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9 *Attorneys for Defendants*
10 DAVID CARLSON and FILM FOETUS, INC.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

13 MICHAL STORY, an Individual,) Case No.: **21STCV29163**
14)
15 Plaintiff,) **HON. THERESA M. TRABER | Dept. 74**
16)
17 v.) **DEFENDANTS DAVID CARLSON AND FILM**
18) **FOETUS, INC.’S ANSWER TO PLAINTIFF**
19) **MICHAL STORY’S UNVERIFIED FIRST**
20) **AMENDED COMPLAINT**
21)
22 DAVID CARLSON, an Individual and)
23 FILM FOETUS, INC., and DOES 1)
24 THROUGH 100,)
25) ACTION FILED: August 6, 2021
26) TRIAL DATE: None Set
27)
28)

29 Defendants David Carlson (“**Carlson**”) and Film Foetus, Inc. (“**Film Foetus**”) (collectively,
30 “**Defendants**”) answer the unverified first amended complaint (“**FAC**”) of Plaintiff Michal Story
31 (“**Plaintiff**” or “**Story**”) as follows:

32 **GENERAL DENIAL**

33 1. Pursuant to *Code of Civil Procedure* section 431.30(d), Defendants deny, generally and
34 specifically, each and every allegation of the unverified FAC and deny, generally and specifically, that
35 Plaintiff has been damaged in the amounts set forth in the unverified FAC or in any amount whatsoever.
36 Defendants also deny that Plaintiff sustained damage in the sum alleged, or in any sum, or at all,
37 whether for the reasons alleged or otherwise. Defendants also deny that Plaintiff’s alleged damages were
38 caused by any act or omission on the part of Defendants.

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1 **AFFIRMATIVE DEFENSES**

2 2. Defendants plead and assert the following separate and distinct affirmative defenses
3 without assuming the burden of proof borne by Plaintiff or conceding that they bear the burden of proof
4 as to any of these issues. In addition, these defenses are plead in the alternative and do not constitute an
5 admission of liability or that Plaintiff is entitled to any relief whatsoever. Defendants do not, by stating
6 the matters set forth in these defenses, allege or admit that they have the burden of proof and/or
7 persuasion with respect to any of these matters, and do not assume the burden of proof or persuasion as
8 to any matters to which Plaintiff has the burden of proof or persuasion. Defendants reserve the right to
9 assert additional affirmative defenses that discovery indicates are proper.

10 **FIRST AFFIRMATIVE DEFENSE**
11 **(Failure to State a Claim)**

12 3. The FAC and each of the purported causes of action set forth therein fail to state “facts”
13 sufficient to constitute a cause of action against Defendants. This affirmative defense is based on a legal
14 argument that the FAC does not sufficiently plead the causes of action asserted therein and is not an
15 assertion of fact. *See Flora Crane Servs., Inc. v. Super. Ct.* (1965) 234 Cal.App.2d 782.

16 **SECOND AFFIRMATIVE DEFENSE**
17 **(Good Faith)**

18 4. Plaintiff’s FAC, and each cause of action alleged therein, fails because Defendants’
19 actions with respect to FAC were consistent with Defendants’ obligations, if any, and were justified and
20 effected in good faith.

21 **THIRD AFFIRMATIVE DEFENSE**
22 **(Estoppel)**

23 5. Defendants are informed and believe and based thereon allege that each and every cause
24 of action or purported cause of action contained in the FAC is barred by the doctrine of Estoppel.

25 **FOURTH AFFIRMATIVE DEFENSE**
26 **(Waiver)**

27 6. Plaintiff’s FAC, and each cause of action alleged therein, is barred in whole or in part by
28 the doctrine of waiver.

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1 **FIFTH AFFIRMATIVE DEFENSE**

2 (Unclean Hands)

3 7. Plaintiff's FAC, and each cause of action alleged therein, is barred in whole or in part by
4 the doctrine of unclean hands.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 (Setoff)

7 8. Without conceding that Defendants caused any damage to Plaintiff whatsoever, or to any
8 other person or entity in any respect, Defendants state that they are entitled to offset any judgment that
9 may be awarded against them in an amount equal to all damages Plaintiff caused to Defendants.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 (Privilege/Justification/First Amendment)

12 9. Defendants have acted fairly and none of the alleged acts of Defendants support claims of
13 unlawful behavior, and all acts were and are justified and privileged. Moreover, First Amendment free
14 speech rights protect Defendants' alleged conduct and bar Plaintiff's asserted claims.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 (Speculative damages)

17 10. Defendants are informed and believe and based thereon allege that Plaintiff's FAC is
18 barred, in whole or in part, because Plaintiff's damages, if any, are vague, uncertain, imaginary, and
19 speculative, and are not capable of being determined by a trier of fact.

20 **NINTH AFFIRMATIVE DEFENSE**

21 (No Damages)

22 11. Plaintiff has not suffered or sustained any damages as a consequence of any alleged
23 representation, act, or conduct of Defendants and there has been no damage to Plaintiff in any amount,
24 manner or at all by reason of any alleged acts by Defendants.

