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

10 MICHAL STORY, an Individual,

11 Plaintiff,

12 vs.

13 DAVID CARLSON, an Individual and
14 FILM FOETUS, INC., and DOES 1
15 THROUGH 100.

16 Defendants.

Case No.: 21STCV29163

JUDGE: Hon.

COMPLAINT FOR DAMAGES:

- 17 1- Breach of Contract
- 18 2- Breach of the Implied Covenant of
- 19 Good Faith and Fair Dealing
- 20 3- Fraud
- 21 4- Common Count
- 22 5- Accounting
- 23 6- Constructive Fraud
- 24 7- Intentional Interference with Economic
- 25 Relationship
- 26 8- Conversion

UNLIMITED JURISDICTION
DAMAGES EXCEED \$25,000

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1 Michal Story, hereinafter referred to as "Story" or "Plaintiff," alleges:

2 Background

3 1. David Carlson, an individual, hereinafter referred to as "Carlson" or
4 "Defendant," is a self-styled producer of documentaries.

5 2. Film Foetus, Inc., is a corporation wholly owned by Carlson.

6 3. Joe Frank, hereinafter referred to as "Frank," was a performer on public radio for
7 39 years, from 1976 to 2015 and created a catalogue of over 230 radio programs. The
8 shows became extremely popular. During that time, he developed a loyal following of
9 tens of thousands of listeners to his weekly radio show aired on National Public Radio
10 stations nationwide, in addition to being simulcast worldwide. In conjunction with
11 creating, producing and narrating his shows, he performed live – all of which were sold
12 out – during those years in cities across the country. Frank was the recipient of
13 numerous awards including an Emmy and a Peabody.

14 4. Frank, to whom Plaintiff was married, and Plaintiff entered into a written
15 agreement effective June 30, 2017 with Film Foetus, Inc. The written contract was
16 denominated to be a Production Agreement. **Exhibit 1.**

17 5. Frank, Plaintiff's husband, died in January 2018 and Plaintiff became the sole
18 successor in interest to Frank and sole party to the contract with Film Foetus, Inc.

19 The Production Agreement

20 6. The purpose of the Production Agreement was to develop a feature length
21 documentary based on the life, radio broadcasts and writings of Frank to be directed by
22 Carlson and to be produced by Film Foetus, Inc. The documentary is known as "Joe
23 Frank—Somewhere Out There."

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1 7. The parties co-owned an undivided fifty percent interest in and to all right, title
2 and interest in and to the documentary, including the copyright, all proceeds from the
3 exploitation thereof and all ancillary and related rights. All applicable copyright
4 registrations and trademark registrations of the documentary's title are required to be in
5 the name of both Plaintiff and Film Foetus, Inc. Film Foetus, Inc. had the right to
6 determine how the completed documentary would be distributed, but only after full
7 and meaningful consultation with Plaintiff. Film Foetus, Inc. had the right to act on
8 behalf of Plaintiff but only after full and meaningful consultation with Plaintiff.

9 8. Film Foetus, Inc., was provided access to materials about Frank's life and based
10 thereon was to finance the project or secure financing for production of the
11 documentary and to provide producing, directing, editing and other necessary services
12 in connection with the production and exploitation of the picture.

13 9. It was agreed that the only funding required to complete the documentary was
14 the amount required to license the musical compositions and/or sound recordings to be
15 incorporated into the picture and to complete post-production for the picture.

16 10. Film Foetus, Inc., was to deliver the director's cut of the picture to Frank who
17 thereafter furnished written notes following receipt of the applicable cut. Film Foetus,
18 Inc., was then required to edit the documentary in accordance with those written notes.

19 11. The parties were to meaningfully consult on a regular basis on all aspects of the
20 production, including but not limited to distribution and exploitation of the
21 documentary. Film Foetus, Inc., was to conduct a crowdfunding campaign to raise
22 \$65,000 in post-production funding. Each party was to be credited in the documentary
23 as an individual producer.

