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DAVID CARLSON *and* FILM FOETUS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

MICHAL STORY, an Individual, Plaintiff, v. DAVID CARLSON, an Individual and FILM FOETUS, INC., and DOES 1 THROUGH 100, Defendants.	Case No.: **21STCV29163** **HON. THERESA M. TRABER | Dept. 47** **REPLY 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** **[Reply Declaration of David Carlson, Reply Declaration of Michael A. Trauben, and Objections to Evidence Cited by Plaintiff Filed Concurrently Herewith]** **Hearing Date** **Date: December 21, 2021** **Time: 9:00 a.m.** **Dept.: 47** ACTION FILED: AUGUST 6, 2021 TRIAL DATE: NONE SET **Reservation IDs: 326394406716 & 865724959919**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's Opposition exposes a deep misunderstanding of California's anti-SLAPP statute. Although littered with vacuous aspersions and *ad hominem* attacks, Plaintiff's Opposition establishes nothing except to reinforce the dearth of legal sufficiency or factual support underpinning Counts 1, 2, 3, 6 and 7 of Plaintiff's First Amended Complaint ("**FAC**"). Because Plaintiff's claims target conduct in furtherance of protected free speech and because Plaintiff fails to establish a probability of prevailing on any of her claims, Defendants' anti-SLAPP Motion ("**Motion**") should be granted.

Plaintiff's retroactive recharacterization of her own claims is irrelevant to determining if the challenged lawsuit arose from acts in furtherance of the Defendants' right to free speech. An actual examination of Counts 1, 2, 3, 6 and 7 of the FAC cements that the alleged injury-producing conduct underlying the challenged causes of action all consist of **acts that help advance or assist Defendants' exercise of their right to free speech**, specifically in Defendants' creation and distribution of a documentary motion picture, *Joe Frank: Somewhere Out There* (the "**Film**" or "**Documentary**"). Contrary to Plaintiff's atmospheric mischaracterizations, Defendants' anti-SLAPP motion is not directed towards Plaintiff's monetary claims, those being Counts 4, 5, and 8 of the Plaintiff's FAC for Money Had and Received, Accounting, and Conversion, respectively.

The allegations of Plaintiff's FAC unequivocally establish that the acts forming the predicate of Counts 1, 2, 3, 6 and 7 of the FAC do not relate to Defendants' alleged failure to "disburse proceeds." Rather, as Plaintiff herself underscores, the alleged acts forming the gravamen of Plaintiff's claims at issue consist of Defendants' alleged failure to:

- Consult with Plaintiff in connection with the creation and public distribution of the Film;
- Refrain from "self-distributing" the Film to the public;
- Publicly identify Plaintiff as a "50% owner of the copyright" in the Film;
- Publicly credit Plaintiff as a producer on the Film;
- Prepare budgets in furtherance of the Film's distribution;
- Securing financing for the Film; *and*
- Identify the Film's investors to Plaintiff.

(FAC ¶¶30-35, 43). **All of these** acts Plaintiff explicitly targets concern Defendants' creation, production, and public display and distribution of the Documentary Film - all of which are acts in furtherance of the

right of free speech in connection with an issue of public interest. As Plaintiff tacitly concedes, acts that "advance or assist" the creation and performance of artistic works are acts **in furtherance of the right of free speech for anti-SLAPP purposes**. *Symmonds v. Mahoney* (2019) 31 Cal.App.5th 1096, 1106. In addition, it is undisputed that the subject Documentary relates to a matter of public interest, depicting and commenting on the career of public figure Joe Frank, a legendary figure in entertainment and public radio.

With respect to the second step of the anti-SLAPP analysis, Plaintiff does not even attempt to demonstrate a "probability" of prevailing on the merits of her claims. Plaintiff has categorically failed to present *any* admissible evidence that Counts 1, 2, 3, 6 and 7 of the FAC are ***both*** legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.

II. DEFENDANTS' MOTION IS TIMELY

Contrary to Plaintiff's misreading of her own proofs of service, which misreading is compounded by Plaintiff's wholesale failure to even cite, let alone apply, the very Code upon which she relied to effectuate service, that being C.C.P. § 415.40, Defendants' anti-SLAPP Motion is unequivocally timely.

