial consequences for SB Green.

9 51. Tickets for the event were priced high. General admission tickets for evening
10 events ranged from \$100 to \$150. VIP tickets were priced from \$500 to \$750. VIP Cabanas in
11 the Main Entertainment Tent cost approximately \$1,000 per person for a minimum of 20
12 people.

13 52. Rather than sell as many tickets as possible, which would have been in SB
14 Green's best interest and consistent with the plan for a profit for SB Green, 944 Media
15 intentionally avoided marketing to certain ethnic groups, based on its racist view of those
16 groups, and instead secretly gave away millions of dollars in tickets to the white, affluent, and
17 attractive crowd it preferred.

18 53. For example, SB Green planned a series of boxing matches to take place at the
19 Super Village on Saturday, February 2. The featured fighter was Hector Camacho Jr., who is
20 popular among Latinos. Based on the suggestions of Kerry Dunne of R-Entertainment,
21 Explosive Productions suggested to 944 Media that they advertise the fights on Spanish
22 language radio stations in Phoenix, because of Camacho's popularity and the popularity in
23 general of boxing in the Latino community.

24 54. 944 Media reacted with open hostility to this idea and with crass open racism.
25 Steve Kushnir of 944 Media wrote to numerous recipients in an e-mail dated January 26, 2008:
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1 Guys. No running commercial on the mexican [sic] radio
2 stations please. What are u [sic] guys thinking! Please call to
3 discuss immediately! I am not destroying this party for the
4 sake of saving this boxing match[.]

5 55. Steve Weiner of Explosive Productions responded that he disagreed and believed
6 that advertising on Spanish language radio was a good move. Kushnir shot back in another e-
7 mail, dated January 28, 2008, with further racist banter:

8 We can't promote on Spanish radio unless you want to kill this
9 event entirely on Sat [sic] night. We will have a bunch of gang
10 bangers and get shut down.

11 56. The discussion concerning advertising continued on or about January 29, 2008,
12 at a meeting held in a conference room at 944 Media's Scottsdale offices. This time, in the
13 presence of several others, including Marc Lotenberg, Sonny Smith, Ashley Kraines, Jessica
14 Gurskis and Ryan Stender of 944 Media, Klein and Weiner, and Kerry Dunne and Reed Glick
15 of R-Entertainment, Kushnir exploded in a profanity-laced tirade, stating: "There is no fucking
16 way we are going to advertise to Mexicans and have them on our property and destroy this
17 event."

18 57. Marc Lotenberg stated his agreement with Kushnir. Explosive Productions also
19 wanted to advertise the event in the local newspaper, the *Arizona Republic*, but 944 Media
20 adamantly refused to use that outlet either. The stated reason: Mexicans read that newspaper.

21 58. The message sent by 944 Media was clear. They wanted Mexicans and Latinos
22 nowhere near their event and refused to buy advertisements that would be seen by Mexicans
23 and Latinos.

24 59. In hindsight, with 944 Media's true intentions for the event now clear, 944's
25 motivation for this position becomes more clear. Mexicans and Latinos, it is apparent, are not
26 consistent with the image that 944 Media promotes in its *944 Magazine*. Since 944 Media
 intended to use the Super Village to promote *944 Magazine's* "lifestyle" image, 944 Media

1 wanted to keep Mexicans and Latinos away from its event, even though they were potential
2 purchasers of tickets and selling tickets was the very purpose of SB Green's investments. Not
3 surprisingly, having ignored the most likely purchasers of tickets for the boxing event, the
4 event flopped.

5 60. Meanwhile, at the same time 944 Media was refusing to allow advertising that
6 may be seen by Mexicans and Latinos, who would have paid for event tickets, it had no
7 problem simply giving away literally thousands of tickets to its friends, business associates,
8 and others it perceives as more desirable.

9 61. Without any approval from the other SB Green members, and unbeknownst to
10 them until the final evening of the event, 944 Media gave away thousands of tickets for the
11 business and promotion of its *944 Magazine*, all without paying any compensation to SB
12 Green.

13 62. For example, while VIP tickets to the event were selling for a minimum of \$500,
14 944 Media simply gave away over 2,500 VIP tickets to women as part of *944 Magazine's*
15 "Super 500 Contest." These contest winners were apparently responsible for *944 Magazine's*
16 promotional efforts during the Super Village and could possibly become *944 Magazine*
17 models. 944 Media did not inform Explosive Productions of its intent to give away to models
18 SB Green tickets valued at well over \$1 million for its own business purposes. Nor did 944
19 Media compensate SB Green for giving away SB Green's tickets to promote *944 Magazine*
20 and to find models for *944 Magazine*.

