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FILED
Superior Court of California
County of Los Angeles

08/13/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: N. Osollo Deputy

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: ---

) FIRST AMENDED COMPLAINT FOR
DAMAGES:

-) 1- Breach of Contract
-) 2- Breach of the Implied Covenant of
Good Faith and Fair Dealing
-) 3- Fraud
-) 4- Common Count
-) 5- Accounting
-) 6- Constructive Fraud
-) 7- Intentional Interference with Economic
Relationship
-) 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.

SEVENTH CAUSE OF ACTION

Intentional Interference with Economic Relationship

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

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

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

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

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

77. The aforementioned conduct of the Defendants was an intentional misrepresentation, deceit, or concealment of a material fact known to the Defendants with the intention on the part of the Defendants of thereby depriving the Plaintiff of property or legal rights or otherwise causing injury, and was despicable conduct that subjected the Plaintiff to a cruel and unjust hardship in conscious disregard of the 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 13, 2021

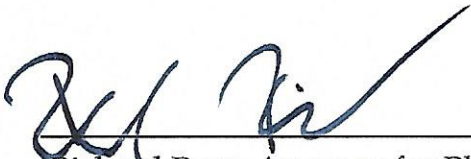
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15 _____
16 Richard Ross, Attorney for Plaintiff
17 Michal Story
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EXHIBIT 1

PRODUCTION AGREEMENT

"The Joe Frank Film"

THIS PRODUCTION AGREEMENT (the "Agreement") is entered into as of June 30, 2017, by and between Film Foetus, Inc. ("Company"), on the one hand, and Joe Frank ("Artist") and Michal Story ("Story"), on the other hand (each a "Party" and, together, the "Parties") in connection with that certain proposed feature-length theatrical motion picture currently entitled "Untitled Joe Frank Film" (the "Picture") based on the life, radio broadcasts and writings of Artist (collectively, the "Story Rights"), to be directed by D. P. Carlson ("Director"), and to be produced by Company in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Artist hereby agree as follows:

1. Structure/Ownership.

a. General. The Picture is a feature length documentary about the life and work of radio artist Joe Frank. For purposes of this Agreement, Story Rights shall mean the irrevocable, non-exclusive, perpetual and universal rights to use Artist's name, approved likeness, approved photograph, sobriquet, approved voice, and approved biography; depict and portray Artist, and make use of incidents of Artist's life preceding, surrounding, following and otherwise in any way relating to incidents about Artist's life and use any and all information and materials in Artist's possession or under Artist's control, which Artist shall, at Company's request, disclose and provide to Company in such forms as, without limitation, copies of any newspapers or magazine clippings, photographs (excluding professional photographs provided by Story, which shall be the subject of a separate good faith negotiation and agreement), transcripts, recordings, journals, notes, recordings, home movies, videotapes or other physical materials relating to Artist's life story and Artist's thoughts, observations, recollections, reactions and experiences surrounding, arising out of, or concerning all those events, circumstances and activities relating to Artist's life story. Subject to the terms and conditions set forth in this Agreement, Company shall finance (or secure financing for) the production of the Picture and provide producing, directing, editing and other necessary services in connection with the production and exploitation of the Picture. Company and Artist shall each co-own an undivided fifty percent (50%) interest in and to all right, title and interest in and to the Picture, including without limitation the copyright and all proceeds from the exploitation thereof and all ancillary and related rights, and all applicable copyright registrations and trademark registrations of the Picture's title filed in any country for any and all versions of the Picture in all media and formats now known or hereafter devised throughout the universe shall be in the name of both Artist and Company provided that Company shall have the sole right and authority, after full and meaningful consultation with Artist, to determine how the completed Picture will be distributed including, without limitation, who the distributor(s) will be, when such distribution(s) should occur and in which media the Picture will be distributed. The parties hereby agree that, subject to full and meaningful consultation with Artist/Story, Company shall have the right to act on behalf of Story and Artist in connection with those distribution decisions and to sign all such distribution agreements on behalf of Story and Artist. Notwithstanding anything contained in this Agreement, Artist and Story shall retain ownership of their respective footage, photographs,