Code of Civil Procedure § 415.40 provides that "service of a summons by this form of mail is **deemed complete on the 10th day after such mailing**." As reflected in Plaintiff's own proofs of service filed with the Court, Plaintiff purported to serve Defendants "by mail and acknowledgement of receipt of service", checking the box in paragraph 5.c. within both proofs of service as having effectuated service under C.C.P. § 415.40. *See* Declaration of Michael A. Trauben ("**Trauben Decl.**") at ¶3, Ex. "A".

Within Plaintiff's proofs of services, Plaintiff indicates that Plaintiff "mailed the documents" on August 24, 2021. (Trauben Reply Decl. at ¶3, Ex. "A" at ¶5.c.).[1] Plaintiff altogether misunderstands and ignores, however, that pursuant C.C.P. § 415.40, service was deemed complete "**on the 10th day after such mailing**", specifically September 3, 2021 (or, at the earliest, if mailed on August 17, 2021, **August 27, 2021**). As Plaintiff acknowledges, pursuant to C.C.P. §425.16(f), a "special motion may be filed within

[1] Even though Plaintiff also claims in her Opposition to have mailed these documents on August 24, 2021, a review of the actual certified mailings Plaintiff attaches to her proofs of service suggest Plaintiff may in fact have mailed these documents on August 17, 2021. Regardless, whether Plaintiff mailed the documents on August 24, 2021 (as her own proofs of service indicate) or on August 17, 2021, Defendants' anti-SLAPP Motion is timely in either case. See *Code of Civil Procedure* § 415.40.

60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper." Here, 60 days from, at the absolute earliest, August 27, 2021 (the earliest service could be deemed complete), is October 26, 2021, the exact date Defendants filed their anti-SLAPP Motion. Accordingly, in accordance with C.C.P. §425.16(f), Defendants' motion is clearly timely. See *Goldsmith v. CVS Pharmacy, Inc.* (C.D. Cal. April 3, 2020) CV 20-00750-AB (JCx), 2020 WL 1650750, at *2 (**under Section 415.40**, certified mail service on December 17, 2019 **deemed complete** on December 27, 2019, "**or 10 days after mailing**"). (Emphasis supplied).

III. THE CHALLENGED CAUSES OF ACTION ARISE FROM PROTECTED ACTIVITY

A. The Claims are Predicated on Conduct "In Furtherance" of the Right of Free Speech

Reflecting a profound misunderstanding of the anti-SLAPP statute and its application, Plaintiff concludes the first step anti-SLAPP inquiry in her Opposition by stating: The violation of contractual obligations does not implicate anti-SLAPP protection. The film was completed. Any changes he made to the documentary after Joe Frank's final cut approval would be without authority. The absence of authority cannot result in anti-SLAPP protection." (Opp. at pg. 7, lns. 10-13). Plaintiff is wrong. As set forth in Defendants' Motion, and altogether ignored by Plaintiff, the California Supreme Court long ago dispelled any misconceptions as to whether C.C.P. 425.16 applied to claims for "breach of contract":

> As the facts in this lawsuit illustrate, **conduct alleged to constitute breach of contract may also come within constitutionally protected speech or petitioning**. The anti-SLAPP statute's definitional focus **is not the form** of the plaintiff's cause of action but, rather, the defendant's ***activity*** that gives rise to his or her asserted liability-and whether that activity constitutes protected speech or petitioning.

Navellier (2002) 29 Cal. 4th 82, 92-93 (emphasis supplied). Contrary to Plaintiff's misapprehensions, claims arising from conduct in furtherance of rights of free speech are in **no way** shielded from the anti-SLAPP statute by virtue of couching such claims as purported "violations of contractual obligations."

Moreover, although unclear, Plaintiff appears to disjointedly argue in her Opposition that because Plaintiff's FAC only targets Defendants' conduct *after* Joe Frank purportedly approved the "final cut" of the Documentary, and because the parties' Production Agreement purportedly prohibited Defendants from engaging in any so-called "creative" work after the "final cut" was approved, Plaintiff is immunized from targeting Defendants' conduct and acts in furtherance of the right of free speech. Plaintiff is mistaken.

