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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

4C4 MEDIA, LLC,

Plaintiff

v.

MARK HAEFELI; MARK HAEFELI
PRODUCTIONS, INC.; JOHN DOES 1-10
(name being fictitious for individuals whose
identities are currently unknown); and ABC
ENTITIES 1-10 (names being fictitious for
corporate or other legal entities whose
identities currently remain unknown),

Defendants.

Civil Action No.:

COMPLAINT

Plaintiff, 4C4 Media, LLC (hereinafter "Plaintiff," "4C4" or "Company"), by and through its counsel, hereby alleges as follows:

THE PARTIES

1. Plaintiff 4C4 Media, LLC is a Delaware limited liability company with its principal place of business at 550 West Main Street, Boonton, New Jersey. The Company is in the business of, *inter alia*, producing and distributing media content, and developing original films, television shows, and other forms of media through various distribution channels.

2. Defendant Mark Haefeli (“Mr. Haefeli”) is a resident of New Jersey and a former officer and member of 4C4 residing at 92 Elm Street, Montclair, NJ 07042.

3. Mr. Haefeli is also a principal of, or is otherwise associated with, defendant Mark Haefeli Productions, Inc. (“MHP”) and has caused it to commit the acts hereafter alleged. Upon information and belief, defendant MHP is a New York corporation whose principal place of business is 92 Elm Street, Montclair, NJ 07042.

4. John Does 1-10, being fictitious names, are individuals whose true identities have not yet been discovered that have acted in active concert with Haefeli or otherwise participated in the wrongful acts against Plaintiff that are set forth herein.

5. ABC Entities 1-10, being fictitious names, are entities whose true identities have not yet been discovered that have acted in active concert with Haefeli or otherwise participated in the wrongful acts against Plaintiff that are set forth herein. Collectively, Mr. Haefeli, MHP, John Does 1-10 and ABC Entities 1-10 will be referred to as the “Defendants.”

JURISDICTION AND VENUE

6. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, 17 U.S.C. § 101 et seq.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (jurisdiction over copyright actions).

8. This Court has personal jurisdiction over each of the Defendants because each regularly does business in the state of New Jersey and the causes of action hereinafter alleged arise out of their transaction of business in the state of New Jersey.

9. Venue is properly situated in this District under 28 U.S.C. § 1391(b)-(c), and/or 28 U.S.C. § 1400(a). Specifically, Mr. Haefeli resides in the state of New Jersey and a substantial portion of the events giving rise to the claims have occurred in the state of New Jersey.

STATEMENT OF THE CASE

10. On or around July 21, 2016, Mr. Haefeli and Cove, LLC established 4C4.

11. From October 2016 until Mr. Haefeli's resignation from 4C4 on February 27, 2019, Mr. Haefeli's work for 4C4 consisted almost exclusively of developing, producing and directing a feature length documentary with the working title "A Billion Dollar Power Station" which documents a recording studio in New York City named the "Power Station" (the "Work" or the "Film").

12. Written agreements between the Company and Mr. Haefeli identified all work performed by Mr. Haefeli, including the Film, as a "work made for hire," with ownership vesting exclusively in 4C4.

13. Among his other responsibilities, Mr. Haefeli was the primary representative of the Company in connection with all negotiations with those individuals being interviewed for the Film, including Ian Hunter ("Hunter"), Max Weinberg ("Weinberg"), Charles Granata ("Granata"), Warren Zanes ("Zanes") and others (the "Interview Subjects").

14. In addition, Mr. Haefeli was primarily responsible for soliciting interest from potential distributors of the Film and opening discussions with them, including, but not limited to, representatives of Abramorama, Red Hawk Films, Vision Films, Submarine Entertainment, Eagle Rock Entertainment, and others ("Potential Distributors").

15. Until his suspension and subsequent resignation from the Company, Mr. Haefeli received monthly guaranteed payments as consideration for his services. These payments were reflected in the Company's K-1s provided to Mr. Haefeli for the years 2016, 2017, and 2018.