25 **TENTH AFFIRMATIVE DEFENSE**

26 (Bad Faith)

27 12. As a further separate and affirmative defense, Defendants allege that Plaintiff's claims
28 are barred in whole or in part due to Plaintiff's bad faith.

ELEVENTH AFFIRMATIVE DEFENSE

(California Evidence Code §623)

13. Defendants allege that if there presently exists or ever existed any or all of the alleged

1 rights, claims or obligations which Plaintiff now seeks by way of the FAC, said rights, claims or
2 obligations are barred as against Defendants because Plaintiff, by Plaintiff's own statements and
3 conduct, has intentionally and deliberately led Defendants to believe a particular thing true and to act in
4 reliance thereon, and thus Plaintiff may not contradict or refute said statement in any litigation arising
5 therefrom.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 **(Inability to Prove Damages)**

8 14. Defendants assert that Plaintiff is unable to properly prove that Plaintiff has incurred any
9 damages as a result of the acts and/or omissions of Defendants, and cannot prove she incurred any
10 damages as no such damages were incurred.

11 **THIRTEENTH AFFIRMATIVE DEFENSE**

12 **(Laches)**

13 15. Plaintiff made a long, continued, and unreasonable delay in giving notice to Defendants
14 of the matters alleged in the FAC and in commencing this action to the prejudice of Defendants, and
15 Plaintiff is thereby barred by laches from asserting any alleged claim against Defendants. Plaintiff has
16 unreasonably delayed efforts to enforce her purported rights, if any, despite her full awareness of
17 Defendants' alleged actions for several years.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 **(Statute of Limitations)**

20 16. Plaintiff's FAC, and each cause of action alleged therein, is barred in whole or in part by
21 the applicable statute of limitations.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 **(Excused Breach)**

24 17. Any liability that Defendants may have had under the alleged agreement or agreements,
25 which Defendants expressly deny, was excused, exonerated, extinguished, and discharged as a result of
26 Plaintiff's conduct, acts, and omissions.

27 **SIXTEENTH AFFIRMATIVE DEFENSE**

28 **(Uncertainty)**

18. Defendants are informed and believe and based thereon allege that Plaintiff's FAC and
the allegations therein are uncertain, vague and ambiguous.

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 (Statute of Frauds)

3 19. Plaintiff is precluded from any recovery under the facts alleged in the FAC by virtue of
4 the statute of frauds.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 (Unjust Enrichment)

7 20. Defendants are informed and believe and based thereon allege that the FAC and the
8 causes of action alleged therein, is barred by the doctrine of unjust enrichment, and that Plaintiff would
9 be unjustly enriched by the requested relief.

10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 (Limitation on Damages)

12 21. Defendants are informed and believe and based thereon allege that Plaintiff's FAC seeks
13 an award of improper damages, including, but not limited to, attorney's fees beyond those permitted by
14 law.

15 **TWENTIETH AFFIRMATIVE DEFENSE**

16 (Failure to Mitigate)

17 22. Defendants are informed and believe and based thereon allege that if Plaintiff suffered
18 any damages as a result of the allegations set forth in the FAC (which Defendants expressly deny),
19 Plaintiff is not entitled to recover from Defendants any sum of damages due to Plaintiff's failure to take
20 reasonable efforts to mitigate the damages Plaintiff allegedly incurred.

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

22 (Federal Law Protection)

23 23. Plaintiff's claims for relief are barred, in whole or in part, because Defendants' conduct is
24 protected under federal law.

25 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

26 (Fraudulent Conduct)

27 24. The FAC is barred on the grounds of Plaintiff's fraudulent conduct, including negligent
28 and/or intentional misrepresentations made by Plaintiff to Defendants such that Defendants were
induced to engage in the conduct as alleged and/or induced to continue in the conduct as alleged, which
Defendants would not have done absent such misrepresentations.

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 (Lack of Standing)

3 25. Plaintiff's FAC is barred from relief as Plaintiff lacks standing with respect to the relief
4 sought.

5 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

6 (Compliance)

7 26. Plaintiff's claims against Defendants are barred in their entirety or in part because
8 Plaintiff has failed to substantially comply with various applicable laws and regulations.

9 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

10 (Consent and Ratification)

11 27. Plaintiff's claims are barred as a result of her consent to or ratification of each act
12 alleged.

13 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

14 (No Right to Punitive Damages)

15 28. The FAC fails to set forth facts sufficient to constitute a cause of action for punitive
16 damages against Defendants on any of the grounds stated in the FAC.

17 29. Plaintiff does not allege any facts in the FAC with specificity sufficient to demonstrate
18 malice, oppression or fraud.

