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LOS ANGELES SUPERIOR COURT

MAR 22 2010

JOHN A. CLARKE, CLERK
BY [Signature] DEPUTY

6 Attorneys for Defendants
 7 Craig J. Nevius; Windmill Entertainment LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, WEST DISTRICT

11 RICHARD B. FRANCIS, as Trustee for the
 Fawcett Living Trust dated December 5, 1991;
 12 and SWEETENED BY RISK LLC,

Case No. BC 430252
 (Consolidated with SC 103096)

Plaintiffs,

[Assigned for all purposes to the
 Honorable Joseph S. Biderman,
 Department K]

vs.

15 CRAIG J. NEVIUS; WINDMILL
 ENTERTAINMENT LLC,

**ANSWER OF DEFENDANTS CRAIG J.
 NEVIUS AND WINDMILL
 ENTERTAINMENT LLC**

Defendants.

Date Action Filed: January 22, 2010



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Case No. BC 430252

ANSWER OF DEFENDANTS CRAIG J. NEVIUS AND WINDMILL ENTERTAINMENT LLC

1 Defendants ~~Craig J. Nevius~~ and ~~Windmill Entertainment LLC~~ ("Defendants") hereby
2 answer the unverified Complaint ("Complaint") of Plaintiffs Richard B. Francis and Sweetened By
3 Risk LLC ("Plaintiffs") as follows:

4 **GENERAL DENIAL**

5 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendants
6 generally and specifically deny each and every allegation of the Complaint filed by Plaintiffs, and
7 each cause of action therein. Defendants further deny any and all liability to Plaintiffs and further
8 deny that Plaintiffs are entitled to any recovery at all from Defendants.

9 **AFFIRMATIVE DEFENSES**

10 Apart from its general denial set for above, Defendants allege as their affirmative defenses
11 as follows.

12 **FIRST AFFIRMATIVE DEFENSE**

13 (Damages Caused by Other Parties)

14 1. Defendants deny that they engaged in any wrongdoing or conduct that caused
15 damage to Plaintiffs and further allege that the purported damages complained of by Plaintiffs, if
16 any, were caused by acts and omissions of others, as set forth below.

17 2. During the last five years of Farrah Fawcett's life, Mr. Nevius was Ms. Fawcett's
18 producer, business partner, and close friend.

19 3. In 2004, Mr. Nevius began his relationship with Ms. Fawcett, as the producer and
20 director of her reality television series "Chasing Farrah." During this time, the two developed a
21 friendship based on mutual trust, understanding and support. Indeed, when Ms. Fawcett's beloved
22 mother died in 2005, Mr. Nevius edited a five minute film about Ms. Fawcett and her parents,
23 which Ms. Fawcett and her father used as the only eulogy at the funeral service. On December 25,
24 2007, Ms. Fawcett gave Mr. Nevius a handwritten holiday card, expressing her gratitude for his
25 help and presence in her life. Ms. Fawcett wrote: "You have become so special to me ~ my loyal
26 friend, my protector, the strength in my life that reminds me of my strength and encourages me and
27 never lets me forget my courage. What brought us to this place I don't know for sure but it's a
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1 journey that I couldn't have taken without you. I am so grateful to have you in my life and I'm
2 going to try my best to make sure it's a long one."

3 4. After completing "Chasing Farrah," Mr. Nevius and Ms. Fawcett began developing
4 projects together for the two to produce and for Ms. Fawcett to star in.

5 5. In or about September 2006, Ms. Fawcett informed a handful of people, including
6 Mr. Nevius, that she was being tested for cancer by doctors at UCLA. Just hours after she was
7 diagnosed with cancer on September 22, 2006, Ms. Fawcett called Mr. Nevius to inform him.

8 6. Mr. Nevius never disclosed any of Ms. Fawcett's confidential medical information.

9 7. On information and belief, Alana Stewart, Ms. Fawcett's self-proclaimed "best
10 friend," was unaware of the tests or the diagnosis until weeks later, when she learned about it on
11 the internet. On information and belief, Ms. Stewart remained largely absent from Ms. Fawcett's
12 life during Ms. Fawcett's first round of cancer treatments when there were no video cameras
13 present.

14 8. Pursuant to Ms. Fawcett's desire to create a televised documentary about her
15 experiences on or about April 1, 2008, Ms. Fawcett and Mr. Nevius executed the Sweetened By
16 Risk LLC Agreement (the "SBR Agreement"), whereby they organized and created Sweetened By
17 Risk LLC ("SBR"). Pursuant to the SBR Agreement and other documents, Nevius is a founder,
18 member, co-owner, co-manager, and now the acting manager of SBR.

19 9. Pursuant to Paragraph 1 of the SBR Agreement, the purpose of the LLC is to
20 develop, produce, distribute and/or license a documentary film entitled "A Wing and A Prayer" to
21 be based on Ms. Fawcett's home movies (the "Film" or the "Documentary").

22 10. Paragraphs 3 and 5 of the SBR Agreement state that Nevius and Windmill invested
23 the original capital for the operation of SBR.