24 12. Film Foetus, Inc., was to provide development and production services including
25 post-production expenses, legal expenses, accounting expenses, and financing costs
26 with the actual, verifiable third party costs of these items. These costs as well as
27 Defendants' reimbursable costs, up to \$96,000 to finish the film if verifiable receipts
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1 were provided, were to be contained in periodic reports including gross revenues
2 received.

3 13. Neither Film Foetus, Inc., nor Carlson nor Plaintiff are to receive a producing fee
4 and other fees for services.

5 14. The contract provides that gross receipts as defined therein shall be divided 50:50
6 between Film Foetus, Inc., and Frank/Story.

7 15. The contract between the parties provides that the prevailing party, in the event
8 of litigation, shall receive reasonable attorney's fees and associated costs including
9 expert witness fees.

10 Parties/Jurisdiction/Venue

11 16. Plaintiff, an Individual, is a resident of Los Angeles County, California.

12 17. Defendant Carlson is a resident of Winnetka, Illinois. Plaintiff is informed and
13 believes that Film Foetus, Inc., is an Illinois corporation.

14 18. The agreement provides that venue shall be where the party who initiates the
15 arbitration, which is defined to be the city and state where the party initiating the
16 arbitration resides.

17 Arbitration

18 19. Plaintiff Story initiated arbitration in Los Angeles, California in accordance with
19 the arbitration provision contained in the production agreement. The arbitration
20 provision designates JAMS to conduct the arbitration.

21 20. Plaintiff had tendered not only her filing fees, but also Defendants' filing fees
22 because Defendants refused to do so.

23 21. The parties could not agree on an arbitrator. Plaintiff submitted four names and
24 Defendants submitted just one name.

25 22. JAMS thereupon proposed that the parties proceed with a strike/rank process
26 which is the standard procedure if an arbitrator is not otherwise selected. A copy of
27 that proposal is attached as **exhibit 2**.

1 23. Per **exhibit 3**, Defendants objected to the selection of an arbitrator via strike/rank
2 thereby waiving enforcement of the arbitration provision.

3 24. After Defendants “rejected” the strike/rank process, JAMS breached its
4 agreement with Plaintiff by refusing to proceed with the arbitration even though fees
5 for all parties had been paid by Plaintiff. The breach by JAMS is set forth in **exhibit 4**.
6 After refusing to conduct the arbitration, JAMS initially refused to return Plaintiff’s
7 fees. Only after extremely strenuous objections by Plaintiff did the case manager state
8 she would talk to her superiors. The fees were ultimately reimbursed.

9 25. It serves no purpose to utilize a different agency because:

10 (a) Only JAMS is identified in the Production Agreement, and

11 (b) Having successfully aborted the arbitration, Defendants would again
12 attempt to sabotage the arbitration.

13 Facts Common to Causes of Action

14 26. Film Foetus, Inc. and Carlson have at least four bank accounts and routinely
15 transfer funds from one account to another without identifying the source of the funds
16 or the purpose of the multiple transfers of funds.

17 27. Carlson formed Joe Frank Movie, LLC and all funds generated by the
18 documentary from any source were to be deposited into the Joe Frank Movie bank
19 account. Carlson also formed a PayPal Account in the name of the movie. No
20 documentation has ever been provided with regard to the formation of and concerning
21 the bank accounts or the LLC. Carlson has provided some copies of bank statements for
22 the LLC – but bank statements do not explain deposits or withdrawals. There is no way
23 to know the source of the deposits or reasons for the withdrawals. Carlson’s providing
24 some “reports” of the PayPal account, without Plaintiff’s having access to the account is
25 not trustworthy because statements can be tampered with.

26 28. Carlson has acknowledged he received \$75,000 from an investor. Carlson has not
27 disclosed where that money is and it does not appear in any budget spreadsheets. The
28 budgets are not reliable. Apart from the lack of contractually required meaningful

1 consultation with Plaintiff, costs associated with, among other things, insurance, Title
2 Search, Copyright, Post-Production, DCP Master, Festival submissions are not costs
3 associated with finishing the film. Previously Carlson acknowledged he had secured
4 financing for these categories such that any additional post-production financing served
5 to withhold monies due to plaintiff because of the duplication of charges.