21 63. Similarly, SB Green marketed high-end cabanas at the event to businesses for
22 between \$20,000 and \$40,000 per night. Included with each of these cabanas were at least 20
23 VIP tickets. Instead of selling all of these cabanas, unbeknownst to Explosive Productions,
24 944 Media gave away about 44% of the available cabanas. It gave away a cabana to its staff.
25 It gave away cabanas to celebrities and its business partners, all of whom, no doubt, 944 Media
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1 intended to curry favor with. 944 Media paid nothing for these cabanas despite simply taking
2 these SB Green assets for its own personal benefit.

3 64. In addition, unbeknownst to Explosive Productions, Eric Crown took a cabana
4 for his personal social use on Thursday night, Friday night, and Saturday night of the event.
5 Along with the cabanas, over the course of the event, he took a total of 170 VIP Hospitality
6 tickets, 20 VIP tickets, and 30 General Admission tickets. The value of these cabanas and
7 tickets, based on event pricing, was over \$180,000. Crown paid nothing to SB Green for these
8 cabanas or the tickets.

9 65. 944 Media never told Explosive Productions about its massive ticket and cabana
10 giveaways. Explosive Productions only found out about these giveaways on the event's final
11 evening. For example, in a January 24, 2008 e-mail, Weiner wrote to Marc Lotenberg: "Can
12 you confirm with us that NO ONE will be getting on the property, no matter who they are or
13 cabana they purchased, unless they have paid in full for the Cabana or tix prior to the event.
14 [sic]" Marc Lotenberg wrote back that same day: "The Budweiser sponsorship includes a
15 cabana but I believe they pay normally 30-60[.] Bacardi I can check on payment terms but
16 shouldn't be too bad[.] All the rest of cabanas are cash up front as far as I know." Of course,
17 Mr. Lotenberg did not disclose that his statement excluded the literally millions of dollars
18 worth of tickets and cabanas that 944 Media had simply given away for its own benefit or that
19 Eric Crown had taken. Indeed, in the months and weeks leading up to SB Green's party, 944
20 Media continued to make misrepresentations to Explosive Productions about ticket sales being
21 great.

22 66. The distribution by 944 Media of thousands of free tickets for its own purposes
23 also effectively resulted in a massive dilution in the actual and perceived value of event tickets.
24 As Explosive Productions would only later learn, with the market flooded with free tickets by
25 944 Media, many prospective purchasers of event tickets either had easy access to a free ticket
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1 or, knowing that so many others were receiving tickets for free, refused to pay \$500 or more
2 for a ticket they viewed as having little value.

3 67. At the same time it was giving away SB Green's tickets for its own selfish
4 purposes, 944 Media was also taking other SB Green assets — in particular sponsorship
5 opportunities — for its own personal benefit.

6 68. From the outset, the members of SB Green outwardly anticipated that
7 sponsorship sales would make up a significant portion of its revenues. The members discussed
8 selling the title sponsorship of the event for at least \$500,000. They discussed selling other
9 sponsorship opportunities as well, including, for example, the logos to be worn on the outfits
10 of bartenders, which they anticipated would fetch at least \$50,000.

11 69. 944 Media, without any prior notice to or approval from the other members of
12 SB Green, took the name of the event for itself, calling it the "944 Super Village." Explosive
13 Productions was shocked when it saw the "944 Super Village" name used in advertising for the
14 event. The name of the event was a valuable asset of SB Green that it could sell or take for
15 itself.

16 70. Explosive Productions raised the issue with 944 Media and asked what
17 compensation 944 Media intended to provide SB Green for taking this asset. 944 Media
18 dodged the issue. At first, 944 Media claimed that this was merely a temporary name being
19 used as a placeholder. 944 Media said that the issue could be discussed later.

20 71. 944 Media, however, never had any intent of marketing the naming rights or
21 changing the name "944 Super Village." Steve Kushnir of 944 Media wrote by e-mail to
22 Weiner and Klein on December 12, 2007: "This has been billed and approved by [the Super
23 Bowl] host committee and on all materials as 944 Super Village and we really don't like the
24 name Fans Village." All of the publicity and advertising for the event generated by 944 Media
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1 utilized the "944 Super Village" name prominently, providing 944 with an enormous windfall
2 of worldwide publicity for its brand.

3 72. 944 Media's press release following the Super Bowl bragged that the "944 Super
4 Village" had generated an amazing 740 million media impressions around the world. It is
5 virtually impossible to imagine that 944 Media could have gained that much attention for its
6 brand in any way outside of the unique circumstances of the Super Bowl and the Scottsdale
7 event. 944 Media paid nothing for this massive benefit. It simply took SB Green's property –
8 the right to name the event – for itself.

9 73. 944 Media multiplied its wrongdoing in naming the event for itself by also
10 claiming sole ownership to the highly publicized "944 Super Village" name. Twelve days
11 before the Super Bowl, on January 22, 2008, 944 Media filed a trademark application for "944
12 Super Village," claiming in the application that 944 Media was the sole owner of the mark.
13 944 Media claimed that the name was first used in commerce on January 15, 2008.

