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5 Attorney for Plaintiff
VALLEY ECONOMIC DEVELOPMENT CENTER, INC.
6
7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF LOS ANGELES
10

11 VALLEY ECONOMIC DEVELOPMENT
CENTER, INC., a California nonprofit
12 corporation

13 Plaintiff,

14 v.

15 GBD GRAPHICS, INC., a California
corporation, doing business as GOLD
16 GRAPHICS MANUFACTURING COMPANY;
KENNETH GOLD, an individual; ANDREW
17 GOLD, an individual; ALBERT GOLD, an
individual; CAROLYN GOLD, an individual;
18 and DOES 1 through 10, inclusive

19 Defendants.
20

) CASE NO. LC087659
)
)

) MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
) REQUEST FOR ENTRY OF DEFAULT
JUDGMENT; DECLARATION OF NILIMA
KAPOOR
)

) DATE: July 30, 2010
) TIME: 8:30 a.m.
) DEPT: NWM
)

21
22 MEMORANDUM OF POINTS AND AUTHORITIES

23 I

24 SUMMARY OF FACTS

25 On or about February 4, 2008 at Los Angeles, California, Defendant, GBD
26 GRAPHICS, INC. DBA GOLD GRAPHIC MANUFACTURING COMPANY (hereinafter "GBD"),
27 gave Plaintiff VALLEY ECONOMIC DEVELOPMENT CENTER, INC. (hereinafter "VEDC") a
28 Promissory Note (hereinafter the "Note"). Under the Note it was agreed that GBD was indebted to

1 VEDC in the sum of ONE HUNDRED THIRTY-SIX THOUSAND ONE HUNDRED TEN
2 DOLLARS AND THIRTY-FOUR CENTS (\$136,110.34), together with an initial interest rate of
3 nine percent (9.0%) and a loan servicing fee of three-quarters of one percent (0.75%) of each
4 payment, with the interest rate adjusted every six months to be three percent (3.0%) over the
5 prime rate stated in the *Wall Street Journal* on the first Monday of the month in which any
6 adjustment occurs, plus the aforementioned loan servicing fee, with interest to increase up to
7 fifteen percent (15.0%) per annum upon default at VEDC's discretion. (Note p. 1, ¶(a)). A true
8 and correct copy of the Note is attached hereto as Exhibit 1. Declaration of NILIMA KAPOOR, ¶2.

9 On or about February 4, 2008, GBD also executed a Security Agreement
10 (hereinafter the "Security Agreement"). A true and correct copy of the Security Agreement is
11 attached hereto as Exhibit 2. KAPOOR Declaration, ¶3.

12 On or about April 21, 2008, GBD executed a Forbearance Agreement (hereinafter
13 "Forbearance") whereby VEDC agreed to a one year forbearance period upon certain conditions,
14 including:

15 1. GBD acknowledging loan matured as of March 31, 2008 and that the current
16 outstanding principal was ONE HUNDRED THIRTY-SIX THOUSAND ONE HUNDRED TEN
17 DOLLARS AND THIRTY-FOUR CENTS (\$136,110.34) plus accrued interest and fees;

18 2. GBD acknowledging that no defense exists to payments of full amounts due
19 and waiving any such defenses that may exist.

20 3. GBD agreeing to make monthly payment of ELEVEN THOUSAND NINE
21 HUNDRED NINETY-TWO DOLLARS AND THIRTY-TWO CENTS (\$11,992.32) within the
22 forbearance period;

23 4. GBD to protect all collateral assets securing the Loan; and

24 5. The personal guarantors acknowledge the FORBEARANCE and their
25 continuing obligations under the Guarantees.

26 A true and correct copy of the Forbearance is attached hereto as Exhibit 3.

27 Under the terms of the Note and Forbearance, Defendant GBD failed to make
28 payments since September 25, 2008. To date, VEDC is owed the sum of ONE HUNDRED

1 TWENTY-FIVE THOUSAND FIVE HUNDRED SEVENTEEN DOLLARS AND EIGHTY CENTS
2 (\$125,517.80) plus interest continuing to accrue from February 20, 2010 at a rate of THIRTY-
3 EIGHT DOLLARS AND SIXTEEN CENTS (\$38.16) per day. A true and correct copy of VEDC's
4 Payoff Statement as of February 20, 2010 is attached hereto as Exhibit 4. KAPOOR Declaration,
5 ¶¶ 5 and 6.

6 Net accrued interest as of February 20, 2010 totals NINETEEN THOUSAND SIX
7 HUNDRED SIXTEEN DOLLARS AND FORTY-FIVE CENTS (\$19,616.45), which incorporates
8 an increase to fifteen percent (15.0%) per annum at VEDC's discretion as of September 25,
9 2008, pursuant to the Note (p. 1, ¶(3)) and net accrued late fees pursuant to the Note (p. 1, ¶(1))
10 total TEN THOUSAND SIX HUNDRED THIRTY-THREE DOLLARS AND SEVENTY CENTS
11 (\$10,633.70) as of February 20, 2010.