6 29. From and after February 1, 2018 all expenses related to production and
7 exploitation of the film were the responsibility of the Defendants. All costs related to
8 the film have been reimbursed to Defendants regardless of the February 1, 2018 cutoff.

9 30. The contract provided that Defendants consult with Plaintiff meaningfully with
10 respect to myriad issues. This never occurred with Defendants believing that informing
11 Plaintiff after the fact of their action satisfied the contractual provision. Among these
12 failures on the part of Defendants was Defendants' self-distributing, failure to consult
13 regarding budgets, changes to the budget, final budget and monies raised.

14 31. Defendants failed to render accountings or verifiable costs.

15 32. Defendants have failed to identify Plaintiff as a 50% co-owner of the project, 50%
16 owner of the copyright. Nor have they provided the copyright application or other
17 paperwork associated with it.

18 33. Defendants have acted as if they were the sole owner of the Joe Frank Movie
19 with no obligation or responsibility to report to or consult with Plaintiff, and acting as if
20 they had no responsibilities or obligations to Plaintiff.

21 34. Defendants submitted multiple budgets without consulting Plaintiff and the
22 multiple budgets taken together are inconsistent, incomprehensible and untrustworthy.
23 Nothing has been verified.

24 35. Defendants failed to show verifiable music licensing costs.

25 36. Plaintiff has been denied access to where financing for post-production has been
26 deposited, access to the Quiver account (streaming video on demand platform) because
27 it is in Defendants' business name rather than Joe Frank Movie, LLC, and has been
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1 denied verifiable access to revenues received, including but not limited to, from
2 Amazon VOD, revenues received from YouTube, and revenues received from Vimeo.

3 37. Defendant has not produced, including but not limited to, canceled checks,
4 deposited for the Joe Frank picture, and credit card receipts for purchases made for the
5 Joe Frank picture.

6 38. Defendant David Carlson is the owner of shares of stock of Defendant Film
7 Foetus, Inc. Plaintiff is informed and believes and thereon alleges that the shares
8 owned by David Carlson constitute 100% of the total number of shares issued and
9 outstanding.

10 39. There existed a unity of interest and ownership between Defendant David
11 Carlson and Defendant corporation Film Foetus, Inc., such as any individuality and
12 separateness between Defendant David Carlson and Defendant Film Foetus, Inc. has
13 ceased, and Defendant Film Foetus, Inc. is the alter ego of David Carlson and that
14 David Carlson controls and dominates Film Foetus, Inc.

15 40. To recognize the separate existence of the Defendant's corporation as an entity
16 distinct from David Carlson would constitute an abuse of the corporate privilege and
17 would sanction fraud. Carlson has engaged in bad faith in his attempt to use the
18 corporate form to enable him to collect revenues intended for Film Foetus so as to
19 enable him to enrich himself by not making required distributions to Plaintiff so as to
20 destroy the separate identity of Film Foetus, Inc.

21 FIRST CAUSE OF ACTION

22 (Breach of Contract against David Carlson and Film Foetus, Inc.)

23 41. The allegations of paragraph 1 through 40 are incorporated herein by reference.

24 42. Plaintiff has performed all conditions, covenants and promises required on her
25 part to be performed in accordance with the terms and conditions of the written
26 contract.

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1 43. From and after September 2019, Defendants breached the contract by:

- 2 (a) Failing to report and to account to Plaintiff including the failure to furnish
3 verifiable costs,
4 (b) Commingling funds from the Film Foetus bank account with at least three
5 other bank accounts in the name of David Carlson or otherwise accessed
6 and controlled only by David Carlson,
7 (c) Not depositing revenues into the Joe Frank Movie LLC, bank account,
8 (d) Not identifying investors or reporting all monies raised,
9 (e) Self-distributing in which meaningful consultation was required, which
10 did not occur,
11 (f) Not according producer credit,
12 (g) Created serial budgets all inconsistent with one another and changing
13 budgets all of which required meaningful consultation which did not
14 occur.
15 (h) Defendants were to finance or secure financing for the project.

16 44. As a result of Defendants' breach of contract, Plaintiff has been damaged in a
17 sum in excess of \$ 25,000 together with interest thereon at the legal rate.