19 30. It is well established that punitive damages may not be awarded as relief in a breach of
20 contract claim. Civil Code section 3294, subd. (a); *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*
21 (1994) 7 Cal.4th 503, 516; *Cyrus v. Haveson* (1976) 65 Cal.App.3d 306, 316. California law is clear that
22 a party can never recover exemplary or punitive damages for breach of an obligation arising from a
23 contract, and that punitive damages are not recoverable in breach of contract actions. Civil Code section
24 3294; *Purcell v. Schweitzer* (2014) 224 Cal.App.4th 969.

25 31. Plaintiff is not entitled to an award of punitive damages with respect to any of her claims,
26 and, to the extent the Plaintiff seeks punitive and/or statutory damages against Defendants, this violates
27 Defendants' right to procedural and substantive due process under the Fifth and Fourteenth
28 Amendments to the United States Constitution and Article I, Section 7 of the California Constitution
because, among other things, the alleged wrongful conduct at issue relates to an alleged breach of

1 contract and certainly not sufficiently reprehensible to warrant any punitive damage recovery and/or any
2 assessment of statutory damages would grossly exceed any actual damages to Plaintiff (of which there
3 are none). Therefore, Plaintiff cannot recover statutory and/or punitive damages against Defendants in
4 this case.

5 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**
6 **(Complaint Presented for an Improper Purpose)**

7 32. Defendants allege that if there presently exists or ever existed any or all of the alleged
8 rights, claims or obligations which Plaintiff now seeks by way of the FAC, said rights, claims or
9 obligations are barred as against Defendants because Plaintiff's FAC is knowingly devoid of evidentiary
10 support and has been presented for an improper purpose pursuant to California Code of Civil Procedure
11 § 128.7.

12 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**
13 **(Ongoing Investigation / Reservation)**

14 33. Defendants have not yet completed a thorough investigation or study or completed the
15 discovery of all the facts and circumstances of the subject matter of the FAC and, accordingly, reserve
16 the right to amend, modify, revise or supplement their answer and to plead such other defenses and to
17 take any and all such other actions in response to the FAC as they may deem proper and necessary in
18 their defense upon completion of said investigation and/or study.

19 **PRAYER**

20 **WHEREFORE**, Defendants pray for judgment as follows:

- 21 1. That the first amended complaint be dismissed, with prejudice and in its entirety;
- 22 2. That Plaintiff takes nothing by reason of Plaintiff's first amended complaint and that
23 judgment be entered against Plaintiff and in favor of Defendants;
- 24 3. For costs of suit incurred herein; *and*
- 25 4. For such other and further relief as the Court may deem just and proper.

26 **DEMAND FOR JURY TRIAL**

27 Defendants hereby request a jury trial in the above-referenced case.
28

1 **DATED:** September 27, 2021

Respectfully submitted,

2 **SINGH, SINGH & TRAUBEN, LLP**
3 **MICHAEL A. TRAUBEN**

4
5 By: 

6 Michael A. Trauben

7 *Attorneys for Defendants*
8 **DAVID CARLSON and FILM FOETUS, INC.**

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PROOF OF SERVICE
California Rules of Court, Rule 2.251
Code of Civil Procedure section 1010.6, 1013, and 1013a

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

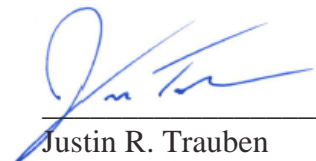
I am over the age of 18 and not a party to the within action; I am employed by SINGH, SINGH & TRAUBEN, LLP in the County of Los Angeles at 400 S. Beverly Drive, Suite 240, Beverly Hills, CA 90212.

On September 27, 2021, I served the foregoing documents described as:

DEFENDANTS DAVID CARLSON AND FILM FOETUS, INC.'S ANSWER TO PLAINTIFF MICHAL STORY'S UNVERIFIED FIRST AMENDED COMPLAINT

- (BY MAIL)** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred.
- √ **(BY E-MAIL OR ELECTRONIC TRANSMISSION)** I caused the document(s) to be sent from e-mail address jtrauben@singhtraubenlaw.com to the persons at the e-mail addresses listed in the Service List.
- (BY FEDERAL EXPRESS DELIVERY)** By placing a true and correct copy of the above document(s) in a sealed envelope addressed as indicated above and causing such envelope(s) to be delivered to the FEDERAL EXPRESS Service Center, on _____, to be delivered by their next business day delivery service on _____, to the addressee designated.
- (BY PERSONAL SERVICE)** I caused such envelope(s) to be hand delivered to the offices of the addressee(s), or by hand to the addressee or its designated representative.
- √ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct.

Executed on September 27, 2021 at Beverly Hills, California.


Justin R. Trauben

1 MICHAL STORY v. DAVID CARLSON & FILM FOETUS, INC

2 ASSIGNED TO:
3 HON. THERESA M. TRABER | DEPT. 74

4 SUPERIOR COURT OF THE STATE OF CALIFORNIA
5 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

6 CASE NO: 21STCV29163

7 SERVICE LIST

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MICHAL STORY