16. Mr. Haefeli executed an Exclusive License and Assignment Agreement ("IP Assignment") that included a "work for hire" provision related to all work performed by Mr. Haefeli during his tenure with the Company.

17. The IP Assignment additionally provided that Mr. Haefeli and all his predecessor entities, including, but not limited to MHP, Second Coming Productions, LLC, Mark Haefeli Productions, LLC, CenterSeat, LLC, and White Light Productions, Inc. exclusively licensed and assigned all right, title, and interest in, to and under contributed creative materials and any future works to be produced, including, but not limited to, the Film. A copy of the IP Assignment is attached hereto as Exhibit "A".

18. Other written agreements between the Company and Mr. Haefeli (an Offer Letter, a Unit Forfeiture Agreement and Operating Agreement) provided, *inter alia*, that certain pre-existing works were assigned to the Company as "Contributed Works", with ownership now having vested in 4C4.

19. Beginning in February 2019, Mr. Haefeli posted several negative comments on social media about a former vendor of 4C4. The result of those comments was an action filed in the Superior Court of New Jersey, Essex County, Docket No. ESX-C-045-19 for, *inter alia*, defamation and enforcement of a non-disparagement obligation set forth in the Settlement Agreement (the "Essex County Action"). Mr. Haefeli, along with 4C4, and other participants in 4C4 (whether by way of legal representation, active performance of services or indirect ownership) were also named in that action.

20. Notwithstanding repeated efforts by the Company to seek an amicable resolution with both Mr. Haefeli and the plaintiff in the Essex County Action, Mr. Haefeli never materially engaged in those efforts and the Essex County Action remains active.

21. Mr. Haefeli resigned as an officer and relinquished his member interest on February 27, 2019.

22. After his resignation, Mr. Haefeli adopted an increasingly adversarial posture toward 4C4 and the members of its remaining member, Cove, LLC.

23. Commencing on or about April 8, 2019, Mr. Haefeli began to publish social media comments, and communicated by text messages and email, negative comments about the Company and the others involved with the Company, which *inter alia* derogated the Company's rightful ownership of the Film, as set forth at length below.

24. The United States Copyright Office issued the Company Certificates of Copyright Registration for the Film, Copyright Registration Nos. Pau 3-962-880 and Pau 3-962-815, effective dates of April 1, 2019 and April 23, 2019 respectively, listing 4C4 as the copyright owner. A copy of the Certificates of Registration (the "Registrations") are attached as Exhibit "B".

The Essex County Action

25. Beginning on February 19, 2019 through February 20, 2019, Mr. Haefeli allegedly posted comments on social media about a former vendor of 4C4, Aciem, LLC d/b/a East Main Media ("Aciem"), and the vendor's owner Brian Brodeur ("Mr. Brodeur"), via the social media platforms Twitter and Facebook.

26. On February 19, 2019, 8:37AM, Mr. Haefeli tweeted:

I strongly suggest that you return my informational media which I copied into your Basecamp program. Also, Google Doc script. None of this information is yours. It is my informational property, you thief and incompetent. Brian, I am the wrong guy to cross. Mark Haefeli.

See Exhibit "C"

27. On or around February 19, 2019, 8:27AM, Mr. Haefeli tweeted:

Do not ever work with this low end company. They can't do anything other than three camera PBS shoots and local town tourism videos. Many people have been screwed by Brodeur's bullshit. He is currently holding all, of my information media.
#Fraud

See Exhibit "C"

28. On or around February 19, 2019, 8:27AM, Mr. Haefeli tweeted:

Complete frauds these pretenders. There are countless individuals who Brodeur has screwed ...stay away

See Exhibit "C"

29. On or around February 19, 2019, 11:27 AM, Mr. Haefeli tweeted:

Just a bull shit company of incompetence. Brodeur is a talentless thief with lots of people coming after him. He's at best a local chamber of commerce video guy. Never has done anything of merit. I hired him for a high end project and was about as creative as an ant farm. #fraud

