

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

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**STAND UP DIGITAL, INC.**  
901 N. PITT ST. SUITE 170  
ALEXANDRIA, VA 22314

Plaintiff,

v.

Case No. \_\_\_\_\_

**KEVIN DARNELL HART**  
15910 VENTURA BLVD., STE. 1505 & 1701  
ENCINO, CA 91436

and

**WAYNE BROWN**  
15910 VENTURA BLVD., STE. 1505 & 1701  
ENCINO, CA 91436

Defendants.  
\_\_\_\_\_

**COMPLAINT**

COMES NOW Stand Up Digital, Inc, by undersigned counsel, and files this Complaint for breaches of fiduciary duty, aiding and abetting breaches of fiduciary duty, and breach of contract against Kevin Darnell Hart and Wayne Brown

**PARTIES**

1. Plaintiff Stand Up Digital, Inc. (“Stand Up”) is an active Virginia corporation with its principal place of business in Alexandria, Virginia. Stand Up engages in the development, marketing, and distribution of mobile phone video game applications.

2. Defendant Kevin Darnell Hart (“Hart”) is a resident of California. Hart is a celebrity known throughout the country for his comedy routines, acting roles in various movies, and celebrity endorsements of numerous products.

3. Defendant Wayne Brown is Hart’s representative and business manager. At all times, he and Hart were the lead contacts for Hart’s communications with Stand Up, and Brown was heavily involved in all aspects of the case, as described below.

### **JURISDICTION AND VENUE**

4. This Court has diversity jurisdiction in this case under 28 U.S.C. § 1332 because complete diversity exists between the Plaintiff and Defendants and the amount in controversy exceeds \$75,000. Venue is proper in this Court under 28 U.S.C. § 1391. Jurisdiction is also proper in this Court under the forum selection clauses of the Name and Likeness Licensing Agreement (the “Licensing Agreement”), **Ex. 1**, and Shareholder’s Agreement, **Ex. 2** discussed *supra*.

### **FACTUAL BACKGROUND**

5. In 2016, Stand Up, Kevin Hart, and Hart’s business manager, Wayne Brown, began discussions about teaming together to develop and launch an innovative and exciting mobile game app, called Gold Ambush. Stand Up’s executive officers have a history of developing and marketing successful, well-known, and profitable mobile app games, similar to Gold Ambush. As a worldwide known celebrity, Kevin Hart’s likeness was to be used as the main online character for app purchasers to use as a player for the game. In addition, Hart’s wife and two children were also playable characters in the game. Purchasers of Gold Ambush would casual-style, multi-player game titled Gold Ambush, which combined “runner” and “strategy” game-plays. At the time it was ready to launch, Gold Ambush would have been the first

mainstream online mobile game to feature both runner and strategy game styles. Gold Ambush was purposefully designed to be a family-friendly, low-violence level game that could be played as a single player or against other Gold Ambush players.

6. On or about January 4, 2017, Stand Up and Mr. Hart executed a Name and Likeness Licensing Agreement (the “Licensing Agreement”). **Ex. 1.** On the same date, Stand Up, Mr. Hart and his company Hartbeat Digital, LLC, signed a Shareholder’s Agreement with respect to Stand Up. **Ex. 2.** Brown was copied on all of these documents, reviewed them along with Hart, and was fully apprised that Hart had executed them both.

7. Pursuant to the Shareholder Agreement, Mr. Hart was duly elected by consent as a member of Stand Up’s Board of Directors. *See Ex. 2*, Section 6.2(a)(iii). When Stand Up first sent them a written proposal to make Hart a member of Stand Up’s Board of Directors, Brown and Hart responded positively and enthusiastically and Hart himself immediately agreed to being one of Stand Up’s three directors. Mr. Hart and his company Hartbeat Digital, LLC received 800 shares of common stock under the Shareholder’s Agreement, which was twenty percent of the 4000 shares of total issued common stock. In exchange for this substantial ownership stake, Mr. Hart entered into the Licensing Agreement, **Ex. 1**, pursuant to which Mr. Hart agreed to provide *inter alia* his name, image, likeness, and associated goodwill and to use his best efforts to promote and market Stand Up’s Gold Ambush mobile application game. Gold Ambush used Mr. Hart and his family members’ likenesses as the key characters and “champions” of the game.