show recordings, radio programs, internet content and audio selections which each furnished for incorporation into the Picture regardless of whether such materials are included in the finished Picture; provided, Artist and Story each hereby grant to the Picture a non-exclusive, perpetual, worldwide, royalty-free license solely for the use of such material in the Picture and in connection with the distribution, exploitation and promotion thereof, except that any photographs provided by Story shall not be used in any manner other than in the Film itself. In addition, Company shall pay to Story on a schedule agreed to by the parties a reasonable, customary, agreed upon fee for Company's incorporation into the Picture of those materials owned by Story. Company shall retain ownership of all footage of Artist shot by Company at Artist's live events and footage of all interviews shot by Company in connection with the Picture regardless of whether such materials are included in the finished Picture. Any footage shot by Company which includes Artist that is not included in the final cut of the Picture shall not be utilized by Company in any other project or for any other purpose without the prior written consent of Artist. In the event of Artist's death or permanent disability, all of Artist's rights under this Agreement, including without limitation consultation and approval rights, shall be automatically assigned to Story. The Parties agree to execute appropriate licenses and assignments of rights in accordance with the terms of this Agreement. For the avoidance of doubt, the ownership structure of the Picture shall not impact the revenue sharing provisions and approvals/controls set forth herein unless approved in writing by the Parties in each instance.

b. Assignment of Rights. If Company actually finances the production of the Picture or secures financing for the Picture from third parties, Artist shall license for use in the Picture all right, title and interest in and to the Story Rights in a manner consistent with this Agreement no later than completion of production of the Picture. Similarly, Company shall assign to the Picture all right, title and interest in and to the results and proceeds of Company's services (including without limitation producing, directing and editing services) in a manner consistent with this Agreement no later than completion of production of the Picture. The parties acknowledge that, as of the effective date of this Agreement as first written above, the only funding required to complete the Picture is an amount required to license the rights to the musical compositions and/or sound recordings to be incorporated into the Picture and to complete post production for the Picture.

c. Abandonment. If Company fails to secure funding to complete post-production for the Picture and to secure festival music rights licenses within eight (8) months following the date Artist approves the final cut of the Picture, then this Agreement shall automatically terminate as of the above applicable date, all rights in and to the Picture and underlying materials shall automatically revert to the party contributing such rights, and neither party will have any further obligation, financial or otherwise, to the other.

2. Approvals and Controls. Company and Artist shall have the following rights of approval, such approval not to be unreasonably withheld or delayed, over the following elements and any replacements thereof:

a. Review of Director's Cut/Final Cut. Company shall deliver to Artist a director's cut of the Picture. Artist shall deliver to Company written notes regarding Artist's views of the Picture within 10 business days following receipt of the applicable cut. Company shall edit the Picture according to those written notes. If Artist does not provide Company with those written

notes within the 10 business day period, Artist shall be deemed to have approved that cut and shall have no further right to comment on the content of the Picture. Company shall deliver to Artist a copy of the Picture after Company has completed editing the Picture based on any written notes provided to Company by Artist (the "Final Cut"). Artist shall notify Company in writing if it approves the Final Cut within ten (10) business days following Artist's receipt. If Artist approves the Final Cut (following any edits by Company based on Artist's written notes), Artist shall not have the right to withdraw that approval at a future date. The parties agree that any attempt at withdrawal of that approval by Artist or Artist's representative will be deemed a material breach of this Agreement.

b. Creative Controls. Except as noted otherwise herein, Company shall have exclusive control and approval with respect to all creative decisions regarding the Picture.

c. Consultation. Company and Artist shall meaningfully consult with each other on a regular basis with respect to the progress in production of the Picture and all other material developments involved with the production, completion, distribution and exploitation of the Picture. If Artist is unable to consult with Company for any reason, then Company shall consult with Story in Artist's place.

d. Music Licenses. In the event Company and/or Artist secures a third party distributor to distribute the Picture in the United States and/or any other territory, then Company shall secure all-media licenses for all musical compositions/sound recordings incorporated into the Picture including, without limitation, licenses that cover the use of those compositions/sound recordings in Picture trailers and in television/radio/internet/mobile advertising for the Picture. Notwithstanding the foregoing, unless and until Company secures a third party distributor for the Picture, Company shall only be required to secure licenses for all musical compositions/sound recordings incorporated into the Picture for film festival exhibition and those film exhibition licenses. The cost of any and all music licenses referenced herein shall be treated as a production expense.