14 74. Section 10.7.1 of the Operating Agreement provides that subject to a limited
15 exception not applicable here, all property of SB Green shall be held in the name of SB Green.
16 Sections 10.7.2 and Section 11.1(n), taken together, stand for the idea that SB Green's property
17 may be held in the name of another company, but only if approved by a vote of a majority of
18 SB Green's members and the property will still belong to SB Green. Upon information and
19 belief, a majority of SB Green's members never voted to allow 944 Media to hold any of SB
20 Green's property in 944 Media's name.

21 75. The name of the event, which was never sold or otherwise transferred by SB
22 Green, is the property of SB Green. Nonetheless, 944 Media's trademark application claims
23 that, with respect to the "944 Super Village" mark, "no other person, firm, corporation, or
24 association has the right to use the mark in commerce."
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1 76. 944 Media's taking of sponsorship opportunities hardly ended with the taking of
2 the name of the event. 944 Media advertised the first night of the event, which occurred on the
3 Thursday before the Super Bowl, as *944 Magazine's* Sixth Anniversary Party. 944 paid
4 nothing for these naming rights.

5 77. Moreover, 944 plastered its name throughout the event facilities during the
6 entirety of the event, putting it in places where Explosive Productions believed the names of
7 paying sponsors were to be displayed, without paying any compensation for these SB Green
8 assets. 944 Media never disclosed to Explosive Productions or SB Green its intention to
9 simply take these assets, and it never reimbursed SB Green for them.

10 78. The 944 name appeared on the outfits of bartenders and in large print behind the
11 stage where performers such as 50 Cent, Wyclef Jean, and Velvet Revolver were performing.
12 The *944 Magazine* name was displayed prominently and repeatedly on the outside of the event
13 tent and on barriers. Large posters of *944 Magazine* covers lined the walls of the inside of the
14 event. 944 Media even displayed large figures in the shape of "944" outside the event. 944
15 paid SB Green nothing for any of this massive publicity.

16 79. 944 Media's inclination to take as much as possible from SB Green even
17 included having a vendor provide it with goods at SB Green's expense. SB Green hired US
18 Turf Company to provide an artificial surface for the event. Unbeknownst to Explosive
19 Productions until recently when it saw the details supporting US Turf Company's invoice, 944
20 Media secretly inserted a provision into SB Green's contract with US Turf Company calling
21 for the installation of turf on a wall at 944 Media's offices.

22 80. SB Green paid US Turf Company's invoice, including the amount related to 944
23 Media's offices, and 944 Media provided no reimbursement to SB Green for this improvement.

24 81. At the same time 944 Media was giving away millions of dollars of SB Green's
25 tickets and cabanas for its own selfish benefit and taking hundreds of thousands of dollars of
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1 SB Green's sponsorship opportunities for its own selfish benefit, 944 Media was also ignoring
2 the SB Green budget and expanding the project far beyond what had ever been agreed. It
3 never informed Explosive Productions or the other members of SB Green about such matters.

4 82. Throughout the months leading up to the event, 944 Media, through Lotenberg
5 and Kushnir, repeatedly assured the other SB Green members that 944 Media was staying
6 within the budget, and stated that the budget would not be increased based on any speculation
7 as to demand but instead only if actual revenues from ticket and sponsorship sales exceeded
8 any expanded expense budget, such that additional expense was justified.

9 83. Explosive Productions and 944 Media met regularly in Arizona to discuss the
10 project. During the final month preceding the event, weekly meetings in Arizona were held.
11 Eric Crown was present at 944 Media's offices when several of these meetings took place, and
12 Lotenberg would often leave the meetings to consult with Crown and to obtain his approval on
13 issues before returning. Explosive Productions asked on numerous occasions for financial
14 updates concerning ticket sales and sponsorships in the months leading up to the party. 944
15 Media was in sole possession of this data. 944 Media ignored the demands for details, but
16 Lotenberg, Kushnir, and Joe Kleiman — 944 Media's CFO — and others from 944 Media
17 repeatedly represented that the project was on track to become a massive financial success.

18 84. Budgets created by 944 Media for SB Green anticipated sponsorship revenues
19 would exceed \$1,000,000. General event ticket sales were expected to exceed \$400,000 and
20 VIP event ticket sales were expected to exceed \$1,500,000. 944 Media, through Lotenberg and
21 Kushnir, represented orally on numerous occasions to Klein and Weiner that sponsorship sales
22 were ahead of projections and that ticket sales were in line to meet projections.

23 85. On January 18, 2008, Weiner wrote to Kushnir, Lotenberg, and Joe Kleiman of
24 944 Media, suggesting that massive ticket broker Razor Gator should be used for ticket sales
25 "to be sure every avenue possible is being pursued on our behalf." Kushnir shot back by e-
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1 mail the same day: "Why would we go somewhere else if john [sic] is selling cabanas actively?