See Exhibit "C"

30. On or around February 19, 2019, 11:27 AM, Mr. Haefeli tweeted:

This company is so low end it is laughable. Amazing how someone as talentless As Brodeur is, is still doing any business, if you want to call local chamber of commerce videos work? Don't go near there. He's also a con man, liar and phony.
#punkfraud

See Exhibit "C"

31. On or around February 19, 2019, 11:27 AM, Mr. Haefeli tweeted:

Piece of shit company @EastMainMedia

See Exhibit "C"

32. On or around February 19, 2019, 11:27 AM, Mr. Haefeli tweeted:

Such bull shit and scam. Do t [sic] fall for this carnival barkers bull shit.

See Exhibit "C"

33. On or around February 19, 2019, 11:27 AM, Mr. Haefeli tweeted:

Brodeur is a phony and these podcasts are bullshit. No one listens or cares. He is talentless piece of shit that fucked with the wrong guy. #fraud you will regret theday you met me scumbag.

See Exhibit "C"

34. On or around February 19, 2019, 11:27 AM, Mr. Haefeli tweeted:

@EastMainMedia piece of shot company. Brodeur is a liar, heat and incompetent. He will be brought Right down to his knees. #fraud#lawsuit

See Exhibit "C"

35. On or around February 19, 2019, Mr. Haefeli posted on Facebook:

Mark Haefeli A complete bullshit company; Brodeur has fucked his last client. Erased my intellectual property and script notesfor [sic] a 2 hour documentary! Should have known that this pretend production company could not handle anything as high end as a "real" documentary! Amateurs at best. cheats and incompetents at worst.

See Exhibit "C"

36. On or around February 19, 2019, Mr. Haefeli posted on Facebook:

This is a complete bullshit company. They cant [sic] do anything except local community travelogues and three camera PBS shoots that my 14 year can edit. Many former clients have been screwed by Brodeur the phony. (He is a con man), But I will be the last Promise!#pieceofshit

See Exhibit "C"

37. On or around February 19, 2019, 11:27 AM, Mr. Haefeli tweeted:

Hey Steve ...let's get together soon so I can fill you in on Brodeur and what a scum bag he is. Suggest you find another vendor because his ship is about to be sunk. You will not want to be associated with him when this gets out.

See Exhibit "C"

38. On or around February 19, 2019, 11:27 AM, Mr. Haefeli tweeted:

Hey Steve, just a heads up to get away from this fraud as soon as possible. We are filing a major law suit against this clown that will bankrupt his business and put him out of his house!:) he's fucked with the wrong guy this time. @EastMainMedia See Exhibit "C"

39. On or around February 25, 2019, two days before Mr. Haefeli resigned from 4C4, Mr. Haefeli engaged Corey Florin ("Mr. Florin"), on behalf of 4C4, to provide post-production film editing services for the Film, and thereafter instructed 4C4 to compensate Mr. Florin for his services.

40. On February 27, 2019, 4C4 suspended Mr. Haefeli for a period of two weeks pending further investigation of the matter.

41. As part of the terms of his suspension, Mr. Haefeli was prohibited from acting in any way on behalf of 4C4 or holding himself out in any way as an authorized representative of 4C4.

Initial Threats of Copyright Infringement

42. On February 27, 2019, at 1:45PM, Mr. Haefeli sent an email to a representative of 4C4 stating, in part:

"The power station project is mine. I will not stop working on it."

See Exhibit "D."

43. Also, on February 27, 2019, at 1:59 PM, Mr. Haefeli sent an email to a representative of 4C4 stating:

"I am not longer a partner. I withdrawal immediately. And I'm taking everything that is mine and was mine."

See Exhibit "D."

44. Also, on February 27, 2019 at 2:09 PM, Mr. Haefeli sent an email to a representative of 4C4 stating:

“I have officially resigned from foresee for MEDIA and I am no longer a part of that company. I also immediately will establish mark haefeli productions or MH P3 on all my signature pages at all of my emails to reinforce that I’m fucking done.”

