

FILED

LOS ANGELES SUPERIOR COURT

OCT 30 2007

Des

JOHN A. CLARKE, CLERK
BY RUGENA LOPEZ, DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**TROPE & DeCAROLIS, LLP
MICHAEL L. TROPE (SBN: 132768)
ANDREW STEIN (SBN: 205494)
11620 Wilshire Boulevard, Suite 710
Los Angeles, California 90025
(310) 405-7373**

**Attorneys for Plaintiff/Cross-Defendant
Larry Birkhead**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

**LARRY BIRKHEAD, an Individual
Plaintiff**

vs.

**DEBRA OPRI, an Individual;
OPRI & ASSOCIATES a Professional
law Corporation and DOES 1 through
50, inclusive,
Defendants**

**DEBRA A. OPRI, an Individual; and
OPRI & ASSOCIATES, a Professional
Law Corporation,**

Cross-Complainants,

vs.

**LARRY BIRKHEAD, an Individual; and
ROES 1 through 10, Inclusive,**

Cross-Defendants.

Case No. BC372018
Related to BS 109143 (lead case)
Complaint Filed: June 1, 2007
Cross-Complaint Filed: Sept. 24, 2007
Trial Date: None Assigned

ANSWER TO CROSS-COMPLAINT

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

COMES NOW the Plaintiff and Cross-Defendant, LARRY BIRKHEAD, an individual

1 (hereinafter "Cross-Defendant") by way of answer to the Cross-Complaint of DEBRA OPRI, an
2 individual; and OPRI & ASSOCIATES, a Professional Law Corporation (hereinafter "Cross-
3 Complainant") on file herein admits, denies, and alleges as to each and every allegation stated
4 against it as follows:

5 **GENERAL DENIAL**

6 1. By virtue of the provisions of Code of Civil Procedure section 431.30, Cross-
7 Defendant generally denies each and every allegation stated against it in the unverified Complaint
8 and further denies that Cross-Complainant has been damaged or is entitled to recover any sum or
9 sums whatsoever, or any other relief.

10 **FIRST AFFIRMATIVE DEFENSE**

11 **(FAILURE TO STATE A CAUSE OF ACTION)**

12 2. The answering Cross-Defendant alleges that Cross-Complainant's Cross-
13 Complaint and each and every Cause of Action therein fails to state a Cause of Action.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(UNCLEAN HANDS)**

16 3. The answering Cross-Defendant alleges that to the extent the Cross-Complainant
17 seeks equitable relief, Cross-Complainant's inequitable conduct constitutes unclean hands and
18 therefore bars the granting of relief to Cross-Complainant herein.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(NO MUTUALITY OF OBLIGATION)**

21 4. The answering Cross-Defendant is informed and believes and on such
22 information alleges that the "Management Agreement" referred to by Cross-Complainant is
23 unenforceable because it lacks consideration, specifically, mutuality of obligation, by allowing
24 Cross-Complainant to represent the Cross-Defendant as she "deems necessary."
25

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH AFFIRMATIVE DEFENSE

(OFFSET)

5. The answering Cross-Defendant alleges that he has suffered damage by reason of the Cross-Complainant's conduct; that he has the right of offset if any amount of money is owed to Cross-Complainant or due Cross-Complainant by way of damage.

FIFTH AFFIRMATIVE DEFENSE

(WAIVER)

6. The answering Cross-Defendant is informed and believe and on such information and belief alleges that Cross-Complainant was engaged in conduct that constitutes a waiver of her rights under the Legal Representation Agreement and Management Agreement alleged in the Cross-Complaint. By reason of said waiver, Cross-Defendant is excused from further performance of the obligations under the alleged contracts.

SIXTH AFFIRMATIVE DEFENSE

(RELEASE)

7. The answering Cross-Defendant alleges that Cross-Complainant's actions constituted a full release and waiver by Cross-Complainant of any and all claims which Cross-Complainant may have against Cross-Defendant.

SEVENTH AFFIRMATIVE DEFENSE

(IN PARI DELICTO)

8. The answering Cross-Defendant alleges that the Cross-Complaint herein and each and every purported Cause of Action in the Cross-Complaint are barred because the Cross-Complainant has engaged in acts and courses of conduct which rendered them in pari delicto.

//
//
//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EIGHTH AFFIRMATIVE DEFENSE

(EQUITABLE ESTOPPEL)

9. The answering Cross-Defendant alleges that the Cross-Complaint herein, and each and every Cause of Action contained in the Cross-Complaint, are barred by reason of acts, omissions, representations and courses of conduct by the Cross-Complainant by which Cross-Defendant was led to rely to his detriment, thereby barring, under the doctrine of equitable estoppel, any Causes of Action asserted by the Cross-Complainant.

NINTH AFFIRMATIVE DEFENSE

(CONDITION PRECEDENT)

10. The answering Cross-Defendant alleges that performance by the Cross-Complainant of certain acts was contingent upon receipt of specific instructions or otherwise properly directed any actions which supposedly were to be undertaken by the Cross-Complainant; thus, Cross-Defendant's authority, direction and cooperation was a condition precedent to any alleged obligation by the Cross-Complainant to perform such acts.

