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7 *Attorneys for Plaintiff*
8 *Stillwell Madison, LLC*

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**

11 Stillwell Madison, LLC, a Delaware limited liability company,) CASE NO.
12)
13 Plaintiff,) **COMPLAINT**
14)
15 v.) (Jury trial requested)
16)
17 Girardi & Keese, a California general partnership)
d/b/a Girardi/Keese; Thomas V. Girardi, and)
Erika N. Girardi, husband and wife,)
18 Defendants.)

18 Plaintiff Stillwell Madison, LLC (“Stillwell”), for its Complaint against Defendants
19 Girardi & Keese (“the Firm”), Thomas V. Girardi, and Erika N. Girardi, alleges as follows:

20 **NATURE OF THE ACTION**

21 1. This is an action for breach of contract and fraud arising out of the Firm and
22 Mr. Girardi’s false representations that induced Stillwell to loan more than \$5 million to the
23 Firm, and the Firm’s subsequent default of the loan agreement, which the Firm and Mr. Girardi
24 pledged to repay but have not.

25 2. Despite acknowledgment of the debt and repeated promises of repayment, the
26 Firm and Mr. Girardi’s assurances that the defaults will be cured have proven empty. Instead,
27 the Firm and Mr. Girardi have continued to evade their obligations under the loan and

1 subsequent forbearance agreement, forcing Stillwell to bring this action to enforce the terms
2 of the parties' agreements.

3 3. Further, upon information and belief, Mr. Girardi intended to and utilized funds
4 loaned by Stillwell, in whole or in part, for personal rather than business purposes, in abject
5 violation of the terms of the loan.

6 4. Upon information and belief, the Firm and Mr. Girardi intended at the time the
7 loan agreement was entered to use at least a portion of the loan funds to support Mr. Girardi
8 and his wife's high-end lifestyle, but concealed this fact from Stillwell.

9 5. To make matters worse, Stillwell has discovered that the Firm and Mr. Girardi
10 had recently been in default on another loan they received from a third party—a fact neither
11 the Firm nor Mr. Girardi disclosed to Stillwell before seeking and securing a forbearance
12 agreement from Stillwell.

13 6. As a result of the Firm and Mr. Girardi's breaches, Stillwell is seeking, among
14 other relief, its actual, consequential, and liquidated damages, attorneys' fees and costs, and
15 interest. Additionally, as a result of the Firm and Mr. Girardi's fraudulent conduct, Stillwell
16 is also seeking punitive damages.

17 **THE PARTIES**

18 7. Plaintiff Stillwell is a limited liability company formed in Delaware with its
19 principal place of business in Maricopa County, Arizona. All of Stillwell's members are
20 citizens of Arizona.

21 8. Upon information and belief, the Firm is a California general partnership doing
22 business as Girardi/Keese in Beverly Hills, California.

23 9. Upon information and belief, Mr. Girardi is a citizen of California, residing in
24 Pasadena, California. According to Mr. Girardi, he is the "100% owner" of the Firm with
25 no general partners.

26 10. At all relevant times, Mr. Girardi was acting on behalf of himself, his marital
27 community, and the Firm.

1 11. Defendant Erika N. Girardi is and was married to Mr. Girardi at all relevant
2 times. Upon information and belief, Mrs. Girardi is a citizen of California, residing in
3 Pasadena, California.

4 12. Mrs. Girardi is named herein based on her presumed community property
5 interest in the Firm and the actions of her husband, Mr. Girardi, taken for the benefit of their
6 marital community.

7 JURISDICTION AND VENUE

8 13. The Court has original subject matter jurisdiction over this action under 28
9 U.S.C. § 1332, in that it is a civil action in which the matter in controversy exceeds the sum
10 or value of \$75,000, exclusive of interest and costs, and is between citizens of different
11 states.

12 14. Venue is proper in this Court under 28 U.S.C. § 1391, in that a substantial part
13 of the events or omissions giving rise to the claim occurred in this judicial district.