In her Opposition, Plaintiff vacillates from claiming that the gravamen of Plaintiff's FAC only relates to "business and financial issues" to the assertion that Defendants "acted in breach of contract" when they "act[ed] unilaterally after the film was completed in 2017 and final cut exercised", even going so far as to exclaim that "Defendant had no right to alter the picture." (Opp. at pg. 6, ln. 5). (Emphasis in the original). Plaintiff's repeated refrain that Defendants somehow breached the production agreement by "altering the film" after the "final cut" is dispositive, serving only to crystalize the gravamen of Plaintiff's FAC as directly arising from Defendants' alleged acts in connection with the creation and distribution of a Documentary Film. See *Tamkin v. CBS Broad., Inc*. (2011) 193 Cal.App.4th 133, 143 (creating, casting, and broadcasting T.V. episode is exercise of free speech); *Sarver v. Hurt Locker, LLC* (C.D. Cal. Oct. 13, 2011) 2011 WL 11574477, at *4 (defendants "easily met the front prong" of anti-SLAPP as expression by means of motion pictures is within free speech guaranty).[2]

Ultimately, Plaintiff is unable to meaningfully dispute that her challenged claims targeting **Defendants' acts** in advancing the development, production and exploitation of the Documentary are acts "in furtherance" of the right of free speech. Notably absent from Plaintiff's Opposition are the FAC's allegations that Defendants breached the parties' agreement by purportedly "[n]ot according [Plaintiff a] producer credit." (FAC ¶¶11,43). The inclusion or election not to include producer credits on a film has already been determined to be "act in furtherance of the right of free speech protected under the anti-SLAPP statute." *Kronemyer v. Internet Movie Database Inc.* (2007) 150 Cal.App.4th 941, 947. It is, of course, likewise well established that the constitutional right of free speech includes the right not to speak. *Id.;* citing *Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 491.

In reality, and contrary to Plaintiff's mischaracterizations, the acts forming the predicate of the causes of action actually at issue do not relate to Defendants' alleged failure to "disburse proceeds", but

[2] Further revealing Plaintiff's misunderstanding of the scope of acts in furtherance of the right of free speech, within Plaintiff Story's declaration, Plaintiff incorrectly asserts that "[e]diting the film is not an act of speech" and "[d]istributing the film is not an act of speech." *See* Declaration of Michael Story ("Story Decl.") at ¶"92-196". Plaintiff is plainly wrong. See *Lieberman v. KCOP Television, Inc*. (2003) 110 Cal.App.4th 156, 166 (section 425.16(a) mandates that the "statute be construed broadly, and the statute's reach is not restricted to speech, but **expressly applies to conduct**" and that "conduct is not limited to the exercise" of the "right of free speech, but **to all conduct in furtherance of the exercise of the right of free speech**, with "furtherance" meaning "*helping* to advance, *assisting*").

rather consist of Defendant's alleged failure to engage in certain affirmative actions in connection with the creation and distribution of the Documentary, including Defendants' alleged failure to:

- consult with Plaintiff in connection with the creation and public distribution of the Film;
- refrain from "self-distributing" the Film to the public;
- publicly identify Plaintiff as a "50% owner of the copyright" in the Film;
- publicly credit Plaintiff as a producer on the Film;
- prepare budgets in furtherance of the Film's distribution;
- securing financing for the Film; *and*
- identify the Film's investors to Plaintiff.

(FAC ¶¶30-35, 43). **All these alleged acts** Plaintiff targets in her FAC implicate Defendants' free speech right to create, product, and distribute the Documentary.