2 We don't have many left."

3 86. On or about January 21, 2008, 10 days before the opening, 944 Media, through
4 Kushnir and Lotenberg, represented to Weiner and Klein that only two or three high-end
5 cabanas, of the 14 available for each night of the party, remained to be sold and that, in view of
6 sponsorships already received, 944 Media expected to reach the goal of \$1 million in
7 sponsorships by the end of that week.

8 87. 944 Media even supported its false claims concerning sales with a ticket counter
9 on its website showing that over 90% of tickets and cabanas had been sold. It, but not
10 Explosive Productions, knew such information was false.

11 88. In the months leading up to the event, 944 Media requested several times that the
12 budget be increased. Lotenberg and Kushnir repeatedly assured Explosive Productions that, as
13 944 Media had previously stated, the budget would only be increased if revenue triggers were
14 reached which justified an increase in expenses. For example, Weiner wrote to Kushnir by e-
15 mail on November 6, 2007, reiterating his understanding that the expense budget would be
16 exceeded only by written agreement and only if ticket sales and other revenues exceeded
17 expectations. Kushnir responded that same day, stating that 944 Media did not intend to
18 exceed the budget, but simply wanted to discuss the "what if" budget scenario. On December
19 3, 2007, following discussions in late November and early December 2007 between Explosive
20 Productions, 944 Media, South Bridge and R-Entertainment concerning the budget, Weiner
21 confirmed by e-mail the group's agreement that the expense budget would only be increased if
22 revenues justified the increase. Weiner stated in that e-mail that Explosive Productions would
23 move forward with the project based on this agreement.

24 89. Similarly, during a later meeting in his office, when trying to convince Explosive
25 Productions and South Bridge to increase the event budget to \$1.5 million, Joe Kleiman of 944
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1 Media assured Steve Weiner and Ira Klein, as well as Fred Unger of South Bridge, that
2 revenues to date would mean that the event was guaranteed to be profitable, even if the budget
3 was increased. Steve Kushnir echoed Kleiman's statements, assuring Weiner, Klein, and
4 Unger again that 944 Media would not increase expenses unless financial trigger points were
5 met, meaning unless the existing revenues exceeded the total planned expenses. Based on 944
6 Media's representations as to the success of ticket sales, cabana sales, and sponsorship sales,
7 what started originally as a \$1 million expense budget grew to over \$1.5 million.

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9 90. Seven days before the beginning of the event, 944 Media told Explosive
10 Productions that the event was growing so much that SB Green needed to hire an outside
11 vendor, Fox Restaurants, to operate the food and beverage aspects of the event at a cost of
12 \$100,000. Those who had been hired to provide food and beverage services – Reed Glick and
13 his company R-Entertainment – would not be able to handle such services because of how
14 many people were expected. In an e-mail, 944 Media claimed that the event was growing so
15 quickly that it was becoming “overwhelming,” and that failing to hire Fox Restaurants would
16 cause the group to “fall on our face.”

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18 91. In another e-mail, dated January 24, 2008, Marc Lotenberg explained: “[w]hat
19 we all as a group budgeted for reed [sic] to do was a much smaller event with way less
20 production and change orders each day. . . . The reality is in a good way the project grew . . .
21 To compare in a different light—we were building a 5 story condo then when construction
22 began we changed everything and decided to build 2 twin towers yet expect to pay the same
23 production fees. Its just not possible- something will crumble, I promise you this and my fear
24 is its going to be the liquor and cash.”

25
26 92. 944 Media had built the project on a far grander scale than had ever been
anticipated. Unbeknownst to Explosive Productions or the other members of SB Green, 944
Media had grown expenses to over \$2.4 million, far more than had ever been approved. All

1 the while, 944 Media, while assuring their partners that ticket sales and sponsorships were
2 outstanding, knew that they had actually sold fewer than 1,000 tickets, had sold only about half
3 of the cabanas, and had obtained barely 20% of the projected sponsorship amounts.

4 93. Of course, 944 Media was not concerned at all with the obvious loss that would
5 ensue. Its concern was throwing a grand party to enhance the name, image, and reputation of
6 its *944 Magazine* as a premiere "lifestyle" magazine.

7 94. The Super Bowl event was, indeed, well attended. 944 Media issued a press
8 release after the event noting that more than 18,000 people attended the event. Each of the
9 cabanas was filled each night, and the facility in general was packed. From outward
10 appearances, and based upon the repeated representations of 944 Media, Explosive Productions
11 believed that the event was a tremendous success.

12 95. It was only on the third night of the party, the evening before the Super Bowl,
13 that 944 Media finally confessed to Explosive Productions the true financial status of the event.
14 Jim Kebert, the accountant for 944 Media, asked Steve Weiner to accompany him outside of
15 the event's tent and told Mr. Weiner that he "would not be happy" with the event's figures.