18 SECOND CAUSE OF ACTION

19 (For Breach of the Implied Covenant of Good Faith and Fair Dealing against David
20 Carlson and Film Foetus)

21 45. The allegations of paragraphs 1 through 43 are incorporated herein by reference.

22 46. Every contract has an implied covenant of good faith and fair dealing pursuant
23 to which, among other things, no party will deprive the other of the benefits of the
24 contract.

25 47. As a result of Defendants' wrongful acts, they have breached the covenant and
26 Plaintiff has been deprived of the benefits of the agreement. Defendants have engaged
27 in conscious and deliberate acts that unfairly frustrate the agreed common purpose of
28 the contract and disappoints the reasonable expectations of Plaintiff to the contract. In

1 so doing, Defendants' acted in bad faith to frustrate the benefits Plaintiff was to receive
2 under the contract. From and after September 2019, and despite repeated requests,
3 Defendants refused to issue accounting reports to Plaintiff, refused to consult with
4 Plaintiff, and refused to disburse gross proceeds to Plaintiff notwithstanding Plaintiff's
5 repeated requests.

6 48. As a direct result, Plaintiff has been damaged in a sum according to proof.

7 THIRD CAUSE OF ACTION

8 (Fraud against David Carlson and Film Foetus)

9 (Promise Made Without Intention to Perform)

10 49. The allegations of paragraphs 1 through 43 are incorporated herein by reference.

11 50. Frank and subsequently Plaintiff were required to provide information and
12 materials in their possession or control to Defendants, specifically: copies of newspapers
13 or magazine clippings, transcripts, recordings, journals, notes, home movies, videotapes
14 and other physical materials relating to Joe Frank's life story and his thoughts,
15 observations, recollections, reactions, and experiences surrounding, arising out of, or
16 concerning events, circumstances and activities relating to Joe Frank's life story.

17 Defendants were to perform in accordance with their representations as particularly set
18 forth in paragraph 43(a) through paragraph 43(h) and paragraphs 26-37.

19 51. At the time Defendants made their promises and representations to the Plaintiff,
20 they had no intention of performing them.

21 52. The promises and representations were made by the Defendants with the intent
22 to induce Plaintiff to turn over to them all of the items set forth in paragraph 40.

23 53. Plaintiff, at the time the promises and representations were made and at the time
24 the Plaintiff took the actions herein alleged, was ignorant of the Defendants' secret
25 intention not to perform and the Plaintiff could not, in the exercise of reasonable
26 diligence, have discovered the Defendants' secret intention. In relying on the promises
27 and representations of the Defendants, Plaintiff turned over and continued to turn over
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1 and confide private information to Defendants. If the Plaintiff had known of the actual
2 intention of the Defendants, she would not have taken such actions.

3 54. Defendants have failed to abide by their promises and representations, have not
4 rendered annual reports to Plaintiff and have not consulted with Plaintiff.

5 55. As a proximate result of the fraudulent conduct of Defendants as herein alleged,
6 Plaintiff has been damaged in a sum according to proof. The Plaintiff and Frank were
7 induced to provide the materials as above stated and to render tens of thousands of
8 hours of services. Plaintiff has received nothing for her investment in time and energy
9 by reason of which the Plaintiff has been damaged in a sum according to proof, but in
10 excess of \$ 25,000.

11 56. The aforementioned conduct of the Defendants was an intentional
12 misrepresentation, deceit, or concealment of a material fact known to the Defendants
13 with the intention on the part of the Defendants of thereby depriving the Plaintiff of
14 property or legal rights or otherwise causing injury, and was despicable conduct that
15 subjected the Plaintiff to a cruel and unjust hardship in conscious disregard of the
16 Plaintiff's rights, so as to justify an award of exemplary and punitive damages.

17 FOURTH CAUSE OF ACTION

18 (Common Count against all Defendants)

19 (For Money Had and Received)

20 57. The allegations of paragraph 1 through 43 are incorporated herein by reference.

21 58. Within the last four years in Los Angeles, California, Defendants became
22 indebted to Plaintiff in a sum according to proof for money had and received by
23 Defendants for the use and benefit of Plaintiff.