TENTH AFFIRMATIVE DEFENSE

(CONTRIBUTORY NEGLIGENCE)

11. The answering Cross-Defendant is informed and believes and thereon alleges that the damages referred to in the Cross-Complaint by Cross-Complainant were proximately caused by the Cross-Complainant and/or others affiliated in any manner with Cross-Complainant in that at all times relevant herein Cross-Complaint failed to exercise for her own protection the proper care and precautions which prudent persons under the same and similar circumstances would have exercised and that if the answering Cross-Defendant committed any wrongful act at all (which supposition is made for the purpose of his defense without admitting such to be a fact), the aforesaid conduct of Cross-Complainant and/or entities or persons associated in any manner with the Cross-Complainant contributed to the happenings of Cross-Complainant's alleged damages.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ELEVENTH AFFIRMATIVE DEFENSE

(STATUTE OF FRAUDS)

12. The answering Cross-Defendant alleges that the Cross-Complainant is barred by the provisions of Section 1624 of the Civil Code, i.e., the Statute of Frauds.

TWELFTH AFFIRMATIVE DEFENSE

(FAILURE OF CONSIDERATION)

13. The answering Cross-Defendant alleges that the Cross-Complaint herein and each and every purported Cause of Action in the Cross-Complaint are barred as a result of a failure of consideration.

THIRTEENTH AFFIRMATIVE DEFENSE

(SUBSTANTIAL OR PARTIAL PERFORMANCE/DIVISIBILITY)

14. The answering Cross-Defendant is informed and believes and on such information and belief alleges that the contracts alleged in the Cross-Complaint, if any, have been substantially and/or partially performed, and as such, are subject to divisibility.

FOURTEENTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE)

15. The answering Cross-Defendant is informed and believes and thereon alleges that Cross-Complainant has failed to mitigate and lessen damages, if any she sustained, as required by law, and is barred from recovery by reason thereof against Cross-Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

(APPORTIONMENT)

16. The answering Cross-Defendant is informed and believes and thereon alleges that the matters complained of in the Cross-Complaint were proximately caused, in whole or in part, by the acts or omissions of a third party or parties or Cross-Complainant. Accordingly, the liability of the Cross-Defendant, if any, and responsible parties, named or unnamed, should be

1 apporioned according to their respective degrees of fault or other legal responsibility, and the
2 liability, if any, of this answering Cross-Defendant should be reduced accordingly.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 (MODIFICATION)

5
6 17. The answering Cross-Defendant is informed and believes and thereon alleges
7 that the contract in question, if any, was modified by the parties, and that the Cross-
8 Complainant is barred from recovery on the unmodified original contract, if any, by reason of
9 said modification.

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 (SUBSTITUTED CONTRACT)

12 18. The answering Cross-Defendant is informed and believes and thereon alleges
13 that a new contract was substituted in place of the original contract, if any, and that Cross-
14 Complainant is barred from recovery on the original contracts, if any.

15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

16 (MUTUAL MISTAKE)

17
18 19. The answering Cross-Defendant is informed and believes and thereon alleges
19 that, if there presently exists or ever existed, any or all of the alleged rights, claims or
20 obligations which Cross-Complainant seeks by way of her Cross-Complaint, said claims or
21 obligations are unenforceable by reason of mutual mistake.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 (AGREEMENT IS NOT FULLY INTEGRATED)

24
25 20. The answering Cross-Defendant is informed and believes and thereon alleges
26 that if there presently exists or ever existed any or all of the alleged rights, claims or obligations
27 which Cross-Complainant seeks by way of her Cross-Complaint, said claims or obligations are
28 unenforceable because the written agreement is not fully integrated.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWENTIETH AFFIRMATIVE DEFENSE

(ASSUMPTION OF THE RISK)

21. The answering Cross-Defendant is informed and believes and thereon alleges that, if there presently exists or ever existed any or all of the alleged rights, claims or obligations that Cross-Complainant by way of her Cross-Complaint seeks, said claims or obligations are unenforceable because Cross-Complainant assumed the risk involved in the transaction.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

22. The answering Cross-Defendant is informed and believes and thereon alleges that, if there presently exists or ever existed, any or all of the alleged rights, claims or obligations which Cross-Complainant seeks by way of her Cross-Complaint, each and every cause of action in the Cross-Complaint is barred by the applicable sections of the California Code of Civil Procedure.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(PAYMENT OF OBLIGATION)

23. The answering Cross-Defendant is informed and believes and thereon alleges that, if there presently exists or ever existed any or all of the alleged rights, claims or obligations which Cross-Complainant seeks by way of her Cross-Complaint, in each and every cause of action in the Cross-Complaint, Cross-Complainant has been compensated in full as Cross-Complainant has been ostensibly spot-lighted as a member of the media's "lawyerazzi."