14 FACTUAL ALLEGATIONS

15 The Loan Agreement

16 15. The Firm is a personal injury law firm that touts more than \$10 billion in
17 verdicts and settlements.

18 16. According to Mr. Girardi's biography on the Firm's website, Mr. Girardi "has
19 obtained numerous multi-million dollar verdicts and settlements, handling claims involving
20 wrongful death, commercial litigation, products liability, bad faith insurance, and toxic
21 torts."

22 17. Despite the ostensible success of the Firm and Mr. Girardi's law practice,
23 Mr. Girardi sought a loan from Stillwell purportedly for the purpose of funding the Firm's
24 operations.

25 18. On or about April 1, 2016, the Firm borrowed \$5,110,440.38 from Stillwell
26 pursuant to a written loan agreement (the "Loan Agreement"). **Exhibit 1.**

1 19. DGMGT, LLC, an Arizona limited liability company, agreed to act as the
2 administrator between the parties with respect to the Loan Agreement (the “Administrator”).

3 20. As repayment for the loan, the Firm assigned Stillwell the future proceeds from
4 certain of the Firm’s cases, which are listed in Exhibit B-1 to the Loan Agreement (the
5 “Client Portfolio”). Ex. 1 at ¶ 2.

6 21. The Firm acknowledged that the loan was an advance on the proceeds the Firm
7 anticipated receiving in connection with the Client Portfolio. Ex. 1 at ¶ 4.

8 22. As a condition to Stillwell’s consent to enter the Loan Agreement, Mr. Girardi
9 executed a personal declaration, dated March 31, 2016, avowing that in the event of default
10 of the Loan Agreement, he personally “shall owe the amount which will make [Stillwell]
11 whole under the terms of the [Loan] Agreement, plus an amount for [Stillwell’s] attorney
12 fees and cost[s] to obtain a judgment, interest on all amounts due subsequent to judgment
13 and liquidated damages as provided in the [Loan] Agreement.” Ex. 1 at Sch. G (“Personal
14 Declaration”).

15 23. The Firm additionally granted Stillwell a security interest in certain aspects of
16 the Client Portfolio, as set forth in the Loan Agreement (the “Collateral”). Ex. 1 at ¶ 3.

17 24. The Firm was accordingly required to disclose any pre-existing interest in the
18 Collateral, which was to be set forth on Exhibit B-2 to the Agreement (the “List of Secured
19 Interests”). Mr. Girardi, on behalf of the Firm, verified that the List of Secured Interests
20 was correct. Ex. 1 at Sch. B.

21 25. Among the creditors identified on the List of Secured Interests was third-party
22 Law Finance Group (“LFG”). Mr. Girardi verified that LFG’s only interest in the Collateral
23 was in what was known as the “Shell Cases.”

24 26. The Firm agreed to provide five-days written notice if: (1) the any creditor
25 agreements identified in the List of Secured Interests are changed or modified; (2) the Firm
26 did not pay any amount due under those agreements; or (3) the Firm committed an act that
27 is a default under any of those agreements. Ex. 1 at ¶ 8(b).

27. In addition, the Firm agreed to provide certain financial statements and reports detailing the status of the Client Portfolio. Ex. 1 at ¶ 8(f), (h).

28. The Loan Agreement provides, in no less than four places, that the loan funds may be used for “business purposes” only. Ex. 1 at Recitals; ¶¶ 4, 8(j), 19.

The Firm Defaults and Stilwell Agrees to Forbear

29. Upon information and belief, the Firm received certain proceeds from the Client Portfolio, but despite the prior assignment of said proceeds to Stillwell, the Firm failed to remit them.

30. Upon information and belief, Mr. Girardi re-directed all or part of the proceeds, to which Stillwell was contractually entitled, to himself and his wife in order to sustain their lavish lifestyle and maintain their glamorous public image.

