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

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

13 MICHAL STORY, an Individual,
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) **REPLY DECLARATION OF DAVID CARLSON**
25) **IN SUPPORT OF DEFENDANTS DAVID**
26) **CARLSON AND FILM FOETUS, INC.’S SPECIAL**
27) **MOTION TO STRIKE COUNTS 1, 2, 3, 6 AND 7**
28) **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 21, 2021**
) **Time: 9:00 a.m.**
) **Dept.: 47**
)
) ACTION FILED: AUGUST 6, 2021
) TRIAL DATE: NONE SET
)
) **Reservation IDs: 326394406716 & 865724959919**

1 **REPLY 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. Unless
5 otherwise noted, I have personal knowledge of the following facts set forth herein and, if called and sworn
6 as a witness, I could and would competently testify thereto under oath.

7 2. I have read Plaintiff’s memorandum of points and authorities filed in opposition to the
8 special motion to strike Plaintiff’s first amended complaint pursuant to Code of Civil Procedure § 425.16
9 (California’s anti-SLAPP statute) (“**Opposition Brief**”) along with the declaration of Plaintiff Michal
10 Story (“**Plaintiff**” or “**Story**”) (the “**Story Declaration**”) and am familiar with their contents.

11 3. In the Story Declaration, Plaintiff Story asserts that based upon Joe Frank’s (“**Frank**”) right to approve the final cut of the documentary motion picture entitled *Joe Frank: Somewhere Out There*
12 (the “**Film**”), that Frank “had total and complete control of the project.” This is incorrect and further
13 contradicted by the express terms of the June 30, 2017 Film production agreement executed by Film
14 Foetus, Frank, and Plaintiff.

15 4. Specifically, with the exception of Frank’s right to approve the final cut of the Film, paragraph 2(b) of the Production Agreement expressly provides that Film Foetus “**shall have exclusive control and approval with respect to all creative decisions regarding the Picture.**” See Exhibit “B” to my sworn declaration dated October 26, 2021. (Emphasis supplied).

16 5. In addition, Frank’s right of “Final Cut” was further limited, as such approval was “not to be unreasonably withheld or delayed.” See Exhibit “B” to my declaration dated October 26, 2021.

17 6. In the Story Declaration, Plaintiff asserts that the Film was completed when Frank approved the “final cut” on or around October 9, 2017. This is similarly incorrect, and Plaintiff is mistaken.

18 7. The final cut approval Frank provided in 2017 concerned the narrative content and structure of the Film in offline editorial form. See Exhibit “D” to my declaration dated October 26, 2021.

19 8. At that time of Frank’s approval, as Frank was well aware, the Film was not yet releasable.

1 9. To be released, the Film required post-production work (color correction), sound mixing,
2 two-tiered music licensing agreements (for festival rights and wider digital distribution), mastering and
3 delivery.

4 10. This detailed post-production work was explained in real time to Plaintiff through, at a
5 minimum, eight (8) written letters I personally sent to Plaintiff from November 5, 2017 through August
6 4, 2019, in each instance advising Plaintiff as to the status of the Film while outlining the future work that
7 still needed to be performed to complete the Film. As always, within these communications, I repeatedly
8 invited Plaintiff's comments and thoughts on the Film and on this post-production process.

9 11. This post-production work is further detailed in the parties' Production Agreement,
10 specifically within paragraph 1(b), which provides as follows:

11 The parties acknowledge that, as of the effective date of this Agreement as first written
12 above, the only funding required to complete the Picture is an amount required to **license**
13 **the rights to the musical compositions and/or sound recordings** to be incorporated into
14 the Picture and to **complete post production for the Picture**.

15 *See Exhibit "B" to my declaration dated October 26, 2021. (Emphasis supplied).*

16 12. In the Story Declaration, Plaintiff Story also asserts that, despite my role as the sole director
17 of the Film and as a producer on the Film, and despite the fact that I independently created the entire Film
18 (with helpful input and comments from Frank), I cannot legitimately be characterized as the creator of the
19 Film.

