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5 Attorney for Plaintiff
VALLEY ECONOMIC DEVELOPMENT CENTER, INC.
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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
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CASE NO. LC087659

) AMENDED NOTICE OF AND MOTION
) FOR SUMMARY JUDGMENT, OR IN
) THE ALTERNATIVE, FOR SUMMARY
) ADJUDICATION; MEMORANDUM OF
) POINTS AND AUTHORITIES IN
) SUPPORT THEREOF; DECLARATION
) OF NILIMA KAPOOR (SEPARATE
) STATEMENT OF UNDISPUTED FACTS
) AND SUPPORTING EVIDENCE FILED
) CONCURRENTLY HEREWITH)

) DATE: June 17, 2010
) TIME: 8:30 a.m.
) DEPT: NWM
)
)
)

22 NOTICE TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on June 17, 2010 at 8:30 a.m. in Department M of
24 the Los Angeles Superior Court located at 6230 Sylmar Avenue, Van Nuys, CA 91401, Plaintiff
25 VALLEY ECONOMIC DEVELOPMENT CENTER, INC. will move the court for summary
26 judgment on the Complaint against individual Defendant, ANDREW GOLD in favor of Plaintiff.
27 If Summary Judgment is not granted, a request is made to summarily adjudicate the following
28 issues:

1 ISSUE #1: Summary Adjudication should be granted to Plaintiff on the Second
2 Cause of Action for Breach of a Written Contract because Defendant, ANDREW GOLD has
3 breached the written agreement he entered into with Plaintiff on February 4, 2008 and April 21,
4 2008, by failing to make payments due and owing to Plaintiff after Plaintiff performed by
5 lending money to Defendants with Plaintiff entitled to recovery of ONE HUNDRED TWENTY-
6 EIGHT THOUSAND AND ONE HUNDRED SIXTEEN DOLLARS AND TWENTY-FIVE CENTS
7 (\$128,116.25). See Separate Statement of Undisputed Facts, ¶¶ 1-7.

8 This Motion is based on this Notice; Memorandum of Points and Authorities,
9 attached hereto; the pleadings, records and filings herein; the Declaration of NILIMA
10 KAPOOR; and such other and further evidence that may be presented at the hearing on this
11 Motion.

12
13 DATED: April ____, 2012

14
15 MORRIS & ASSOCIATES

16
17 By: _____
18 BAYLEIGH J. PETTIGREW
19 Attorney for Plaintiff
20 VALLEY ECONOMIC DEVELOPMENT
21 CENTER, INC.
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 SUMMARY OF FACTS

4 On or about February 4, 2008, Plaintiff VALLEY ECONOMIC DEVELOPMENT
5 CENTER, INC. (hereinafter "Plaintiff") received a ONE HUNDRED THIRTY-SIX THOUSAND
6 ONE HUNDRED TEN DOLLARS AND THIRTY-FOUR CENTS (\$136,110.34) Promissory Note
7 (hereinafter "Note") from Defendant, GBD GRAPHICS, INC. dba GOLD GRAPHICS
8 MANUFACTURING COMPANY (hereinafter "GBD"). A true and correct copy of the Note is
9 attached hereto as Exhibit 1. Declaration of NILIMA KAPOOR, ¶2. Plaintiff is seeking default
10 judgment against the entity, GBD. Defendants ALBERT GOLD and CAROLYN GOLD filed for
11 Chapter 7 bankruptcy on January 27, 2010. Defendant KENNETH GOLD filed for Chapter 7
12 bankruptcy on February 26, 2010. Declaration of NILIMA KAPOOR, ¶9.

13 That same day, as security for the Note, Defendant, GBD, also executed a
14 Security Agreement, giving Plaintiff a lien on Defendants' business assets. A true and correct
15 copy of the Security Agreement is attached hereto as Exhibit 2. NILIMA KAPOOR Declaration,
16 ¶3.

17 On or about February 4, 2008, as security for the Loan, ANDREW GOLD signed
18 a Continuing Guaranty. A true and correct copy of the Guaranty of ANDREW GOLD is
19 attached hereto as Exhibit 3. NILIMA KAPOOR Declaration, ¶4.