The recent case of *Symmonds v. Mahoney*, analyzed in detail in Defendants' Motion, is simply ignored by Plaintiff. (2019) 31 Cal.App.5th 1096 (Mahoney). Directly analogous to this matter, the court in *Mahoney* observed that music [like movies] is a "form of expression and communication protected under the First Amendment", and that "[c]ourts have held that acts that 'advance or assist' the creation and performance of artistic works are acts in furtherance of the right of free speech for anti-SLAPP purposes. *Mahoney* at 1105-1106, citing *Tamkin*, 193 Cal.App.4th at 143 (creation of television show is exercise of speech and writing, casting, and broadcasting a television show are **acts in furtherance** of this speech). Because music, like film, is a form of expression protected under the First Amendment, it follows that a "singer's selection of the musicians that play with him both advances and assists the performance of the music, and therefore is an act in furtherance of his exercise of the right of free speech." (*Id.* at 1106).

Here, as in *Mahoney*, Defendants' lawful decision (or alleged failure) to "meaningfully consult" with Plaintiff "on all aspects of the production, including but not limited to distribution and exploitation of the documentary" both **advance** and **assist** the exercise of Defendants' free speech to develop and produce the Documentary, and are therefore acts in furtherance of their right of free speech. (FAC ¶11). Plaintiff's targeting of these acts and allegations that Defendants decided to "self-distribute" the documentary and did not "consult" Plaintiff "regarding budgets, changes to the budget, final budget and monies raised" and allegedly breached the Production Agreement by not "identifying investors," all comprise essential decisions which helped advance or assist the Documentary, and thus are all acts in furtherance of Defendants' exercise of their free speech. (FAC ¶¶ 30-36, 43). *Ojjeh v. Brown* (2019) 43

Cal.App.5th 1027, 1040 (filmmakers' conduct in soliciting investments for uncompleted film was conduct "in furtherance" of producing a documentary in the exercise of the right to free speech).[3]

B. The Challenged Speech is Clearly in Connection with an Issue of Public Interest

Plaintiff cannot legitimately dispute that Defendants' acts in creating, producing, and distributing the Documentary Film constitute conduct "in connection with" an issue of public interest – namely, the life of public radio icon Joe Frank. Indeed, as Plaintiff now ignores, Plaintiff herself alleges in her FAC that Frank "was a performer on public radio for 39 years," "created a catalogue of over 230 radio programs" that "became extremely popular," and was the recipient of numerous awards including an Emmy and a Peabody." (FAC at ¶3). Defendants have further introduced uncontroverted evidence that Frank's life and legacy are issues of public interest and that the subject Documentary is a matter of public interest. (RJN at Exs. 1-7; Declaration of Carlson ("**Carlson Decl.**") at ¶¶20-22).

In her Opposition, Plaintiff conflates Defendants' "acts" in furtherance of the exercise of the right of free speech with the speech at issue for purposes of determining whether the **speech** that is being advanced is in connection with a matter of public interest. As the statute makes plain, it is the speech that the act is in furtherance of that must be in connection with an issue of public interest. C.C.P. §425.16(b)(1), (e). Nonetheless, Plaintiff claims that the dispute "pertains to [sic] distribution of the film. That private dispute is not of public interest." (*Opp.* at pg 7, lns 3-4). But the anti-SLAPP statute clearly encompasses claims based on the "distribution" of a documentary film – while also reaching any "acts that 'advance or assist' the creation and performance of artistic works." *Symmonds*, 31 Cal.App.5th at 1106. Moreover, Counts 1, 2, 3, 6 and 7 of the FAC necessarily depend on Defendants' alleged acts of creating, producing, and distributing the Documentary Film – absent which Plaintiff would have no reason to bring these claims. See *Doe v. Gangland Prods.* (9th Cir. 2013) 730 F.3d 946, 955 ("But for the broadcast and Defendant's actions in connection with that broadcast, Plaintiff would have no reason to sue Defendants").

Finally, in her Opposition, Plaintiff fixates on the case of *Dyer v. Childress* (2007) 147 Cal.App.4th 1273 in attempting to argue that the Documentary Film is not a matter of public interest. Initially,

[3] Plaintiff completely misunderstands that "to insulate the exercise of free speech rights against chilling litigation" (such as Plaintiff's action here), the "Legislature has defined protected activity to include not only the acts of speaking, but 'any other conduct in furtherance of the exercise of' constitutional speech rights on matters of public interest." *Wilson v. Cable News Network* (2019) 7 Cal.5th 871, 893.