8. Under the Licensing Agreement, Mr. Hart agreed as to perform services on behalf of the company as follows:

**3.1. Promotion.** Licensor shall in good faith use his best efforts to promote the Products through social appearances and other marketing initiatives as agreed to by the Parties; Licensor further agrees in good faith to use his best efforts to engage brands and other influencers for collaboration in marketing of the Products (collectively, the “Services”).

**3.2. Licensor Standards.** All Services to be provided by the Licensor shall be performed in a workmanlike manner, and at a level of proficiency to be expected of such a Licensor with the background and experience that the Licensor has represented he has.

*See Ex. 1.*

Prior to formalizing his relationship with Stand Up, Hart represented to Stand Up that he had a variety of experiences in providing celebrity endorsements for multiple products, services, and told them that he loved the Gold Ambush's look and feel. He promised Stand Up's representatives, that "when you get Kevin, you get all of Kevin" and expressed his eagerness to move forward with the parties' relationship. Both before and after the agreements were signed, Brown likewise represented that he would stay closely involved in assisting Hart in fulfilling his contractual and fiduciary duties and performing the needed services and activities necessary to make Gold Ambush a success.

9. After entering into the Shareholder's and Licensing Agreement with Hart, Stand Up undertook substantial monetary investments in 2017 to push for a successful and exciting launch of Gold Ambush. Notably, Stand Up undertook all of the monetary risk for the game's success. Mr. Hart did not undertake any financial obligations. Specifically, Stand Up spent approximately \$1.24 million on the game's development, promotion, animation, consulting and legal fees, office expenses, travel and entertainment expenses, and other costs specifically associated with the game. All of these expenses are fully documented. Stand Up spent approximately \$678,000 in developer costs, \$351,000 in promotion and public relations expenses, \$33,000 in travel and entertainment expenses, \$41,000 in animation development, \$74,000 in consulting expenses, and \$20,000 in office expenses, and other related expenses.

10. Stand Up consistently attempted to keep Hart and Brown fully informed of the development and promotion process. Stand Up regularly sent Hart and Brown (and other Hart

representatives) updates of the progression of game development, and regularly sought his input on the look and depiction of the playable characters in the Gold Ambush, consisting of himself, his wife and his two children. Hart's contractual obligations included approving character designs, providing promotional shoots, endorsing and marketing the upcoming launch of Gold Ambush, and continuing such promotion and marketing efforts after the launch.

11. Gold Ambush's launch was originally scheduled for June 2017. However, Mr. Hart requested that the launch date be moved so as not to coincide with Hart's publication of his autobiography and other promotions that month. Accordingly, Stand Up reset its launch date for Monday, September 18, 2017. Mr. Hart and Brown were advised of this new launch date in June 2017. Hart, Brown and Hart's other representatives working with him on Gold Ambush received consistent reminders by emails, several phone calls, and texts of the date of launch and continual updates as to the progress of the launch. Hart and Brown were also advised and fully understood and agreed with Stand Up how crucial a successful launch was to the overall profitability and longevity of the game.

12. During the lead up to the September 18, 2017 launch date, taking place in August and September 2017, Stand Up's team was devoting a very substantial amount of time, resources, and money to Gold Ambush's launch. In all of their communications with Hart, Brown, and the rest and his team in August and September, Hart and Brown and the rest of Hart's representatives never once alerted them in any way – written or verbal – of any pending scandal or bad news involving Mr. Hart that could affect Gold Ambush launch and subsequent success.

13. Gold Ambush was scheduled to launch on Monday, September 18, 2017. On the eve of the launch, on Saturday evening, September 16, 2017 at approximately 7:07 p.m., Kevin

Hart posted a 1:00 minute recording of himself on Instagram in which Mr. Hart admitted that he had made an “error of judgment,” admitted “apologizing to [his] wife and kids,” admitted he “was wrong” and that “there was no excuses for [his] bad behavior,” and also stated that he “was not going to allow another person to have financial gain off of [his] mistakes” and confirmed that such a person had “attempted” to do that. This Instagram video was immediately posted to Mr. Hart’s millions of online followers, and it has now been viewed over 6.2 million times.