20 On or about April 4, 2008, Defendants, including ANDREW GOLD, signed a
21 Forbearance Agreement (hereinafter "Forbearance"), whereby Defendants agreed that no
22 defenses existed to payment of the full amount due Plaintiff and waived any such defenses,
23 and in particular, that the personal Guarantors of the Note acknowledged the Note and the
24 Agreement and their continuing obligation under their guarantees. This Forbearance was
25 signed by ANDREW GOLD on April 21, 2008. A true and correct copy of the executed
26 Forbearance is attached hereto as Exhibit 4. NILIMA KAPOOR Declaration, ¶5. VEDC has
27 retained possession of the original signed Loan Agreement, Security Agreement, Forbearance
28 and Continuing Guarantees for use in subsequent proceedings against this and other

1 Defendants but can and will produce them upon this court's request.

2 To date, Plaintiff has disbursed ONE HUNDRED THIRTY-SIX THOUSAND ONE
3 HUNDRED TEN DOLLARS AND THIRTY-FOUR CENTS (\$136,110.34) in principal to
4 Defendants. NILIMA KAPOOR Declaration, ¶5. Defendants are obligated to make monthly
5 payments on the Note, but only made payments totaling FORTY-FOUR THOUSAND FIVE
6 HUNDRED SIXTEEN DOLLARS AND THREE CENTS (\$44,516.03) towards the principal. As
7 of February 20, 2010, there is due owing to Plaintiff the sum of:

8 Remaining principal balance of \$ 91,594.31

9 Interest accrued through February 20, 2010 \$ 19,616.45

10 Late fees accrued through February 20, 2010 \$ 10,633.70

11 As of February 20, 2010, VEDC is entitled to: \$ 121,844.46

12 plus attorneys fees of \$ 5,706.89 and costs of \$ 564.90 for a total due to VEDC through
13 February 20, 2010 of \$ 128,116.25. NILIMA KAPOOR Declaration, ¶7. Interest continues to
14 accrue thereon.

15 II

16 LEGAL STANDARDS FOR MOTION FOR SUMMARY JUDGMENT
17 AND SUMMARY ADJUDICATION

18 California Code of Civil Procedure § 437(c) allows for summary judgment where
19 there is “no triable issue as to any material facts and the moving party is entitled to judgment
20 as a matter of law.” Summary adjudication is allowed where the moving party is alleging that
21 one or more causes of action in the complaint has no merit or there is no defense thereto.
22 California Code of Civil Procedure § 437(c)(f)(1). “A motion for summary adjudication shall be
23 granted only if it completely disposes of a cause of action.” California Code of Civil Procedure
24 § 437(c)(f)(1). Any causes of action not disposed of in summary adjudication are to be
25 resolved at trial.

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1 III

2 WHERE THERE IS NO CONFLICT AS TO THE TERMS OF THE
3 CONTRACT AND THE TERMS ARE AMBIGUOUS OR
4 UNCERTAIN, ITS MEANING AND EFFECT IN RELATION TO THE
5 PARTIES BECOMES A QUESTION OF LAW TO BE DECIDED BY
6 THE COURT AND A MOTION FOR SUMMARY JUDGMENT MAY
7 BE GRANTED

8 Where there is no conflict to the terms of the contract and the terms are not
9 ambiguous or uncertain, its meaning and effect in relation to the parties becomes a question of
10 law decided by the court and motion for summary judgment may be granted. Goldstein v.
11 Hoffman, 213 Cal.App. 2nd 803, 814, 29 Cal.Rptr. 334 (1963); Nizuk v. Gorgas, 180 Cal.App.
12 2nd 699, 705, 4 Cal.Rptr. 565, 570 (1960). The terms of the Guaranty and Forbearance are
13 clear. Defendant, ANDREW GOLD, agreed to pay Plaintiff all indebtedness of GBD, including
14 but not limited to the remaining principal balance and interest and attorneys fees. NILIMA
15 KAPOOR Declaration, ¶¶4-5. Exhibit 3, pp. 1-2(1)-(4), Exhibit 4, p. 1(6).

16 VEDC is entitled to ONE HUNDRED TWENTY-EIGHT THOUSAND ONE
17 HUNDRED SIXTEEN DOLLARS AND TWENTY-FIVE CENTS (\$128,116.25). NILIMA
18 KAPOOR Declaration, ¶7. Plaintiff gave adequate consideration by disbursing to Defendants
19 the sum of ONE HUNDRED THIRTY-SIX THOUSAND ONE HUNDRED TEN DOLLARS AND
20 THIRTY-FOUR CENTS (\$136,110.34). There is now due and owing:

21	Remaining principal balance of	\$ 91,594.31
22	Interest accrued through February 20, 2010	\$ 19,616.45
23	Late fees accrued through February 20, 2010	\$ 10,633.70
24	As of February 20, 2010 VEDC is entitled to:	<u>\$ 121,844.46</u>

25 plus attorneys fees of \$ 5,706.89 and costs of \$ 564.90 for a total due to VEDC through
26 February 20, 2010 of \$ 128,116.25. NILIMA KAPOOR Declaration, ¶7. Interest continues to
27 accrue thereon.