See Exhibit “D.”

45. Also, on February 27, 2019 at 10:02 PM, Mr. Haefeli sent another email to a representative of 4C4 stating:

I have resigned and neither one of you would even know where to start to creat anything except bullshit.

See Exhibit “D.”

46. At some time after February 27, 2019, Mr. Haefeli contacted Mr. Florin, and falsely represented that he continued to be a representative of 4C4 and requested, and obtained, a copy of the Film and all ancillary materials.

47. At some time after February 27, 2019, Mr. Haefeli “redirected” www.4c4media.com to a website or websites under the control of Mr. Haefeli.

48. At some time after February 27, 2019, Mr. Haefeli contacted Mr. Florin and, unbeknownst to 4C4, directed Mr. Florin to remove the Company’s name from the film, and place a copyright notice in the Film naming Mr. Haefeli as the copyright owner.

49. On Friday, March 1, 2019 at 9:39 AM, Mr. Haefeli sent an email stating: “Trust me, he will never get that film. *It is my film.*” See Exhibit “D.”

50. On or around March 5, 2019, 4C4 and Mr. Florin entered into an agreement governing Mr. Florin’s post-production film editing services, past and future, which included a

“work for hire” provision (the “Florin Post-Production Agreement”) and paid Mr. Florin as requested and required.

51. On Thursday, March 7, 2019 at 10:24 PM, Haefeli sent an email stating:

I ACTUALLY HAD MY EDITOR SIGN IN A FEW WEEKS AGO USING MY LOG IN. SAME INFO. HE WAS REVIEWING SEVERAL SPECIFIC “EXCLUSIVE” CLIPS FROM VARIOUS ARTISTS THAT I ISOLATED FOR USAGE IN MY RECENT PROJECT “ A BILLION DOLLAR POWER STATION”. I THINK WE TALKED ABOUT THIS DOCUMENTARY SEVERAL YEARS AGO. FUNNY HOW HE HAD NO PROBLEM...:)

WE HAD BEEN INCORPORATING A NUMBER OF CLIPS INTO THE DOCUMENTARY UNTILL THE WRONGFUL “EMPLOYEE TERMINATION” FILING WAS ISSUED TO ME. **THEY ARE TRYING TO TAKE THE “POWER STATION” DOC . . .**

See Exhibit “D.”

52. On Saturday, March 9, 2019 at 1:13 PM, Mr. Haefeli sent an e-mail to 4C4’s counsel stating, in part:

Also the Power Station film was a project originally developed and produced by Tony Bongiovi and Mark Haefeli beginning in 2014, well before 4c4media. ***This was meant to be and always was a separate project and is not mentioned in any agreement as a partnership entity except in an attempt to partner 4c4 with Tony Bongiovi’s company BPST.*** That deal is now null and void as far as Bongiovi is concerned and me as well.

See Exhibit “D.”

53. On April 8, 2019, the Company communicated with Mr. Florin concerning payment for post-production services.

54. At this time, the Company instructed Mr. Florin to not provide Mr. Haefeli with access to any of the assets associated with the Film.

55. On April 9, 2019 4C4 informed Mr. Florin via e-mail that:

Finally, so there are no further issues, nothing in your possession related to the project is to be made available to anyone else for download or copying. For clarity, the film and all related materials are 4C4’s property, not Mark’s or anyone else’s.