Defendants did not cite *Dyer* in the section of their Motion regarding Defendants' protected speech being in connection with an issue of public interest. Rather, Defendants cited *Dyer* for the court's reaffirmation that "[c]ertainly, it is beyond dispute that movies involve free speech". *Dyer*, 147 Cal.App.4th at 1280. Although the court in *Dyer* reaffirmed the maxim that movies involve free speech, the court simply found that a fictional character's representation of Troy Dyer, a private figure, was not a matter of public interest. However, as the court in *Tamkin* underscored, the "statutory language [of the anti-SLAPP statute] compels us to focus on the conduct of the defendants and to inquire whether that conduct furthered such defendants' exercise of their free speech rights concerning a matter of public interest." *Tamkin*, 193 Cal.App.4th 133, 144 (public interest requirement to be "construed broadly" and creation of CSI television show issue of public interest); *De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845 (television series about rivalry between two Hollywood actresses matter of public interest); *Daniel v. Wayans*, 8 Cal.App.5th 367, 386 (movie itself was an issue of public interest within anti-SLAPP protection).

IV. PLAINTIFF WILL NOT "PROBABLY PREVAIL" ON COUNTS 1, 2, 3, 6 AND 7[4]

In response to Defendant Carlson's 22-page declaration attaching 26 exhibits, none of which Plaintiff contests as inaccurate, Plaintiff did not attach any evidence to her declaration, failing to offer any admissible evidence in support of her claims. However, neither the allegations of Plaintiff's FAC nor the unsubstantiated conclusory parroting of those same allegations establish Plaintiff's claims in Counts 1, 2, 3, 6 and 7 of her FAC. See *Abir Cohen Treyzon Salo, LLP v. Lahiji* (2019) 40 Cal.App.5th 882, 889 (Plaintiffs did not carry burden of showing claim had minimal merit where assertions were speculative and not supported by evidence in record).

A. Plaintiff Fails to Meet Her Burden with Respect to Defendant Carlson

In a futile attempt to salvage her claims against Defendant Carlson in his personal capacity, and after tacitly conceding that Plaintiff does not maintain any evidence to support her claims, Plaintiff improperly asserts that Defendants "ignore[] the alter ego *allegations* at ¶¶ 38, 39 and 40 of the first

[4] Defendants' Motion seeks to strike Counts 1, 2, 3, 6 and 7 of Plaintiff's FAC. Nonetheless, Plaintiff's Opposition is predominately fixated on the purported merits of the causes of action Defendants are ***not*** seeking to strike, those being Counts 4, 5, and 8 of Plaintiff's FAC for Money Had and Received, Accounting, and Conversion, respectively. For instance, in her Opposition, Plaintiff asserts: "Moreover, defendant has not accounted to plaintiff." (*Opp.* at pg. 8, lns. 11-12). However, Defendants have not moved to strike Count 5 of Plaintiff's FAC for an Accounting.

amended complaint." (Emphasis supplied). Plaintiff, of course, in "opposing an anti-SLAPP motion **cannot rely on allegations** in the [FAC], but must set forth evidence that would be admissible at trial." *Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699–700 (emphasis supplied); *Neurelis, Inc. v. Aquestive Therapeutics, Inc.* (2021) 71 Cal.App.5th 769 (plaintiff "may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence"). As Plaintiff has failed to supply **any evidence** of any kind to support her "alter ego" allegations, Plaintiff's claims as against Defendant Carlson in his individual capacity, asserted solely on the basis of "alter ego", fail as a matter of law.

B. Plaintiff's Contract Claims Fail Against All Defendants

In support of her first cause of action, Plaintiff alleges that Defendants: (i) failed to "report" to Plaintiff; (ii) commingled bank funds; (iii) failed to identify Film investors; (iv) failed to consult with Plaintiff on the Film; (v) failed to accord Plaintiff a producer credit; and (vi) failed to finance or secure financing for the Documentary. (FAC at ¶43). Each of these claims fail as a matter of law.

