

Cause No. 11-5644

Sync Point Post, LLC, § IN THE DISTRICT COURT  
Plaintiff, §  
v. § OF DALLAS COUNTY, TEXAS  
Mendelson Entertainment Group, LLC, §  
Defendant. § 14th JUDICIAL DISTRICT

PLAINTIFF'S SECOND AMENDED PETITION & REQUEST FOR DISCLOSURE

A. Discovery-Control Plan

1. Plaintiff intends to conduct discovery under Level 1 of Texas Rule of Civil Procedure 190.2 because this suit involves only monetary relief totaling \$50,000 or less, excluding court costs, prejudgment interest, and attorney fees.

B. Parties

2. Plaintiff is Sync Point Post, LLC, a Texas Corporation.

3. Defendant, Mendelson Entertainment Group, LLC, a Texas corporation whose registered office is 3303 Blackburn St, Apt. 406, Dallas, Texas, 75204-1560, Dallas County, Texas, may be served with process by serving it President, Barry Mendelson, at that address.

C. Jurisdiction

4. Jurisdiction is proper in this court because defendant maintains its offices and conducts business in Texas.

D. Venue

5. Venue is proper in Dallas County under Texas Civil Practice & Remedies Code section 15.002 because all or a substantial part of the events or omissions occurred in Dallas County.

E. Facts

6. Between approximately July of 2007 and December of 2010, Plaintiff performed video production and post-production services for and delivered final edited products, in the form of a videotape, DVD or similar medium, to Defendant. The work was performed at Plaintiff's offices and studio, located in Dallas County, Texas.

7. From October of 2009 until November of 2010, Plaintiff produced a series of approximately 12 video programs, delivery of which Defendant accepted with a promise to pay the amounts due within a specified time.

8. Defendant made partial payment on one of the programs, leaving a balance due on that program. Defendant has failed to make any payment on approximately 11 other programs.

Despite requests for payments and a demand letter, Defendant has refused to make payment.

#### F. Count 1 – Suit on Sworn Account

9. Plaintiff sold services to defendant on an open account. Defendant accepted the final products of the services and became bound to pay plaintiff its designated charges, which were according to the terms of the parties' agreements.

9. Plaintiff attaches a record of the account and the required affidavit as Exhibit A and incorporates it by reference. The account accurately sets forth the services plaintiff provided to defendant and identification of each final product provided, the dates of delivery of the final products, and the date payment was due on each of the delivered final products. The account represents a record of the series of transactions that is similar to and accurately reflects the records plaintiff systematically keeps in the ordinary course of business.

10. After the final products were delivered, Defendant made partial payment on one, leaving a balance due. Defendant did not make any payments to Plaintiff for the remaining final products.

11. This claim is just and true, it is due, and all just and lawful offsets, payments, and credits have been allowed. Plaintiff attaches an affidavit verifying these facts as Exhibit B and incorporates it by reference.

12. The principal balance due on the account is \$35,200.00.

13. Attorney fees. Plaintiff is entitled to recover reasonable attorney fees under Texas Civil Practice & Remedies Code chapter 38 because this is a suit on an account, which is listed in section 38.001(7). Plaintiff retained counsel, who presented plaintiff's claim to Defendant. Defendant did not tender the amount owed within 30 days of when the claim was presented.

#### G. Count 2 – Breach of Contract

14. In the alternative to Count 1, defendant breached Defendant's contract with Plaintiff. Plaintiff reasserts paragraphs 6 – 13 and incorporates them here by reference.

15. For each project Plaintiff produced for Defendant, Plaintiff and Defendant entered into a valid and enforceable oral contract that was performable within one year. The agreement of each contract was attested to and documented by budgets prepared by Plaintiff and approved by Defendant, approval by Defendant of each final product, presentation of a prepared invoice to Defendant, and acceptance of final product by Defendant for shipping and distribution.

16. Plaintiff fully performed Plaintiff's contractual obligations by producing each product as specified and approved, doing so by deadline, and doing so for the agreed amount.

17. Defendant breached the contract by failing to pay for approximately 11 projects, and making only partial payment on one.

18. Defendant's breach caused injury to Plaintiff, which resulted in expectation damages due to Defendant's failure to pay the amounts due.

19. Plaintiff seeks liquidated damages in the amount of at least \$35,200.00, which is within the jurisdictional limits of this court.

#### H. Count 3 – Quantum Meruit

20. In the alternative to Count 1, defendant accepted services from Plaintiff without compensating Plaintiff. Plaintiff reasserts paragraphs 6 – 19 and incorporates them here by reference.

21. Plaintiff provided Defendant with services in the form of edited final products, each of which Defendant accepted.

22. Plaintiff provided the services for defendant's benefit. Defendant distributed and earned profits from the edited final products provided by Plaintiff.

23. Defendant knew or should have known that Plaintiff expected compensation when defendant accepted the services. Defendant had agreed to the amounts due, was served invoices stating the amounts due, and accepted delivery of the edited final products provided by Plaintiff.

24. Because Plaintiff expected compensation, Defendant's acceptance of the edited final products without payment resulted in the loss of revenues expected for the work performed.

25. Plaintiff seeks liquidated damages in the amount of at least \$35,200.00, which is within the jurisdictional limits of this court.