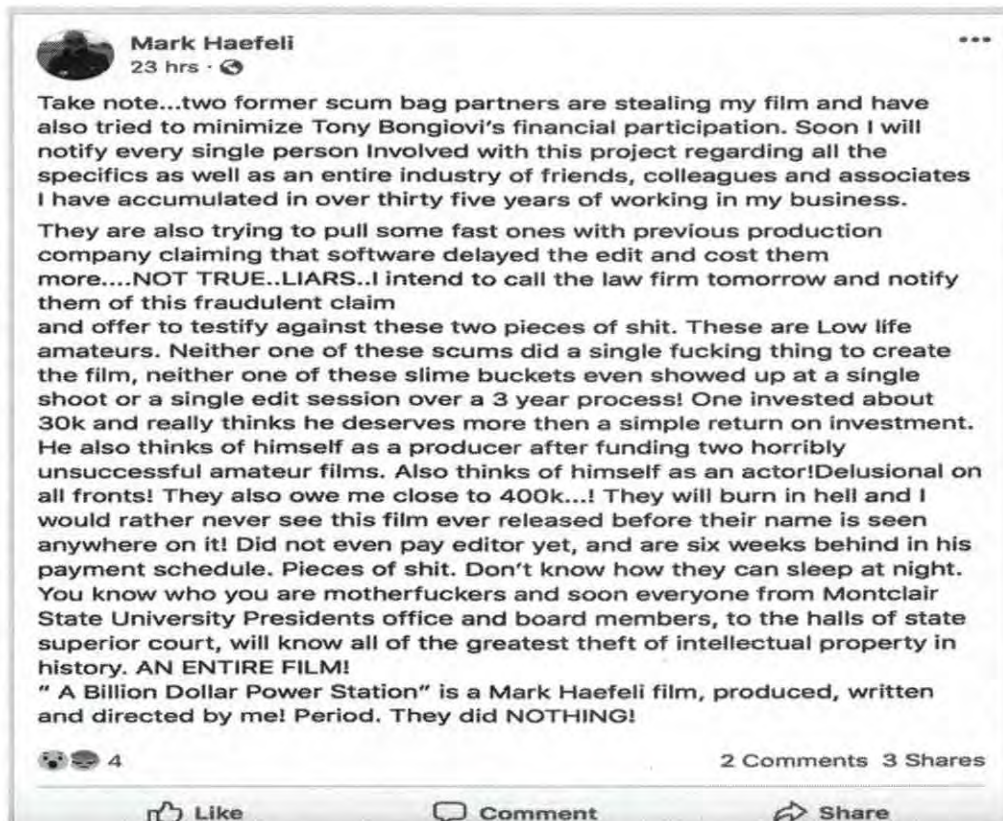
See Exhibit "D."

Continuing False Assertions of Copyright Ownership

56. Beginning on and around April 9, 2019, Mr. Haefeli began posting and circulating false, defamatory and damaging comments regarding 4C4 and its officers, representatives, and members and others merely associated with it.

57. Since that time, Mr. Haefeli has repeatedly held himself out as the rightful owner of the Film and has continuously threatened to infringe the Company's copyright rights in the Film.

58. On or around April 10, 2019, Mr. Haefeli posted the following on Facebook:



59. On or around April 10, 2019, Mr. Haefeli posted the following on the @powerstationdoc Twitter account, which is owned and run exclusively by Mr. Haefeli:



60. On April 11, 2019 at 8:28 PM, Haefeli sent a text message to a representative of Plaintiff stating:

... when it come to this film.... I am willing to flush eight years of my life down the toilet to make sure that neither one of you ever sees a dime. I am willing to do that you chicken shIt. I will fall on he the grenade to fuck you the way you have fucked Me...And you two run to my lawyer with all your little bits and pieces of truth that I post...**oh well be good live pretty soon! On the internet ...**
BTW...what would make you think I don't have a drive you fool! You're a bit slow on the draw.

See Exhibit "D."

61. On April 12, 2019 at 9:27AM, Mr. Haefeli sent an e-mail stating, in part:

You may know by now but robert has stolen my film, literally... So he is now in possession of seven years of my life claiming he owns this! I am sure you can not imagine how anyone could do such a thing..., please note that the film credits Mark Haefeli as producer and director and there is no mention of 4C4media anywhere on the film. The last credit roll is the copyright which reads Mark Haefeli Productions 2019 and I do not think you want to mess with some ones copywritten material....***BTW...I have a copy of the drive as well. Had the project cloned about two weeks ago...***

See Exhibit "D."