12 Amount due on the Note and FORBEARANCE as of January is:

13	Outstanding principal	\$ 91,594.31
14	Interest accrued through February 20, 2010	\$ 19,616.45
15	Late fees accrued through February 20, 2010	\$ 10,633.70
16	Subtotal sum due to VEDC on the Note and Forbearance	<u>\$ 121,844.46</u>

17
18 plus attorney's fees of \$ 5,706.89 and costs of \$ 764.90 pursuant to the Security Agreement (p.5,
19 ¶14) for a total due through February 20, 2010 of \$ 128,316.25. KAPOOR Declaration, ¶¶5-7.

20 At this time, VEDC is only seeking default against GBD to be jointly and severally
21 liable with Defendant, ANDREW GOLD. Chapter 7 bankruptcy proceedings of ALBERT GOLD,
22 CAROLYN GOLD, and KENNETH GOLD are ongoing and VEDC has retained possession of the
23 original signed Loan Agreement, Security Agreement, Forbearance, and Continuing Guarantees
24 for use in possible subsequent legal proceedings against other Defendants but can and will
25 provide them to this Court upon request.

26 ///

27 ///

28 ///

2 VALLEY ECONOMIC DEVELOPMENT CENTER, INC. IS
3 ENTITLED TO MONEY DAMAGES

4 The elements for breach of contract are the following:

- 5 1. The existence of a contract;
- 6 2. Plaintiff's performance or excuse for nonperformance;
- 7 3. Defendant's breach; and
- 8 4. Damages to Plaintiff from breach.

9 Acoustics, Inc. v. Trepte Construction Company, 14 Cal.App. 3d, 887, 913, 92

10 Cal.Rptr. 723, 740 (1971). Here, a contract existed between VEDC and the Defendant when they
 11 executed the Note and Forbearance. VEDC performed by loaning the Defendants ONE
 12 HUNDRED THIRTY-SIX THOUSAND ONE HUNDRED TEN DOLLARS AND THIRTY-FOUR
 13 CENTS (\$136,110.34). The Defendant breached the Note and the Forbearance by failing to
 14 make payments. The last payment was received on September 25, 2008. Although demand has
 15 been made, GBD remains liable for ONE HUNDRED TWENTY-ONE THOUSAND EIGHT
 16 HUNDRED FORTY-FOUR DOLLARS AND FORTY-SIX CENTS (\$121,844.46) plus associated
 17 costs in the amount of \$ 764.90 and attorney's fees in the amount of \$ 5,706.89 pursuant to the
 18 Note, and the Forbearance for a total liability through February 20, 2010 of \$ 128,316.25 with
 19 interest continuing to accrue. KAPOOR Declaration, ¶¶5-7.

20 Judgment should be awarded against Defendant GBD in the sum of:

21	Outstanding principal	\$ 91,594.31
22	Interest accrued through February 20, 2010	\$ 19,616.45
23	Late fees	\$ 10,633.70
24	Attorneys fees	\$ 5,706.89
25	Costs	\$ 564.90
26	Total sum due to VEDC through February 20, 2010	\$ 128,316.25

27 ///

28 ///

1 Attorneys fees are calculated under Los Angeles Superior Court Rule §3.2(b):

2 1. $\$5,270.00 + (0.02 \times \$21,844.46) = \$5,706.89$;

3 Costs were incurred as follows:

- 4 1. Clerk's Filing Fees \$ 555.00
5 2. Process Server's Fees \$ 209.90

6 Total Costs \$ 764.90

7 KAPOOR Declaration, ¶7.

8 Total due to VEDC through February 20, 2010 is ONE HUNDRED TWENTY-EIGHT THOUSAND
9 THREE HUNDRED SIXTEEN DOLLARS AND EIGHTY CENTS (\$128,316.80).
10

11 DATED: April ____, 2012

12 MORRIS & ASSOCIATES

13
14
15 By: _____
16 BAYLEIGH J. PETTIGREW
17 Attorneys for Plaintiff
18 VALLEY ECONOMIC DEVELOPMENT
19 CENTER, INC.

20 vedc-gbd.memo.p&a/4/8/2012/fch
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- 1 a. GBD acknowledging loan matured as of March 31, 2008 and that the current
- 2 outstanding principal was ONE HUNDRED THIRTY-SIX THOUSAND ONE
- 3 HUNDRED TEN DOLLARS AND THIRTY-FOUR CENTS (\$136,110.34) plus
- 4 accrued interest and fees;
- 5 b. GBD acknowledging that no defenses exist to payment of the full amounts
- 6 due and waiving any such defense that may exist.
- 7 c. GBD agreeing to make monthly payment of ELEVEN THOUSAND NINE
- 8 HUNDRED NINETY-TWO DOLLARS AND THIRTY-TWO CENTS (\$11,992.32)
- 9 within the forbearance period;
- 10 d. GBD to protect all collateral assets securing the Loan; and
- 11 e. The personal guarantors acknowledge the FORBEARANCE and their
- 12 continuing obligations under the Guarantees.