3. Crowdfunding Campaign. It is contemplated that Company may conduct a non-investor crowdfunding campaign to raise approximately \$65,000 in post-production funding in order to complete the Picture. In connection with any such crowdfunding campaign, Artist hereby grants to Company the right to utilize Artist's name, approved likeness, approved biography, approved photograph and approved image as part of the crowdfunding materials and the rewards offered to consumers for donating funds.

4. Producer Terms. Company and Artist each shall be credited on the Picture as an individual "Producer" of the Picture and each shall provide customary creative/physical producer services in connection therewith as more fully set forth below. In this regard, the following terms and conditions shall apply:

a. In full and meaningful consultation with Artist, Company shall provide certain development and production services including without limitation preparing budgets and schedules, engaging in casting activities, hiring and paying key crew, post-production expenses, legal expenses, accounting expenses, and certain financing costs, with the actual, verifiable,

third-party cost of these items (i.e., to the extent paid to third parties and not to Company or Director) all as set out more fully in Paragraph 5 below ("Production Costs").

b. Company, Director, Artist and Story shall not be entitled to receive a producing fee or other fees for services in connection with the Picture, it being understood and agreed that their sole and exclusive compensation for producing and/or directing the Picture shall be the Parties' respective shares of Net Proceeds in accordance with Paragraphs 5.c. and 6 below.

c. Company shall have the right to recoup the Production Costs prior to any distribution of remaining Net Proceeds (as hereinafter defined) to any other party.

d. Following Company's recoupment of the Production Costs, Company and Artist/Story each shall be entitled to receive an equal (i.e., 50/50) share of the "Net Proceeds" derived from the Picture. For purposes of this Agreement, "Net Proceeds" shall mean the amount of "Gross Receipts" remaining, if any, from the distribution and exploitation of the Picture and all rights therein and by-products thereof (including without limitation soundtracks and merchandising), after the deduction of costs, expenses and fees as set forth in Paragraph 5 below. As used herein, "Gross Receipts" shall mean any and all sums actually received by Company, Artist or a collection account manager on their behalf (if applicable) from the sale, licensing, distribution and all other exploitation of the Picture and all rights therein and by-products thereof in all markets and media now known or hereafter devised throughout the universe in perpetuity. To the extent that a portion of Net Proceeds is granted to any third party(ies) (upon mutual approval of Company and Artist), each of Company and the Artist shall bear an equal (i.e., 50%) portion of such grant of Net Proceeds.

e. All other terms of Producers' producing engagement services shall be determined by Company and Artist in good faith.

5. Disposition of Gross Receipts. The parties acknowledge that to date Company has incurred actual, verifiable, third party Production Costs totaling \$29,000.00 for the Picture. The parties further acknowledge that Company contemplates conducting an on-line, non-investor crowdfunding campaign to secure funds totaling \$65,000.00 to complete post-production for the Picture (the "Completion Funding"). The parties agree that all funds, if any, which exceed the Completion Funding shall be included in Gross Receipts. All revenues actually received from the exploitation of the Picture after deduction of any expenses actually incurred by Company to complete post-production for the Picture (if those expenses exceed any funds retained by Company that exceeded the Completion Funding) and any third party (other than the sales agent) distribution fees and expenses ("Gross Receipts") shall be payable as follows on a continuing basis (subject to the terms of any mutually-approved production lender):

First, in payment of any collection account manager fees and expenses (i.e., should the Parties elect to engage the services of a collection account manager);

Second, in payment of all normal and customary guild residuals, re-use fees, and similar mandatory payments, if any, to the extent not paid from a residuals reserve established by the Parties, and audit and collection costs in connection with the distribution and exploitation of the Picture;

Third, in payment of any sales agent's fees (i.e., should the Parties elect to engage the services of a sales agent);

Fourth, in payment of any sales agent's expenses;

Fifth, in payment in full to the mutually-approved production lenders, if any (including without limitation Company and/or Artist), of their entire loans, including, without limitation, all applicable interest, finance fees and costs, if any;

Sixth, in payment to mutually-approved equity investors, if any, in the Picture of the principal amount of their respective investments (plus any preferred return thereon) on a pro rata, pari passu basis; and

Seventh, to Company and Artist, the remaining balance, if any, of Gross Receipts (i.e., 50% to each of them), subject to any mutually-approved participations granted to third parties.

