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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 Plaintiff,)
15 v.) **HON. THERESA M. TRABER | Dept. 47**
16 DAVID CARLSON, an Individual and) **DEFENDANTS DAVID CARLSON AND FILM**
17 FILM FOETUS, INC., and DOES 1) **FOETUS, INC.’S NOTICE OF MOTION AND**
18 THROUGH 100,) **SPECIAL MOTION TO STRIKE COUNTS 1, 2, 3,**
19 Defendants.) **6 AND 7 OF PLAINTIFF MICHAL STORY’S**
20) **UNVERIFIED FIRST AMENDED COMPLAINT**
21) **UNDER THE CALIFORNIA ANTI-SLAPP**
22) **STATUTE, CODE OF CIVIL PROCEDURE §**
23) **425.16**
24) **[Declaration of David Carlson, Request for Judicial**
25) **Notice, and [Proposed] Order Filed Concurrently**
26) **Herewith]**
27) **Hearing Date**
28) **Date: December 3, 2021**
) **Time: 9:00 a.m.**
) **Dept.: 47**
) **ACTION FILED: AUGUST 6, 2021**
) **TRIAL DATE: NONE SET**
) **Reservation IDs: [326394406716](#) & [865724959919](#)**

1 **TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that on **December 3, 2021**, at **9:00 a.m.**, in **Department 47** of the
4 Los Angeles County Superior Court, located at **111 North Hill Street, Los Angeles, California 90012**,
5 Defendants David Carlson and Film Foetus, Inc. (collectively, **“Defendants”**), will, and hereby do move,
6 pursuant to Code of Civil Procedure § 425.16 (California’s anti-SLAPP statute), for an order striking
7 Counts 1, 2, 3, 6 and 7 of the unverified First Amended Complaint (**“FAC”**) filed by Plaintiff Michal
8 Story (**“Plaintiff”** or **“Story”**). Pursuant to Code of Civil Procedure § 425.16(c)(1), Defendants also move
9 for an order awarding them their attorney’s fees and costs in an amount to be proven through a subsequent
10 application and motion.

11 This Special Motion to Strike is made on the grounds that each of Plaintiff’s first, second, third,
12 sixth and seventh causes of action “arise from” Defendants’ acts and conduct done in furtherance of
13 Defendants’ exercise of free speech in connection with a public issue or issue of public interest, including
14 in furtherance of Defendants’ creation, promotion, distribution and exhibition of the feature length
15 documentary film entitled **“JOE FRANK – SOMEWHERE OUT THERE,”** which are “act[s] . . . in
16 furtherance of [Defendants’] right of . . . free speech under the United States Constitution or the California
17 Constitution in connection with a public issue.” Code Civ. Proc. § 425.16(b)(1). Plaintiff’s allegations
18 underlying first, second, third, sixth, and seventh causes of action are impermissibly based on, and directed
19 against, Defendants’ acts in advancing and assisting in the exercise of Defendants’ creation, promotion,
20 distribution, and exhibition of a feature length documentary film. In addition, Plaintiff cannot meet her
21 burden of establishing through competent and admissible evidence a reasonable probability that she will
22 prevail against Defendants in connection with Plaintiff’s first cause of action for breach of contract,
23 Plaintiff’s second cause of action for breach of the implied covenant of good faith and fair dealing,
24 Plaintiff’s third cause of action for fraud, Plaintiff’s sixth cause of action for constructive fraud, and
25 Plaintiff’s seventh cause of action for intentional interference with economic relationship.

26 Because Plaintiff’s FAC asserts meritless claims arising from acts in furtherance of Defendants’
27 exercise of their right of free speech, Plaintiff’s first, second, third, sixth, and seventh causes of action
28 should be stricken. (*Code of Civil Procedure* §§ 425.16(b)(1)).

1 This Special Motion to Strike is based upon this Notice of Motion, the accompanying
2 Memorandum of Points and Authorities in support thereof, the concurrently filed Declaration of David
3 Carlson and the exhibits thereto; the concurrently filed Request for Judicial Notice, the complete files and
4 records in this action, any oral argument heard on this Motion; and any further argument and evidence
5 that Defendants may present at or before the hearing on this Motion.

6 **DATED:** October 26, 2021

Respectfully submitted,

7 **SINGH, SINGH & TRAUBEN, LLP**
8 **MICHAEL A. TRAUBEN**

9
10
11 By: 

Michael A. Trauben

12 *Attorneys for Defendants*
13 DAVID CARLSON *and* FILM FOETUS, INC.

TABLE OF CONTENTS

I. INTRODUCTION1

II. STATEMENT OF FACTS1

 A. The Parties1

 B. The Development, Production and Distribution of the Documentary Film.....2

 C. Defendants’ Request for Judicial Notice3

III. ANTI-SLAPP STATUTE LEGAL STANDARD3

IV. PLAINTIFF’S ALLEGATIONS UNDERLYING ALL CAUSES OF ACTION WITHIN HIS UNVERIFIED COMPLAINT ARISE FROM PROTECTED ACTIVITY5

 A. Defendants’ Alleged Conduct – Failing to Credit and Failing to Manage the Production and Distribution of the Film, or Failing to Consult with Plaintiff or Identify Investors – are all Acts that Advance and Assist their Right to Free Speech.....5

 (i) Expression by Means of Motion Pictures is Within the Right of Free Speech.....6

 (ii) Defendants’ Alleged Acts are in Furtherance of Their Right to Free Speech6

 B. Defendants’ Protected Speech is in Connection with an Issue of Public Interest: The Personal Life of the Public Figure Joe Frank8

V. PLAINTIFF CANNOT ESTABLISH A PROBABILITY OF PREVAILING ON HER CLAIMS ARISING FROM PROTECTED ACTIVITY10

 A. Plaintiff Cannot Prevail on Her First Cause of Action for Breach of Contract Claim.....10

 B. Plaintiff Cannot Prevail on Her Second Claim for Breach of Implied Covenant.....12

 C. Plaintiff Cannot Prevail on Her Third Cause of Action for Promissory Fraud12

 D. Plaintiff Cannot Prevail on Her Sixth Cause of Action for Constructive Fraud.....13

 E. Plaintiff Cannot Prevail on Her Seventh Cause of Action for Intentional Interference14

VI. CONCLUSION.....15

TABLE OF AUTHORITIES

California Supreme Court

Alliance Mortg. Co. v. Rothwell (1995) 10 Cal.4th 122613

Applied Equip. Corp. v. Litton Saudi Arabia Ltd. (1994) 7 Cal.4th 50314, 15

Baral v. Schnitt (2016) 1 Cal.5th 37610

Club Members for an Honest Election v. Sierra Club (2008) 45 Cal. 4th 3093

Equilon Enters. v. Consumer Cause, Inc. (2002) 29 Cal.4th 534

Guglielmi v. Spelling-Goldberg Prods. (1979) 25 Cal. 3d 8606

Navellier v. Sletten (2002) 29 Cal. 4th 825

Oasis W. Realty, LLC v. Goldman (2011) 51 Cal. 4th 81110

Quelimane Co. v. Stewart Title Guar. Co. (1998) 19 Cal.4th 2614

Shoemaker v. Myers (1990) 52 Cal.3d 115

Sweetwater Union High Sch. Dist. v. Gilbane Bldg. Co. (2019) 6 Cal. 5th 9315

Varian Med. Sys., Inc. v. Delfino (2005) 35 Cal.4th 1804

Wilson v. Cable News Network, Inc. (2019) 7 Cal.5th 8715

Winter v. DC Comics (2003) 30 Cal. 4th 8817

California Court of Appeals

Avidor v. Sutter’s Place, Inc. (2013) 212 Cal.App.4th 143914

Barak v. Quisenberry Law Firm (2006) 135 Cal.App.4th 6544

Berryman v. Merit Prop. Mgmt., Inc. (2007) 152 Cal.App.4th 154413

Brodeur v. Atlas Entm’t, Inc. (2016) 248 Cal.App.4th 6659

Careau & Co. v. Sec. Pacific Bus. Credit, Inc. (1990) 222 Cal.App.3d 137112

Church of Scientology v. Wollersheim (1996) 42 Cal.App.4th 6289

Daniel v. Wayans (2017) 8 Cal.App.5th 36710

Dickinson v. Cosby (2019) 37 Cal.App.5th 11383

Dove Audio, Inc. v. Rosenfeld, Meyer & Susman (1996) 47 Cal.App.4th 77710

Dryden v. Tri–Valley Growers (1977) 65 Cal.App.3d 99014

DuPont Merck Pharm. Co. v. Super. Ct. (2000) 78 Cal.App.4th 56213

1	<i>Durell v. Sharp Healthcare</i> (2010) 183 Cal.App.4th 1350.....	12
2	<i>Dyer v. Childress</i> (2007) 147 Cal.App.4th 1273	6
3	<i>Eastwood v. Super. Ct.</i> (1983) 149 Cal.App.3d 409.....	8
4	<i>Farmers Ins. Exch. v. Zerlin</i> (1997) 53 Cal.App.4th 445	14
5	<i>Fox Searchlight Pictures, Inc. v. Paladino</i> (2001) 89 Cal. App. 4th 294.....	4
6	<i>Hall v. Time Warner, Inc.</i> (2007) 153 Cal.App.4th 1337	4
7	<i>Hecimovich v. Encinal Sch. Parent Teacher Org.</i> (2012) 203 Cal.App.4th 450.....	4
8	<i>Hunter. v. CBS Broad. Inc.</i> (2013) 221 Cal. App. 4th 1510.....	6
9	<i>I-CA Enters., Inc. v. Palram Am., Inc.</i> (2015) 235 Cal.App.4th 257.....	14
10	<i>Kronemyer v. Internet Movie Database Inc.</i> (2007) 150 Cal.App.4th 941	9
11	<i>Lieberman v. KCOP Television, Inc.</i> (2003) 110 Cal.App.4th 156.....	6
12	<i>McBride v. Boughton</i> (2004) 123 Cal.App.4th 379	13
13	<i>Mintz v. Blue Cross of Cal.</i> (2009) 172 Cal.App.4th 1594.....	15
14	<i>Nagy v. Nagy</i> (1989) 210 Cal.App.3d 1262.....	12
15	<i>No Doubt v. Activision Publ'g, Inc.</i> (2011) 192 Cal.App.4th 1018.....	8
16	<i>Nygaard, Inc. v. Uusi-Kerrula</i> (2008) 159 Cal.App.4th 1027	9
17	<i>Ojjev v. Brown</i> (2019) 43 Cal.App.5th 1027	6, 7
18	<i>Patrick v. Alacer Corp.</i> (2008) 167 Cal.App.4th 995.....	13
19	<i>Prakashpalan v. Engstrom, Lipscomb & Lack</i> (2014) 223 Cal.App.4th 1105	13
20	<i>Reeder v. Specialized Loan Servicing LLC</i> (2020) 52 Cal.App.5th 795.....	12
21	<i>SI 59 LLC v. Variel Warner Ventures, LLC</i> (2018) 29 Cal.App.5th 146.....	14
22	<i>Stewart v. Rolling Stone LLC</i> (2010) 181 Cal.App.4th 664	8
23	<i>Symmonds v. Mahoney</i> (2019) 31 Cal.App.5th 1096.....	6, 7-8
24	<i>Tamkin v. CBS Broad., Inc.</i> (2011) 193 Cal.App.4th 133	6-7, 8, 9
25	<i>Wanlandv. Law Offices of Mastagni, Holstedt & Chiurazzi</i> (2006) 141 Cal.App.4th 15	3
26	<i>Wilbanks v. Wolk</i> (2004) 121 Cal.App.4th 883	9
27	<i>Younan v. Equifax Inc.</i> (1980) 111 Cal.App.3d 498.....	13

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Federal Cases

Metabolife Int’l, Inc. v. Wornick (9th Cir. 2001) 264 F.3d 832.....4
Sarver v. Hurt Locker, LLC (C.D. Cal. Oct. 13, 2011) 2011 WL 11574477.....6

Code and Statutes

C.C.P. §§ 425.16.....3, 4, 5, 6, 8, 10, 13

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In her First Amended Complaint (“**FAC**”), Plaintiff Michal Story (“**Story**” or “**Plaintiff**”) alleges
4 that Defendants David Carlson (“**Carlson**”) and Film Foetus, Inc. (“**Film Foetus**”) (collectively,
5 “**Defendants**”) did not meaningfully consult with her in connection with the production and distribution
6 of a documentary motion picture, *Joe Frank: Somewhere Out There* (the “**Film**” or “**Documentary**”), that
7 Defendants failed to properly credit Plaintiff on the Film and failed to identify investors of the Film.

8 These claims fall squarely within California’s anti-SLAPP statute and must be dismissed. It is
9 beyond peradventure that the creation of a film (including conduct that advances or assists in the creation
10 of a film) constitutes the exercise of free speech and, therefore, that conduct in connection with the
11 production, creation and distribution of films is protected by the anti-SLAPP statute.

12 Plaintiff also cannot demonstrate a probability of succeeding on Counts 1, 2, 3, 6 and 7 of the FAC.
13 Plaintiff’s first, second, third, sixth and seventh cause of action each necessarily depend upon Plaintiff’s
14 ability to establish through admissible evidence that Defendants did not meaningfully consult with her in
15 connection with the production and distribution of the Documentary, and that this purported lack of
16 meaningful consultation caused Plaintiff damages, that Defendants never intended to perform their
17 obligations under the Production Agreement in connection with the production and distribution of the
18 Documentary, and that Defendants failed to credit Plaintiff. Plaintiff cannot meet her burden.