20 13. Plaintiff's subjective opinion in this regard is meritless and, notably, is directly
21 contradicted by Plaintiff's late husband, Frank, who, on or around September 1, 2017, wrote as follows:

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

25 *See Exhibit "Z" to my declaration dated October 26, 2021. (Emphasis in Original).*

26 14. In the Story Declaration, Plaintiff Story further asserts that the motion to strike was
27 somehow a concession "for the first time that there was a \$75,000 investment", and further asserts that
28 this investment was "never accounted for." Once again, this is incorrect and Plaintiff is completely
mistaken.

1 15. As with all Film decisions and updates, Plaintiff was apprised that I had secured \$75,000
2 from a supporter of the Film in real time.

3 16. Specifically, in my February 7, 2019 letter to Plaintiff, I expressly informed Plaintiff that
4 a supporter of the Film had "expressed interest" in providing \$75,000 for the Film, in particular, to secure
5 the music rights for wider distribution. *See* Exhibit "V" to my declaration dated October 26, 2021.

6 17. Once again, despite my best efforts to engage and consult with Plaintiff in connection with
7 these prolific and documented Film updates, including my further written invitation for "any thoughts or
8 suggestions" by Plaintiff, Plaintiff did not respond to my February 7, 2019 letter to offer any comment,
9 question, or objection, including with respect to the prospect of this \$75,000 contribution to the Film.

10 18. As I expressly indicated to Plaintiff within this February 7, 2019 letter, I ultimately moved
11 forward with securing this \$75,000 contribution to the Film. *See* Exhibit "V" to my declaration dated
12 October 26, 2021.

13 19. As Plaintiff alleges in her first amended complaint, it was Defendant Film Foetus'
14 responsibility "to finance or secure financing for the project." (FAC at ¶43(h)).

15 20. After I secured the financing for the Film to secure the music rights for wider distribution,
16 I expressly accounted for these funds to Plaintiff in a follow-up certified letter I sent to Plaintiff on August
17 4, 2019, wherein I specifically and expressly notified Plaintiff that Film Foetus had "finalized all of the
18 music licensing contracts." *See* Exhibit "L" to my declaration dated October 26, 2021.

19 21. In addition, within the December 2, 2019 letter update I provided to Plaintiff, I also
20 included detailed reports and numerous receipts clearly demonstrating these expenditures as paid for with
21 the \$75,000 in financing I had disclosed and was able to secure. *See* Exhibit "R" to my declaration dated
22 October 26, 2021.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct.

25 Executed this 14th day of December 2021 at Cook County, Illinois.

26
27 By: 
28 David Carlson

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

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

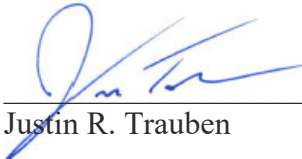
5 I am over the age of 18 and not a party to the within action; I am employed by SINGH, SINGH
6 & TRAUBEN, LLP in the County of Los Angeles at 400 S. Beverly Drive, Suite 240, Beverly Hills, CA
7 90212.

8 On December 14, 2021, I served the foregoing documents described as:

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

- 14 **(BY MAIL)** I enclosed the document(s) in a sealed envelope or package addressed to the
15 persons at the addresses listed in the Service List and placed the envelope for collection and
16 mailing, following our ordinary business practices. I am readily familiar with the firm's practice
17 for collecting and processing correspondence for mailing. On the same day that correspondence
18 is placed for collection and mailing, it is deposited in the ordinary course of business with the
19 United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or
20 employed in the county where the mailing occurred.
- 21 **(BY E-MAIL OR ELECTRONIC TRANSMISSION)** I caused the document(s) to be sent
22 from e-mail address jtrauben@singhtraubenlaw.com to the persons at the e-mail addresses listed
23 in the Service List. I did not receive, within a reasonable time after the transmission, any
24 electronic message or other indication that the transmission was unsuccessful.
- 25 **(BY FEDERAL EXPRESS DELIVERY)** By placing a true and correct copy of the above
26 document(s) in a sealed envelope addressed as indicated above and causing such envelope(s) to
27 be delivered to the FEDERAL EXPRESS Service Center, on _____, to be delivered
28 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

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

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Attorney for Plaintiff

MICHAL STORY