16 96. Only then did Explosive Productions learn that the event had been a financial
17 disaster. Only then did it learn that 944 Media had greatly exceeded the budget and that its
18 representations concerning ticket sales and sponsorships had been absolutely false. Only then
19 did Explosive Productions learn that the overflowing facility was not the result of great ticket
20 sales but rather the result of 944 Media having given away literally thousands of tickets each
21 night to its friends, business partners, and the potential magazine models lured to the party for
22 several purposes.

23 97. The final numbers provided by 944 Media were grim. Revenues totaled less than
24 \$1.6 million while expenses totaled more than \$2.4 million.

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98. Contrary to 944 Media's repeated representations to Explosive Productions, sales of tickets, cabanas and promotions were far below expectations. According to figures provided by 944 Media, General Event ticket sales were approximately \$191,000, or less than 43% of the budgeted target. According to 944 Media, VIP ticket sales were approximately \$333,000, which was less than 22% of the budgeted amount. Indeed, this figure apparently includes VIP tickets given to cabana purchasers, so the actual amount of individual VIP ticket sales was even lower. Upon information and belief, although 14 cabanas were available for sale on each of Thursday, Friday, and Saturday of the event, and while all were filled each night, only 23.5 total cabanas were actually sold over that three day period. The others were simply given away by 944 Media for its sole benefit.

99. The last expense budget that had been approved by Explosive Productions had called for approximately \$1.6 million in costs, and that budget had only been approved based upon representations by 944 Media that ticket and sponsorship sales were fantastic and justified raising expenses to that level. Actual expenses, Explosive Productions discovered after the event, were over 150% of that budgeted amount.

100. A profit and loss statement for SB Green prepared by 944 Media shows that even based upon 944 Media's understanding of the budgets, which includes a never-approved expense figure of nearly \$2 million, actual expenses still were more than 120% of the budgeted amount while revenues were only approximately 45% of the budgeted amount.

101. 944 Media's refusal to allow marketing towards those likely most interested in the boxing event had predictable results. The event flopped. SB Green lost money. But at least, from 944's perspective, its "image" had been enhanced and plenty of potential "models" participated in their party.

102. After the event, 944 Media continued its charade, at least to the outside world, bragging in its press release about "selling out crowds nightly." The truth is that 944 Media

1 lied to its partners, city officials, and the public about ticket sales, cabana sales, and
2 sponsorship sales. It lied about staying within budget and not expanding the project unless
3 revenues actually received justified expansion. It lied about the need to bring in an outside
4 food and beverage vendor because of the supposed exploding growth of the event.

5 103. It made all of these misrepresentations knowingly because: (i) it knew that its
6 partners in SB Green were paying over half of the expenses; (ii) its sole goal was not to make a
7 profit, but to promote the brand and image of 944 Media and *944 Magazine* to the greatest
8 extent possible regardless of expense; and (iii) it knew that its partners would shut down or
9 scale back the project if they knew the truth.

10 104. Also, 944 Media continues to hold funds belonging to SB Green in its personal
11 bank account. These funds are in 944 Media's account as a result of checks being made
12 payable to 944 Media, instead of SB Green, as a result of 944 Media entering into numerous
13 contracts in its own name, rather than SB Green's, even though the funds to be received
14 actually belonged to SB Green. 944 Media has acknowledged that it is holding SB Green's
15 funds but has failed to transfer the money to SB Green's accounts after repeated requests to do
16 so.

17 105. In the end, to the detriment of Explosive Productions and SB Green, 944 Media
18 got what it wanted through its lies and deceit. As it bragged in a press release: "When all was
19 said and done, 944 once again reiterated its reputation for throwing mind-blowing events to
20 produce its biggest feat of all time."

21 106. The actions of 944 Media and Defendants have actually and proximately caused
22 Plaintiffs to suffer damages in an amount to be determined at trial. All of their actions are
23 outrageous and were taken intentionally and with an evil mind and purpose to deprive
24 Plaintiffs of their interests in the collective business enterprise.
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FIRST CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

107. Plaintiffs re-allege and incorporate, by this reference, the claims, facts, and allegations set forth in the paragraphs above, as if set forth fully herein.

108. 944 Media, either directly or indirectly, owed fiduciary duties to Plaintiffs, including duties of loyalty, good faith, and care.

109. As described above, Defendants are liable for the actions of 944 Media.

110. 944 Media breached its fiduciary duties by, among other things:

- a. taking and using, without paying any compensation, SB Greens assets, in the form of tickets, cabanas, the naming rights for the event and numerous other sponsorship opportunities, and cash, all for its own personal gain and to the detriment of SB Green and Explosive Productions;
- b. taking SB Green's rights to the trademark for the name "944 Super Village";
- c. refusing to market on Spanish radio stations or in the Arizona Republic for its own selfish purposes and to the detriment of SB Green and Explosive Productions;
- d. vastly exceeding the agreed-upon budget for the Super Bowl event despite revenues not justifying any expansion for its own benefit and to the detriment of SB Green and Explosive Productions;
- e. repeatedly misrepresenting the true state of ticket sales, cabana sales, sponsorship sales and event expenses, for its own benefit and to the detriment of SB Green and Explosive Productions.