6. Credits. Subject to the requirements of any applicable guild and union agreements, the following credits will be accorded on screen in the main titles ("Screen Credit") and in the billing block of all paid ads, subject to customary distributor exclusions ("Paid Ad Credit"), as follows:

a. Producer: Artist shall be accorded separate card Screen Credit and Paid Ad Credit in the form "Producer."

b. Director/Producer: D. P. Carlson shall be accorded separate card Screen Credit and Paid Ad Credit in the form "Produced & Directed By D. P. Carlson."

c. Co-Producers: Michal Story and Mike Weber each shall be accorded separate card Screen Credit and Paid Ad Credit in the form "Co-Producer."

d. Excluded Ad Protection: The "Produced & Directed By," "Producer," "Executive Producer" and "Co-Producer" credits shall be accorded in excluded ads in which individual credit is accorded to any individual producer or executive producer (subject to the customary exceptions and exclusions of the distributors of the Picture and except for nomination and award ads in which only the honored individual(s) is accorded credit).

e. Production Company Credit: Company shall be accorded production company logo Screen Credit above the title of the Picture, as well as production company Screen Credit in the main titles of the Picture and corresponding Paid Ad Credit.

f. All other aspects of credit not specifically addressed above shall be subject to the mutual approval of the Parties.

7. Insurance. Company shall obtain and keep in full force and effect in amount, coverage, kind and form reasonably satisfactory to Artist, all types of insurance that is typically obtained for motion pictures and motion picture productions, including, without limitation, cast, negative and faulty stock insurance; customary errors and omissions insurance and comprehensive liability insurance. Company, Artist and Story shall be the named insured(s) on all such policies.

8. Representations and Warranties.

a. Company represents and warrants that:

(i) it is a duly organized company in good standing in its state/country of origin;

(ii) it has the right to enter into and fully perform this Agreement, the consent of no other person or entity is required in connection herewith, and it is capable of, and there is no impediment to, the performance of its obligations hereunder or with respect to the Picture;

(iii) it owns or controls all rights, and has not previously assigned to any third party or encumbered any of its rights, in the results and proceeds of Company's services hereunder; and

(iv) there are no actual or, to the best of its knowledge, threatened claims with respect to the Picture.

b. Artist represents and warrants that it has the right to enter and fully perform this Agreement, the consent of no other person or entity is required in connection herewith, and it is capable of, and there is no impediment to, the performance of his obligations hereunder.

9. Indemnification.

a. Company shall indemnify, defend, and hold Artist and Story and their respective successors, assigns, affiliates, agents, officers, directors, employees and shareholders harmless, against any liability, claim, cause of action, damage or expense (including, without limitation, reasonable outside attorneys fees, expert witness fees, disbursements and court costs regardless of whether litigation is commenced) ("Claims") arising from a breach by Company of its representations and warranties and covenants hereunder or arising from its (or its employees'), gross negligence or intentional misconduct (excluding only negligence that is covered by insurance).

b. Artist shall indemnify and hold Company and its successors, assigns, affiliates, agents, officers, directors, employees and shareholders harmless, against any Claims arising from a breach by Artist of its representations and warranties and covenants hereunder or arising from its (or its employees') gross negligence or willful misconduct (excluding only negligence that is covered by insurance).

10. Assignment. This Agreement shall not be assignable by the Parties hereto without the prior written consent of all the Parties hereto, which consent shall not be unreasonably withheld or delayed.

11. Confidentiality/Press Release. Company and Artist shall mutually approve any and all press releases and public announcements related to this Agreement. Company and Artist shall otherwise keep confidential this Agreement and the subject matter hereof, which shall not be disclosed to any third party except (a) as it has become generally available to the public; (b) to the Parties' agents, representatives, attorneys and professional advisors, on a need-to-know basis; (c) in order to comply with any law, rule, regulation or order of

any governmental authority with jurisdiction over the subject matter hereof; and (d) as may be required by the Parties to enforce their respective rights under this Agreement.