24 59. Plaintiff has demanded payment from Defendants. The last demand was made
25 approximately three months prior to the filing of this complaint.

26 60. No payment has been made by Defendants to Plaintiff and there is now due and
27 owing a sum according to proof with interest on that amount of 10% a year.

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1 FIFTH CAUSE OF ACTION

2 (Accounting Against all Defendants)

3 61. The allegations of paragraph 1 through 43 are incorporated herein by reference.

4 62. Beginning in or about September 2019, and including within the last four years,
5 Defendants have received monies arising from the exploitation of the Joe Frank movie,
6 fifty percent of which is due is due to Plaintiff and none of which has been paid. In
7 addition, Defendants have transferred money to and from at least four bank accounts
8 controlled by them. Defendants have not reported to Plaintiff and have submitted
9 serial budgets which are inconsistent with one another none of which have resulted
10 from consultation with Plaintiff as contractually required.

11 63. The amount of money due from Defendants to Plaintiff is unliquidated and
12 unknown to Plaintiff, but within the knowledge of Defendant, and cannot be
13 ascertained without an accounting of the revenues received by Defendants from the Joe
14 Frank movie.

15 64. Plaintiff has demanded that Defendants account for the aforementioned sales
16 transactions and pay the amount due to Plaintiff. The Defendants have failed and
17 refused, and continue to fail and refuse to render the accounting and to pay Plaintiff.

18 SIXTH CAUSE OF ACTION

19 (Constructive Fraud Against Film Foetus and David Carlson)

20 65. The allegations of paragraph 1 through 43 are incorporated herein by reference.

21 66. Defendant Carlson was the employee of Defendant Film Foetus and wholly
22 owned Film Foetus. As such he had access to all funds received by Film Foetus which
23 were to be divided by Film Foetus with Plaintiff.

24 67. By virtue of Defendant Carlson's being an employee of Defendant Film Foetus
25 and having access to funds received into bank accounts, by virtue of the Plaintiff's
26 having placed confidence in the fidelity and integrity of Defendant Film Foetus in
27 entrusting the Defendant Film Foetus with the authority to receive and distribute funds,
28 a confidential relationship existed at all times herein mentioned between the Plaintiff

1 and Defendant Carlson. In addition, by having placed confidence in the fidelity and
2 integrity of the Defendant Film Foetus, a confidential relationship existed at all times
3 herein mentioned between the Plaintiff and Film Foetus.

4 68. Despite having voluntarily accepted the trust and confidence reposed in them by
5 the Plaintiff with regard to the Plaintiff's funds, and in violation of this relationship of
6 trust and confidence, Defendants abused the trust and confidence of the Plaintiff by,
7 commingling funds between themselves, by holding sums due to Plaintiff, withdrawing
8 funds from the bank accounts for their own personal use rather than for the authorized
9 purposes set forth in the contract between Plaintiff and Film Foetus. No part of these
10 sums has been returned or paid by Defendants to the Plaintiff, despite the Plaintiff's
11 demand therefor.

12 69. Defendants did these acts herein alleged with the intent to deceive and defraud
13 Plaintiff and the Defendant concealed the fact from Plaintiff that they had obtained
14 funds by virtue of not accounting to Plaintiff and still used the funds otherwise due
15 Plaintiff for their own use. Defendants did these acts with the intent to induce reliance
16 by the Plaintiff in the continuing fidelity of the Defendants.

17 70. Plaintiff in fact placed confidence and reliance in Defendants' integrity. The
18 Plaintiff discovered the true facts concerning Defendants' misuse of the funds as alleged
19 above. The Plaintiff reasonably relied on the Defendants' view of their relationship
20 created by the contract with Defendants.

21 71. The aforementioned conduct of the Defendants was an intentional
22 misrepresentation, deceit, or concealment of a material fact known to the Defendants
23 with the intention on the part of the Defendants of thereby depriving the Plaintiff of
24 property or legal rights or otherwise causing injury, and was despicable conduct that
25 subjected the Plaintiff to a cruel and unjust hardship in conscious disregard of the
26 Plaintiff's rights, so as to justify an award of exemplary and punitive damages.