19 At bottom, Plaintiff’s FAC is an abusive litigation tactic singularly designed to coerce Defendants
20 into relinquishing control of the Documentary to Plaintiff. Counts 1, 2, 3, 6 and 7 of Plaintiff’s FAC should
21 be stricken in their entirety.

22 **II. STATEMENT OF FACTS**

23 **A. The Parties**

24 Defendant Carlson is an award-winning independent film director. *See* Declaration of David
25 Carlson (“**Carlson Decl.**”) at ¶¶5-7, Ex. “A”. Defendant Film Foetus is an independent film & digital
26 production company that produces content for broadcast television, home and corporate video, and
27 independent film. (*Id.* at ¶4). Joe Frank (“**Frank**”) was an award winning performer on public radio for
28

39 years. (FAC at ¶3). Plaintiff alleges that by virtue of having been married to Frank, Plaintiff is the “sole successor in interest to Frank and sole party to the contract with Film Foetus, Inc.” (FAC at ¶5).

B. The Development, Production and Distribution of the Documentary Film

In 2010, Frank agreed to participate in the production of a Documentary about his life. (Carlson Decl. at ¶¶18-22). For the next 8 years, Film Foetus worked as a producer, director, and editor on the Film for no compensation, and completed the Film on or around August 1, 2019 on a budget of less than \$200,000.00. (*Id.* at ¶¶23-25, 77-78). The Film was financed by Defendants, crowdfunding and through professional favors of Carlson’s peers done in the spirit of independent filmmaking. (*Id.* at ¶¶26, 87). In addition to Carlson’s provision of hundreds of hours of uncompensated labor and time, Carlson personally invested \$70,798.00 into the production of the Film and has also donated an additional \$10,641.00 into the Film. (*Id.* at ¶¶88, 157). Neither Plaintiff nor Frank participated in the financing of the Film. (*Id.* at ¶168). The Film premiered at a film festival in March 2018, shortly after Frank’s passing. (*Id.* at ¶27).

In June 2017, a production agreement for the Film was executed by Film Foetus, Frank, and Plaintiff (the “**Production Agreement**”). (Id. at ¶30, Ex. “B”). On March 9, 2018, the Film was registered with the Copyright Office, wherein *both* Film Foetus and Plaintiff are identified as the copyright claimants. (*Id.* at ¶¶32-33, Ex. “C”). With the exception of Frank’s right to approve the final cut of the Film (which Frank approved in writing on October 9, 2017), paragraph 2(b) of the Production Agreement provides that Film Foetus “shall have exclusive control and approval with respect to all creative decisions regarding the Picture.” (*Id.* at ¶¶35-36, Exs. “B”, “D”). Pursuant to paragraph 5 of the Production Agreement, the parties expressly acknowledged that, as of the date of the Production Agreement in 2017, Film Foetus had already, “incurred actual, verifiable, third-party Production Costs totaling \$29,000.00.” (*Id.* at ¶74, Ex. “B”).

In accordance with the Production Agreement, Defendant Film Foetus kept Frank and Story fully apprised of all material developments with respect to the Film. (*Id.* at ¶¶37-73, 83-84, Exs. “E”-“U”). Defendant Film Foetus not only routinely provided Plaintiff with updates as to the development, production and distribution of the Film, but also further invited Plaintiff’s involvement and suggestions, including offers to discuss any details or budget line items related to the Film (strategy, budget items, etc.). (*Id.*). Nonetheless, Plaintiff never, at any time, offered any suggestions, comments, or raised any concerns whatsoever about the budget for the Film. (*Id.* at ¶71).

1 As reflected within the December 1, 2020 budget Film Foetus provided to Plaintiff, to date, the
2 actual, verifiable, third-party production costs to produce the Film total \$183,100.00 (the “**Verifiable**
3 **Production Costs**”). (*Id.* at ¶¶63, 77-78, Ex. “R”). In turn, the Film has yielded income totaling \$4,917.68
4 (the “**Total Film Revenue**”). (*Id.* at ¶¶79, 118). The entirety of the Total Film Revenue derived from the
5 exploitation of the Film remains in the bank account of Joe Frank Movie, LLC (the “**JFM LLC**”), a
6 company formed to own and operate a bank account for the Film with Plaintiff’s express knowledge. (*Id.*
7 at ¶¶50-51, 80-81, Ex. “J”). To date, based upon the Total Film Revenue derived from the exploitation of
8 this low-budget documentary Film, Film Foetus remains unrecouped in the amount of \$70,798.00. (*Id.* at
9 ¶90). All of Plaintiff’s allegations underpinning Counts 1, 2, 3, 6 and 7 of the FAC are unsubstantiated
10 and belied by myriad documents. (*Id.* at ¶¶92-196, Exs. “V”-“Z”).

11 Further, in complete conformity with the Production Agreement, Plaintiff is expressly credited as
12 a producer on the Film. (*Id.* at ¶¶151-152, Ex. “E”). On September 15, 2017, Frank expressly requested
13 in writing that his credit be removed from the Film. (*Id.* at ¶153, Ex. “Z”).

14 C. Defendants’ Request for Judicial Notice

15 The conduct of Defendants at issue in the FAC – acts in furtherance of the development of the
16 Documentary concerning public figure Joe Frank – are indisputably in connection with a matter of public
17 interest. Joe Frank is a legendary figure in entertainment, particularly with respect to public radio. His life
18 and legacy are issues of public interest. (RJN at Exs. 1-4; FAC ¶3). Likewise, the subject documentary is
19 a matter of public interest. (RJN at Exs. 5-7).

20 III. ANTI-SLAPP STATUTE LEGAL STANDARD

21 “The Legislature enacted the anti-SLAPP statute to address the societal ills caused by meritless
22 lawsuits filed to chill the exercise of First Amendment rights.” *Dickinson v. Cosby* (2019) 37 Cal.App.5th
23 1138, 1155. “The statute accomplishes this end by providing a special procedure for striking meritless,
24 chilling claims at an early stage of litigation.” (*Id.*); C.C.P. § 425.15(b)(1); *Club Members for an Honest*
25 *Election v. Sierra Club* (2008) 45 Cal.4th 309, 315. The statute is “**broadly construed** to encourage
26 continued participation in free speech and petition activities.” *Wanlandv. Law Offices of Mastagni,*
27 *Holstedt & Chiurazzi* (2006) 141 Cal.App.4th 15, 22 (emphasis supplied).

1 The purpose of the anti-SLAPP statute is to “encourage participation in matters of public
2 significance and [to] prevent meritless litigation designed to chill the exercise of First Amendment rights.”
3 *Hall v. Time Warner, Inc.* (2007) 153 Cal.App.4th 1337, 1346. To protect defendants from such abusive
4 lawsuits, California’s “anti-SLAPP” statute provides:

5 A cause of action against a person arising from any act of that person **in furtherance of**
6 **the person’s right of petition or free speech under the United States or California**
7 **Constitution in connection with a public issue** shall be subject to a special motion to
8 strike, unless the court determines that the plaintiff has established that there is a probability
9 that the plaintiff will prevail on the claim.

10 (C.C.P. § 425.16(b)(1)). (Emphasis supplied).

11 On a motion to strike, the trial court evaluates the merits of the lawsuit using a summary judgment
12 like procedure. *Varian Med. Sys., Inc. v. Delfino* (2005) 35 Cal.4th 180, 192. However, unlike a motion
13 for summary judgment, to shift the burden of proof to the plaintiff, a defendant need only show that the
14 complaint or any cause of action therein, arises from protected First Amendment activity. *Barak v.*
15 *Quisenberry Law Firm* (2006) 135 Cal.App.4th 654, 661. The burden then shifts to the plaintiff to establish
16 a probability that she will prevail on the merits of her claims, requiring a plaintiff to establish that the
17 complaint is both legally sufficient and supported by a sufficient *prima facie* showing of facts to sustain
18 a favorable judgment if the evidence submitted by the complaint is credited. *Hecimovich v. Encinal Sch.*
19 *Parent Teacher Org.* (2012) 203 Cal.App.4th 450, 469.

20 Although the statute refers to “lawsuits brought primarily to chill exercise” of rights of free speech,
21 the California Supreme Court has made clear that a defendant need not show that the lawsuit was brought
22 with the subjective intent to “chill” these rights. *Equilon Enters., LLC v. ConsumerCause, Inc.* (2002) 29
23 Cal.4th 53, 58. Nor need a defendant demonstrate that the complaint actually had a “chilling” effect on
24 his rights. (*Id.* at 59). Rather, the only thing a defendant needs to establish is that the challenged lawsuit
25 arose from an act on the part of the defendant in furtherance of his right of petition or free speech. *Fox*
26 *Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal. App. 4th 294, 306-307. From that, the court may
27 presume that the purpose of the action was to chill the exercise of free speech rights. (*Id.*). “In making its
28 determination [on an anti-SLAPP motion], the court shall consider the pleadings, and supporting and
opposing affidavits stating the facts upon which the liability or defense is based.” *Code of Civil Procedure*
§ 425.16(b)(2).

1 As to the “second step” regarding plaintiff’s burden, the plaintiff must meet her burden of proving
2 a prima facie case “**with admissible evidence.**” *Metabolife Int’l, Inc. v. Wornick* (9th Cir. 2001) 264 F.3d
3 832, 840 (emphasis supplied); see also *Sweetwater Union High Sch. Dist. v. Gilbane Bldg. Co.* (2019) 6
4 Cal. 5th 931, 940 (“[a]s to the second step inquiry” for an anti-SLAPP motion, “a plaintiff seeking to
5 demonstrate the merit of the claim “may not rely solely on its complaint, even if verified; instead, its proof
6 must be made upon competent admissible evidence”). “If the plaintiff cannot meet the minimal burden of
7 ‘stat[ing] and substantiat[ing] a legally sufficient claim,’ the claim is stricken pursuant to the [anti-SLAPP]
8 statute.” *Navellier v. Sletten* (2002) 29 Cal. 4th 82, 88.

9 **IV. PLAINTIFF’S ALLEGATIONS UNDERLYING ALL CAUSES OF ACTION WITHIN** 10 **HER UNVERIFIED FAC ARISE FROM PROTECTED ACTIVITY**

11 An anti-SLAPP motion addresses all kinds of claims, regardless of the nature or form of the action,
12 as long as the underlying action is “against a person who has exercised [free speech or petition] rights.”
13 *Navellier* (2002) 29 Cal. 4th at 92-93. For instance, in *Navellier*, the California Supreme Court dispelled
14 any misconceptions as to whether section 425.16 applied to claims for “breach of contract”:

15 As the facts in this lawsuit illustrate, conduct alleged to constitute breach of contract may
16 also come within constitutionally protected speech or petitioning. The anti-SLAPP statute's
17 definitional focus **is not the form** of the plaintiff's cause of action but, rather, the
18 defendant's **activity** that gives rise to his or her asserted liability-and whether that activity
19 constitutes protected speech or petitioning. Evidently, “[t]he Legislature recognized that
20 ‘all kinds of claims could achieve the objective of a SLAPP suit-to **interfere with and**
21 **burden the defendant's exercise of his or her rights.**” [] “Considering the purpose of
22 the [anti-SLAPP] provision, expressly stated, the nature or form of the action is not what
23 is critical **but rather that it is against a person who has exercised certain rights**” []

24 *Navellier*, 29 Cal. 4th at 92-93 (emphasis in bold supplied) (internal citations omitted).¹

25 **A. Defendants’ Alleged Conduct – Failing to Credit and Failing to Manage the** 26 **Production and Distribution of the Film, or Failing to Consult with Plaintiff or** 27 **Identify Investors – are all Acts that Advance and Assist their Right to Free Speech**

28 The gravamen of Counts 1, 2, 3, 6 and 7 of the FAC arise from Defendant’s alleged acts in
consulting with Plaintiff in connection with the production and distribution of the Film, identifying the

¹ Courts may also consider the defendant’s reason for taking the challenged actions to determine whether the acts were made to further the defendant’s exercise of its free speech rights. See *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 889, 892-893 (although CNN’s termination of its employee was not “itself speech,” it may be afforded anti-SLAPP protection if the act was made in furtherance of CNN’s free speech rights).

1 owners of the copyright in the Film, preparing budgets in furtherance of the Film’s distribution, music
2 licensing for the Film, and identifying Film investors. (FAC ¶¶30-35, 43). All the acts Plaintiff targets are
3 acts that help advance or assist in Defendants’ exercise of their rights of free speech in connection with
4 an issue of public interest. C.C.P. §425.16(e)(4); *Ojeh v. Brown* (2019) 43 Cal.App.5th 1027, 1039 (act
5 is in furtherance of right of free speech if it helps advance that right or assists in the exercise of that right).

6 (i) **Expression by Means of Motion Pictures is Within the Right of Free Speech**

7 It is well established under California law that films involve free speech and are considered
8 expressive works. *Dyer v. Childress* (2007) 147 Cal.App.4th 1273, 1280 (“[c]ertainly, it is beyond dispute
9 that movies involve free speech”); *Guglielmi*, 25 Cal.3d at 872. It follows that because a film is an
10 expressive work, its creation is also an exercise of free speech. See *Tamkin v. CBS Broad., Inc.* (2011)
11 193 Cal.App.4th 133, 143 (creating, casting and broadcasting T.V. episode is exercise of free speech);
12 *Sarver v. Hurt Locker, LLC* (C.D. Cal. Oct. 13, 2011) 2011 WL 11574477, at *4 (defendants “easily met
13 the front prong” of anti-SLAPP as expression by means of motion pictures is within free speech guaranty).