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1 IV

2 PLAINTIFF IS ENTITLED TO MONEY DAMAGES

3 The elements for breach of contract are the following:

- 4 1. The existence of contract;
- 5 2. Plaintiffs' performance or excuse for non-performance;
- 6 3. Defendants' breach; and
- 7 4. Damages to Plaintiff from breach.

8 Acoustics, Inc. v. Trepe Construction Company, 14 Cal.App. 3rd, 887, 913, 92 Cal.Rptr. 723,
 9 740 (1971). Here, a contract existed between Plaintiff, VEDC, and ANDREW GOLD, when he
 10 executed the Guaranty and the Forbearance Agreement. Plaintiff, VEDC, performed by loaning
 11 the Defendants ONE HUNDRED THIRTY-SIX THOUSAND ONE HUNDRED TEN DOLLARS
 12 AND THIRTY-FOUR CENTS (\$136,110.34). ANDREW GOLD breached the Guaranty by
 13 failing to make payments. The last payment was received on September 25, 2008. Although
 14 demand has been made, there is now due and owing the sum of ONE HUNDRED TWENTY-
 15 EIGHT THOUSAND ONE HUNDRED SIXTEEN DOLLARS AND TWENTY-FIVE CENTS
 16 (\$128,116.25). ANDREW GOLD remains liable for ONE HUNDRED TWENTY-ONE
 17 THOUSAND EIGHT HUNDRED FORTY-FOUR DOLLARS AND FORTY-SIX CENTS
 18 (\$121,844.46), plus interest and late fees accrued to date from February 20, 2010 as well as
 19 associated costs of \$ 564.90 and attorneys fees pursuant to the Guaranty of \$ 5,706.90 for a
 20 total due to VEDC through February 20, 2010 of ONE HUNDRED TWENTY-EIGHT
 21 THOUSAND ONE HUNDRED SIXTEEN DOLLARS AND TWENTY-FIVE CENTS
 22 (\$128,116.25). NILIMA KAPOOR Declaration, ¶¶ 4-7; ANDREW GOLD Guaranty, p. 7, ¶20.

23 Judgment should be awarded against Defendant, ANDREW GOLD, in the sum
24 of:

25	Remaining principal balance of	\$ 91,594.31
26	Interest accrued through February 20, 2010	\$ 19,616.45
27	Late fees accrued through February 20, 2010	\$ 10,633.70
28		

1 As of February 20, 2010 VEDC is entitled to: \$ 121,844.46

2 plus attorneys fees of \$ 5,706.89 and costs of \$ 564.90 for a total due to VEDC through
3 February 20, 2010 of \$ 128,116.25.

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

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

6 Costs were incurred as follows:

7	Clerk’s filing fees in the amount of	\$ 355.00
8	Process Server’s fees in the amount of	\$ 209.90
9	Costs in a total sum of	<u>\$ 564.90</u>

10 For a total sum of ONE HUNDRED TWENTY-EIGHT THOUSAND ONE HUNDRED SIXTEEN
11 DOLLARS AND TWENTY-FIVE CENTS (\$128,116.25). NILIMA KAPOOR Declaration, ¶8.

12
13 IV
14 CONCLUSION

15 Defendant, ANDREW GOLD, failed to honor his obligations under his Continuing
16 Guaranty and Forbearance Agreement by failing to make all payments when due. Defendant
17 ANDREW GOLD waived all defenses under the Forbearance Agreement. Plaintiff is now
18 entitled to recover ONE HUNDRED TWENTY-EIGHT THOUSAND ONE HUNDRED SIXTEEN
19 DOLLARS AND TWENTY-FIVE CENTS (\$128,116.25). NILIMA KAPOOR Declaration, ¶8.

20
21 DATED: April ____, 2012

22 MORRIS & ASSOCIATES

23
24 By: _____
25 BAYLEIGH J. PETTIGREW
26 Attorneys for Plaintiff
27 VALLEY ECONOMIC DEVELOPMENT
28 CENTER, INC.

1 signed by ANDREW GOLD is attached hereto as Exhibit 3. VEDC has retained possession of
2 the original Guaranty signed by ANDREW GOLD for use at trial if this Motion for Summary
3 Judgment should be denied and can and will present it to this court at its request.