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f. Instructing US Turf Company, without any disclosure to SB Green or Explosive Productions, to install turf in 944 Media's Scottsdale offices, and then paying for this office improvement with SB Green funds.

111. Plaintiffs were injured as a result of 944 Media's breach of its fiduciary duties.

SECOND CLAIM FOR RELIEF

(Breach of Contract)

112. Plaintiffs re-allege and incorporate by reference all claims, facts, and allegations set forth in the paragraphs above, as if set forth fully herein.

113. The Operating Agreement is a valid contract between Explosive Productions and 944 Media.

114. As described above, Defendants are liable for the actions of 944 Media.

115. Explosive Productions complied with its obligations under the Operating Agreement..

116. 944 Media breached the Operating Agreement.

117. 944 Media breached § 8.2 of the Operating Agreement because it did not make its best effort to stay within the operating budget.

118. 944 Media breached § 11.5 of the Operating Agreement, because it possessed SB Green property and assets and/or assigned the right to SB Green property or assets for other than an SB Green purpose, without the written consent or authorization of a Majority in Interest of the Members of SB Green.

119. 944 Media breached § 10.7.1 of the Operating Agreement, which provides that subject to a limited exception, not applicable here, all property of SB Green shall be held in the name of SB Green.

1 other SB Green assets, Eric Crown exercised such dominion or control over SB Green's event
2 tickets and cabanas, without paying any compensation for these assets.

3 126. SB Green has been injured by 944 Media's and Eric Crown's acts of exercising
4 dominion or control over its assets.

5 **FOURTH CLAIM FOR RELIEF**

6 **(Breach of the Covenant of Good Faith and Fair Dealing)**

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8 127. Plaintiffs re-allege and incorporate by reference the claims, facts, and allegations
9 set forth in the paragraphs above, as if set forth fully herein.

10 128. The Operating Agreement of SB Green contains an implied covenant of good
11 faith and fair dealing requiring that one party not unjustifiably hinder the other parties'
12 expectations under or performance of the contract.

13 129. 944 Media breached the implied covenant of good faith and fair dealing in the
14 Operating Agreement by, among other things:

- 15 a. acting in a manner inconsistent with the reasonable expectations of
16 Plaintiffs;
- 17 b. taking and using, without paying any compensation, SB Greens assets, in
18 the form of tickets, cabanas, the name of the event and other sponsorship
19 opportunities, and cash, all for its own personal gain and to the detriment
20 of SB Green and Explosive Productions;
- 21 c. taking SB Green's rights to the trademark for the name "944 Super
22 Village";
- 23 d. refusing to market on Spanish radio stations or in the Arizona Republic
24 for its own selfish purposes and to the detriment of SB Green and
25 Explosive Productions;
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- e. vastly exceeding the agreed-upon budget for the Super Bowl event despite revenues not justifying any expansion for its own benefit and to the detriment of SB Green and Explosive Productions;
- f. Instructing US Turf Company, without any disclosure to SB Green or Explosive Productions, to install turf in 944 Media's Scottsdale offices, and then paying for this office improvement with SB Green funds.
- g. repeatedly misrepresenting the true state of ticket sales, cabana sales, sponsorship sales and event expenses, for its own benefit and to the detriment of SB Green and Explosive Productions.

130. As described above, Defendants are liable for the actions of 944 Media.

131. Plaintiffs were damaged as a result of 944 Media's breaches of the implied covenant of good faith and fair dealing.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

132. Plaintiffs re-allege and incorporate by reference all claims, facts, and allegations set forth in the paragraphs above, as if set forth fully herein.

133. As described above, Defendants are liable for the actions of 944 Media.

134. As a result of its conduct described herein, 944 Media was wrongfully enriched. 944 Media, and its *944 Magazine*, received massive publicity in the amount of 740 million media impressions. 944 Media also took numerous sponsorship opportunities at the Super Bowl event as described above, including the title sponsorship for the parties' Super Bowl party as well as the naming rights for the Thursday night of the event. 944 Media also took thousands of event tickets and numerous cabanas for its own use or for the use of others it

1 wished to curry favor with. Indeed, 944 Media took over 2,500 tickets, valued at over \$1
2 million, for a model search alone. 944 Media paid nothing for these enrichments.

3 135. Defendant Eric Crown was also enriched by having received a cabana each night
4 of the Super Bowl event as well as numerous event tickets each day, all without having to pay
5 for these benefits.