24 11. Pursuant to Paragraph 7:

25 Nevius shall have the right and the responsibility to
26 assume Ms. Fawcett's role as Manager of the LLC if
27 (A) Fawcett becomes too ill to function (for any
28 prolonged period of time) or (B) Fawcett is otherwise
unavailable due to failing health (for a prolonged
period of time) or (C) Fawcett is unable to
communicate her instructions and/or her decisions

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for any reason whatsoever (for a prolonged period of time).

12. The SBR Agreement has no provisions that might allow Ms. Fawcett the right or authority to appoint any other person manager or CEO of SBR.

13. On information and belief, after production began on the Film, Ms. Stewart became interested in being part of the Documentary and the notoriety it would give her, and began to spend more time with Ms. Fawcett more frequently. Eventually, Ms. Stewart was hired by SBR to videotape parts of the Documentary.

14. In September 2008, Ryan O'Neal contacted Mr. Nevius and wrongfully demanded that Mr. Nevius relinquish control of SBR and the Film to a producer of his choosing. When Mr. Nevius refused, Mr. O'Neal threatened to kill him.

15. On information and belief, in April 2009, after Ms. Fawcett's condition deteriorated, Ms. Stewart, Mr. O'Neal, and Richard B. Francis, Mr. O'Neal's business manager, conspired in wrongful acts to wrest control and ownership of the Film and SBR away from Ms. Fawcett and Mr. Nevius.

16. On information and belief, in April and May 2009, Mr. Francis claimed rights under a legally invalid document that purported to give him and Mr. O'Neal rights in SBR and the Program, contrary to SBR's operating agreement.

17. In April 2009, Mr. Francis threatened Mr. Nevius to stay away from Ms. Fawcett under threat of physical violence, stating: "... you better not appear at Farrah's. Because you're gonna get your ass kicked in by Ryan! And I mean it!"

18. On information and belief, with Mr. Nevius barred from seeing or communicating with Ms. Fawcett, Mr. Francis, Mr. O'Neal, and potentially Ms. Stewart wrongfully procured Ms. Fawcett's signature on documents that they believed would enable them to remove Mr. Nevius from working on the Film and from the management of SBR.

19. Throughout April and May 2009, Mr. Nevius requested that he be allowed to see or talk to Ms. Fawcett, to check on her health and see if her needs were being met. All of his requests were denied by Mr. Francis.

1 20. On May 13, 2009, after Ms. Stewart, Mr. O'Neal, and Mr. Francis wrongfully took
2 control of the Film and SBR, Mr. Nevius filed suit against them for declaratory relief, interference
3 with contractual relations, and interference with prospective economic advantage.

4 21. On May 15, 2009, NBC broadcast on national television a version of the Film that
5 contained material Ms. Fawcett specifically stated she did not want aired, including self-serving
6 interviews with Ms. Stewart talking about herself as a filmmaker, and Mr. O'Neal making self-
7 serving statements not approved by Ms. Fawcett. The Film also contained invasions of Ms.
8 Fawcett's privacy, including footage of Ms. Fawcett in a semi-conscious state on her deathbed
9 being visited by her son in a prison jumpsuit and chains.

10 22. These and other invasions of Ms. Fawcett's privacy were included in the Film over
11 Mr. Nevius's vehement objections.

12 23. On information and belief, much of Ms. Fawcett's actual medical information,
13 which Ms. Fawcett adamantly wanted included in the Film, was removed from the Film or
14 portrayed inaccurately over Mr. Nevius's objections; at the same time, Mr. O'Neal and Ms. Stewart
15 sought more screen time to talk about themselves.

16 24. In August 2009, little more than one month after Ms. Fawcett died, Ms. Stewart, for
17 her own personal gain and profit, exploited Ms. Fawcett's name and likeness by releasing a tell-all
18 book that disclosed countless personal facts about Ms. Fawcett. The book, entitled "My Journey
19 With Farrah," is nothing more than an adaptation of the Film and was published in breach of
20 obligations Ms. Stewart owed to SBR. In the book, Ms. Stewart divulged details of Ms. Fawcett's
21 private medical records for her own profit.

22 25. On information and belief, Ms. Stewart then appointed herself "president" of the
23 Farrah Fawcett Foundation (the "Foundation"), a charitable foundation funded by Ms. Fawcett's
24 assets, and Mr. Francis named himself "chairman of the board / treasurer." On information and
25 belief, Kim Swartz, an attorney at Mitchell Silberberg & Knupp LLP, who has been fired by Ms.
26 Fawcett, also installed himself as "director." On information and belief, Mr. Francis and Ms.
27 Stewart are using the Foundation to divert Ms. Fawcett's assets away from other rightful
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1 beneficiaries. On information and belief, although Mr. O'Neal has no official title with the
2 Foundation, he recently announced that he would be "working" with the Foundation.

3 26. On information and belief, Ms. Fawcett was not aware of the Foundation's existence
4 during her lifetime or of Mr. Francis's attempts to usurp her estate.