31. To forestall Stillwell from enforcing its rights under the Loan Agreement, on August 28, 2018, Mr. Girardi proposed to the Administrator that he and the Firm would make monthly payments on the Loan in the amount of \$500,000.00, plus monthly interest, with the first payment due October 1, 2018, and the loan being paid in full by September 2019. **Exhibit 2.**

32. On August 30, 2018, Stillwell accepted Mr. Girardi’s proposal, resulting in an enforceable forbearance agreement (the “Forbearance Agreement”). **Exhibit 3.**

33. Unbeknownst to Stillwell, however, the Firm and Mr. Girardi had also defaulted on their loan with LFG and had entered a similar forbearance agreement just weeks before.

34. Pursuant to the Loan Agreement, the Firm is contractually obligated to provide Stillwell notice within five days if: (1) the any creditor agreements identified in the List of Secured Interests are changed or modified; (2) the Firm did not pay any amount due under those agreements; or (3) the Firm committed an act that is a default under any of those agreements

1 35. But the Firm did not provide any, let alone timely, notice of any of these
2 defaults, or of the fact of the forbearance agreement with LFG, as required by the Loan
3 Agreement.

4 36. Had Stillwell known this material fact—which the Firm was required to
5 disclose pursuant to the terms of the Loan Agreement—it would not have agreed to forbear
6 from enforcing its rights under the Loan Agreement.

7 37. Further, upon information and belief, at the time Mr. Girardi proposed the
8 terms of the Forbearance Agreement, neither he nor the Firm intended to make the promised
9 payments. Rather, upon information and belief, Mr. Girardi proposed and entered into the
10 Forbearance Agreement for the sole purpose of delaying Stillwell from taking legal against
11 him and his Firm without any return performance.

12 38. Consistent with the Firm and Mr. Girardi’s apparent intention, neither caused
13 the October 1, 2018 payment to be made in accordance with the Forbearance Agreement,
14 resulting in a breach of the same.

15 39. On December 2, 2018, Mr. Girardi contacted the Administrator with yet
16 another proposal and offered to make three payments of \$500,000.00 per month between
17 December 2018 and February 2019, with the loan balance to be paid in full by March 17,
18 2019.

19 40. Mr. Girardi caused the full December 2018 payment to be made to Stillwell,
20 but caused only \$250,000 to be paid in January 2019—\$250,000 less than what was
21 promised.

22 41. As of the date of this Complaint, despite demand, neither the Firm nor
23 Mr. Girardi have caused any further payments to be made to Stillwell.

24 42. On February 13, 2019, Stillwell requested copies of certain documents and
25 financial records from the Firm pursuant to Paragraph 8(b) and (h) of the original Loan
26 Agreement. As a courtesy to the Firm, the contractual time period to respond to the requests
27 was extended until February 27, 2019. The Firm did not respond to Stillwell’s request.

1 43. On March 25, 2019, the Firm and Mr. Girardi were provided written notice of
2 this additional material default of the Loan Agreement and given until April 5, 2019 to cure
3 such default. The Firm and Mr. Girardi did not respond.

4 44. Since that time, Mr. Girardi has approached the Administrator about the
5 possibility of another forbearance, but Mr. Girardi has never followed through on any of his
6 proposals—reinforcing the indication that he (nor the Firm) has, and continues to not have,
7 any intention of repaying the loan balance.

8 45. As of May 1, 2019, the Firm and Mr. Girardi owe Stillwell at least
9 \$3,454,804.00, exclusive of interest, administrative expenses, and other charges, and remain
10 in default.

11 **FIRST CAUSE OF ACTION**

12 **Breach of Contract (Girardi & Keese)**

13 46. Stillwell incorporates paragraphs 1 through 45 of its Complaint, as if fully set
14 forth herein.

15 47. The Loan Agreement and Forbearance Agreement constitute valid and
16 enforceable written contracts between Stillwell and the Firm.

17 48. Stillwell substantially performed its obligations under the Loan Agreement and
18 the Forbearance Agreement.