13 A true and correct copy of the Forbearance is attached hereto as Exhibit 3.

14 5. Under the terms of the Note and Forbearance, Defendant GBD failed to

15 make payments since September 25, 2008. To date, VEDC is owed the sum of ONE HUNDRED

16 TWENTY-ONE THOUSAND EIGHT HUNDRED FORTY-FOUR DOLLARS AND FORTY-SIX

17 CENTS (\$121,844.46) plus interest continuing to accrue from February 20, 2010 at a rate of

18 THIRTY-EIGHT DOLLARS AND SIXTEEN CENTS (\$38.16) per day, plus attorneys fees in the

19 amount of \$ 5,270.00 and costs in the amount of \$764.90 (as calculated below in ¶7) for a total

20 due to VEDC through February 20, 2010 of ONE HUNDRED TWENTY-FIVE THOUSAND, FIVE

21 HUNDRED SEVENTEEN DOLLARS AND EIGHTY CENTS (\$128,316.25).

22 6. The last payment was received on September 25, 2008. To date VEDC is

23 owed the sum of no less than:

24	Outstanding principal:	\$ 91,594.31
25	Interest accrued through February 20, 2010:	\$ 19,616.45
26	Late fees accrued through February 20, 2010:	\$ 10,633.70
27	Subtotal due to VEDC on the Note and Forbearance (exclusive of	\$ 121,844.46
28	Attorneys fees of \$ 5,270.00 and Costs of \$ 764.90):	

1 A true and correct copy of VEDC's Payoff Statement as of January 12, 2010 is attached hereto
2 as Exhibit 4.

3 7. Under the terms of the Security Agreement (p. 7, ¶21) Defendant is
4 obligated to pay all costs, fees, and expenses, including reasonable attorney's fees incurred in
5 the collection and enforcement of the Note and Forbearance. Attorney's fees incurred are
6 calculated under Los Angeles Superior Court local rules at § 3.2(b) as follows:

7 (a) $\$5,270.00 + (0.02 \times \$21,844.46) = \$5,706.89;$

8 plus costs incurred as follows:

9 (a) Clerk's filing fees in the amount of: \$ 555.00

10 (b) Process Server's fees in the amount of: \$ 209.90

11 Costs in a total sum of: \$ 764.90

12 The total sum due to VEDC is ONE HUNDRED TWENTY-EIGHT THOUSAND THREE
13 HUNDRED SIXTEEN DOLLARS AND TWENTY-FIVE CENTS (\$128,316.25).

14 I declare under penalty of perjury under the laws of the State of California that
15 the foregoing is true and correct.

16 Executed this ____ day of July, 2012, at Van Nuys, California.

17
18
19 _____
NILIMA KAPOOR

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of **Los Angeles**, State of California. I am over the
4 age of 18 and not a party to the within action. My business address is **2312 West Victory**
5 **Boulevard, Burbank California 91506-1227.**

6 On April _____, 2012, I served the foregoing document described as
7 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR**
8 **ENTRY OF DEFAULT JUDGMENT; DECLARATION OF NILIMA KAPOOR** on interested
9 parties in this action

10 By placing: the original a true copy thereof
11 enclosed in sealed envelopes addressed as follows:

12 *****SEE ATTACHED SERVICE LIST*****

13 **BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in
14 the United States mail at Burbank, California.

15 **BY FAX:** I caused such document to be transmitted by facsimile transmission to
16 _____, facsimile number (____) ____-____, on April _____, 2012. The
17 transmission was reported as complete and without error. A copy of the transmission
18 report is attached hereto. The transmission report was properly issued by the
19 transmitting facsimile machine.

20 **BY PERSONAL SERVICE:** I caused such an envelope to be delivered by hand to the
21 offices of the addressee.

22 Executed on April _____, 2012, at Burbank, California.

23 (State) I declare under penalty of perjury under the laws of the State of
24 California that the above is true and correct.

25 (Federal) I declare that I am employed in the office of a member of the bar of this
26 Court at whose direction the service was made.

27 JESSICA IMME

28 _____
Signature

1 VALLEY ECONOMIC DEVELOPMENT CENTER, INC. v.
2 GBD GRAPHICS, INC. dba GOLD GRAPHICS
3 MANUFACTURING COMPANY, et al.
4 LASC CASE NO. LC087659

5 SERVICE LIST

6 SCOTT H. NOSKIN, ESQ.
7 MIRMAN, BUBMAN & NAHMIAS, LLP
8 21860 BURBANK BOULEVARD, SUITE 360
9 WOODLAND HILLS, CA 91367
10 (ATTORNEY FOR ANDREW GOLD)

11 KENNETH GOLD
12 15016 MOORPARK STREET
13 SHERMAN OAKS, CA 91403

14 ALBERT GOLD
15 18350 HATTERAS STREET, #168
16 TARZANA, CA 91356-1693

17 CAROLYN GOLD
18 18350 HATTERAS STREET, #168
19 TARZANA, CA 91356-1693

20 GBD GRAPHICS, INC. dba
21 GOLD GRAPHICS MANUFACTURING COMPANY
22 c/o MITCHELL KAUFMAN – Agent For Service Of Process
23 16633 VENTURA BLVD., SUITE 500
24 ENCINO, CA 91436
25
26
27
28