14. Given Mr. Hart’s enormous popularity as a comedian and actor and fame throughout the United States, his Instagram posting immediately made headlines and instantly generated far more detailed reporting on the nature of Hart’s extramarital affair and the attempt to extort him. On September 16, just hours after Mr. Hart’s Instagram posting, the website tvone.tv posted a detailed article and analysis of the Instagram video entitled “Did Kevin Hart Just Admit to Cheating on His Pregnant Wife?” See <https://tvone.tv/61390/did-kevin-hart-just-admit-to-cheating-on-his-pregnant-wife/>. By the next day CBS Los Angeles was reporting in far greater detail about the scandal, noting that Mr. Hart was the subject of an FBI investigation into his being extorted due to sexually suggestive videos that had been surreptitiously taken of him and an unknown woman in Las Vegas. See <https://www.youtube.com/watch?v=qmPSIAbrzRY>. Likewise, throughout the weekend of September 16-17 and on Monday September 17, numerous well-known celebrity news and other news websites, such as TMZ, and E News were fully reporting upon the sex scandal and extortion attempt made on Mr. Hart. See, e.g., <http://www.tmz.com/2017/09/16/kevin-hart-apologizes-to-wife-kids-alleged-extortion/> and <https://www.eonline.com/news/881260/everything-we-know-about-kevin-hart-s-alleged-extortion-case>.

15. Neither Hart, his manager Brown, nor any other Hart representative ever provided Stand Up with any notice, warning, or even vague intimation of the scandal/extortion, or that Hart was going to post about a devastating personal scandal and an extortion attempt on Instagram less than 48 hours before the launch of his and Stand Up's family-friendly mobile app game. Needless to say, this announcement and the immediate media fallout came as a complete shock to Stand Up. Mr. Hart's announcement of his affair and the extortion came with no warning to Stand Up and took place less than two days before the company's launch of the mobile family-friendly and family-oriented game, Gold Ambush on Monday, September 18.

16. In the weeks that followed Hart's Instagram announcement, it became clear that he and Brown had known of the extortion attempt long before the September 18, 2017 launch of Gold Ambush. By failing to inform Stand Up of the situation so that Stand Up could have taken steps to delay the launch and potentially retool the game, Hart willfully violated of his fiduciary duties of loyalty, care, and duty to disclose harmful information to Stand Up under Virginia statutory and common law standards for corporate directors. As Hart's business manager with full knowledge of the scandal, the extortion, and the impact such failure to disclose would have on Stand Up, Brown aided and abetted Hart's breach of fiduciary duties.

17. The Los Angeles County District Attorney's office filed a criminal case filed against Jonathan Todd Jackson, a former friend of Mr. Hart. In reference to the criminal allegations and by Mr. Hart's own admissions subsequent to the September 16 Instagram posting, Mr. Hart engaged in an extramarital affair in Las Vegas on or about the weekend of August 19, 2017 and was allegedly recorded surreptitiously by Mr. Jackson. As stated in the L.A. County District Attorney's press release, see **Ex. 3**, the extortioner alleged to be Mr. Jackson tried to extort payment for this video from Mr. Hart between August 25 and August 30,

2017. Law enforcement officials told multiple news periodicals that his extortioner contacted him and his representatives personally in August 2017 through encrypted emails and that Hart and his legal representatives immediately contacted local law enforcement. *See* <https://theblast.com/kevin-hart-extortion-suspects-millions/>. The “representatives” referred to are Wayne Brown and possibly others. Yet Hart and Brown made no similar attempt at any time to alert Stand Up of the need to postpone Gold Ambush’s launch or that he would be making an unannounced Instagram post about the scandal and extortion on the eve of the launch.

18. Not only did the announcement come with no notification to Stand Up, Mr. Hart knew of the extortion attempt in August, several weeks prior to his Instagram announcement. In clear violation of his duties as a Director of Stand Up, Hart made no effort to warn the company of his pending announcement, coordinate a postponement of September 18 launch, or in any way attempt to mitigate the damages caused by the fallout of the scandal. Indeed, not only did Hart Brown and his other representatives completely fail to warn Stand Up prior to the September 16 Instagram announcement, Hart and Brown utterly refused to communicate with Stand Up in any respect following the September 16 Instagram announcement for over a week, despite repeated attempts by Stand Up to call, email and text Hart and Brown and Hart’s other representatives. This post-scandal refusal to communicate caused the damages to Stand Up to further spiral downward. When he and Brown finally spoke to Stand Up’s team on the week of September 18, Hart and Brown incredibly blamed Stand Up for not unilaterally and immediately canceling the launch on September 18 after his unexpected Instagram posting on the evening of Saturday, September 16.