62. Mr. Haefeli knowingly induced Mr. Florin to breach Mr. Florin's obligations under the Florin Post-Production Agreement by holding himself out as a duly authorized representative of the Company and requesting and receiving from Mr. Florin a copy of the Film and other assets in Mr. Florin's possession.

63. On April 12, 2019 at 9:43AM, Mr. Haefeli sent an e-mail stating in part: "By the way I asked Corey two weeks ago, to make me a precautionary back up. This was well before you started your legal bullying routine." See Exhibit "D."

64. On April 13, 2019 at 9:49AM, Mr. Haefeli posted the following on his Facebook account:



See Exhibit "D."

65. Shortly thereafter, at 10:18AM, Haefeli posted the following on his Facebook account:



See Exhibit "D."

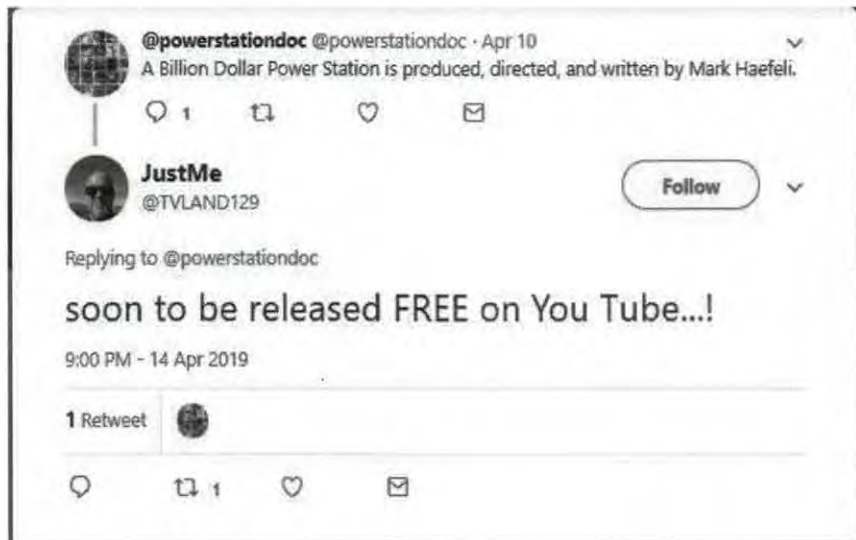
66. Shortly thereafter, on April 13, 2019, at 1:25PM, Mr. Haefeli sent the following text message stating, in part:

Until this film is given back to me, and I'm not talking about the drive, I am taking about exclusive ownership, because as you know, I already have a copy of the drive, and you will have to spend tens of thousands of dollars to start over on the edit but won't even have enough material to do another edit! You can't afford it and god knows you can't raise money.

BTW, I have already started working with another editor late last week soon as I got the drive from Corey. We continue to make changes and alterations to finalize this so it will pass QC. I did tell you I would do anything I had to do to get this film done. I am relentless.

See Exhibit "D."

67. On or around April 14, 2019, at 9:00PM, Mr. Haefeli posted the following on Twitter:



See Exhibit "D."

68. On or around April 16, 2019, Mr. Haefeli posted the following on Twitter:



See Exhibit “D.”

69. Moreover, and in a final effort to avoid Court intervention, on April 25, 2019, Plaintiff sent a Notice and Demand Letter to Defendants’ counsel demanding that Mr. Haefeli, through his counsel, withdraw all threats to copy, disseminate, edit, abridge, enhance and otherwise infringe Plaintiff’s copyright in the Film.

70. Despite having sent the Notice and Demand Letter to Defendant’s counsel on April 25, 2019, Mr. Haefeli has continued to infringe Plaintiff’s copyright rights. Most recently, on or about April 29, 2019, at 9:39 pm, Mr. Haefeli posted on Facebook that he launched a website, www.powerstationfilm.com.



See Exhibit “D.”