1 SEVENTH CAUSE OF ACTION

2 Intentional Interference with Economic Relationship

3 72. The allegations of paragraph 1 through 43 are incorporated herein by reference.

4 73. On or about June 30, 2017, Plaintiff and Defendant Film Foetus entered into a
5 written contract to develop a feature length documentary on the life, radio broadcasts
6 and writings of Frank to be directed by Carlson and produced by Film Foetus, Inc. The
7 documentary is known as “Joe Frank—Someone Out There.” The documentary was to
8 be exploited with the gross proceeds divided between the parties.

9 74. Defendant David Carlson knew of the above described contract existing
10 between Plaintiff and Film Foetus in that Defendant Carlson was and is the sole
11 shareholder of Film Foetus and its CEO.

12 75. Defendant Carlson intentionally disrupted the above described economic
13 relationship in that he diverted funds intended for Film Foetus into his own bank
14 accounts. In addition to commingling bank accounts, Defendant Carlson, by virtue of
15 his ownership and domination of Film Foetus caused Film Foetus to breach other
16 elements of the contract as more particularly described in paragraphs 27-37.

17 76. As a proximate result of Defendant Carlson’s conduct in disruption of the
18 economic relationship between Plaintiff and Film Foetus, Plaintiff has suffered
19 damages.

20 77. The aforementioned conduct of the Defendants was an intentional
21 misrepresentation, deceit, or concealment of a material fact known to the Defendants
22 with the intention on the part of the Defendants of thereby depriving the Plaintiff of
23 property or legal rights or otherwise causing injury, and was despicable conduct that
24 subjected the Plaintiff to a cruel and unjust hardship in conscious disregard of the
25 Plaintiff’s rights, so as to justify an award of exemplary and punitive damages

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1 EIGHTH CAUSE OF ACTION

2 (Conversion)

3 78. The allegations of paragraph 1 through 43 are incorporated herein by reference.

4 79. Defendants collected funds which were required to be accounted for and
5 disbursed to Plaintiff in accordance with the contract.

6 80. On and about September, 2019, Plaintiff discovered that Defendants were
7 withholding funds due her.

8 81. Defendants had agreed to pay Plaintiff fifty percent of the gross proceeds which
9 Defendants received.

10 82. Plaintiff has made demand that Defendants distribute the amount of gross
11 revenues due her but Defendants have refused.

12 83. As a proximate result of Defendants' conversion, Plaintiff has suffered the loss of
13 use of the monies due her and has incurred costs in attempting to recover the monies
14 due her all to her damage in a sum according to proof.

15 84. The aforementioned conduct of the Defendants was an intentional
16 misrepresentation, deceit, or concealment of a material fact known to the Defendants
17 with the intention on the part of the Defendants of thereby depriving the Plaintiff of
18 property or legal rights or otherwise causing injury, and was despicable conduct that
19 subjected the Plaintiff to a cruel and unjust hardship in conscious disregard of the
20 Plaintiff's rights, so as to justify an award of exemplary and punitive damages.

21
22 Wherefore, Plaintiff prays:

- 23 1. For special and general damages according to proof,
24 2. For interest thereon at the legal rate,
25 3. For an accounting between Plaintiff and Defendants and for payment owed to
26 Plaintiff for the amount due from Defendants and interest on that amount,
27 4. For imposition of a constructive trust against Defendants for the benefit of
28 Plaintiff.


1 5. For copyright registration to be corrected, including showing correct copyright
2 percentages and categories excluded from copyright, that Story be credited as co-
3 producer in the film, that Story is accorded full access to bank accounts and crowd
4 funding accounts in the name of the documentary, and that outstanding requests for
5 footage from defendants by plaintiff is fulfilled.

6 6. For reasonable attorney's fees,

7 7. For punitive damages in an amount appropriate to punish Defendants and deter
8 others from engaging in similar misconduct, and,

9 8. For costs of suit incurred herein and for such other relief that the court deems
10 proper.

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12 Dated August 6, 2021

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16 Richard Ross, Attorney for Plaintiff
17 Michal Story