19. Mr. Hart refused to timely disclose to the company the damaging information regarding his affair and the attempts to extort him. He compounded this damage by his

Instagram announcement of these explosive allegations on the eve of Gold Ambush's official launch. Brown encouraged and assisted Hart in not disclosing the scandal to Stand Up for weeks before September 16, and to ignore of Stand Up's attempts to communicate thereafter. Mr. Hart's actions and omissions crippled the efficacy of Gold Ambush, completely destroyed all of Stand Up's pre-launch monetary commitments, shuttered the credibility of the game as a family-oriented entertainment, caused Apple's AppStore to withdraw its commitment to feature the game (the key element in a successful launch of a game) and nullified the future profitability of the game. These actions constitute willful misconduct under Virginia law. Mr. Hart's willful misconduct not only caused a complete loss of Stand Up's out of pocket expenses and investment totaling \$1.24 million, it also led to a complete loss of profits which the company reasonably anticipated it would have earned over the next three years.

20. At the time of its launch, Gold Ambush would have been the first combined maze running and city building strategy game on the entire market. It was innovative, visually and graphically impressive, and backed up by Mr. Hart's enormous popularity and marketability. Stand Up had entered into promotion agreements with Apple and other app promoters, and the game was primed to be promoted actively on Apple's App store and other gaming download sites. It was thus available to an enormous U.S. market, along with being directly promoted and cross-promoted by Mr. Hart to millions of his Instagram and other social media followers.

21. Stand Up followed and completed all reasonable steps and metrics utilized by the gaming industry to ensure a high-quality game and a successful launch. Stand Up's CIO and CCO took direct charge of the development of Gold Ambush. These officers have created successful video games, apps and large scale mobile solutions for Mercedes, Land Rover and many other well-known brands. The original concept of Gold Ambush was also brought to the

table after being vetted for almost 24 months with testing and industry leaders, including the CEO of the video game company Supercell, who praised Stand Up's development efforts, writing that Gold Ambush looked amazing. In addition to ensuring excellent quality for the game, Stand Up conducted soft launches in other well-known and predominantly English-speaking markets, including the Philippines, Australia/New Zealand, Canada, and Europe. The soft launches – even in markets where Mr. Hart is less well known – came back with excellent statistics for downloads, retention, and average spending per user. These results indicated an even more profitable launch in the United States, where the game's family appeal and innovative design would have combined with the synergy of Apple and other promotions and Hart's built in customer base. Gold Ambush was posed to be an instant and long-lasting hit, which could have in turn led to numerous additional game and other marketing opportunities for both Stand Up and Mr. Hart.

22. In all, based on detailed metrics and statistics, Gold Ambush's lifetime value (LTV) per customer was at least \$6.73, a very strong and profitable margin for the gaming industry. After months of testing both internationally and with the 60 days following the launch in the U.S., the LTV was calculated for paying users based upon their purchases inside of the game. The soft launches internationally and in the United States clearly demonstrated that users readily bought these in-app purchases, and such purchases could only be expected to be further enhanced had Hart promoted the game after the September 18 launch.

23. These in-app purchases consisted of gem purchases and did not include advertising revenue of users watching the ads at the end of game sessions. These advertisements added an additional 7% to the LTV. The in-app purchases ranged from a \$2.99 Kevin Hart starter pack, all the way to a \$99.99 bag of gold. These in-app purchases are used to enhance gameplay

and the longer the game exists and the longer a player plays it, the higher the LTV can get because the game gets harder and these purchases can help users get through levels.

24. Based on all statistical and historical evidence, Gold Ambush was poised to make many millions of dollars in net profit for Stand Up over the following three years. Based on, *inter alia*, (1) statistical modeling, (2) comparative successful celebrity character online mobile app games, (3) Hart's inherent popularity and ability to successfully leverage his influence to market products, (4) and the unique game play and high-quality characteristics and graphics of Gold Ambush, Stand Up's conservative net profit over the following three years would have been at least \$6 million. Only Hart's willful actions in refusing to advise the company of the enormous danger of the scandal's announcement destroyed all ability of Gold Ambush to be profitable. There was simply nothing that could be done to save the game, due to Hart's failure to disclose and work with the company to delay the launch and refocus the game and its advertisers.

