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ATTORNEY FOR LEON HURST
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6 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
7 DALLAS DIVISION

8 In re:

Civil Action No.3:00-CV-1405-M

9 Michael J. Quilling, Receiver for
Hammersmith Trust, LLC,
10 Hammersmith Trust, Ltd.,
Microfund, LLC and
11 Bridgeport Alliance, LLC

12 Plaintiff

13 vs.

14 Adam Shaw, et al.

15 Defendants
16

17 Leon Hurst

18 Counterclaim- Plaintiff

19 vs.

Date of Hearing: NA
Time of Hearing: NA

20 Michael J. Quilling, Receiver for
Hammersmith Trust, LLC,
21 Hammersmith Trust, Ltd.,
Microfund, LLC and
22 Bridgeport Alliance, LLC

23 Counterclaim-Defendants
24

25 ORIGINAL ANSWER AND COUNTERCLAIM OF
LEON HURST

26 TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

27 COMES NOW Leon Hurst, Defendant and Counterclaim-Plaintiff in this action, by and through
28

1 his counsel of record, Donald J. Christie, and pursuant to Rule 7, Rule 8 and Rule 13 of the Federal
2 Rules of Civil Procedure files this his Original Answer and Counterclaim and as grounds therefore
3 states as follows:

4 Response by Paragraph

5 Parties

6 1. Defendant lacks sufficient information as to the allegations contained in paragraph 1 of the
7 complaint and therefore denies the same.

8 2. Defendant lacks sufficient information as to the allegations contained in paragraph 2 of the
9 complaint and therefore denies the same.

10 3. Defendant lacks sufficient information as to the allegations contained in paragraph 3 of the
11 complaint and therefore denies the same.

12 4. Defendant lacks sufficient information as to the allegations contained in paragraph 4 of the
13 complaint and therefore denies the same.

14 5. Defendant lacks sufficient information as to the allegations contained in paragraph 5 of the
15 complaint and therefore denies the same.

16 6. Defendant lacks sufficient information as to the allegations contained in paragraph 6 of the
17 complaint and therefore denies the same.

18 7. Defendant admits that he is an individual resident and citizen of the State of Florida and
19 denies the balance of the allegations contained in paragraph 7 of the Complaint.

20 8. Defendant lacks sufficient information as to the allegations contained in paragraph 8 of the
21 complaint and therefore denies the same.

22 9. Defendant lacks sufficient information as to the allegations contained in paragraph 9 of the
23 complaint and therefore denies the same.

24 10. Defendant lacks sufficient information as to the allegations contained in paragraph 10 of the
25 complaint and therefore denies the same.

26 11. Defendant lacks sufficient information as to the allegations contained in paragraph 11 of the
27 complaint and therefore denies the same.

28 12. Defendant lacks sufficient information as to the allegations contained in paragraph 12 of

1 the complaint and therefore denies the same.

2 13. Defendant lacks sufficient information as to the allegations contained in paragraph 13 of the
3 complaint and therefore denies the same.

4 14. Defendant lacks sufficient information as to the allegations contained in paragraph 14 of the
5 complaint and therefore denies the same.

6 15. Defendant lacks sufficient information as to the allegations contained in paragraph 15 of the
7 complaint and therefore denies the same.

8 16. Defendant lacks sufficient information as to the allegations contained in paragraph 16 of the
9 complaint and therefore denies the same.

10 17. Defendant lacks sufficient information as to the allegations contained in paragraph 17 of the
11 complaint and therefore denies the same.

12 18. Defendant lacks sufficient information as to the allegations contained in paragraph 18 of the
13 complaint and therefore denies the same.

14 19. Defendant lacks sufficient information as to the allegations contained in paragraph 19 of the
15 complaint and therefore denies the same.

16 **Jurisdiction and Venue**

17 20. To the extent that paragraph 20 of the complaint contains conclusions of law, such
18 conclusions require no response. Defendant, however, denies that the Order Appointing Receiver grants
19 this Court jurisdiction over the subject matter of this action, denies that this action constitutes a
20 "Receivership Asset" as defined in said order, and denies the factual allegations contained in paragraph
21 20 of the complaint.

22 21. To the extent that paragraph 21 of the complaint contains conclusions of law, such
23 conclusions require no response. Defendant, however, denies, even if subject matter jurisdiction lies
24 in this Court, that Venue is proper in this Court as the contract underlying this action was between
25 citizens of the State of Florida and the State of Kentucky. Defendant denies the factual allegations
26 contained in paragraph 21 of the complaint.