12. Arbitration. Any disputes under this Agreement or any document or instrument relating hereto (except to the extent expressly set forth to the contrary in such document or instrument) as well as the arbitrability of such dispute shall be resolved by final, binding arbitration before a single, mutually-approved arbitrator with experience in the entertainment industry under the Commercial Rules of JAMS in the venue of the party who initiates the arbitration (to which jurisdiction Company and Artist hereby irrevocably submit). The award of the JAMS arbitrator(s) shall include an award of reasonable outside attorneys' fees and associated costs (including expert witness fees) to the prevailing party in such arbitration. The arbitration shall be conducted in the city and state where the party initiating the arbitration resides. Any award of arbitration may be confirmed and/or enforced in any court located in the county and city where the arbitration was conducted and/or any court having jurisdiction over the losing party and/or any of its assets or properties.

13. No Partnership. This Agreement does not establish a relationship of partners or joint venturers between Company and Artist and/or Story; and no party shall hold itself out as agent or authorized representative of the other, nor shall there be any fiduciary or other legal relationship of trust established between Company and Artist and/or Story hereunder.

14. Remedies. Notwithstanding any other provision of this Agreement, each Party's sole remedy for breach by the other Party of any of its obligations under this Agreement shall be an action at law for damages and each Party acknowledges that such damages are fully adequate to compensate the other Party in the case of any breach by a Party hereunder. In no event shall either Party seek or be entitled to rescission, injunctive or other equitable relief.

15. Survival of Terms. Notwithstanding the abandonment of the Picture or the termination of this Agreement for any reason, paragraphs 1.a., 1.c., 9, 10, 11, 12, 13, 14 and 16 shall survive.

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16. Miscellaneous. The validity, interpretation and legal effect of this Agreement shall be governed by the laws of the Illinois applicable to contracts entered into and wholly performed entirely therein without regard to conflict of laws provisions. No amendment or modification hereof shall be valid unless contained in a writing signed by both Parties. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof, and replaces any prior agreements, understandings, representations or warranties, verbal or written, as to the subject matter hereof. This Agreement shall bind and inure to the benefit of the Parties and their respective permitted assigns, licensees, successors, heirs and representatives. Each Party hereto generally consents to service of process by registered mail, return receipt requested, at the addresses set forth below to receive service of process in any action, suit or proceeding with respect to any matter as to which it has submitted to jurisdiction as set forth above. The headings of the Paragraphs hereof are for convenience only and shall not be deemed to limit or in any way affect the scope, meaning or intent of this Agreement or any portion hereof. Should any Paragraph or provision of this Agreement be held to be void, invalid or inoperative as a result of any judicial or administrative proceeding or decree, such decision shall not affect any other Paragraph or provision hereof, and the remainder of this Agreement shall be effective as though such void, invalid or inoperative Paragraph or provision had not been contained herein. This Agreement may be executed in one or more counterparts (including via facsimile or electronic transmission), each of which shall be deemed an original for all purposes but all of which together shall constitute one and the same instrument. The Parties contemplate entering into more comprehensive documentation consistent with the terms hereof; provided, however, that unless and until such more formal documentation is executed by each of the Parties, this Agreement shall be the final and binding and enforceable in accordance with its terms.

ACCEPTED AND AGREED AS OF JUNE 30, 2017:

FILM FOETUS, INC.

By: DP Carlson
D. P. Carlson
President/CEO

JOE FRANK

By: Joe Frank
Joe Frank
An Individual

By: Michal Story
Michal Story
An Individual

EXHIBIT 2

Story, Michal vs. Film Foetus, Inc. - JAMS Ref No. 1220067771

From: Hanna Ahn (hahn@jamsadr.com)

To: rross777@yahoo.com; mtrauben@singhtraubenlaw.com; trichards@singhtraubenlaw.com

Date: Thursday, May 27, 2021, 11:41 AM PDT

Good morning,

I am following up on this arbitration. It is my understanding that the parties have not yet mutually agreed to an arbitrator per the parties' arbitration agreement.