19 49. The Firm breached the Loan Agreement and the Forbearance Agreement by,
20 among other things, failing to make required payments; failing to disclose requested
21 financial statements; failing to provide notice of the defaults and forbearance of its loan from
22 LFG; and, upon information and belief, using the loan proceeds provided by Stillwell for
23 purposes other than the business of the Firm.

24 50. As a direct and proximate result of the Firm's breaches, Stillwell has been
25 damaged in an amount to be proven at trial.

1 **SECOND CAUSE OF ACTION**

2 **Breach of Contract (Thomas V. Girardi)**

3 51. Stillwell incorporates paragraphs 1 through 50 of its Complaint, as if fully set
4 forth herein.

5 52. Mr. Girardi's Personal Declaration attached to the Loan Agreement constitutes
6 a valid and enforceable written contract between Stillwell and Mr. Girardi whereby
7 Mr. Girardi agreed to be individually liable for the entire amount owed under the Loan
8 Agreement, plus attorneys' fees and costs, interest, and liquidated damages as provided in
9 the Loan Agreement.

10 53. In addition, the Forbearance Agreement constitutes a valid and enforceable
11 written contract between Stillwell and Mr. Girardi, whereby Mr. Girardi agreed to make
12 monthly payments of \$500,000.00 per month to Stillwell beginning on October 1, 2018.

13 54. Stillwell substantially performed its obligations under the Personal Declaration
14 and Forbearance Agreement.

15 55. Mr. Girardi breached his promises under the Personal Declaration and
16 Forbearance Agreement by, despite demand, failing to pay the amounts owed under the Loan
17 Agreement sufficient to make Stilwell whole, and by failing to make the promised monthly
18 payments under the Forbearance Agreement.

19 56. As a direct and proximate result of Mr. Girardi's breaches, Stillwell has been
20 damaged in an amount to be proven at trial.

21 **THIRD CAUSE OF ACTION**

22 **Fraud (Girardi & Keese and Thomas V. Girardi)**

23 57. The Firm, through Mr. Girardi in his capacity as its sole owner, and Mr. Girardi,
24 in his individual capacity, made certain representations to Stillwell, including but not limited
25 to, that Firm would use the loan funds for business purposes only, and that they intended to
26 make the promised payments under the Forbearance Agreement.

1 58. However, upon information and belief, the foregoing representations, which
2 were made with respect to the Firm and Mr. Girardi's financial condition, were false when
3 made.

4 59. Upon information and belief, the Firm and Mr. Girardi knew the
5 representations made to Stillwell were false.

6 60. Upon information and belief, the Firm and Mr. Girardi deceptively intended
7 Stillwell to rely and act upon the foregoing representations and omissions in order to obtain
8 a loan from Stillwell for more than \$5,000,000.00, and then transfer proceeds, in whole or
9 in part, to Mr. and Mrs. Girardi for their personal use instead of business purposes.

10 61. Upon information and belief, the Firm and Mr. Girardi also deceptively
11 intended Stillwell to rely and act upon the foregoing representations and omissions in order
12 to obtain a Forbearance Agreement that they never intended to honor.

13 62. The Firm and Mr. Girardi's representations were material to the Loan
14 Agreement because Stillwell would not have provided the Loan had it known that
15 Defendants were going to use the Loan proceeds to, upon information and belief, support
16 Mr. and Mrs. Girardi's high-end lifestyle.

17 63. The Firm and Mr. Girardi's representations and omissions were material to the
18 Forbearance Agreement because Stillwell would not have agreed to forbear from enforcing
19 its rights under the Loan Agreement had it known (1) the Firm and Girardi had defaulted on
20 their loan from LFG and (2) the Firm nor Mr. Girardi intended to make the promised
21 payments under the Forbearance Agreement.

22 64. The Firm and Mr. Girardi's conduct was intentional and willfully indifferent.

23 65. Stillwell relied on the truth of the Firm and Mr. Girardi's representations in
24 entering the Loan Agreement and the Forbearance Agreement.

25 66. Stillwell's reliance on the Firm and Mr. Girardi's representations was
26 reasonable and justified under the circumstances.