5 27. On information and belief, Mr. Francis as the trustee of the Fawcett Living Trust
6 dated December 5, 1991 (the "Trust") has systematically sought to divert and delay distribution to
7 the Trust's beneficiaries such as Ms. Fawcett's father who, to date, has not been paid all of his
8 benefits, while Mr. Francis and his lawyers have helped themselves to the Trust's assets by paying
9 themselves to line their own pockets.

10 28. On January 22, 2010, Mr. Francis wrongfully used Ms. Fawcett's Trust assets to file
11 the current action in an obvious retaliation against Mr. Nevius for his action against Mr. Francis.

12 Defendants are informed and believe that Mr. Francis is wrongfully using Trust assets to pursue his
13 baseless and economically nonsensical action for his own personal gain at the expense of the Trust.

14 On information and belief, while Mr. Nevius seeks no damages from the estate of Ms. Fawcett, Mr.
15 Francis, in a blatant breach of his fiduciary duty to the beneficiaries of the Trust, and in league with

16 others, is using Trust assets to fund a meritless lawsuit for his own personal gain and benefit
17 against Mr. Nevius. On information and belief, Mr. Francis is using the Trust beneficiaries' money

18 to pursue his own personal vendetta and litigation defense agenda that does not further the interests
19 of the beneficiaries of the Trust.

20 29. Consequently, Defendants allege that the purported damages complained of by
21 Plaintiffs, if any, were caused by acts and omissions of others.

22 **SECOND AFFIRMATIVE DEFENSE**

23 (Estoppel)

24 30. Plaintiffs are estopped to assert each of the purported causes of action alleged in
25 their Complaint.

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THIRD AFFIRMATIVE DEFENSE

(Acquiescence)

31. Plaintiffs are not entitled to any recovery against Defendants because Plaintiffs knowingly and voluntarily acquiesced to Defendants' complained of actions.

FOURTH AFFIRMATIVE DEFENSE

(Waiver)

32. Plaintiffs are not entitled to any recovery against Defendants because Plaintiffs have knowingly and voluntarily waived any rights they may have against Defendants.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

33. Plaintiffs' purported causes of action are barred or otherwise limited to the extent that Plaintiffs have failed to mitigate or avoid the damages alleged.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

34. Plaintiffs have come into this Court with unclean hands and, as a consequence thereof, Plaintiffs are barred from any recovery herein.

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

35. Plaintiffs' Complaint, and each purported cause of action therein, is barred by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

(Plaintiffs' Negligence and Breach of Duty)

36. Any damages alleged by Plaintiffs were primarily caused by their own acts, omissions, negligence, wrongful acts, or other breach of duty on the part of Plaintiffs. Therefore Plaintiffs are barred from any recovery thereon. In the alternative, Plaintiffs' alleged damages, if any, must be offset by the amount or percentage of their own breach of duty, negligence, wrongful acts or omissions, or comparative fault.

NINTH AFFIRMATIVE DEFENSE

(Set-Off)

37. Any and all damages purportedly sustained by Plaintiffs are offset, in whole or in part, by the damages sustained by Defendants as alleged in Defendants' Complaint against Mr. Francis, Mr. O'Neal, and Ms. Stewart dated May 13, 2009.

TENTH AFFIRMATIVE DEFENSE

(Business Judgment Rule)

38. As Mr. Nevius's business decisions as manager of SBR were made in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he reasonably believed to be in the best interests of SBR, Plaintiffs' Complaint, and each purported cause of action therein, is barred by the business judgment rule.

ELEVENTH AFFIRMATIVE DEFENSE

(No Right to Punitive Damages)

39. Plaintiffs are not entitled to recover any punitive or exemplary damages because Plaintiffs have failed to plead facts sufficient to support allegations of oppression, fraud or malice, or that Defendants committed any alleged oppressive, fraudulent or malicious acts, authorized or ratified such acts.

TWELFTH AFFIRMATIVE DEFENSE

(No Standing)

40. Plaintiffs do not have standing to bring the Complaint, and each and every purported cause of action therein.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

41. The Complaint, and each and every purported cause of action therein, fails to allege facts sufficient to constitute any cause of action against Defendants.

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FOURTEENTH AFFIRMATIVE DEFENSE

(Reservation)

42. Defendants reserve the right to amend this pleading at the conclusion of discovery to reflect affirmative defenses available to them as revealed through discovery.

WHEREFORE, Defendants pray for relief as follows:

1. That Plaintiffs take nothing by their Complaint;
2. For Defendants' costs of suit and their reasonable attorneys' fees to the extent permitted by law or contract; and
3. For such other and further relief as the Court may deem just and proper.

DATED: March 19, 2010

LINER GRODE STEIN YANKELEVITZ
SUNSHINE REGENSTREIF & TAYLOR LLP

By Miles J. Feldman
Miles J. Feldman
Attorneys for Defendants
Craig J. Nevius, Windmill Entertainment LLC