Initially, regarding Plaintiff's claim that Film Foetus breached the Production Agreement by not according Plaintiff a producer credit, as Plaintiff tacitly concedes in her Opposition, Plaintiff's "claim" is patently frivolous as Plaintiff **received her producer credit**. (Carlson Decl. at ¶¶151-152, Ex. "E"). Plaintiff's declaration filed in support of her Opposition fails to even attempt to support her claim that she failed to receive a producer credit (as any such claim is patently false). Instead, Plaintiff's Opposition, including Plaintiff's declaration, is completely silent on the issue, conceding that her breach of contract claim has no merit whatsoever, effectively submitting to the Court's striking of these allegations.[5]

Plaintiff's Opposition also fails to make sense of Plaintiff's paradoxical allegation that Defendants somehow failed to secure financing for a subject Documentary that, as Plaintiff acknowledges, was completed and publicly released long ago. As with Plaintiff's credit allegations, Plaintiff's Opposition fails to address the complete lack of merit (or even logic) of this factual allegation.

[5] Defendants' anti-SLAPP Motion may be granted as to portions of Plaintiff's FAC (*e.g.*, portions that frivolously allege that Plaintiff was not credited as a basis for her breach of contract claim). *Balla v. Hall* (2021) 59 Cal.App.5th 652, 672, citing *Baral v. Schnitt* (2016) 1 Cal.5th 376, 384 (anti-SLAPP motion may be used to strike allegations of protected activity even without defeating a pleaded cause of action).

Similarly, Plaintiff fails in her Opposition to offer any admissible evidence that Defendant Film Foetus "commingled bank funds". To this issue of alleged "commingling", Plaintiff asserts that "Defendant has multiple bank accounts to which funds for the movie have transferred, but has not provided full and complete bank statements." Such rank speculation, even if true, is not evidence sufficient to establish even minimal merit that Film Foetus breached the parties' contract by "commingling funds."

Plaintiff also fails to submit any admissible evidence in support of her claim that Defendant Film Foetus breached the Production Agreement by "[n]ot identifying investors." Plaintiff once again offers nothing beyond mere speculation along with a plainly distorted misinterpretation of Defendant Carlson's initial declaration. *See* Reply Declaration of Carlson ("**Carlson Reply Decl.**") at ¶¶14-21.

With respect to Plaintiff's allegations that Defendants did not consult with her in a meaningful way, Plaintiff appears to argue that Defendants' routine and comprehensive correspondence to Plaintiff informing her as to the status of the Documentary, outlining Defendants' future plans for post-production and distribution, and inviting Plaintiff to comment or call Defendant should she have any questions or input, were actually "updates" and, apparently, according to Plaintiff, "updates are something different" than consultation. (Story Decl. at ¶42). Plaintiff's rhetorical games in attempting to distinguish frequent updates and invitations for discussion as distinct from "consultation" is patently meritless. Unsurprisingly, Plaintiff completely fails to articulate her personal definition of "consulting" and further fails to articulate what Defendants should have done beyond, as Plaintiff concedes, keeping Plaintiff fulling informed and inviting her to comment or provide input on Defendant Film Foetus' ongoing Film distribution strategies.[6]

As the undisputed record reflects, Defendant Film Foetus meaningfully apprised Plaintiff of every distribution decision and, critically, afforded Plaintiff an opportunity to provide input or suggestions or to raise any questions with respect to the Film's budget and distribution. (Carlson Decl. at ¶¶37-73, 83-84, 92-196, Exs. "E"-Y"). Nonetheless, at no time did Plaintiff ever offer *any* suggestions or comments with

[6] The Cambridge definition of consult is "to discuss something with someone before you make a decision." With respect to the material decision of the Documentary's distribution, this is exactly what Defendants did, a fact Plaintiff concedes. By way of one example, on March 21, 2014, Defendant sent Plaintiff an email attaching an estimated budget for future work on the Film coupled with a detailed message explaining the proposed line items for various post-production costs, including marketing. Within this correspondence, as always, Defendant invited Plaintiff's "suggestions" and made himself available to "answer any questions you may have." (Carlson Decl. at ¶45, Ex. "F").