4 5. On or about April 21, 2008, Defendants, including ANDREW GOLD,
5 signed a Forbearance Agreement whereby Defendants agreed that no defenses existed to the
6 payment of the full amount due to Plaintiff and that ANDREW GOLD waived any such
7 defenses, and, in particular, that the personal guarantors of the Note acknowledged the
8 agreements and their continuing obligation of their Guarantees. This Forbearance was signed
9 by ANDREW GOLD on April 21, 2008. A true and correct copy of the executed Forbearance is
10 attached hereto as Exhibit 4. VEDC has retained possession of the original signed
11 Forbearance Agreement for use in the case against the Defendant and the other remaining
12 Defendants and can and will present it to this court at its request.

13 6. To date, VEDC has disbursed ONE HUNDRED THIRTY-SIX THOUSAND
14 ONE HUNDRED TEN DOLLARS AND THIRTY-FOUR CENTS (\$136,110.34) to Defendants.
15 Defendants only made payments totaling FORTY-FOUR THOUSAND FIVE HUNDRED
16 SIXTEEN DOLLARS AND THREE CENTS (\$44,516.03) towards the principal.

17 7. The last payment was received on September 25, 2008. To date VEDC is
18 owed the sum of no less than:

19	Remaining principal balance of	\$ 91,594.31
20	Interest accrued through February 20, 2010	\$ 19,616.45
21	Late fees accrued through February 20, 2010	\$ 10,633.70

22 As of February 20, 2010 VEDC is entitled to: \$ 121,844.46

23 plus attorneys fees of \$ 5,706.89 and costs of \$ 564.90 for a total due to VEDC through
24 February 20, 2010 of \$ 128,116.25. A true and correct copy of VEDC's Payoff Statement as of
25 February 20, 2010 is attached hereto as Exhibit 5.

26 8. Under the terms of the Security Agreement (p. 7, ¶21) and the Guaranty of
27 ANDREW GOLD (p. 1, ¶3(a); p.7, ¶20), each Defendant is obligated to pay all costs, fees, and
28 expenses, including reasonable attorney's fees incurred in the collection and enforcement of

1 the Note, the Guaranty. Attorney's fees incurred are calculated under Los Angeles Superior
2 Court local rules at § 3.2(a) as follows:

3 (1) $\$5,270.00 + (0.02 \times \$21,844.46) = \$5,706.89$

4 Plus costs incurred as follows:

5 (1) Clerk's filing fees in the amount of: \$ 355.00

6 (2) Process Server's fees in the amount of: \$ 209.90

7 Costs in a total sum of: \$ 564.90

8 For a total sum of ONE HUNDRED TWENTY-EIGHT THOUSAND ONE HUNDRED SIXTEEN
9 DOLLARS AND TWENTY-FIVE CENTS (\$128,116.25) due to VEDC

10 9. Defendants ALBERT GOLD and CAROLYN GOLD filed for Chapter 7
11 bankruptcy on January 27, 2010.

12 10. Defendant KENNETH GOLD filed for Chapter 7 bankruptcy on February
13 26, 2010.

14 VEDC is entitled to recover from Defendant, ANDREW GOLD, ONE HUNDRED
15 TWENTY-EIGHT THOUSAND ONE HUNDRED SIXTEEN DOLLARS AND TWENTY-FIVE
16 CENTS (\$128,116.25) plus interest accrued from February 20, 2010 at a rate of \$38.16 per
17 day. Exhibit 5.

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

20 Executed this ____ day of March, 2012, at Van Nuys, California.

21
22
23 _____
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 **AMENDED**
7 **NOTICE OF AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE,**
8 **FOR SUMMARY ADJUDICATION; MEMORANDUM OF POINTS AND AUTHORITIES IN**
9 **SUPPORT THEREOF; DECLARATION OF NILIMA KAPOOR (SEPARATE STATEMENT**
10 **OF UNDISPUTED FACTS AND SUPPORTING EVIDENCE FILED CONCURRENTLY**
11 **HEREWITH)** on interested parties in this action

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

14 *****SEE ATTACHED SERVICE LIST*****

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

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

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

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

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

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

JUSTINE C. HASENFRATZ

Signature

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

5 **SERVICE LIST**
6

7 KENNETH GOLD
8 15016 MOORPARK STREET
9 SHERMAN OAKS, CA 91403

10 ALBERT GOLD
11 18350 HATTERAS STREET, #168
12 TARZANA, CA 91356-1693

13 CAROLYN GOLD
14 18350 HATTERAS STREET, #168
15 TARZANA, CA 91356-1693

16 ANDREW GOLD
17 11586 KLING STREET
18 VALLEY VILLAGE, CA 91602

19 GBD GRAPHICS, INC. dba GOLD GRAPHICS MANUFACTURING COMPANY
20 c/o MITCHELL KAUFMAN – AGENT FOR SERVICE OF PROCESS
21 16633 VENTURA BLVD., SUITE 500
22 ENCINO, CA 91436
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27
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