25. Instead of a successful launch, after Hart's September 16 announcement and the growing scandal, all of the game promoters, including Apple, immediately pulled out of all promotion and marketing of the game to its subscribers. The game became inextricably associated with Hart's affair and was "promoted" by gossip columns linking and juxtaposing Hart's affair with Gold Ambush's family friendly image of Hart, his wife and his children's characters. Likewise, it was subjected to widespread negative publicity and viral and biting user comments ridiculing the game in light of Hart's scandal. **Exs. 4 – 5**. Indeed, before Apple quickly pulled Gold Ambush from its app store, users were already making numerous comments making fun of the game in light of Hart's scandals, a few of which are found at **Ex. 6**.

26. There are multiple steps Stand Up would have taken on the game's technology side had Mr. Hart abided by his fiduciary and contractual duties and promptly disclosed the situation to Stand Up's management. First, had Stand Up been told of the matter in August, it would have worked with Apple's editor and promotional team to push the release by at least 60 days. Stand Up could have used this time to actually further enhance the game. However, due to the completely out of the blue announcement of Mr. Hart's scandal on the eve of the September 18 launch, Apple immediately pulled out of any promotional activities, canceling promotion of the game on the Apple Feature and canceling all of Mr. Hart's scheduled event appearances.

27. Second, if Stand Up had been timely informed, it would have pushed the launch date so that the game did not show up in the app stores until later, after the news of the scandal died down. This would have greatly reduced the negative reviews and comments on blog sites, articles and other media announcing the launch of Gold Ambush alongside of Mr. Hart's affair, just as the scandal broke.

28. Third, if Mr. Hart had properly informed Stand Up, it would have worked with its development team to spread out the cost of development. This would have allowed the company to have more runway for a postponed launch. Since Stand Up had an impending launch deadline of September 18, it spent almost double on development in the previous two months so that it could hit the deadline. By significantly increasing its burn of development budget, the company was limited in its ability to continue maintaining and updating a long time after launching the game, although this would never have been a problem absent Mr. Hart's actions. However, because of his failure to timely disclose, Stand Up could not slow down its development costs and postpone the launch. Simultaneously, because Mr. Hart announced his affair at the exact time of the launch, his actions led to little revenue and promotion after the launch. Stand Up

could not sustain any more development costs. Mr. Hart's actions and failure to disclose nullified any ability for Stand Up to enhance the game.

29. Likewise, had Mr. Hart kept his fiduciary and contractual duties and promptly informed Stand Up, it could have taken steps on the promotional side to negate the damage. All public relations, social media and marketing efforts would have been stopped, paused and rescheduled. Later dates could have then been chosen to allow negative backlash from Mr. Hart's scandal to die down. This would have given Stand Up time to develop a new launch campaign to better fit Mr. Hart's current image at the time (i.e., potentially shifting the focus away from his family and onto themes involving Hart's running and exercise). The launch of the game became fully intertwined with the scandal, making the coverage through media outlets either negative or nonexistent. Certain outlets turned the game away directly due to the scandal when they had originally agreed to post and market it.

30. If the launch date was pushed back, the game would have earned much more widespread and positive coverage, the Apple App Store being the most significant. A feature in the App Store was a major piece of the overall promotion Stand Up was counting on for substantial downloads. Gold Ambush was expected to be featured prominently in the App Store until the scandal broke out. Once that occurred, Apple immediately backed out of promoting the game. Again, all of this could have been avoided if Hart would have only met his fiduciary and contractual duties to the company.

31. Finally, in addition to technological and promotional steps Stand Up could have taken to avoid damaging Ambush Gold's marketability, Hart himself failed to abide by his commitment to promote the game following the news of the scandal and refused to take other actions to help the company possibly salvage the game, including providing a modest loan to the

company. Following his Instagram announcement of the scandal on September 16, Mr. Hart largely stayed off of social media during the game's crucial launch period. Because of this, the game was unable to reach his massive online following, which was an important selling point upon which Stand Up was relying on for downloads at that time. Mr. Hart's social media channels were a major resource to the promotion of the game, but they abruptly became unavailable at the time of the scandal. There was no mention of the game on its launch day through his channels, which only added to the public's negative scrutiny.