14 Here, Plaintiff alleges that the “purpose of the Production Agreement was to develop a feature
15 length documentary based on the life, radio broadcasts and writing of Frank to be directed by Carlson and
16 to be produced by Film Foetus, Inc.” (FAC at ¶6). Clearly, any acts Defendants undertook in furtherance
17 of the purpose of the Production Agreement were acts in furtherance of their rights to free speech.

18 (ii) **Defendants’ Alleged Acts are in Furtherance of their Right to Free Speech**

19 An act is in furtherance of the right of free speech if the act helps to advance that right or assists
20 in the exercise of that right. See *Lieberman v. KCOP Television, Inc.* (2003) 110 Cal.App.4th 156, 166
21 (section 425.16(a) mandates that the “statute be construed broadly, and the statute’s reach is not restricted
22 to speech, but **expressly applies to conduct**” and that “conduct is not limited to the exercise” of the “right
23 of free speech, but **to all conduct in furtherance of the exercise of the right of free speech**, with
24 “furtherance” meaning “*helping to advance, assisting*”); see also *Hunter v. CBS Broad. Inc.* (2013) 221
25 Cal.App.4th 1510 (non-public “selection of a weather anchor ... qualifies as an act in furtherance of the
26 exercise of free speech,” protected under the first prong of section 425.16); *Symmonds v. Mahoney* (2019)
27 31 Cal.App.5th 1096. Clearly, acts that “advance or assist” the creation and performance of artistic work
28 are acts in furtherance of the right of free speech for anti-SLAPP purposes. *Tamkin*, 193 Cal.App.4th at

1 143 (writing and casting television show are acts in furtherance of free speech); *Winter v. DC Comics*
2 (2003) 30 Cal. 4th 881, 891-892 (First Amendment protects creative elements of artistic work).

3 Here, Defendants' lawful decision to "meaningfully consult" with Plaintiff "on all aspects of the
4 production, including but not limited to distribution and exploitation of the documentary" both **advance**
5 and **assist** the exercise of Defendants' free speech to develop and produce the Documentary, and are
6 therefore acts in furtherance of their right of free speech. (FAC ¶11). Plaintiff's targeting of these acts is
7 encapsulated in Plaintiff's allegations that the "contract provided that Defendants consult with Plaintiff
8 meaningfully with respect to myriad issues" but that Defendants allegedly decided to "self-distribute" the
9 documentary and allegedly did not "consult" Plaintiff "regarding budgets, changes to the budget, final
10 budget and monies raised" and allegedly breached the Production Agreement by not "identifying
11 investors," all of which comprise essential decisions which helped advance or assist the Documentary,
12 and thus are all acts in furtherance of the exercise of free speech. (FAC ¶¶ 30-36, 43). *Ojeh*, 43
13 Cal.App.5th at 1040 (filmmakers' conduct in soliciting investments for uncompleted film was conduct "in
14 furtherance" of producing a documentary in the exercise of the right to free speech).

15 The case of *Symmonds v. Mahoney* is further instructive on this point. *Symmonds*, 31 Cal.App.5th
16 1096. In *Mahoney*, the defendant, professionally known as "Eddie Money", a singer and songwriter who
17 performed in concerts, terminated the plaintiff, Symmonds, who was his drummer. Symmonds then sued
18 Mahoney for discrimination on the basis of age, disability and medical condition. (*Id.* at 1099). In
19 response, Mahoney filed an anti-SLAPP motion, arguing that the activity underlying the challenged claim
20 of age discrimination was Mahoney's decision to terminate Symmonds, which Mahoney contended was
21 an act in furtherance of his free speech rights in connection with an issue of public importance. (*Id.* at
22 1105). The trial court denied Mahoney's anti-SLAPP motion, concluding that:

23 "[w]hile it is arguable ... that an employer's choice of who is selected to work on a
24 particular show or project in any particular moment in time is an act in furtherance of the
25 employer's constitutionally protected free speech activity, such choice 'does not mean that
26 defendants' alleged discrimination and retaliation against plaintiff ... was also an act in
27 furtherance of its speech rights.'" (*Id.* at 1102-1103)

28 The Appellate Court disagreed and reversed, holding that Mahoney's decision to terminate
Symmonds was protected conduct under the anti-SLAPP statute. (*Id.* at 1105-1106). The court observed
that music is a "form of expression and communication protected under the First Amendment", and that

1 “[c]ourts have held that acts that ‘advance or assist’ the creation and performance of artistic works are acts
2 in furtherance of the right of free speech for anti-SLAPP purposes. (*Id.* at 1105-1106; citing *Tamkin*, 193
3 Cal.App.4th at 143). Because music is a form of protected expression, it follows that a “singer’s selection
4 of the musicians that play with him both advances and assists the performance of the music, and therefore
5 is an act in furtherance of his exercise of the right of free speech.” (*Id.* at 1106).

6 Here, as in *Mahoney*, the Defendants’ decisions related to the production, distribution, exhibition
7 and display of the subject Documentary both advance and assist the exercise of speech and are therefore
8 acts in furtherance of their right of free speech. And it is precisely these alleged acts by Defendants in
9 furtherance of the right of free speech that are the gravamen of Plaintiff’s claims, namely, Defendants’
10 consultation with Plaintiff in connection with the Film, Defendants’ crediting of Plaintiff in connection
11 with the Film, Defendants’ identification of the owners of the Film, Defendants’ preparation of budgets
12 in furtherance of the distribution of the Film, Defendants’ music licensing in connection with the Film,
13 and Defendants’ identification of investors of the Film. (FAC ¶¶30-36, 43).

14 Because Defendants’ alleged conduct are all acts that help advance or assist the exercise of free
15 speech through the development and public distribution of the Documentary Film, the conduct Plaintiff is
16 targeting is in furtherance of his constitutional right to free speech.

17 **B. Defendants’ Protected Speech is in Connection with an Issue of Public Interest: The**
18 **Personal Life of the Public Figure Joe Frank**

19 Under California law, the life and work of entertainers and other celebrities can create an “issue
20 of public interest” for purposes of section 425.16(e). “[T]here is a public interest which attaches to people
21 who, by their accomplishments, mode of living, professional standing or calling, create a legitimate and
22 widespread attention to their activities.” *Stewart v. Rolling Stone LLC* (2010) 181 Cal.App.4th 664, 677-
23 678, quoting *Eastwood v. Super. Ct.* (1983) 149 Cal.App.3d 409, 422.²

24 The conduct of Defendants at issue in the FAC – acts in furtherance of the development of the
25 Documentary concerning public figure Joe Frank – are indisputably in connection with a matter of public

26 ² See also *No Doubt v. Activision Publ’g, Inc.* (2011) 192 Cal.App.4th 1018, 1027 (distributor’s use of
27 band members’ likenesses in a video game was a “matter of public interest because of the widespread
28 fame” of the band]; *Hall*, 153 Cal. App. 4th at 1347 (television broadcast of interview with Marlon
Brando’s housekeeper made in connection with an issue of public interest because of “public’s fascination
with Brando and widespread public interest in his personal life”).

1 interest. Joe Frank is a legendary figure in entertainment, particularly with respect to public radio. His life
2 and legacy are issues of public interest. (RJN at Exs. 1-4). Likewise, the subject documentary is a matter
3 of public interest. (RJN at Exs. 5-7; Carlson Decl. at ¶¶20-22).

4 In fact, in Plaintiff’s own FAC, Plaintiff emphatically underscores the public’s interest:

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

10 (FAC at ¶3). Typically, the public interest requirement “means that in many cases [triggering the anti-
11 SLAPP statute], the statement or conduct will be a part of a public debate and the public therefore will be
12 exposed to varying viewpoints on the issue.” *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 898
13 (*Wilbanks*). Two of the most commonly articulated definitions of “statements made in connection with a
14 public issue” include whether “**the subject of the statement or activity precipitating the claim was a**
15 **person or entity in the public eye**”, and “**whether the statement or activity precipitating the claim**
16 **involved a topic of widespread public interest.**” (*Id.*). (Emphasis supplied).

17 Moreover, facts concerning the creation of works of art and entertainment are also an issue of
18 public interest. *Kronemyer v. Internet Movie Database Inc.* (2007) 150 Cal.App.4th 941, 59 (public
19 knowledge as to the listing of credits on the movie “My Big Fat Greek Wedding” was topic of public
20 interest); see also *Tamkin*, 193 Cal.App.4th at 143-144 (“public interest in the writing, casting and
21 broadcasting” of a television episode for purposes of the anti-SLAPP statute).³ The targeted speech in this
22 matter implicates “an issue of public interest.” The Film documents the personal life of Joe Frank, who
23 Plaintiff has herself characterized as a highly popular performer on public radio for 39 years who
24
25

26
27 ³ The anti-SLAPP statute, including the scope of the term “public interest,” is to be construed broadly.
28 *Nygaard, Inc. v. Uusi-Kerrula* (2008) 159 Cal.App.4th 1027, 1039-42. “Case precedent confirms there is a
public interest ‘in the writing, casting and broadcasting’ of an episode of a popular television program”.
Brodeur v. Atlas Entm’t, Inc. (2016) 248 Cal.App.4th 665, 674.

1 “developed a loyal following of tens of thousands of listeners to his weekly radio show . . .” and who was
2 the recipient “of numerous awards including an Emmy and a Peabody.” (FAC at ¶3; RJN at Exs. 3-14).⁴

3 **V. PLAINTIFF CANNOT ESTABLISH A PROBABILITY OF PREVAILING ON HER**
4 **CLAIMS ARISING FROM PROTECTED ACTIVITY**

5 Once the moving party establishes that the lawsuit arises from protected activity, to survive the
6 motion, the burden shifts to plaintiff to show through competent evidence a probability that she will
7 succeed on his claim. *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777; *Baral*
8 *v. Schnitt* (2016) 1 Cal.5th 376, 384 (burden “shifts to the plaintiff to demonstrate the merit of the claim
9 by establishing a probability of success”); C.C.P. §425.16(a). Here, having established that Plaintiff’s
10 claims arise from protected activity – that being acts that assist and advance the right to free speech - the
11 burden now shifts to Plaintiff to establish a probability that she will prevail on the merits of her claims.
12 C.C.P § 425.16(b)(1). If the Plaintiff cannot satisfy this burden, the Court must strike the causes of action
13 at issue in the FAC. (*Id.*).

14 **A. Plaintiff Cannot Prevail on Her First Cause of Action for Breach of Contract Claim**

15 The elements of a cause of action for breach of contract are (1) the existence of the contract; (2)
16 plaintiff’s performance; (3) defendant’s breach; *and* (4) the resulting damages to the plaintiff. *Oasis W.*
17 *Realty, LLC v. Goldman* (2011) 51 Cal. 4th 811, 821. In support of her first cause of action, Plaintiff
18 alleges that Defendants: (i) failed to “report” to Plaintiff; (ii) commingled bank funds; (iii) failed to
19 identify Film investors; (iv) failed to consult with Plaintiff on the Film; (v) failed to accord Plaintiff a
20 producer credit; and (vi) failed to finance or secure financing for the Documentary. (FAC at ¶43). Each of
21 Plaintiff’s allegations underpinning her cause of action for breach of contract are demonstrably false and
22 belied by the clear record.

23 Initially, as a threshold matter, Plaintiff is unable to even allege, let alone present any admissible
24 of, an actual contract between Plaintiff and Defendant Carlson. (Carlson Decl. at ¶30, Ex. “B”). The
25 parties’ Production Agreement is exclusively between Frank, Plaintiff and Defendant Film Foetus.
26 Consequently, any claim for breach of contract against Defendant Carlson fails as a matter of law. (*Id.*).

27 _____
28 ⁴ See *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 655 (that an issue receives media coverage is indicative that the speech is of the public interest).

1 With respect to Plaintiff’s allegations underpinning her claim for breach of contract, each are
2 provably false, with Plaintiff unable to present any admissible evidence to substantiate any of her claims.
3 Contrary to Plaintiff’s blanket, conclusory allegations, Plaintiff was in fact kept meaningfully apprised of
4 all material developments with respect to the Film. (*Id.* at ¶¶37-73, 83-84, 92-196, Exs. “E”-Y”). For
5 instance, Defendant Film Foetus meaningfully apprised Plaintiff of every distribution decision and further
6 afforded Plaintiff an opportunity to provide input or suggestions or to raise any questions with respect to
7 the Film’s budget. (*Id.*). Nonetheless, at no time did Plaintiff ever offer any suggestions or comments with
8 respect to the distribution of the Film. (*Id.* at ¶71). Indeed, further cementing Film Foetus’ numerous
9 updates to Plaintiff regarding the distribution of the Film, Plaintiff actually appears to allege in the FAC
10 that Film Foetus sent *too many budgets*. (FAC at ¶43(h)). Accordingly, as Film Foetus unequivocally
11 provided Plaintiff with the Film’s budgets and reasonably updated Plaintiff as the production and
12 distribution of the Film progressed, Plaintiff cannot substantiate the legal sufficiency of her claim that
13 Defendants failed to report to her regarding the Film. (*Id.* at ¶¶37-73, 83-84, 92-196, Exs. “E”-Y”).