TWENTY-THIRD AFFIRMATIVE DEFENSE

(NO COMPENSIBLE INJURY)

24. Cross-Complainant has not suffered any compensible injury as a result of Cross-Defendant's alleged actions and, as a result, is not entitled to judgment against Cross-

1 Defendant.

2 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

3 (PREVENTION OF PERFORMANCE)

4 25. Cross-Complainant is barred from seeking damages for the claims alleged in the
5 Cross-Complaint for the alleged non-performance by Cross-Defendant since Cross-
6 Complainant has prevented the performance of Cross-Defendant.

7 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

8 (INTERVENING NEGLIGENCE AND/OR CAUSATION)

9
10 26. Cross-Defendant alleges that Cross-Complainant's damages, if any, resulted
11 entirely from the intentional, reckless, or negligent acts of third parties, including other
12 attorneys to whom Cross-Complainant did not have the right, the duty, or the opportunity
13 Cross-Complainant has not suffered any compensable injury as a result of Cross-Defendant's
14 alleged actions and, as a result, is not entitled to judgment against Cross-Defendant.

15 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

16 (UNLICENSED TALENT AGENT)

17 23. The answering Cross-Defendant is informed and believes and thereon alleges
18 that, if there presently exists or ever existed any or all of the alleged rights, claims or
19 obligations which Cross-Complainant seeks by way of her Cross-Complaint, each and every
20 cause of action in the Cross-Complaint is barred by the applicable sections of the California
21 Labor Code as the Cross-Complainant has been operating as an unlicensed talent agent,
22 wherefore, said Media Agreement is void ab initio and the Cross-Complainant is barred from
23 recovering any compensation she is seeking under the Management Contract.

24 ///

25 ///

26 ///

27 ///

28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Cross-Defendant prays that:

1. That Cross-Complainant take nothing by virtue of her Cross-Complaint on file herein, and that same be dismissed;
2. For cost of suit and attorney's fees herein; and
3. For such further and other relief as this Court may deem just and proper.

Dated: October 29, 2007

Trope & DeCarolis, LLP



MICHAEL L. TROPE
ANDREW STEIN
Attorneys for Plaintiff/Cross-Defendant
LARRY BIRKHEAD

2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action; my business address is 11620 Wilshire Boulevard, Suite 710,
6 Los Angeles, California 90025.

6 On, October 29, 2007, I served the foregoing documents described as **ANSWER TO
7 CROSS-COMPLAINT** on the interested party(ies) in this action:

7 **[X] BY PLACING**

8 the original a true copy thereof enclosed in sealed envelopes addressed as follows:

9 David B. Owen
10 Nemecek & Cole
11 15260 Ventura Blvd., Suite 920
12 Sherman Oaks, California 91403

11 **[] VIA MAIL**

12 I am "readily familiar" with the firm's practice of collection and processing
13 correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal
14 Service on that same day, with postage thereon fully prepaid, at 11620 Wilshire Blvd., Los
15 Angeles, California, in the ordinary course of business. I am aware that on motion of the
16 party served, service is presumed invalid if postal cancellation date or postage meter date is
17 more than one day after date of deposit for mailing in affidavit.

15 **[] VIA TELECOPIER**

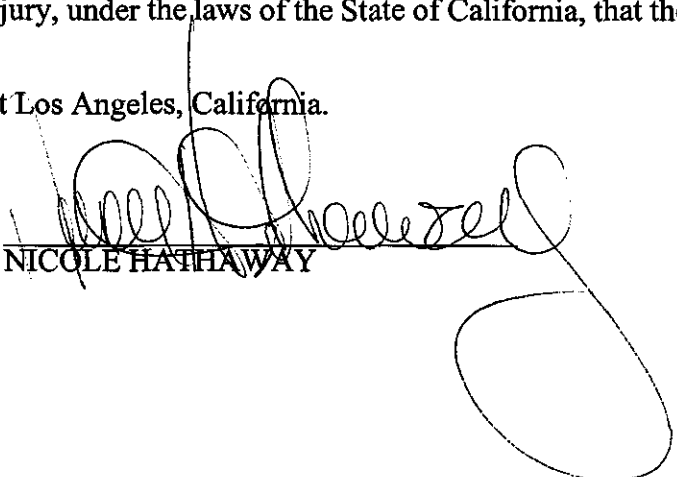
16 A copy of the above-referenced document(s) was transmitted, via facsimile transmission, to
17 the above addressee on said date.

17 **[X] VIA FEDERAL EXPRESS**

18 I deposited the Federal Express Envelope in the Federal Express drop box located at 11620
19 Wilshire Boulevard, Los Angeles, California 90025.

19 I declare, under penalty of perjury, under the laws of the State of California, that the above
20 is true and correct.

21 Executed October 29, 2007, at Los Angeles, California.

22 
23 NICOLE HATHAWAY

24
25
26
27
28 **PROOF OF SERVICE**