6 136. SB Green and, ultimately, Explosive Productions were impoverished, and there
7 is a connection between the impoverishment of SB Green and Explosive Productions and the
8 enrichment of Defendants and 944 Media described herein. The sponsorship opportunities,
9 tickets and cabanas that 944 Media and Eric Crown took for their own benefit belonged to SB
10 Green, and SB Green could have sold these assets to Defendants or 944 Media, if not to others,
11 instead of having them taken without compensation. Likewise, the amount of money that SB
12 Green, and ultimately Explosive Productions, spent producing the event was increased far
13 beyond the original budget, and indeed beyond any budget that ever was approved, because of
14 944 Media's expansion of the event, which expansion was not the result of sales of
15 sponsorships and tickets as represented to Plaintiffs, but instead by 944 Media's need to cater
16 to attendees to whom 944 Media had simply given tickets as well as 944 Media's self-
17 interested desire to throw a party that was the "epicenter" of Super Bowl week to enhance its
18 image.

19 137. No justification exists for Defendants' or 944 Media's enrichments, nor for
20 Plaintiffs' impoverishments.

21 138. Plaintiffs are without a remedy provided by law to rectify their impoverishments
22 and 944 Media's and Defendants' enrichments.
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SIXTH CLAIM FOR RELIEF
(Negligent Misrepresentation)

139. Plaintiffs re-allege and incorporate by reference all claims, facts, and allegations set forth in the paragraphs above, as if set forth fully herein.

140. As described above, Defendants are liable for the actions of 944 Media.

141. 944 Media falsely represented to Explosive Productions that its true intention in producing the Super Bowl event was to make a profit, and it failed to disclose that its genuine intent was to gain maximum positive publicity for 944 Media and its *944 Magazine* regardless of whether this would result in a financial loss.

142. 944 Media falsely represented to Explosive Productions on numerous occasions the levels of sales of tickets, cabanas and sponsorships. Similarly, 944 Media falsely represented to SB Green and Explosive Productions that proposed budget increases would not result in budgeted expenditures being more than actual existing revenues from sponsorships, cabana sales, and ticket sales.

143. 944 Media falsely represented to Explosive Productions and SB Green that all cabanas to be occupied were being paid for, either up front or, in a few specific instances, within a few months.

144. 944 Media falsely represented to Explosive Productions and SB Green on numerous occasions that expenditures for the event did not exceed the agreed-upon budget.

145. 944 Media falsely represented to Explosive Productions and SB Green that it was actively marketing the naming rights for the event as well as other sponsorship opportunities, all which it ultimately took for itself.

146. 944 Media intended that Plaintiffs rely on this information and provided the false information for that purpose.

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2 147. 944 Media knew that the information it was providing was false or failed to
3 exercise reasonable care in obtaining or communicating the information.

4 148. Plaintiffs relied on the false information provided by 944 Media, which reliance
5 was justified in view of the parties' relationship and 944 Media's superior knowledge of the
6 truth of the represented information.

7 149. As an actual and proximate result of 944 Media's misrepresentations and
8 Plaintiffs' reliance thereon, Plaintiffs were damaged.

9 **SEVENTH CLAIM FOR RELIEF**

10 **(Fraud)**

11 150. Plaintiffs re-allege and incorporate by reference all claims, facts, and allegations
12 set forth in the paragraphs above, as if set forth fully herein.

13 151. As described above, Defendants are liable for the actions of 944 Media.

14 152. 944 Media represented to Explosive Productions that it would stay within the
15 agreed upon budget when producing the Super Bowl event, and represented that the event
16 would only be expanded if justified by ticket and promotional sales. 944 Media represented
17 that "944 Super Village" was simply a placeholder for the name of the event, and that the name
18 would be changed when a sponsor was found.

19 153. 944 Media had no intention of fulfilling these representations at the time they
20 were made.

21 154. Moreover, despite a duty to so disclose, 944 Media never disclosed to Explosive
22 Productions that its true goal in participating in the project was to gain maximum positive
23 exposure for itself and its *944 Magazine*, that it had no intention of staying within the budget,
24 but instead would spend whatever money was necessary to create a grand party that would be
25 the "epicenter" of Super Bowl week and would enhance its reputation. 944 Media never
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1 disclosed that it had no intention of changing the name of the event to anything other than "944
2 Super Village," and never disclosed that it had no intention of selling numerous other
3 sponsorship opportunities, but instead intended to keep these opportunities for its own use.
4 944 media never disclosed to SB Green or Explosive Productions that it was having US Turf
5 Company install artificial turf on the wall of 944 Media's offices at SB Green's expense. 944
6 Media never disclosed to Explosive Productions or SB Green that actual costs of producing the
7 event were far exceeding any budget that had ever been approved.
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9 155. 944 represented to Explosive Productions that its purpose and intention in joining
10 Explosive Productions in forming SB Green and producing the Super Bowl party was to make
11 a profit. 944 Media stated that it was attempting to sell the name of the Super Bowl event and
12 other sponsorship opportunities it ultimately took for itself. 944 Media represented to
13 Explosive Productions and SB Green in the months and weeks leading up to the event that
14 ticket sales, cabana sales and sponsorship sales were meeting or exceeding projections.
15 Indeed, 944 Media represented to Explosive Productions that such sales were so great that the
16 Super Bowl event needed to be expanded at considerable expense, and that even a new catering
17 company had to be brought in. The level of existing sales of sponsorships and tickets, 944
18 Media represented, exceeded the proposed expenditure amount in the proposed new budget.
19 944 Media also repeatedly represented that it was staying within the group's agreed upon
20 budget in producing the event.