14 With respect to purportedly “not identifying investors”, Plaintiff alleges nothing more than
15 “Carlson has acknowledged he received \$75,000 from an investor” but that Plaintiff somehow is unclear
16 as to where the “money is”. (FAC ¶28). Although Plaintiff fails to identify the investor of which she is
17 well aware, Plaintiff was in fact informed that an individual named Douglas Elliott (“**Elliott**”) contributed
18 to the Film on February 7, 2019, albeit with no expectation of a monetary return. (*Id.* at ¶¶106-109, Ex.
19 “V”). In fact, Elliott was prominently displayed as a producer on all marketing materials for the Film,
20 including on the Film’s home and public IMDB pages. (*Id.* at Ex. “E”). Moreover, JFM LLC’s bank
21 statements, as provided to Plaintiff on December 2, 2019, clearly demonstrate that Elliott’s monies were
22 transferred into JFM LLC’s bank account on March 6, 2019. (*Id.* at ¶¶108, Ex. “R”).

23 Regarding Plaintiff’s claim that Film Foetus breached the Production Agreement by not according
24 Plaintiff a producer credit, Plaintiff’s “claim” is patently frivolous, as Plaintiff in fact **received her**
25 **producer credit**. (*Id.* at ¶¶151-152, Ex. “E”).⁵

26 _____
27 ⁵ To the extent, however improperly pled and ill-defined, Plaintiff is attempting to allege that Film Foetus
28 failed to provide Frank a credit, Plaintiff has no standing to make any such claim and, regardless, any such
contention is patently baseless. On September 15, 2017, Frank expressly requested in writing that his
credit be removed. (Carlson Decl. at ¶153, Ex. “Z”).

1 Moreover, even if Plaintiff could present admissible evidence to substantiate the legal sufficiency
2 of her purported breach of contract claims (which she cannot), Plaintiff is unable to provide any evidence
3 establishing any damage resulting from any purported contractual breaches. Pursuant to paragraph 5 of
4 the Production Agreement, the parties expressly acknowledged that Film Foetus had already, at that time
5 in 2017, “incurred actual, verifiable, third-party Production Costs totaling \$29,000.00.” (*Id.* at ¶74, Ex.
6 “B”). Conversely, to date, total film revenue is \$4,917.68. (*Id.* at ¶¶79, 118). Plaintiff cannot present any
7 admissible evidence supporting any damages resulting from any of Defendants’ purported breaches.

8 Finally, Plaintiff’s unsupported allegation that Film Foetus failed to finance the Documentary is
9 demonstrably false and contradicted by the Documentary’s public release and distribution. (*Id.* at ¶27).

10 **B. Plaintiff Cannot Prevail on Her Second Claim for Breach of Implied Covenant**

11 “The [implied] covenant of good faith and fair dealing [is] implied by law in every contract.”
12 *Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1369. A breach of the implied covenant of good
13 faith is a breach of the contract. *Careau & Co. v. Sec. Pacific Bus. Credit, Inc.* (1990) 222 Cal.App.3d
14 1371, 1393. In support of Plaintiff’s second cause of action, Plaintiff mechanically re-incorporates the
15 same allegations which fail to support an actual breach of the Production Agreement. Moreover, Plaintiff’s
16 unsupported allegation that Defendants somehow refused to issue accounting reports to Plaintiff and/or
17 refused to consult with Plaintiff is directly belied by the record. (*Id.* at ¶¶37-73, 83-84, 92-196, Exs. “E”-
18 Y”). For all the same reasons Plaintiff’s first cause of action fails, Plaintiff fails to state a claim for breach
19 of the implied covenant of good faith and fair dealing and has no probability of prevailing on this claim.

20 **C. Plaintiff Cannot Prevail on Her Third Cause of Action for Promissory Fraud**

21 The elements of fraud are misrepresentation, knowledge of falsity, intent to induce reliance on the
22 misrepresentation, justifiable reliance on the misrepresentation, and resulting damages. *Reeder v.*
23 *Specialized Loan Servicing LLC* (2020) 52 Cal.App.5th 795, 803. Promissory fraud is a subspecies of
24 fraud, and an action may lie where a defendant fraudulently induces the plaintiff to enter into a contract,
25 by making promises he does not intend to keep. (*Id.*) In a claim of fraud, the elements must be alleged
26 with specificity. *Nagy v. Nagy* (1989) 210 Cal.App.3d 1262, 1268.

27 Here, as a threshold matter, Plaintiff completely fails to allege facts sufficient to state a claim for
28 fraud. The sole “representations” Plaintiff alleges Defendants made were those “representations” set forth

1 in the written Production Agreement between Plaintiff, Frank, and Film Foetus, thereby conflating
2 Plaintiff's breach of contract claims with her "fraud" claims. (FAC ¶50). Notwithstanding Plaintiff's direct
3 concession that Defendant Film Foetus did in fact develop, produce, and distribute a feature length
4 Documentary Film regarding Frank, Plaintiff alleges in rote, conclusory fashion, devoid of any supporting
5 facts, that at "the time Defendants made their promises and representations to the Plaintiff, they had no
6 intention of performing them." (FAC ¶51). In addition to failing to plead her fraud claims with any remote
7 degree of specificity, Plaintiff in no manner alleges that her purported damages were in any way the result
8 of her reliance upon any of Defendants' alleged statements. Indeed, an examination of Plaintiff's
9 allegations reveal that Plaintiff is simply conflating the alleged contractual breaches of the Production
10 Agreement with the performance of these exact same contractual obligations. Plainly, Plaintiff woefully
11 fails to allege any facts in support of her "fraud" claim. *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th
12 995 (damage an essential element of a cause of action for fraud and "[m]isrepresentation ... does not
13 support a cause of action unless the plaintiff suffered consequential damages").

14 Moreover, to satisfy her burden under the second prong of the anti-SLAPP analysis, Plaintiff must
15 "substantiate the legal sufficiency of [her] claim." *DuPont Merck Pharm. Co. v. Super. Ct.* (2000) 78
16 Cal.App.4th 562, 568. In other words, even if Plaintiff was able to allege a legally sufficient claim (which
17 she cannot), Plaintiff still "must provide the court with sufficient evidence to permit the court to determine
18 whether 'there is a probability that the plaintiff will prevail on the claim.'" (*Id.*; § 425.16, subd. (b)(1)).
19 Plaintiff is unable to do so. Considering the vague nature of the alleged promises, Plaintiff cannot present
20 any admissible evidence as to having justified relied upon the purported promises. Finally, there is no
21 evidence that Plaintiff suffered any economic damage resulting from these contractual promises, all of
22 which Film Foetus performed. *Alliance Mortg. Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1240 (unless
23 plaintiff merely seeks to rescind a contract, she must show actual monetary loss to recover on fraud claim).

24 **D. Plaintiff Cannot Prevail on Her Sixth Cause of Action for Constructive Fraud**

25 Constructive fraud "is a unique species of fraud applicable only to a fiduciary or confidential
26 relationship." *Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1131.
27 "Constructive fraud arises on a breach of duty by one in a confidential or fiduciary relationship to another
28 which induces justifiable reliance by the latter to his prejudice." *Id.*; see also *Younan v. Equifax Inc.* (1980)

1 111 Cal.App.3d 498, 516 (elements of constructive fraud cause of action are “(1) a fiduciary or
2 confidential relationship; (2) nondisclosure (breach of fiduciary duty); (3) intent to deceive, and (4)
3 reliance and resulting injury (causation)). Plaintiff’s attempt to allege a claim for “constructive fraud” is
4 similarly defective because the FAC is devoid of any facts supporting the conclusory assertion that
5 Plaintiff purportedly suffered damages by virtue of justifiably relying upon a false representation.

6 Just as with Plaintiff’s claim for promissory fraud, Plaintiff cannot establish an actual injury and
7 certainly cannot establish any injury resulting from justifiable reliance on any purported representations
8 of Defendants. Accordingly, because Plaintiff fails to allege any facts sufficient to state a claim against
9 Defendants for “constructive fraud,” let alone with the requisite particularity, Plaintiff’s sixth cause of
10 action must be stricken.⁶

11 **E. Plaintiff Cannot Prevail on Her Seventh Cause of Action for Intentional Interference**

12 The elements of an action for tortious interference with contractual relations are “(1) a valid
13 contract between plaintiff and a third party; (2) defendant’s knowledge of this contract; (3) defendant’s
14 intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach
15 or disruption of the contractual relationship; and (5) resulting damage.” *Quelimane Co. v. Stewart Title*
16 *Guar. Co.* (1998) 19 Cal.4th 26, 55. Moreover, “[i]t has been repeatedly held that a plaintiff, seeking to
17 hold one liable for unjustifiably inducing another to breach a contract, must allege that the contract would
18 otherwise have been performed, and that it was breached and abandoned by reason of the defendant’s
19 wrongful act **and that such act was the moving cause thereof.**” *Dryden v. Tri-Valley Growers* (1977)
20 65 Cal.App.3d 990, 997 (emphasis supplied). Plaintiff cannot demonstrate these necessary elements.

21 Moreover, there are several material infirmities with Plaintiff’s “interference” claims. As a
22 threshold matter, Plaintiff’s cause of action as directed against Film Foetus is inherently defective.⁷

23
24 ⁶ Quizzically, Plaintiff’s allegation of reliance is that Plaintiff was induced “in the continuing fidelity of
25 the Defendants.” (FAC at ¶69). However, purportedly “continuing fidelity” does not constitute actual
26 reliance sufficient to state a claim for fraud. *See SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29
27 Cal.App.5th 146, 153 (reliance requires a changing of legal positions).

28 ⁷ The cause of action is clearly directed against *both Defendants*, asserting that “[t]he 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.” (FAC ¶77). (Emphasis supplied).

1 Specifically, consistent with California’s underlying policy of protecting the expectations of contracting
2 parties against frustration by outsiders who have no legitimate social or economic interest in the
3 contractual relationship, **the tort cause of action for interference with contract does not lie against a**
4 **party to the contract.** *I-CA Enters., Inc. v. Palram Am., Inc.* (2015) 235 Cal.App.4th 257, 271; citing
5 *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 513–514. As alleged by Plaintiff,
6 Film Foetus is a party to the Production Agreement. Accordingly, it is axiomatic that no claim may be
7 brought against Film Foetus for allegedly tortiously interfering with its own contract.

8 Plaintiff’s tortious interference claim as directed against Carlson individually similarly fails as a
9 matter of law. First, Carlson, as the alleged sole owner and agent of Film Foetus, cannot interfere with
10 Film Foetus’ Production Agreement with Plaintiff. Plaintiff’s allegations that “Defendant Carlson, by
11 virtue of his ownership and domination of Film Foetus caused Film Foetus to breach other elements of
12 the contract”, is a baseless attempt to circumvent the longstanding maxim that “the tort cause of action for
13 interference with contract does not lie against a party to the contract.” *Applied Equip. Corp.*, 7 Cal.4th
14 503, 513 (“[t]he tort duty not to interfere with the contract falls only on strangers – interlopers who have
15 no legitimate interest in the scope or course of the contract’s performance”); *Mintz v. Blue Cross of Cal.*
16 (2009) 172 Cal.App.4th 1594, 1604 (under California law, “it is settled that corporate agents and
17 employees acting for and on behalf of a corporation cannot be held liable for inducing a breach of the
18 corporation’s contract”); *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 24, 25 (where defendants were agents
19 of the employer who were “vested with the power to act for the employer (rightly or wrongly)” they “stand
20 in the place of the employer, because the employer . . . cannot act except through such agents”).

21 Because Plaintiff cannot demonstrate a probability of prevailing on her claims for intentional
22 interference, Plaintiff’s interference claims must be stricken.

23 **VI. CONCLUSION**

24 The conduct Plaintiff alleges is protected under the anti-SLAPP statute and Plaintiff cannot meet
25 her burden of demonstrating a probability of prevailing on her claims. Accordingly, Defendants
26 respectfully request that this motion be granted in its entirety, and that they be awarded their attorney’s
27 fees and costs.

1 **DATED:** October 26, 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.

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

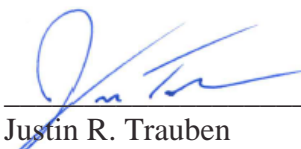
I am over the age of 18 and not a party to the within action; I am employed by SINGH, SINGH & TRAUBEN, LLP in the County of Los Angeles at 400 S. Beverly Drive, Suite 240, Beverly Hills, CA 90212.

On October 26, 2021, I served the foregoing documents described as:

DEFENDANTS DAVID CARLSON AND FILM FOETUS, INC.'S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE COUNTS 1, 2, 3, 6 AND 7 OF PLAINTIFF MICHAL STORY'S UNVERIFIED FIRST AMENDED COMPLAINT UNDER THE CALIFORNIA ANTI-SLAPP STATUTE, CODE OF CIVIL PROCEDURE § 425.16

- (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. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (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.

Executed on October 26, 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. 47

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

6 CASE NO: 21STCV29163

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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,
14 Plaintiff,

15 v.

16 DAVID CARLSON, an Individual and
17 FILM FOETUS, INC., and DOES 1
18 THROUGH 100,
19 Defendants.

) Case No.: **21STCV29163**
)
) **HON. THERESA M. TRABER | Dept. 47**
)
) **DECLARATION OF DAVID CARLSON IN**
) **SUPPORT OF DEFENDANTS DAVID CARLSON**
) **AND FILM FOETUS, INC.’S SPECIAL MOTION**
) **TO STRIKE COUNTS 1, 2, 3, 6 AND 7 OF**
) **PLAINTIFF MICHAL STORY’S UNVERIFIED**
) **FIRST AMENDED COMPLAINT UNDER THE**
) **CALIFORNIA ANTI-SLAPP STATUTE, CODE**
) **OF CIVIL PROCEDURE § 425.16**
)
) **Hearing Date**
)
) **Date: December 3, 2021**
) **Time: 9:00 a.m.**
) **Dept.: 47**
)
) ACTION FILED: AUGUST 6, 2021
) TRIAL DATE: NONE SET
)
) **Reservation IDs: 326394406716 & 865724959919**

1 **DECLARATION OF DAVID CARLSON**

2 I, DAVID CARLSON, declare:

3 1. I am the founder and president of Film Foetus, Inc. (“**Film Foetus**”), a defendant in the
4 above-entitled action filed by Michal Story (“**Plaintiff**” or “**Story**”). I am over the age of eighteen (18).
5 Unless otherwise noted, I have personal knowledge of the following facts set forth herein and, if called
6 and sworn as a witness, I could and would competently testify thereto under oath.