At this time, JAMS will attempt to facilitate agreement among the parties regarding the selection of an arbitrator. Please advise if you would be in agreement to selecting your arbitrator via the strike/rank process whereby JAMS will provide a list of arbitrator candidates for parties to strike and rank in order of preference. The highest ranked candidate would then be the selected arbitrator.

Please advise no later than June 2, 2021.

Thank you.

Hanna Ahn
Senior Case Manager

JAMS - Local Solutions. Global Reach.TM

5 Park Plaza | Suite 400 | Irvine, CA 92614

P: 714-937-8237 | F: 714-939-8710

www.jamsadr.com

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EXHIBIT 3

RE: Story, Michal vs. Film Foetus, Inc. - JAMS Ref No. 1220067771

From: Mike Trauben (mtrauben@singhtraubenlaw.com)
To: hahn@jamsadr.com
Cc: ross777@yahoo.com; trichards@singhtraubenlaw.com
Date: Thursday, June 3, 2021, 02:07 PM PDT

Dear Ms. Ahn,

Respondent respectfully notes that Respondent does not agree to the selection of an arbitrator via strike/rank.

Respectfully submitted,

Mike Trauben

[attorney bio](#) | [email](#) | [vCard](#)

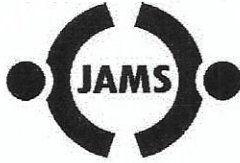


From: Hanna Ahn <hahn@jamsadr.com>
Sent: Thursday, June 3, 2021 12:51 PM
To: ross777@yahoo.com; Mike Trauben <mtrauben@singhtraubenlaw.com>; Thomas Richards <trichards@singhtraubenlaw.com>
Subject: RE: Story, Michal vs. Film Foetus, Inc. - JAMS Ref No. 1220067771

Good afternoon,

I am following up on this email below.

EXHIBIT 4



June 17, 2021

NOTICE TO ALL PARTIES

Re: **Story, Michal vs. Film Foetus, Inc.**
Reference#: 1220067771

Dear Parties:

As you know, JAMS commenced arbitration in this matter on April 15, 2021. The parties' arbitration provision provides for arbitration "before a single, mutually-approved arbitrator . . . under the Commercial Rules of JAMS . . ." To date the parties have been unable to agree on an arbitrator. On May 27, 2021, JAMS offered to administer a strike and rank process to assist the parties in selecting an arbitrator. Respondent replied that "Respondent does not agree to the selection of an arbitrator via strike/rank."

In light of the parties' contractual requirement for the arbitrator to be "mutually-approved," and given Respondent's lack of agreement to a strike and rank procedure, JAMS is unable to proceed with administration at this time. If the parties agree to a JAMS arbitrator, or agree to the JAMS strike and rank process for selecting an arbitrator, we will happy to proceed.

Sincerely,

A handwritten signature in black ink, appearing to read "Hanna Ahn", written over a horizontal line.

Hanna Ahn
Senior Case Manager
hahn@jamsadr.com

PROOF OF SERVICE BY E-Mail

Re: Story, Michal vs. Film Foetus, Inc.
Reference No. 1220067771

I, Chandra Ahr, not a party to the within action, hereby declare that on June 17, 2021, I served the attached LETTER DATED JUNE 17, 2021 on the parties in the within action by electronic mail at Irvine, CALIFORNIA, addressed as follows:

Richard Paul Ross Esq.
L/O Richard Ross
424 South Beverly Drive
Beverly Hills, CA 90212
Phone: 310-245-1911
rross777@yahoo.com
Parties Represented:
Michal Story

Michael A. Trauben Esq.
Thomas K. Richards Esq.
Singh, Singh & Trauben, LLP
400 S. Beverly Dr.
Ste. 240
Beverly Hills, CA 90212
Phone: 310-856-9705
mtrauben@singhtraubenlaw.com
trichards@singhtraubenlaw.com
Parties Represented:
David P. Carlson
Film Foetus, Inc.

I declare under penalty of perjury the foregoing to be true and correct. Executed at Irvine, CALIFORNIA on June 17, 2021.

Chandra Ahr

Chandra Ahr
JAMS
CAhr@jamsadr.com