32. Despite the scandal, and the fallout damage it caused the game, Stand Up diligently continued to try to improve the game, and gain a new publisher, and regain support from Apple's app store. Stand Up created new characters, mazes shields, traps and other features. In October 2016, Stand Up made a final attempt to engage Mr. Hart to bring the game back onto the path to success. In a detailed email to Hart and Brown, Stand Up asked for Mr. Hart to provide a modest two-year loan of \$200,000 to assist the company in over the next months as it regrouped. The loan was would have provided Mr. Hart with a generous ten percent interest rate paid quarterly. Stand Up also asked Mr. Hart to engage in a large scale authentic promotion of the game to help Apple reconsider its decision following the scandal to cancel its feature article on the game and to take the game off the Apple App Store. Given Mr. Hart's actions directly leading to the severe damage to the game, it was incumbent upon Mr. Hart, pursuant to his statutory and fiduciary duties as a company director, to take such actions and support Gold Ambush in these endeavors to salvage and relaunch the game. Yet once again, Mr. Hart and Brown utterly ignored Stand Up's October communication and left the Gold Ambush and the company to continue spiraling downward with no support from its featured face of the game.

33. Stand Up and Mr. Hart also had plans to cross-market the game with his other well-known brand name endorsements. Mr. Hart works with many top brands (i.e. Nike, H&M, Tommy John), and Stand Up and Mr. Hart had planned to worked with some of these brands in the early stages of the launch, through game integrations, sponsorship opportunities and marketing promotions based on his relationship with these brands. Because of his lack of involvement in promoting the game following the scandal, these anticipated meetings never took place.

34. Finally, since the goal of the game had always been to promote a non-violent and innovative video game with a focus on family-friendly and fun entertainment, the game's concept became a far more difficult vision to sell after the scandal. Stand Up could not move forward with any realistic pitches for Kevin Hart-involved projects for kid-friendly outlets or platforms, especially after being blindsided by the scandal on the eve of the game's launch.

**COUNT I – BREACH OF FIDUCIARY DUTY UNDER  
VA. CODE §§ 13.1-690 & 13.1-692.1**

35. The allegations of paragraphs 1 through 33 are fully incorporated and adopted as if restated.

36. As a Director of Stand Up, whose company Hartbeat Digital, LLC owned 20 percent of Stand Up's common stock, Mr. Hart owed the company his duty to act in "the best interest of the corporation" in accordance with his good faith business judgment pursuant to Va. Code § 13.1-690. Mr. Hart owed a duty of loyalty, care, frankness and fair dealing to both Standup and its shareholders.

37. Mr. Hart's actions, omissions and lack of disclosure violated any good faith measure of business judgment and acted to greatly harm Stand Up, rather than to protect its "best interest." He breached all of his duties of loyalty, care, good faith and frank disclosure. Mr.

Hart failed to act when confronted with harmful information that should have been disclosed to Stand Up. Instead, Mr. Hart intentionally refused to alert Stand Up in any manner prior to his September 16 Instagram announcement and complete disregarded his obligation to disclose harmful information. Had he acted in good faith and in keeping with his fiduciary duties, it would have permitted Stand Up to (1) postpone the launch of Gold Ambush, (2) coordinate with the game sponsors and promoters, (3) redesign the game to take into account the news of the scandal, and (4) generally avoid the affects of his damaging disclosure.

38. Likewise, Mr. Hart further breached his fiduciary duties by intentionally refusing to communicate with Stand Up after the damaging disclosure for more than a week after the September 18 launch, further crippling the company and its efforts to contain its losses. His further refusal to assist Stand Up salvage the game after the damage caused his conduct. He refused to provide a loan and further promoting the game, which constitute additional breaches of his duty to act in the best interest of the company. Mr. Hart's intentional actions and omissions were wrongful and constitute willful misconduct under Va. Code § 13.1-692.1. Mr. Hart acted with bad faith in exclusively advancing his own interests to the detriment of the company, and likewise acted with careless and reckless disregard of the best interest of Stand Up. His knowing and wrongful dereliction of duty and reckless indifference for his duty to act in Stand Up's best interest constitutes willful misconduct.