7 **Film Foetus and My Film Career**

8 2. Since 1998 and to this day, I have resided either in Chicago, Illinois or, until more recently,
9 the greater Chicago area.

10 3. I founded Film Foetus, an Illinois corporation, on September 18, 1998.

11 4. Film Foetus is an independent film & digital production company that produces content
12 for broadcast television, home video, corporate video, and independent film.

13 5. Since 1988, through my company, Film Foetus, I have collaborated with hundreds of
14 clients in the entertainment, corporate, and not-for-profit spaces and, in my capacity as a director, I have
15 interviewed thousands of people on a variety of productions, including Fortune 500 company executives.

16 6. I am an award-winning independent film director with an impeccable professional
17 reputation who has collaborated with scores of industry professionals.

18 7. My film, production, director, editor, writer, and cinematographer credits are reflected on
19 my professional IMDB page. A true and correct copy of my IMDB page is attached hereto as **Exhibit**
20 **“A”**.

21 8. Since 1998, Film Foetus has remained a corporation in good standing with the State of
22 Illinois.

23 9. At its inception, Film Foetus filed articles of incorporation with the Illinois Secretary of
24 State.

25 10. Shortly thereafter, Film Foetus issued stock shares, entered a consent of the directors and
26 consent of the shareholders and has, at all times since, maintained verified books and records.

27 11. Since 1998, Film Foetus has consistently filed its annual reports with the Illinois Secretary
28 of State.

1 12. At all times relevant, Film Foetus has maintained liability insurance.

2 13. At all times relevant, Film Foetus has maintained sufficient operating capital to cover its
3 contractual obligations.

4 14. Neither I nor Film Foetus have ever been named as a defendant in any lawsuit prior to this
5 action.

6 **Joe Frank Documentary**

7 15. Joe Frank (“**Frank**”) was a French-born American writer, teacher, and radio performer
8 known best for his often philosophical, humorous, surrealist, and sometimes absurd monologues and radio
9 dramas he recorded.

10 16. Throughout his career, Frank has been honored with many major industry awards,
11 including the George Foster Peabody Award and an Emmy Award.

12 17. Frank passed away on January 15, 2018, and was survived by his wife, Plaintiff Story.

13 18. On or around March 29, 2010, I personally pitched Frank about collaborating on an
14 independent documentary film about his remarkable life.

15 19. Frank agreed to participate in the production of the Film about his life, and production
16 officially began later in 2010.

17 20. The film I created and developed was ultimately entitled *Joe Frank: Somewhere Out There*,
18 a feature length documentary film that explores the life of Frank, whose career on radio and online spanned
19 four decades (the “**Film**” or “**Documentary**”).

20 21. The Documentary Film I made intended to, and ultimately did, demonstrate how Frank’s
21 highly produced radio shows were innovative, autobiographical, surreal, funny, disturbing, and thought
22 provoking meditations on the human condition.

23 22. The Documentary Film features dozens of rare interviews with Frank’s friends, actors,
24 engineers and closest associates, each of whom comments upon and provides different perspectives
25 regarding Frank’s storied career as a performer on public radio. The Documentary further weaves stories
26 together with a wide variety of Frank’s radio shows to reveal his art, creative process, and personal life,
27 and stars among others, Frank, Harry Shearer, Ira Glass, David Cross, Grace Zabriskie, and Alexander
28 Payne.

1 23. Commencing in 2010, and for the next eight (8) years, I worked as a producer, director,
2 and editor on the Film with no compensation.

3 24. I completed the Film, including all post-production work, on or around August 1, 2019.

4 25. I was ultimately able to finish the Film for less than \$200,000.00 (less than one half of the
5 Film’s estimated budget of nearly \$425,000.00).

6 26. I was able to achieve completion of the Film under-budget through self-financing, crowd-
7 funding, and professional favors from peers done in the spirit of independent filmmaking.

8 27. The Film premiered at a film festival in March 2018, shortly after Frank’s passing.

9 28. I have zealously worked to market and promote the Film, including by placing the Film in
10 various film festivals, promoting the Film through the Film’s website that I created, traveling to film
11 festivals at my own personal expense, and participating in a variety of media interviews in support of the
12 Film.

13 29. I have maintained a personal, professional, and/or financial responsibility to the hundreds
14 of people who worked on and supported the project to deliver the Film to completion, including to prepare
15 the Film for festival and worldwide release.

16 **The Parties’ Production Agreement and Contractual Obligations**

17 30. In or around June 2017, a production agreement for the Film was entered into and executed
18 by Film Foetus, Frank, and Plaintiff Story (the “**Production Agreement**”). A true and correct copy of the
19 Production Agreement is attached hereto as **Exhibit “B”**.

20 31. Pursuant to paragraph 1(a) of the Production Agreement, Film Foetus and Frank agreed to
21 be joint owners of the Film, with each owning “an undivided fifty percent (50%) interest” in the film,
22 including all copyrights. *See* Exhibit “B”.

23 32. On March 9, 2018, the Film was registered with the United States Copyright Office,
24 receiving a registration number of Pau 3-987-589. A true and correct copy of the original certificate of
25 registration issued by the United States Copyright Office is attached hereto as **Exhibit “C”**.

26 33. In accordance with the Production Agreement, both Film Foetus and Plaintiff Story are
27 identified as the copyright claimants of the Film. *See* Exhibit “C”.

1 34. Pursuant to paragraph 2(a) of the Production Agreement, Frank was provided the
2 contractual right to review a final cut of the Film. *See* Exhibit “B”.

3 35. Frank approved the final cut of the Film via email on October 9, 2017, specifically in an
4 email with the subject line “FINAL CUT APPROVAL”, wherein Frank wrote: “we’ve arrived at a
5 complete creative agreement”. A true and correct copy of Frank’s October 9, 2017 email approving the
6 final cut of the Film is attached hereto as **Exhibit “D”**.

7 36. With the exception of Frank’s right to approve the final cut of the Film, paragraph 2(b) of
8 the Production Agreement expressly provides that Film Foetus “shall have exclusive control and approval
9 with respect to all creative decisions regarding the Picture.” *See* Exhibit “B”.

10 37. Pursuant to paragraph 2(c) of the Production Agreement, notwithstanding Film Foetus’
11 creative control over the Film, Film Foetus and Frank were mutually obligated to “meaningfully consult”
12 about the production of the Film, in addition to “material developments involved with the production,
13 completion, distribution and exploitation of the Picture.” *See* Exhibit “B”.

14 38. As outlined in further detail below, I kept Frank and Story fully apprised of all material
15 developments with respect to the Film.

16 39. Pursuant to paragraph 6(c) of the Production Agreement, Story was to be accorded, and
17 was in fact accorded, a “Co-Producer” credit in the Film.

18 40. Story’s credit is reflected both within the Film itself, on the Film’s IMDB page, on the
19 Film’s website, and in all official press releases for the Film. *See* **Exhibit “E”**.

20 **Defendants’ Regular, Transparent and Comprehensive Updates to Plaintiff**

21 41. For approximately eleven (11) years, I have kept Plaintiff informed about details of the
22 Film, including to provide Plaintiff with ongoing updates related to the production, post-production,
23 evolving budget, and distribution strategies for the Film.

24 42. Since late 2017 alone, I have initiated and provided Plaintiff Story with at least twenty-two
25 (22) updates regarding the Film, the majority of which I received no response from Plaintiff.

26 43. Within these numerous Film updates, I have consistently offered Plaintiff in writing the
27 ability to discuss any details or line items related to the Film (strategy, budget items, etc.).
28

1 44. Over the years, however, Plaintiff has unilaterally and independently elected to not engage
2 with me in any of these matters regarding the Film in any meaningful way.

3 45. On March 21, 2014, I sent Plaintiff an estimated budget with a cover email describing in
4 general terms how to navigate the budget/excel document, while further offering to answer “any questions
5 [Plaintiff] may have, get [Plaintiff’s] suggestions, and talk about . . .” the budget. A true and correct copy
6 of my March 21, 2014 email to Plaintiff, inclusive of Plaintiff’s response thereto, is attached hereto as
7 **Exhibit “F”**.

8 46. Plaintiff responded to my March 21, 2014 email by stating that “this is all so above
9 [Plaintiff’s] pay grade.” *See* Exhibit “F”.

10 47. Thereafter, within a subsequent email I sent to Plaintiff dated May 27, 2014, wherein I
11 conveyed the Film’s budget to Plaintiff, I made clear to Plaintiff to “[f]eel free to call me if you have any
12 questions . . .” A true and correct copy of my May 27, 2014 email to Plaintiff, inclusive of Plaintiff’s
13 response thereto, highlighted for ease of reference, is attached hereto as **Exhibit “G”**.

14 48. Subsequently, within another email I sent to Plaintiff dated July 25, 2014, wherein I once
15 again conveyed the Film’s budget, I wrote: “[a]s always, if you have any questions about anything please
16 feel free to give me a call to discuss the line items.” A true and correct copy of my July 25, 2014 email to
17 Plaintiff, highlighted for ease of reference, is attached hereto as **Exhibit “H”**.

18 49. In a letter to Frank dated July 10, 2016, I again enclosed a copy of the Film’s budget and
19 once again further underscored: “[a]s a reminder, I have receipts from all of my hard costs, and I am
20 available to discuss the Budget with you line by line if you have any questions about any of the items
21 and/or totals.” A true and correct copy of my July 10, 2016 letter to Frank, highlighted for ease of
22 reference, is attached hereto as **Exhibit “I”**.

23 50. Thereafter, on November 27, 2017, after Frank approved the final cut of the Film on
24 October 9, 2017, I put Frank and Plaintiff on notice that I was forming a limited liability company, Joe
25 Frank Movie, LLC (the “**JFM LLC**”), specifically to own and operate a bank account for the Film. A true
26 and correct copy of my November 27, 2017 email to Frank and Plaintiff is attached hereto as **Exhibit “J”**.
27
28

1 51. At no time relevant did Plaintiff ever object to my formation of JFM LLC and nor did
2 Plaintiff ever contemporaneously demand any documents related to JFM LLC’s formation and/or
3 structure.

4 52. On March 29, 2018, I provided Plaintiff with a further update for the Film, specifically
5 with respect to licensing, title searches, copyrights, insurance, and financing. A true and correct copy of
6 my March 29, 2018 email update to Plaintiff is attached hereto as **Exhibit “K”**.

7 53. On August 4, 2019, I sent a certified letter to Plaintiff expressly advising Plaintiff that I
8 was working with Premiere Digital Services, Inc. d/b/a Quiver Digital (“**Quiver**”) to distribute the Film
9 via video on-demand (“**VOD**”), with distribution commencing on or around August 23, 2019 in over 60
10 countries through Amazon Video, Google Play, iTunes, Microsoft and Vimeo On-Demand. A true and
11 correct copy of my August 4, 2019 letter to Plaintiff, highlighted for ease of reference, is attached hereto
12 as **Exhibit “L”**.

13 54. Within my August 4, 2019 letter to Plaintiff, I concluded the letter with a direct inquiry to
14 Plaintiff, specifically as follows: “If you have any thoughts or suggestion for the film’s success, please let
15 me know”. *See* Exhibit “L”.

16 55. Plaintiff did not respond to my August 4, 2019 correspondence in any respect and nor did
17 Plaintiff voice any objection to this disclosed distribution plan or offer any suggestions or alternatives.

18 56. Thereafter, on August 25, 2019, reflecting Plaintiff’s receipt and review of my August 4,
19 2019 letter, Plaintiff sent me an email inquiring about further details concerning the Film “selling (for
20 viewing) on Amazon?” A true and correct copy of Plaintiff’s August 25, 2019 email to me is attached
21 hereto as **Exhibit “M”**.

22 57. Shortly thereafter, on September 3, 2019, I sent a certified letter to Plaintiff wherein I
23 detailed the business arrangement with respect to the Film’s digital distribution with Amazon. Despite
24 multiple attempts at delivery, this letter was returned unopened. A true and correct copy of my attempted
25 September 3, 2019 certified letter to Plaintiff, reflecting multiple delivery attempts, is attached hereto as
26 **Exhibit “N”**.

27 58. Nonetheless, a few days later, on September 7, 2019, Plaintiff sent me a congratulatory
28 email stating as follows:

1 Congratulations on getting the film out to the public via the digital platforms. I know this
2 has been a difficult and challenging project. At last, despite the ups and downs, this 10+
3 year journey to complete the film is behind us

4 A true and correct copy of Plaintiff’s September 7, 2019 email to me is attached hereto as **Exhibit “O”**.

5 59. Within Plaintiff’s September 7, 2019 email, Plaintiff requested a general update concerning
6 the Film’s budget and further requested that I endeavor to provide accounting updates “maybe every six
7 months”.

8 60. Within this September 7, 2019 email, however, Plaintiff did not object to the Film’s
9 ongoing digital distribution through Quiver or offer any other distribution suggestions or alternatives. To
10 the contrary, the general tenor of the email is congratulatory, collaborative and forward thinking, with
11 Plaintiff’s request for an intermittent accounting itself serving as a form of approval of my disclosed
12 distribution strategy.