respect to the distribution of the Film. (*Id.* at ¶71). Nor does Plaintiff submit any evidence reflecting any failure to consult with Plaintiff in connection with any material Film decision. Plaintiff's speculative assertion, without evidence, that Defendants failed to consult with her does not satisfy her burden proof to present competent admissible evidence. See *Abir Cohen Treyzon Salo, LLP* (2019) 40 Cal.App.5th at 890 (speculative inferences not supported by the evidence fall short of establishing *prima facie* showing).

In fact, directly to the contrary, after remaining silent in response to Defendants' consultation and advisement as to the various potential methods of distribution, when Defendants did finally secure digital distribution, Plaintiff wrote Carlson to congratulate him, exclaiming "Congratulations on getting the film out to the public via the digital platform. I know this has been a difficult and challenging project." (*Id.* at ¶58, Ex. "O"). The email goes on to establish Plaintiff's expectations with respect to future Film "updates", writing "[a]t this point, it would be great to work out a timeline for status updates so that we are both comfortable and on the same page regarding the finances and distribution of the film …" (*Id.* at ¶58, Ex. "O"). Plaintiff concludes her email, not demanding further ways to provide input, not by admonishing Defendants for failing to consult with her to date, but by writing that "I hope we can do this on a business level so that I can satisfactorily stay informed without having to ask." (*Id.* at ¶58, Ex. "O"). Consistent with these expectations Plaintiff herself set, Plaintiff offers no evidence suggesting that Plaintiff was not properly "consulted" in connection with the Film and, more importantly, **no evidence that Plaintiff suffered any damages as a result of any such breach, itself an essential element to her claim**.

C. Plaintiff's Promissory Fraud Claims Fail

Plaintiff does not even attempt to substantiate her third and sixth causes of action sounding in fraud. The word fraud is not used once in her Opposition, and Plaintiff fails to present any evidence whatsoever to remotely substantiate any of her fraud claims. These claims must be stricken.[7]

D. Plaintiff's Interference Claims Fail

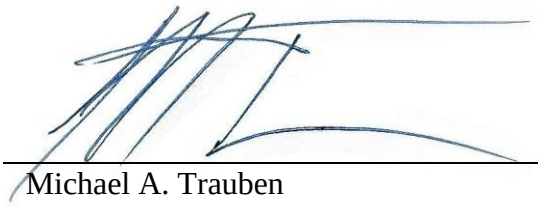
Plaintiff does not even attempt to substantiate her seventh cause of action for intentional interference with economic relationship. The word interference is not used once in her Opposition.

[7] Plaintiff asserts in conclusory fashion that each of her claims "has satisfies the requisite elements". However, such a boilerplate recitation is insufficient. Plaintiff fails to plead fraud with a modicum of particularity and was further required to present admissible evidence that would substantiate the legal sufficiency of her claims. *Indus. Waste and Debris Box Svc., Inc. v. Murphy* (2016) 4 Cal.App.5th 1135

DATED: December 14, 2021

Respectfully submitted,

SINGH, SINGH & TRAUBEN, LLP
MICHAEL A. TRAUBEN



By: _____
Michael A. Trauben

Attorneys for Defendants
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 December 14, 2021, I served the foregoing documents described as:

REPLY 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.

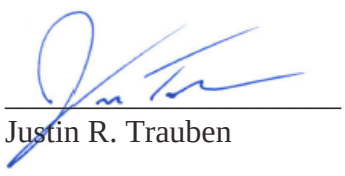
√ **(BY E-MAIL OR ELECTRONIC TRANSMISSION)** I caused the document(s) to be sent from e-mail address jtrauben@singhtraubenlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication 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 December 14, 2021 at Beverly Hills, California.



Justin R. Trauben

MICHAL STORY v. DAVID CARLSON & FILM FOETUS, INC

ASSIGNED TO:
HON. THERESA M. TRABER | DEPT. 47

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

CASE NO: 21STCV29163

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