26. Attorney fees. Plaintiff is entitled to recover reasonable attorney fees under Texas Civil Practice & Remedies Code section 38.001(1)-(3) because this suit is for quantum meruit. Plaintiff retained counsel, who presented Plaintiff's claim to Defendant. Defendant did not tender the amount owed within 30 days of when the claim was presented.

#### I. Jury Demand

27. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

#### J. Conditions Precedent

28. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

#### K. Request for Disclosure

29. Under Texas Rule of Civil Procedure 194, plaintiff requests that defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

L. Prayer

30. For these reasons, plaintiff asks that the court issue citation for defendant to appear and answer, and that plaintiff be awarded a judgment against defendant for the following:

- a. \$35,200.00 as the amount due on the account.
- b. Prejudgment and postjudgment interest.
- c. Court costs.
- d. Attorney fees.
- e. All other relief to which plaintiff is entitled.

The Gormly Law Firm

By:

  
Eric Kevin Gormly

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Dallas, Texas 75231

Telephone: 214-242-0596

Fax: 214-739-8959

ATTORNEY FOR PLAINTIFF,  
SYNC POINT POST, LLC

CERTIFICATE OF SERVICE

I certify that a true and correct copy of Plaintiff's Second Amended Petition was served on Defendant, Barry Mendelson, President of Mendelson Entertainment Group, through counsel of record, Eunice Nakamura, whose address is 1601 Elm Street, Suite 4100, Dallas, Texas, 75201, by fax, to fax number 214-979-7402 on June 28, 2011, before 5:00 p.m. local time of the recipient.

  
Eric K. Gormly

NO. 11-5644

**Sync Point Post, LLC,  
Plaintiff**

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**IN THE DISTRICT COURT  
  
14TH JUDICIAL DISTRICT  
  
OF DALLAS COUNTY, TEXAS**

v.

**Mendelson Entertainment Group, LLC  
Defendant**

**STATE OF TEXAS §  
DALLAS COUNTY §**

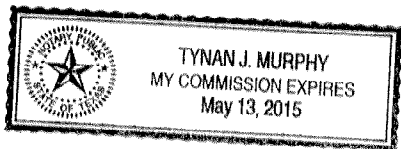
**AFFIDAVIT OF FACTS SUPPORTING SUIT ON SWORN ACCOUNT**

Before me, the undersigned notary, on this day personally appeared Robin Gormly, the affiant, a person whose identity is known to me. After I administered an oath, affiant testified:

1. "My name is Robin Gormly. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am the President of Sync Point Post, LLC.
3. Plaintiff in this case is Sync Point Post, LLC.
4. Defendant in this case is Mendelson Entertainment Group, LLC.
5. This action is based on the business dealings between the parties, of which a systematic record was kept.
6. This action is for services performed and delivery of the final products of those services.
7. The principle balance of \$35,200 is due on the account, which is attached to the petition as Exhibit B and incorporated by reference. That amount is just and true, it is due, and all just and lawful offsets, payments, and credits have been allowed."

*Robin Gormly*  
\_\_\_\_\_  
Robin Gormly, Affiant

Sworn to and subscribed before me by Robin Gormly on June 28, 2011.



*Tynan J. Murphy*  
\_\_\_\_\_  
Notary Public in and for  
the State of Texas

Accounting for Services Performed

Re: Suit on Account/Breach of Contract for Non-Payment

Services performed under contract by:  
Robin Gornly, President, Sync Point Post LLC, 1251 S. Sherman, Suite 106, Dallas, Texas 75081

Services performed for:  
Barry Mendelson, President, Mendelson Entertainment Group, LLC, 3303 Blackburn St. Apt. 406, Dallas, TX 75204

Nature of Services Performed:  
Editing and Post-Production of sports-oriented programs.

	<u>Show Title</u>	<u>Ship Date</u>	<u>Cost</u>	<u>Amt. Paid</u>	<u>Balance</u>	<u>Payment Due</u>
<u>Series: Football 2009</u>						
1	OU vs. Texas	10/1/2009	\$9,000	\$0	\$9,000	12/01/2009
<u>Series: Football 2010</u>						
1	Bobby Bowden	8/24/2010	\$2,050	\$2,000	\$50	10/8/2010
2	3 QBs	8/31/2010	\$4,250	\$0	\$4,250	10/15/2010
3	OU vs. Texas	9/21/2010	\$900	\$0	\$900	11/5/2010
4	Miami vs. FSU	9/28/2010	\$3,000	\$0	\$3,000	11/12/2010
5	Nick Saban	10/12/2010	\$2,500	\$0	\$2,500	11/26/2010
6	Georgia vs. Florida	10/19/2010	\$2,500	\$0	\$2,500	12/3/2010
7	Derrick Dooley	10/26/2010	\$2,500	\$0	\$2,500	12/10/2010
8	Auburn vs. Alabama	11/2/2010	\$3,000	\$0	\$3,000	12/17/2010
9	Clemson vs. SC	11/2/2010	\$2,500	\$0	\$2,500	12/17/2010
10	Ohio State vs. Mich	11/9/2010	\$2,500	\$0	\$2,500	12/24/2010
11	Notre Dame vs. USC	11/16/2010	\$2,500	\$0	\$2,500	12/31/2010
	<b>TOTAL DUE</b>				<b>\$35,200</b>	