13 61. Two days later, on September 9, 2019, in response to Plaintiff’s request for an intermittent
14 accounting, I sent a USPS Certified package to Plaintiff containing the Quiver Master Service Agreement
15 and Vimeo Terms and Conditions, along with a revised Film budget. A true and correct copy of my
16 September 9, 2019 Certified letter to Plaintiff is attached hereto as **Exhibit “P”**.

17 62. On September 23, 2019, I sent another USPS Certified letter to Plaintiff to follow-up and
18 advise Plaintiff that I would continue to keep Plaintiff apprised regarding the Film, including to provide
19 financial updates to Plaintiff every six months as Plaintiff expressly requested, further noting that, at that
20 time, there was “no income to report on the [F]ilm.” A true and correct copy of my September 23, 2019
21 Certified letter to Plaintiff is attached hereto as **Exhibit “Q”**.

22 63. Thereafter, on December 2, 2019, in response to Plaintiff’s request for additional
23 documentation concerning the Film, I physically delivered to Plaintiff via USPS (tracking no. 9505 5130
24 0338 9336 3038 45, confirmed delivery on December 4, 2019) a cover letter and no less than 405 Film
25 documents on two CD-ROMs, including sales reports, budgets, receipts, license agreements, and
26 accounting and bank statements, including, without limitation, the articles of organization and
27 corresponding Secretary of State filings for JFM LLC. A copy of my December 2, 2019 correspondence
28 to Plaintiff, along with pictures of the CD-ROMs and a list of the documents contained therein, highlighted
29 for ease of reference, is attached hereto as **Exhibit “R”**.

1 64. Notably, within my December 2, 2019 package to Plaintiff, as a part of my Film update, I
2 directly provided Plaintiff with a copy of the Film’s publicly available copyright registration.

3 65. Accordingly, for no less than 1.5 years prior to Plaintiff’s initiation of this action, Plaintiff
4 was both apprised of, and provided a copy of, the publicly available copyright registration for the Film.

5 66. On December 1, 2020, in connection with my periodic sales reports and Film updates to
6 Plaintiff, I delivered a finalized budget for the Film to Plaintiff. A true and correct copy of my December
7 1, 2020 letter to Plaintiff, inclusive of the tracking receipt number, is attached hereto as **Exhibit “S”**.

8 67. Ultimately, I have provided Plaintiff, either directly or through Frank prior to his passing,
9 numerous financial updates regarding the Film, including updates on March 21, 2014, April 21, 2014,
10 May 27, 2014, July 25, 2014 and July 10, 2016 and, more recently, on February 6, 2019, September 9,
11 2019, June 1, 2020 and December 1, 2020.

12 68. These updates included the provision of multiple files on CD-ROMs containing, among
13 other things:

- 14 a. JFM LLC’s monthly Bank Statements;
- 15 b. JFM LLC’s Debit Card Reports;
- 16 c. Sales Reports;
- 17 d. Quiver Digital Sales Statements (iTunes, Amazon, Google Play, Microsoft,
18 YouTube);
- 19 e. Vimeo VOD Sales Statements;
- 20 f. Revised Budgets;
- 21 g. Budget Receipts;
- 22 h. PayPal Statements; *and*
- 23 i. WI Public TV Agreement.

24 69. A majority of these updates and corresponding backup documents were sent to Plaintiff as
25 a part of my comprehensive (and certified) December 2, 2019 delivery to Plaintiff. *See* Exhibit “R”.

26 70. Notably, throughout my 10-year development of the Film, except for a one-time reference
27 to a single \$400.00 hotel expense Plaintiff herself incurred, Plaintiff never, at any time, reached out to me
28 to substantively discuss the Film’s budget or any specific line items embodied within the budget.

1 71. Moreover, throughout my 10-year development of the Film, Plaintiff never, at any time,
2 offered any suggestions, comments, or raised any concerns whatsoever about the budget for the Film.

3 72. As the record reflects, Plaintiff was, at all times relevant, reasonably apprised of the Film’s
4 budget and was further provided every opportunity to review, comment or scrutinize the budget in
5 Plaintiff’s discretion.

6 73. Although Plaintiff certainly may have reviewed and scrutinized the budget, Plaintiff never
7 expressed any concerns about the Film’s budget to me.

8 **The Film’s Funding and Revenue**

9 74. Pursuant to paragraph 5 of the Production Agreement, the parties expressly acknowledged
10 that Film Foetus had already, at that time, “incurred actual, verifiable, third-party Production Costs
11 totaling \$29,000.00”. *See* Exhibit “B”.

12 75. Notably, to date, the Film has yet to earn sufficient revenue to offset the agreed upon
13 production costs totaling \$29,000.00 as reflected within the 2017 Production Agreement. *See* Exhibit “B”.

14 76. Further, as expressly contemplated within paragraph 1(b) of the Production Agreement,
15 and as further detailed within the budget I previously provided to Story on December 1, 2020, Film Foetus
16 expended \$84,604.61 to secure the necessary musical licenses for the Film.

17 77. Ultimately, as reflected within the December 1, 2020 budget I provided to Plaintiff, to date,
18 the actual, verifiable, third-party production costs to produce the Film total \$183,100.00 (the “**Verifiable**
19 **Production Costs**”).

20 78. These Verifiable Production Costs generally break down as follows:

21 a. Production

- 22 i. Approximately \$3k in equipment rentals;
- 23 ii. Approximately \$6.1k in travel expenses;
- 24 iii. Approximately \$1.5k in location fees and supplies;

25 b. Post-Production

26
27
28

- i. Approximately \$24k in on-line editing and color correction fees (labor, etc.)¹;
- ii. Approximately \$12k in stock footage and photos;
- iii. Approximately \$100.1k in music licensing fees and clearance;
- iv. Approximately \$3.8k in mastering and delivery fees;
- v. Approximately \$12.8k in marketing fees;
- vi. Approximately \$19.8k in legal, insurance, aggregator and consulting fees;

See Exhibit “R”.

79. As reflected in the most recent sales report provided to Plaintiff dated June 7, 2021, to date, the Film has yielded income totaling \$4,917.68 (the “**Total Film Revenue**”). See Exhibit “X”.

80. Notably, the entirety of the Total Film Revenue derived from the exploitation of the Film remains in JFM LLC’s bank accounts.

81. To date, JFM LLC has not disbursed any profits or revenue derived from the exploitation of the Film to any person or entity.

82. A small percentage of monies raised for the Film were derived from a crowdfunding campaign in early 2018.

83. All crowdfunding information was provided to Plaintiff via an email directed to Plaintiff’s former counsel dated November 15, 2019. A true and correct copy of my former counsel’s November 25, 2019 email update to Plaintiff’s former counsel is attached hereto as **Exhibit “T”**.

84. As I previously advised Plaintiff, the results of the public crowdfunding campaign are and remain publicly available. Specifically, as reflected on Indiegogo’s website since March 2018, the crowdfunding campaign only achieved 29% of its \$75K goal, yielding \$22,337 gross monies. After deducting Indiegogo’s fees, the Film netted \$20,625.43. A true and correct copy of a printout of the now closed crowdfunding campaign on Indiegogo’s website is attached hereto as **Exhibit “U”**.

85. Further, within the multiple budget updates I have provided to Plaintiff, I included express references to these crowdfunding revenues.

¹ I donated and did not charge for my personal editing services.

1 86. Specifically, by way of one example, my September 9, 2019 certified letter to Plaintiff
2 contained a budget clearly identifying and addressing the Indiegogo crowdfunding revenues. *See* Exhibit
3 “P”.

4 87. In addition, paragraph 3 of the Production Agreement expressly references, acknowledges,
5 and authorizes a contemplated plan to “conduct a non-investor crowdfunding campaign to raise
6 approximately \$65,000 in post-production funding in order to complete the Picture.” *See* Exhibit “B”.

7 88. Separate and apart from these crowd sourced funds, I have personally invested \$70,798.00
8 into the production of the Film. I have also donated an additional \$10,641.00 into the Film.

9 89. Film Foetus has never, at any time, failed and/or refused to pay any amounts owed to
10 Plaintiff as derived from the exploitation of the Film.

11 90. To date, based upon the Total Film Revenue derived from the exploitation of this low-
12 budget documentary project and Film, Film Foetus remains unrecouped in the amount of \$70,798.00.

13 91. Film Foetus will, of course, continue to account to Plaintiff and, once recouped, will pay
14 Plaintiff in accordance with the parties’ Production Agreement, that being 50% of all gross receipts from
15 the Film.

16
17 **Plaintiff’s Unverified First Amended Complaint**

18 92. On August 13, 2021, Plaintiff filed her unverified first amended complaint (the “**FAC**”)
19 against Film Foetus and me, which is replete with numerous false statements and allegations.

20 93. I have read Plaintiff’s unverified FAC and know its contents.

21 **Plaintiff’s General Allegations**

22 94. In paragraphs 26 and 27 of the FAC, Plaintiff alleges that I failed to apprise Plaintiff as to
23 the source and purpose of Film funds, and further that I never provided Plaintiff with any documentation
24 whatsoever “with regard to the formation of and concerning the bank accounts or the [Movie] LLC.”

25 95. This is patently false.

26 96. On November 27, 2017, I expressly advised Plaintiff that I was forming JFM LLC, and
27 further detailed the purpose in forming this limited liability company. *See* Exhibit “J”.

1 97. Thereafter, on December 2, 2019, as a part of one of my many updates to Plaintiff, I
2 provided Plaintiff with, among other Film related documents, a copy of JFM LLC’s articles of
3 organization, JFM LLC’s Chase credit card statements, JFM LLC’s PayPal financial records, and JFM
4 LLC’s bank statements. *See* Exhibit “R”.

5 98. Plaintiff’s speculative conjecture in her FAC that the PayPal reports as provided are
6 inherently “not trustworthy” because they theoretically “can be tampered” is wholly unsupported and
7 completely baseless.

8 99. The PayPal reports I provided to Plaintiff were downloaded directly from PayPal, and
9 generated entirely by PayPal. Similarly, all bank statements I provided to Plaintiff were original statements
10 generated entirely by the bank which issued the statements.

11 100. The only two vendors for the Film, Vimeo and Quiver (Premiere Digital), directly deposit
12 all revenue derived from the exploitation of the Film into JFM LLC accounts (PayPal and Chase bank,
13 respectively), whereby these direct deposits are expressly represented in the reports as provided to
14 Plaintiff.

15 101. Separately, among several other updates, my February 7, 2019 letter update to Plaintiff
16 included a detailed budget and breakdown of the Film’s cost and expenses. A true and correct copy of my
17 February 7, 2019 letter to Plaintiff, inclusive of the attached budget, is attached hereto as **Exhibit “V”**.

18 102. Additional financial updates include, among others, my October 8, 2018 budget letter and
19 my September 9, 2019 budget letter to Plaintiff. A true and correct copy of my October 8, 2018 letter to
20 Plaintiff, highlighted for ease of reference, is attached hereto as **Exhibit “W”**; see also Exhibit “P”.

21 103. Plaintiff has never, at any time, requested any explanation as to any specific line item for
22 the Film, including any line items in the bank statements as provided to Plaintiff by me over the years.

23 104. In paragraph 28 of the FAC, Plaintiff alleges that I failed to disclose a \$75k investment and
24 that such funds are not reflected in the budget documents as provided.

25 105. This is patently **false**.

26 106. In my February 7, 2019 letter to Plaintiff, I expressly advised Plaintiff that a supporter of
27 the Film had “expressed interest” in providing \$75k for the Film, specifically to secure the music rights
28 for wider distribution. *See* Exhibit “V”.

1 107. That supporter, Douglas Elliott (“**Elliott**”), did ultimately contribute \$75K to the Film to
2 assist with the music licensing for the Film and further received a producer credit on the Film.

3 108. JFM LLC’s bank statements, as provided to Plaintiff on December 2, 2019, clearly
4 demonstrate that Elliott’s monies were transferred into JFM LLC’s bank account on March 6, 2019. *See*
5 Exhibit “R”.

6 109. Notably, Elliott gave JFM LLC these funds for the Film without any expectation that JFM
7 LLC would reimburse Elliott.

8 110. The remainder of Plaintiff’s allegations in paragraph 28 regarding my purported failure to
9 meaningfully consult with Plaintiff are likewise false and belied by clear record evidence to the contrary.
10 *See* Exhibit “D-W”.

11 111. In paragraph 29 of the FAC, Plaintiff alleges that I and Film Foetus have been fully
12 reimbursed.

13 112. This is patently **false**.

14 113. Unsurprisingly, as Plaintiff cannot, Plaintiff does not identify any source of revenue
15 sufficient to fully reimburse the \$70,798.00 in funds that I personally invested into the Film.

16 114. As the records clearly reflect, \$70,798.00 is yet to be reimbursed.

17 115. In paragraph 30 of the FAC, Plaintiff re-alleges that I failed to meaningfully consult with
18 Plaintiff in connection with the production and distribution of the Film.

19 116. This is, once again, patently **false** and belied by clear record evidence to the contrary. *See*
20 Exhibits “D-W”.

21 117. In paragraph 31 of the FAC, Plaintiff alleges that I failed to “render accountings or
22 verifiable costs”.

23 118. This is patently **false** and belied by clear record evidence to the contrary. Specifically, in
24 addition to all the above-referenced updates concerning the Film that I provided to Plaintiff, a true and
25 correct copy of a compilation of additional sales reports updates I provided to Plaintiff, dated December
26 5, 2019, February 18, 2020, June 1, 2020, June 12, 2020, December 1, 2020 and June 7, 2021, are attached
27 hereto as **Composite Exhibit “X”**.