21 156. These representations were false.

22 157. Despite having a duty to so disclose, 944 Media failed to disclose to Explosive
23 Productions or SB Green that it was giving away for its own purposes thousands of SB Green's
24 event tickets and numerous SB Green cabanas. 944 Media and Eric Crown, despite a duty to
25 do so, failed to disclose that Mr. Crown would take, without paying any compensation, a
26 cabana for his personal use each evening of the event, including dozens of VIP tickets each

1 night. 944 Media also failed to disclose at any time before the final evening of the event,
2 despite having a duty to so disclose, that ticket sales and sponsorship sales were far below the
3 levels planned for, and failed to disclose that the actual levels of sponsorship, ticket and cabana
4 sales were far below what 944 Media had earlier represented to Explosive Productions and SB
5 Green. It similarly failed to disclose, despite having a duty to so disclose, that the real reason it
6 wanted to expand the event at considerable expense was that it had given away millions of
7 dollars worth of tickets and cabanas, for its own perceived benefit, and that it wanted to
8 impress its non-paying guests. Likewise, despite a duty to so disclose, 944 Media never
9 disclosed to SB Green that it was trade marking, for itself, the title "944 Super Village."

10 158. The misrepresentations and omissions described herein were material.

11 159. 944 Media knew the representations to be false when they were made.

12 160. 944 Media intended for these representations to be acted upon by Explosive
13 Productions in a manner reasonably contemplated. 944 Media intended that Explosive
14 Productions, in reliance on its misrepresentations: (1) would agree to allow 944 Media to join
15 with Plaintiffs in producing the Super Bowl event, and (2) would agree to increase the event
16 budget, and would not take steps to reduce the size or cost of the event or to cause the event to
17 be cancelled so as to prevent financial losses.

18 161. Plaintiffs were not aware of the falsity of these misrepresentations and they were
19 unaware of 944 Media's omissions.

20 162. Plaintiffs relied on the misrepresentations of 944 Media and its representatives.

21 163. It not for those representations made by 944 Media before Explosive Productions
22 agreed with it to form SB Green and to work together on the Super Bowl event, or if Plaintiffs
23 had been aware of the falsity of 944 Media's representations, Plaintiffs would not have agreed
24 to form SB Green and work with 944 Media on the Super Bowl event.
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2 164. If not for those representations made by 944 Media after Explosive Productions
3 agreed to work with 944 Media on the Super Bowl event, or if Explosive Productions or SB
4 Green had been aware of those misrepresentations, SB Green and Explosive Productions
5 would have shut the event down or taken other steps to stop 944 Media's wrongful conduct and
6 the overspending on the production of the event.

7 165. Plaintiffs had a right to rely on the misrepresentations of 944 Media and its
8 representatives.

9 166. Plaintiffs were actually and proximately injured as a result of their reliance on
10 the misrepresentations of 944 Media and its representatives.

11 **EIGHTH CLAIM FOR RELIEF**

12 **(Constructive Fraud)**

13 167. Plaintiffs re-allege and incorporate by reference all claims, facts, and allegations
14 set forth in the paragraphs above, as if set forth fully herein.

15 168. As a member of SB Green, 944 Media was in a fiduciary and/or close
16 relationship with SB Green and the other member of SB Green -- Explosive Productions -- and
17 owed fiduciary and/or other legal duties to Explosive Productions and SB Green.

18 169. As described above, Defendants are liable for the actions of 944 Media.

19 170. As described herein, 944 Media breached its fiduciary and/or other legal duties
20 owed to SB Green and Explosive Productions, and for its own benefit used unfair, misleading,
21 deceptive, and/or improper means to take advantage of and/or gain an unfair advantage or
22 benefit over SB Green and Explosive Productions.

23 171. As described herein, 944 Media misled and/or induced justifiable reliance by SB
24 Green and Explosive Productions, to the detriment of SB Green and Explosive Productions .
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RELIEF REQUESTED

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants as follows:

- a) For all damages, in an amount to be proven at trial but which amount is in excess of \$100,000.00;
- b) For punitive damages in an amount deemed just and reasonable;
- c) For all recoverable attorneys fees and costs pursuant to A.R.S. § 12-341.01 or other applicable law;
- d) For recoverable prejudgment and post judgment interest at the maximum rate allowed by law;
- e) For such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 27th day of March, 2009.

STINSON MORRISON HECKER LLP

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