39. Accordingly, Stand Up seeks against Hart all of its actual, compensatory damages of \$1.24 million, lost profits in the amount of \$6 million; all reasonable attorney's fees and costs pursuant to Section 10.6 of the Shareholder's Agreement; and pre-judgment and post-judgment interest under Virginia's six percent statutory interest rate.

## **COUNT II – BREACH OF FIDUCIARY DUTY OF CARE & LOYALTY**

40. Independent of his statutory fiduciary duties delineated in Count I, Hart owed common law duties of care and loyalty to Stand Up. He was bound to act in good faith and with due regard to the best interests Stand Up. As a fiduciary, Hart was obligated by his duties of care and loyalty to inform his Stand Up about any fact that could have affected Stand Up's decision regarding whether or how to act. Hart's failure to disclose the upcoming scandal and his plan to announce the scandal on the eve of the launch of Gold Ambush deprived Stand Up of its ability to determine how to act to protect its business asset and delay the roll out of the game. He refused to provide a loan and further promoting the game, which constitute additional breaches of his duties of loyalty and care to act in the best interest of the company

41. Accordingly, Stand Up seeks against Hart all of its actual, compensatory damages of \$1.24 million, lost profits in the amount of \$6 million; and pre-judgment and post-judgment interest under Virginia's six percent statutory interest rate.

### **COUNT III – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

42. Wayne Brown actively and knowingly aided and abetted Hart to violate his fiduciary duties in Counts I and II, both before and after the September 16 Instagram announcement. Brown was fully aware of the scandal and the extortion attempts in August 2017. Brown was fully aware that Hart was on the Board of Directors for Stand Up, that Hart was the face of the game, and that he was integral to the game's success. Brown had actual notice or at least constructive notice of Hart's breaches of fiduciary duties and actively assisted and encouraged Hart not to disclose the nature of the scandal to Stand Up. Likewise, Brown continued to knowingly assist Hart in breaching his fiduciary duties by his failure to communicate post-September 16 and in refusing to cooperate and assist Stand Up after the scandal was made public.

Accordingly, Brown is jointly and severally liable under Virginia law for all damages sought against Hart in Counts I and II, with the exception of attorney's fees.

#### **COUNT IV – BREACH OF CONTRACT**

43. Under the Licensing Agreement, sections 3.1 and 3.2, Hart was subject to additional contractual duties separate apart from to his fiduciary duties as a Director. He contractually required to act in good faith and with best efforts to promote Gold Ambush through social appearance and other agreed upon market initiatives and to engage brands and other influencers to market the game. He was also to act in a workmanlike manner with the requisite level of proficiency and experience expected of someone with Mr. Hart's extensive experience in promoting numerous products and brands.

44. Mr. Hart's conduct in August and September of 2017 violated these contractual duties to Stand Up. Rather than acting in good faith and with his best efforts to promote Gold Ambush with social appearances and appropriate marketing, Hart's September 16 Instagram announcement was a social media appearance that directly undercut and destroyed the entire process of promoting and selling Gold Ambush to the public. Hart acted with complete lack of good faith and with complete lack of care as to using his best efforts to promote and market Gold Ambush. Likewise, his actions in failing to inform Stand Up of the scandal, failing to work with Stand Up to postpone the game, posting the September 16 Instagram with no notice or warning to Stand Up, and failure to work to promote the game and limit the damages to it after the scandal were all breaches of his contractual duties. Hart's actions were the antithesis of acting in a workmanlike manner and with a level of proficiency expected of a celebrity with the background and experience in promoting multiple products and services. Likewise, his post-scandal refusal to provide a loan and to take any substantial actions to promote the game, which

constitute additional breaches of his contractual duties. Hart's actions constitute willful misconduct and flagrant violations of his contractual duties.

45. Accordingly, Stand Up seeks against Hart all of its actual, compensatory damages of \$1.24 million, reasonably foreseeable consequential damages in the amount of \$6 million in lost profits; all reasonable attorney's fees and costs pursuant to Section 8.2 of the Licensing Agreement; and pre-judgment and post-judgment interest under Virginia's six percent statutory interest rate.

Dated: July 24, 2018

Respectfully submitted,

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