1 119. In paragraph 32 of the FAC, Plaintiff alleges that I have somehow failed to “identify
2 Plaintiff as a 50% co-owner of the project, 50%”, and that I have further failed to provide the “copyright
3 application or other paperwork associated with it.”

4 120. Both these allegations are patently **false** and belied by clear record evidence to the contrary.
5 *See Exhibits “D-X”.*

6 121. The vague allegations of paragraph 33 are likewise false, unsupported, and belied by clear
7 record evidence to the contrary. *See Exhibits “D-X”.*

8 122. In paragraph 34 of the FAC, Plaintiff again alleges that I failed to consult with Plaintiff.

9 123. Of course, this allegation is once again patently **false**, unsupported, and belied by clear
10 record evidence to the contrary. *See Exhibits “D-X” (including sales report binder).*

11 124. Specifically, on numerous occasions, I invited Plaintiff to review, comment upon, or reach
12 out to me with any questions whatsoever in connection with the several proposed and revised budgets that
13 I delivered to Plaintiff on multiple occasions. Plaintiff elected not to engage or respond to my overtures
14 in any meaningful way, and certainly never, at any time, questioned any specific line item or made any
15 specific objections or suggestions about the budgets that I provided to Plaintiff.

16 125. In paragraph 35 of the FAC, Plaintiff alleges that I “failed to show verifiable music
17 licensing costs.”

18 126. This is patently **false**.

19 127. On December 2, 2019, as a part of one of my substantial Film updates to Plaintiff, I directly
20 provided Plaintiff with a music clearance budget report (the “**Music Licensing Report**”). A true and
21 correct copy of the Music Licensing Report, as provided to Plaintiff on December 2, 2019, is attached
22 hereto as **Exhibit “Y”**.

23 128. The Music Licensing Report clearly reflects all the payments with respect to the Film’s
24 music licensing.

25 129. Prior to Plaintiff’s initiation of this legal action, Plaintiff never once asked to see any
26 documents related to “verifiable music licensing costs”.

27 130. In paragraph 36 of the FAC, Plaintiff alleges that I denied her “access” to the so-called
28 “Quiver account”.

1 131. This is patently **false** and nonsensical.

2 132. As Plaintiff is well aware, Quiver (Premiere Digital) directly deposited all revenue from
3 the Film into JFM LLC's Chase bank account, with every direct deposit expressly represented in the bank
4 statements I provided to Plaintiff.

5 133. In paragraph 37 of the FAC, Plaintiff alleges that I failed to provide "cancelled checks"
6 and "credit card receipts".

7 134. This is patently **false**.

8 135. On December 2, 2019, as a part of one of my substantial Film updates to Plaintiff, I directly
9 provided Plaintiff with all relevant original bank statements. *See* Exhibit "R".

10 136. In paragraphs 38-40 of the FAC, Plaintiff attempts to allege that my company, Film Foetus,
11 a company existing and operating since September 18, 1998, is nothing more than a shell and a sham.

12 137. This is patently **false**.

13 138. As addressed above in paragraphs 3-13, Film Foetus has always adhered to the required
14 corporate formalities and has always maintained appropriate liquidity to satisfy its contractual obligations
15 and debts.

16 139. As Plaintiff cannot, Plaintiff has presented no evidence to support the spurious and
17 unsupported allegation that Film Foetus is my alter ego.

18 **Plaintiff's First Cause of Action for Breach of Contract**

19 140. Initially, as a threshold matter, I have never, in my personal capacity, entered into any
20 contracts or agreements with either Frank or Plaintiff.

21 141. At no point in time have I ever personally owed any contractual obligations to Plaintiff,
22 nor her to me.

23 142. Nonetheless, Plaintiff appears to assert her breach of contract claim against me personally.
24 To the extent that this cause of action is based upon her alter ego allegations, such allegations are
25 unfounded and unsupported. *See* paragraphs 3-13, *supra*.

26 143. Paragraph 43 of the FAC alleges that "Defendants" breached the Production Agreement
27 and lists eight apparent categories of breaches.

28 144. Each such category is **false** and unsupported.

1 145. As addressed, above, I have fully reported to and accounted to Plaintiff in connection with
2 the Film. *See* Exhibits “D-X”.

3 146. As addressed, above, I have never “commingled” funds, and have fully apprised Plaintiff
4 as to the formation of all relevant bank or financial accounts regarding the Film, regularly providing
5 Plaintiff with original bank and financial statements for the Film. *See* Exhibits “D-X”.

6 147. As addressed above, the only two vendors for the Film have *directly* deposited their funds
7 into JFM LLC’s accounts (PayPal for Vimeo and Chase for Quiver (Premiere Digital)).

8 148. As addressed, above, I have always advised Plaintiff as to all monies raised for the Film
9 and have further substantiated all such monies via the regular updates and written budgets I have
10 consistently provided to Plaintiff. *See* Exhibits “D-X”.

11 149. As addressed above, and as is well documented, I have meaningfully conferred with
12 Plaintiff about all distribution efforts for the Film, specifically within multiple writings and
13 communications. *See* Exhibits “D-X”.

14 150. Plaintiff never expressed any concern with my prior distribution efforts for the Film, never
15 offered any alternative suggestions for the Film’s distribution and, in fact, only ever wrote to congratulate
16 me for my successful efforts to secure distribution of the Film. *See* Exhibits “D-X”.

17 151. Concerning credits, as addressed above, Story was to be accorded, and was in fact
18 accorded, a “Co-Producer” credit in the Film.

19 152. Story’s credit is reflected both within the Film itself, on the Film’s IMDB page, on the
20 Film’s website, and in all official press releases for the Film. *See* Exhibit “E”.

21 153. To the extent Plaintiff is asserting that I failed to properly credit Frank, on September 15,
22 2017, in a letter from Frank to me, wherein Frank provided me with substantial notes about the Film,
23 Frank concluded his letter as follows:

24 **I THINK IT WOULD BE BEST IF MY NAME, AS PRODUCER, BE TAKEN OFF**
25 **THE FILM. IN SPITE OF MY INPUT, THIS IS FUNDAMENTALLY YOUR**
26 **WORK, WHICH REFLECTS YOUR AESTHETIC AND SENSIBILITY.**

27 A true and correct copy of Frank’s September 15, 2017 letter, inclusive of my reply notes in blue, is
28 attached hereto as **Exhibit “Z”**.

1 154. Based upon Frank’s clear expression of his desire in this regard, I removed Frank’s name
2 as a producer at his express request and directive.

3 155. Concerning budgets, as addressed above, and as Plaintiff’s allegations concede, I regularly
4 provided Plaintiff with up-to-date budgets as the Film’s production progressed. I also further regularly
5 invited Plaintiff’s comment or suggestion concerning these budgets that I routinely provided to Plaintiff.
6 *See Exhibits “D-X”.*

7 156. Finally, concerning Plaintiff’s allegation that “Defendants were to finance or secure
8 financing for the project”, this is exactly what occurred.

9 157. I personally secured \$20,625.43 in crowdsource funding and personally invested
10 \$70,798.00 into the Film. *See Exhibits “D-X”.*

11 158. As the record clearly reflects, there has been no breach of the Production Agreement in any
12 respect.

13 159. Film Foetus has never failed and/or refused to pay Plaintiff any monies owed in connection
14 with the Film and nor has Film Foetus ever failed and/or refused to perform any of its contractual
15 obligations pursuant to the Production Agreement.

16 160. To date, based upon the Total Film Revenue derived from the exploitation of this low-
17 budget documentary project and Film, Film Foetus remains unrecouped in the amount of \$70,798.00.

18 161. Film Foetus will, of course, continue to account to Plaintiff and, once recouped, will pay
19 Plaintiff in accordance with the parties’ Production Agreement, that being 50% of all gross receipts from
20 the Film.

21 **Plaintiff’s Second Cause of Action for Breach of the Implied Covenant of Good Faith**

22 162. Plaintiff’s allegations of breach are false and belied by the record.

23 163. At all times relevant, Film Foetus regularly and meaningfully consulted with Plaintiff about
24 the Film and issued substantive accounting reports, including, among many other documents, original
25 bank and financial statements. *See Exhibits “D-X”.*

26 164. Further, as addressed above, the Film has not yet earned or generated sufficient revenues
27 to trigger any disbursement to Plaintiff under the Production Agreement.

1 165. To date, based upon the Total Film Revenue derived from the exploitation of this low-
2 budget documentary project and Film, Film Foetus remains unrecouped in the amount of \$70,798.00.

3 **Plaintiff's Third Cause of Action for Fraud**

4 166. Initially, Plaintiff's allegation that Plaintiff (and/or Frank) rendered "tens of thousands of
5 hours of service" to benefit the Film is preposterous and a knowing misrepresentation to the Court.

6 167. At all times, Plaintiff refused to meaningfully participate in the production of the Film,
7 refusing to even promote the Film on Plaintiff's websites or social media.

8 168. Notably, neither Plaintiff nor Frank ever contributed any monies whatsoever towards the
9 development, production or post-production of the Film.

10 169. Likewise, Plaintiff and Frank never, at any time, promoted the Film on Frank's professional
11 website, as currently operated and controlled by Plaintiff.

12 170. Ultimately, contrary to Plaintiff's false allegations, Film Foetus has completely fulfilled
13 and will continue to fulfill its contractual obligations pursuant to the Production Agreement.

14 171. At all times relevant, Film Foetus regularly and meaningfully consulted with Plaintiff about
15 the Film and issued substantive accounting reports, including, among many other documents, original
16 bank and financial statements. *See* Exhibits "D-X".

17 172. Further, as addressed above, the Film has not yet earned or generated sufficient revenues
18 to trigger any disbursement to Plaintiff under the Production Agreement.

19 173. To date, based upon the Total Film Revenue derived from the exploitation of this low-
20 budget documentary project and Film, Film Foetus remains unrecouped in the amount of \$70,798.00.

21 **Plaintiff's Fourth Cause of Action for Money Had and Received**

22 174. Plaintiff's allegations of monies purportedly owed are false and belied by clear record
23 evidence to the contrary.

24 175. Neither I nor Film Foetus owe Plaintiff any monies.

25 176. Specifically, the Film has not yet earned or generated sufficient revenues to trigger any
26 disbursement to Plaintiff under the Production Agreement.

27 177. To date, based upon the Total Film Revenue derived from the exploitation of this low-
28 budget documentary project and Film, Film Foetus remains unrecouped in the amount of \$70,798.00.

1 **Plaintiff's Fifth Cause of Action for an Accounting**

2 178. Film Foetus has already fully accounted to Plaintiff in connection with all expenses and
3 profits relating to the Film.

4 179. I have provided Plaintiff, either directly or through Frank before his passing, numerous
5 financial updates regarding the Film, including updates on March 21, 2014, April 21, 2014, May 27, 2014,
6 July 25, 2014 and July 10, 2016 and, more recently, on February 6, 2019, September 9, 2019, June 1, 2020
7 and December 1, 2020.

8 180. These updates included multiple files on CD-ROMs containing, among other things:

- 9 a. JFM LLC's monthly Bank Statements;
- 10 b. JFM LLC's Debit Card Reports;
- 11 c. Sales Reports;
- 12 d. Quiver Digital Sales Statements (iTunes, Amazon, Google Play, Microsoft,
13 YouTube);
- 14 e. Vimeo VOD Sales Statements;
- 15 f. Revised Budgets;
- 16 g. Budget Receipts;
- 17 h. PayPal Statements; *and*
- 18 i. WI Public TV Agreement.

19 181. A majority of these updates and corresponding backup documents were sent to Plaintiff as
20 a part of my comprehensive (and certified) December 2, 2019 delivery to Plaintiff. *See* Exhibit "R".

21 182. Plaintiff maintains all records related to the production and exploitation of the Film.

22 183. There are no sales transactions related to the Film for which Plaintiff has not been provided
23 all relevant financial documents and statements.

24 **Plaintiff's Sixth Cause of Action for Constructive Fraud**

25 184. Plaintiff's allegations of fraud are false and directly belied by clear record evidence to the
26 contrary.

1 185. At all times relevant, Film Foetus regularly and meaningfully consulted with Plaintiff about
2 the Film and issued substantive accounting reports, including, among myriad other documents, original
3 bank and financial statements. *See* Exhibits “D-X”.

4 186. Further, as addressed above, the Film has not yet earned or generated sufficient revenues
5 to trigger any disbursement to Plaintiff under the Production Agreement.

6 187. To date, based upon the Total Film Revenue derived from the exploitation of this low-
7 budget documentary project and Film, Film Foetus remains unrecouped in the amount of \$70,798.00.

8 **Plaintiff’s Seventh Cause of Action for Intentional Interference**
9 **with Economic Relationship**

10 188. Plaintiff’s allegations of interference against me personally are false and belied by clear
11 record evidence to the contrary.

12 189. I never once diverted funds from, or intended to, Film Foetus, to my own personal bank
13 account.

14 190. Moreover, when coordinating the conduct of Film Foetus, I was acting not in my personal
15 capacity, but as an authorized representative of Film Foetus.

16 191. The unsupported allegation that I, in my personal capacity, caused Film Foetus to do
17 anything is false.

18 192. Simply, in my personal capacity, I have never taken any action to disrupt (or alter) the
19 relationship between Film Foetus and Plaintiff and have certainly never instigated or caused any breach
20 of the Production Agreement by Film Foetus, including by virtue of the fact that Film Foetus has never
21 breached the Production Agreement.