27 **Background Facts**

28 22. Defendant lacks sufficient information as to the allegations contained in paragraph 22 of

1 the complaint and therefore denies the same.

2 23. Defendant lacks sufficient information as to the allegations contained in paragraph 23 of
3 the complaint and therefore denies the same.

4 24. Defendant lacks sufficient information as to the allegations contained in paragraph 24 of
5 the complaint and therefore denies the same.

6 25. Defendant lacks sufficient information as to the allegations contained in paragraph 25 of the
7 complaint and therefore denies the same.

8 26. Defendant lacks sufficient information as to the allegations contained in paragraph 26 of the
9 complaint and therefore denies the same.

10 27. Defendant denies that the funds invested by him were third party funds and Defendant lacks
11 sufficient information as to the balance of the allegations contained in paragraph 27 of the complaint
12 and therefore denies the same.

13 **COUNT ONE**

14 **Constructive Trust and Disgorgement**

15 28. Answering Paragraph 28 of the First Count of the complaint, Defendant repeats,
16 incorporates and realleges his answers to paragraphs 1 through 27 above.

17 29. To the extent that paragraph 29 of the complaint contains conclusions of law, such
18 conclusions require no response. Defendant denies the factual allegations contained in paragraph 29
19 of the complaint.

20 30. To the extent that paragraph 30 of the complaint contains conclusions of law, such
21 conclusions require no response. Defendant denies the factual allegations contained in paragraph 30
22 of the complaint.

23 **COUNT TWO**

24 **Aiding and abetting Breach of Fiduciary Duty**

25 31. Answering Paragraph 31 of the Count Two of the complaint, Defendant repeats,
26 incorporates and realleges his answers to paragraphs 1 through 30 above.

27 32. To the extent that paragraph 32 of the complaint contain conclusions of law, such
28 conclusions require no response. Defendant lacks sufficient information as to the factual allegations

1 contained in paragraph 32 of the complaint and therefore denies the same.

2 33. To the extent that paragraph 33 of the complaint contains conclusions of law, such
3 conclusions require no response. Defendant denies that he was an agent or broker. Defendant lacks
4 sufficient information as to the factual allegations contained in paragraph 33 of the complaint and
5 therefore denies the same.

6 34. To the extent that paragraph 34 of the complaint contains conclusions of law, such
7 conclusions require no response. Defendant denies that he was an agent or broker. Defendant lacks
8 sufficient information as to the factual allegations contained in paragraph 34 of the complaint and
9 therefore denies the same.

10 **COUNT THREE**

11 **Aiding and abetting Corporate Waste**

12 35. Answering Paragraph 35 of the Count Three of the complaint, Defendant repeats,
13 incorporates and realleges his answers to paragraphs 1 through 34 above.

14 36. To the extent that paragraph 36 of the complaint contains conclusions of law, such
15 conclusions require no response. Defendant denies that he was an agent or broker. Defendant lacks
16 sufficient information as to the factual allegations contained in paragraph 36 of the complaint and
17 therefore denies the same.

18 37. To the extent that paragraph 37 of the complaint contains conclusions of law, such
19 conclusions require no response. Defendant denies that he was an agent or broker. Defendant lacks
20 sufficient information as to the factual allegations contained in paragraph 37 of the complaint and
21 therefore denies the same.

22 **COUNT FOUR**

23 **Fees, Expenses, Cost and Interest**

24 38. Answering Paragraph 38 of the Count Three of the complaint, Defendant repeats,
25 incorporates and realleges his answers to paragraphs 1 through 37 above.

26 39. To the extent that paragraph 39 of the complaint contains conclusions of law, such
27 conclusions require no response. Defendant denies that he was an agent or broker. Defendant lacks
28 sufficient information as to the factual allegations contained in paragraph 39 of the complaint and

1 therefore denies the same.

2 40. Plaintiffs' causes of action appear to be in equity rather than at law. Defendant, therefore,
3 denies Plaintiffs' right to Trial by Jury.

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 41. Defendant pleads the defense of Statute of Frauds.

7 **SECOND AFFIRMATIVE DEFENSE**

8 42. Defendant pleads the defense of Statute of Limitations.

9 **THIRD AFFIRMATIVE DEFENSE**

10 43. Defendant pleads the defense of fraud.