22 **Plaintiff’s Eighth Cause of Action for Conversion**

23 193. Plaintiff’s allegations of conversion are false and belied by clear record evidence to the
24 contrary.

25 194. At all times relevant, Film Foetus regularly and meaningfully consulted with Plaintiff about
26 the Film and issued substantive accounting reports, including, among many other documents, original
27 bank and financial statements. *See* Exhibits “D-X”.

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

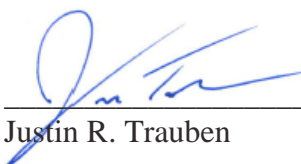
I am over the age of 18 and not a party to the within action; I am employed by SINGH, SINGH & TRAUBEN, LLP in the County of Los Angeles at 400 S. Beverly Drive, Suite 240, Beverly Hills, CA 90212.

On October 26, 2021, I served the foregoing documents described as:

DECLARATION OF DAVID CARLSON IN SUPPORT OF DEFENDANTS DAVID CARLSON AND FILM FOETUS, INC.'S SPECIAL MOTION TO STRIKE COUNTS 1, 2, 3, 6 AND 7 OF PLAINTIFF MICHAL STORY'S UNVERIFIED FIRST AMENDED COMPLAINT UNDER THE CALIFORNIA ANTI-SLAPP STATUTE, CODE OF CIVIL PROCEDURE § 425.16

- (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. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (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.

Executed on October 26, 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. 47

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

6 CASE NO: 21STCV29163

7 SERVICE LIST

8 **RICHARD ROSS, ESQ.**

9 ross777@yahoo.com

10 424 S. Beverly Drive

11 Beverly Hills, California 90212

12 Tel.: (310) 245-1911

Attorney for Plaintiff

MICHAL STORY

1 **SINGH, SINGH & TRAUBEN, LLP**
2 **THOMAS RICHARDS** (SBN: 310209)
3 trichards@singhtraubenlaw.com
4 **MICHAEL A. TRAUBEN** (SBN: 277557)
5 mtrauben@singhtraubenlaw.com
6 400 S. Beverly Drive, Suite 240
7 Beverly Hills, California 90212
8 Tel: 310.856.9705 | Fax: 888.734.3555

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,**
14 **Plaintiff,**
15 **v.**
16 **DAVID CARLSON, an Individual and**
17 **FILM FOETUS, INC., and DOES 1**
18 **THROUGH 100,**
19 **Defendants.**

20) **Case No.: 21STCV29163**
21)
22) **HON. THERESA M. TRABER | Dept. 47**
23)
24) **DEFENDANTS DAVID CARLSON AND FILM**
25) **FOETUS, INC.’S REQUEST FOR JUDICIAL**
26) **NOTICE IN SUPPORT OF DEFENDANTS’**
27) **SPECIAL MOTION TO STRIKE COUNTS 1, 2, 3,**
28) **6 AND 7 OF PLAINTIFF MICHAL STORY’S**
) **UNVERIFIED FIRST AMENDED COMPLAINT**
) **UNDER THE CALIFORNIA ANTI-SLAPP**
) **STATUTE, CODE OF CIVIL PROCEDURE §**
) **425.16**
)
) **Hearing Date**
)
) **Date: December 3, 2021**
) **Time: 9:00 a.m.**
) **Dept.: 47**
)
) **ACTION FILED: August 6, 2021**
) **TRIAL DATE: None Set**
)
) **Reservation IDs: 326394406716 & 865724959919**

1 Pursuant to Evidence Code §§ 452 and 453, Defendants David Carlson (“**Carlson**”) and Film
2 Foetus, Inc. (“**Film Foetus**”) (collectively, “**Defendants**”) respectfully request that the Court take
3 judicial notice of the following documents:

4 1. A true and correct copy of *NPR.org* article entitled *Radio Artist, Writer Joe Frank Dies at*
5 *79*, dated January 16, 2018, attached hereto as **Exhibit “1”**.

6 2. A true and correct copy of the *WashingtonPost.com* article entitled *Joe Frank, boundary-*
7 *pushing storyteller whose medium was radio, dies at 79*, dated January 17, 2018, attached hereto as
8 **Exhibit “2”**.

9 3. A true and correct copy of *Slate.com* article entitled *Joe Frank Signs Off*, dated January
10 18, 2018, attached hereto as **Exhibit “3”**.

11 4. A true and correct copy of *argonautnews.com* article entitled *In Memoriam: The Real Joe*
12 *Frank*, dated January 31, 2018, attached hereto as **Exhibit “4”**.

13 5. A true and correct copy of *WPR.org* article entitled *Joe Frank Could Well Be The Most*
14 *Interesting Man in Public Radio*, dated April 7, 2018, attached hereto as **Exhibit “5”**.

15 6. A true and correct copy of *SMDP.com* article entitled *A Tale of Two Franks*, dated April
16 4, 2019, attached hereto as **Exhibit “6”**.

17 7. A true and correct copy of *pbswisconsin.org* article entitled ‘*Joe Frank: Somewhere Out*
18 *There’ Explores Life of Radio Legend*, dated June 15, 2021 attached hereto as **Exhibit “7”**.

19 **Basis of Taking Judicial Notice**

20 Judicial notice may be taken of “[f]acts and propositions that are not reasonably subject to
21 dispute and are capable of immediate and accurate determination by resort to sources of reasonably
22 indisputable accuracy.” Evid. Code § 452(h); see *Imogean Joslin v. H.A.S Ins. Brokerage* (1986) 184
23 Cal. App. 3d 369, 375 (judicial notice proper “where there is not or cannot be a factual dispute”).

24 Under Evidence Code § 453, a court must take judicial notice of any matter specified for
25 discretionary judicial notice in § 452, if a party asks the court to take judicial notice of that matter, gives
26 each adverse party sufficient notice of the request to give that party time to prepare to dispute the
27 request, and furnishes the court with sufficient information to enable it to take judicial notice of the
28 matter. *Cal. Evid. Code* § 453. Sufficient notice of matters subject to judicial notice is provided by

1 lodging a copy of the relevant documents and records with the Court and opposing counsel. *Agostini, v.*
2 *Strycula* (1965) 231 Cal. App.2d 804, 806-807.

3 It is well established under California law that a court may take judicial notice of news articles,
4 if not for the truth of anything stated therein, for context the articles provide or what the articles may
5 reflect about public knowledge or public interest. See *Brodeur v. Atlas Entm't, Inc.* (2016) 248
6 Cal.App.4th 665, 673 (granting request for judicial notice of articles, biographies, lists and news
7 releases for purposes of demonstrated the significant public interest in the subjects at issue in this case,
8 including the film itself); see also *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 900; *Mangini v.*
9 *R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1064.

10 With respect to the judicial noticing of newspaper articles, “the truth of the facts reported is
11 irrelevant.” *Unruh-Haxton v. Regents of Univ. of Cal.* (2008) 162 Cal.App.4th 343, 362, as modified
12 (May 15, 2008). Here, the articles Defendants seek to have this Court judicially notice are offered to
13 show a public interest in certain topics directly relevant to Defendant’s special motion to strike,
14 specifically in connection with the first prong of section 425.16. Considering this context, the “accuracy
15 of the reporting is irrelevant.” *Id.*; citing *McKelvey v. Boeing N. Am., Inc.* (1999) 74 Cal.App.4th 151,
16 162.

17 Accordingly, for the foregoing reasons, Defendants respectfully requests that the Court take
18 judicial notice of the attached Exhibits 1 - 6.

19 **DATED:** October 26, 2021

Respectfully submitted,

20 **SINGH, SINGH & TRAUBEN, LLP**

21 **MICHAEL A. TRAUBEN**

22
23
24 By: 

Michael A. Trauben

25 *Attorneys for Defendants*

26 DAVID CARLSON *and* FILM FOETUS, INC.

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

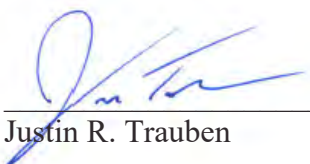
I am over the age of 18 and not a party to the within action; I am employed by SINGH, SINGH & TRAUBEN, LLP in the County of Los Angeles at 400 S. Beverly Drive, Suite 240, Beverly Hills, CA 90212.

On October 26, 2021, I served the foregoing documents described as:

DEFENDANTS DAVID CARLSON AND FILM FOETUS, INC.'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' SPECIAL MOTION TO STRIKE COUNTS 1, 2, 3, 6 AND 7 OF PLAINTIFF MICHAL STORY'S UNVERIFIED FIRST AMENDED COMPLAINT UNDER THE CALIFORNIA ANTI-SLAPP STATUTE, CODE OF CIVIL PROCEDURE § 425.16

- (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. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (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.

Executed on October 26, 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. 47

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

6 CASE NO: 21STCV29163

7 SERVICE LIST

8 RICHARD ROSS, ESQ.

9 ross777@yahoo.com

424 S. Beverly Drive

Beverly Hills, California 90212

10 Tel.: (310) 245-1911

Attorney for Plaintiff

MICHAL STORY

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

MICHAL STORY, an Individual,	)	Case No.: 21STCV29163
)	
Plaintiff,	)	HON. THERESA M. TRABER | Dept. 47
)	
v.	)	[PROPOSED] ORDER GRANTING
	)	DEFENDANTS DAVID CARLSON AND FILM
DAVID CARLSON, an Individual and	)	FOETUS, INC.’S SPECIAL MOTION TO STRIKE
FILM FOETUS, INC., and DOES 1	)	COUNTS 1, 2, 3, 6 AND 7 OF PLAINTIFF
THROUGH 100,	)	MICHAL STORY’S UNVERIFIED FIRST
	)	AMENDED COMPLAINT UNDER THE
Defendants.	)	CALIFORNIA ANTI-SLAPP STATUTE, CODE
	)	OF CIVIL PROCEDURE § 425.16
)	
	)	<u>Hearing Date</u>
)	
	)	Date: December 3, 2021
	)	Time: 9:00 a.m.
	)	Dept.: 47
)	
	)	ACTION FILED: AUGUST 6, 2021
	)	TRIAL DATE: NONE SET
)	
	)	Reservation IDs: 326394406716 & 865724959919

1 Defendants DAVID CARLSON and FILM FOETUS, INC.’S (collectively, “**Defendants**”)
2 Special Motion to Strike Counts 1, 2, 3, 6 and 7 of the unverified Complaint filed by Plaintiff MICHAL
3 STORY (“**Plaintiff**” or “**Story**”) pursuant to *Code of Civil Procedure* § 425.16, came on regularly for
4 hearing on **December 3, 2021** in **Department 47** of the above-entitled Court, located at 111 North Hill
5 Street, Los Angeles, California, the Honorable Theresa M. Traber presiding.

- 6 1. After consideration of the arguments and materials submitted by the parties, the Court
7 hereby **GRANTS** Defendants’ Special Motion to Strike;
- 8 2. Defendants have established that Plaintiff Story’s allegations underlying Counts 1, 2, 3, 6
9 and 7 of Plaintiff’s First Amended Complaint arise from acts and conduct in furtherance
10 of Defendants’ exercise of the constitutional right of free speech in connection with a
11 public issue or an issue of public interest. (*Code of Civil Procedure* § 425.16(b)(1) and
12 (e)(4));
- 13 3. Plaintiff Story is not able to meet her burden of establishing a probability of prevailing on
14 the merits of Counts 1, 2, 3, 6 and 7 of her First Amended Complaint. (*Code of Civil*
15 *Procedure* § 425.16(b)(1)). Plaintiff Story can neither establish that Counts 1, 2, 3, 6 and
16 7 of her First Amended Complaint are legally sufficient nor establish with admissible
17 evidence that Counts 1, 2, 3, 6 and 7 of her First Amended Complaint are supported by a
18 sufficient prima facie showing of facts to sustain a favorable judgment;
- 19 4. Counts 1, 2, 3, 6 and 7 of Plaintiff’s unverified First Amended Complaint are stricken and
20 dismissed in their entirety with prejudice;
- 21 5. Defendants are awarded their attorneys’ fees and costs as against Plaintiff Story pursuant
22 to *Code of Civil Procedure* Section 425.16(c), the amount of which award shall be set be
23 separate noticed motion; *and*
- 24 6. Defendants are ordered to give notice of the Court’s Order.

25 **IT IS SO ORDERED**

26
27 Dated: _____

28 JUDGE OF THE SUPERIOR COURT

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

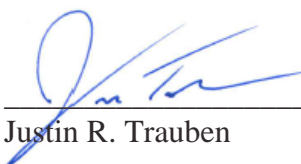
I am over the age of 18 and not a party to the within action; I am employed by SINGH, SINGH & TRAUBEN, LLP in the County of Los Angeles at 400 S. Beverly Drive, Suite 240, Beverly Hills, CA 90212.

On October 26, 2021, I served the foregoing documents described as:

[PROPOSED] ORDER GRANTING DEFENDANTS DAVID CARLSON AND FILM FOETUS, INC.'S SPECIAL MOTION TO STRIKE COUNTS 1, 2, 3, 6 AND 7 OF PLAINTIFF MICHAL STORY'S UNVERIFIED FIRST AMENDED COMPLAINT UNDER THE CALIFORNIA ANTI-SLAPP STATUTE, CODE OF CIVIL PROCEDURE § 425.16

- (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. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
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- (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.

Executed on October 26, 2021 at Beverly Hills, California.


Justin R. Trauben

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

2 ASSIGNED TO:
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4 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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8 **RICHARD ROSS, ESQ.**

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Beverly Hills, California 90212

10 Tel.: (310) 245-1911

Attorney for Plaintiff

MICHAL STORY