11 **FOURTH AFFIRMATIVE DEFENSE**

12 44. Defendant pleads the defense of estoppel.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 45. Defendant pleads the defense of failure to plead fraud with specificity.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 46. Defendant pleads the defense of failure to state a claim upon which judgment can be
17 granted.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 47. Defendant pleads the defense of lack of jurisdiction over the subject matter.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 48. Defendant pleads the defense of lack of jurisdiction over the person.

22 **NINTH AFFIRMATIVE DEFENSE**

23 49. Defendant pleads the defense of improper venue.

24 **TENTH AFFIRMATIVE DEFENSE**

25 50. Defendant pleads the defense of insufficiency of process and service of process.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 51. Defendant pleads the defense of Setoff.

28 **COUNTERCLAIMS**

1 COMES NOW plaintiff LEON HURST , pursuant to Rule 13 of the Federal Rules of Civil
2 Procedure for his Counterclaims against counterclaim-defendants and complains and alleges as
3 follows:

4 **FIRST COUNTERCLAIM**

5 **(Offset for Breach of contract)**

6 52. Hurst incorporates herein by reference as though fully set forth at length each and every
7 allegation and statement contained in paragraphs 1 through 51, above.

8 53. On or about March 6, 1977 Hurst entered into an agreement between himself and
9 counterclaim-defendant Hammersmith Trust, LLC (the "LLC"). All funds delivered to the LLC by Hurst
10 were obtained by Hurst from his own retirement funds.

11 54. The LLC failed to perform under and breached the agreement thereby causing Hurst sever
12 and substantial damages which shall be proven at trial. The amount of the damages sustained by Hurst
13 exceeds the damages claimed by the Receiver and are offset against any claim of the Receiver who, as
14 assignee of the LLC is subject to the damages sustained by Hurst from the actions of the LLC.

15 **SECOND COUNTERCLAIM**

16 **(Offset for Misrepresentation)**

17 55. Hurst incorporates herein by reference as though fully set forth at length each and every
18 allegation and statement contained in paragraphs 1 through 54, above.

19 56. On information and belief, the LLC knowingly and intentionally misrepresented to Hurst
20 the facts surrounding its ability to perform in order to gain valuable consideration from Hurst thereby
21 causing Hurst sever and substantial damages which shall be proven at trial. The amount of the damages
22 sustained by Hurst exceeds the damages claimed by the Receiver and are offset against any claim of
23 the Receiver who, as assignee of the LLC is subject to the damages sustained by Hurst from the actions
24 of the LLC.

25 **THIRD COUNTERCLAIM**

26 **(Offset for Fraudulent Inducement)**

27 57. Hurst incorporates herein by reference as though fully set forth at length each and every
28 allegation and statement contained in paragraphs 1 through 56, inclusive, above.

1 58. At the time the LLC entered into the agreement with Hurst, the LLC knew that it would
2 not be able to fully perform under the agreement. The LLC fraudulently failed to disclose such facts to
3 Hurst in order to induce Hurst to enter into the agreement. The amount of the damages sustained by
4 Hurst exceeds the damages claimed by the Receiver and are offset against any claim of the Receiver
5 who, as assignee of the LLC is subject to the damages sustained by Hurst from the actions of the LLC.


6 **ATTORNEYS FEES**

7 59. In order to defend this action, it has been necessary that the Defendant retain the services
8 of an attorney and a reasonable sum for attorney's fees should be awarded to Defendant.

9
10 WHEREFORE, Defendant, expressly reserves its right to amend the Answer before or at the
11 time of trial of the action herein, to bring additional counterclaims to include all items of damages not
12 yet ascertained, and prays that the Court enter an order denying Plaintiffs the relief requested in the
13 Complaint and holding in favor of Defendant for reasonable attorneys' fees incurred herein; for costs
14 of suit incurred herein; and for such other and further relief as the Court deems just and proper.

15
16 Dated: April 9, 2001

17 Respectfully Submitted By

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19 
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23 Las Vegas, NV 89101
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25 Fax No. (702) 384-2270
26 ATTORNEY FOR LEON HURST
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Certificate of Service

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I, Donald J. Christie hereby certify that a true and correct copy of the foregoing Original Answer and Counterclaim was sent on April 9, 2001 by Federal Express, Overnight Delivery, all charges paid by sender, to:

Kenneth A. Hill, Esq.
Quilling, Selander, Cumiskey & Lownds, P.C.
2001 Bryan Street, Suite 1800
Dallas, TX 75201-4240