71. On or about that same day, Mr. Haefeli launched www.powerstationfilm.com and proclaimed, "A Billion Dollar Power Station" - *A Mark Haefeli Film*".

COUNT I
Copyright Infringement Under the Copyright Act

72. Plaintiff repeats and realleges the foregoing as if set forth at length.

73. The Film is the subject of Copyright Registration Nos. Pau 3-962-880 and Pau 3-962-815, effective date April 1, 2019 and April 23, 2019, respectively.

74. Plaintiff is the owner of the Copyright Registration Nos. Pau 3-962-880 and Pau 3-962-815 and the rightful owner of the creative works embodied in those Registrations.

75. Defendant had access to the copyrighted works.

76. By the wrongful conduct described above, Defendants have infringed upon Plaintiff's copyright.

77. The infringement of Plaintiff's copyrighted materials has been willful, intentional, and in total disregard of Plaintiff's copyright, in violation of 17 U.S.C. § 501 *et seq.*

78. Defendants did not have a license, prior authorization or the consent of Plaintiff to reproduce, distribute, publicly perform, or otherwise use the Film.

79. As a result of Defendants' infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to either disgorgement of profits and recovery of actual damages, or statutory damages pursuant to 17 U.S.C. § 504.

80. Plaintiff is further entitled to recovery of its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

81. Additionally, Defendants' publication of the Work on the Internet has resulted in irreparable damage to Plaintiff by depriving Plaintiff of its first publication right and Plaintiff has no adequate remedy at law.

82. Defendants' infringement of Plaintiff's copyrights has damaged, and is continuing to damage, Plaintiff in an amount to be determined at trial.

83. Accordingly, Plaintiff seeks an order under 17 U.S.C § 502 enjoining Defendants' copyright infringement.

84. By reason of the foregoing, Plaintiff is entitled to injunctive relief, either actual or statutory damages, attorneys' fees and costs, and further relief as the Court deems just and proper.

COUNT II
Defamation – Libel

85. Plaintiff repeats and realleges the foregoing as if set forth at length.

86. Mr. Haefeli made severely damaging and disparaging remarks and statements concerning Plaintiff on social media platforms and through electronic communications with thirdparties. Upon information and belief, these third parties include at least some of the Interview Subjects.

87. Mr. Haefeli's disparaging statements were at all times, and remain, demonstrably false and defamatory in nature.

88. The disparaging and defamatory statements made by Mr. Haefeli concern the personal, professional and business reputation and character of Plaintiff.

89. Furthermore, the statements made by Mr. Haefeli clearly and unmistakably vilified Plaintiff without any basis in fact.

90. At all times, Mr. Haefeli either: (i) knew the disparaging and defamatory statements were false when he communicated them; or (ii) communicated the statements with reckless disregard of their truth or falsity; or (iii) acted negligently in failing to ascertain the falsity of the statements before communicating them.

91. As a direct and proximate result of Mr. Haefeli's conduct, Plaintiff has been impaired in its ability to earn a living and maintain a business, thereby causing Plaintiff damages.

92. As a direct and proximate result of Mr. Haefeli's conduct, the reputation of Plaintiff has been damaged, and it has sustained and will continue to sustain damages.

COUNT III
Tortious Interference with Contractual Relations

93. Plaintiff repeats and realleges the foregoing as if set forth at length.

94. Plaintiff and third parties, including Mr. Florin, entered into contractual agreements, written and oral, which governed various aspects of the Film.

95. Plaintiff reasonably expected that its contractual relationship with those third parties would continue into the future.

96. Defendants knew of the agreement between Plaintiff and those third parties.

97. By the wrongful conduct described above, Defendants intentionally and improperly interfered with the agreement with those third parties and did so with the intent and purpose of inducing those third parties to breach such agreement or otherwise act in a way to render performance impossible.

98. Defendants' interference caused those third parties to breach the agreement.

99. As a result of Defendants' actions, Plaintiff has been and continues to be damaged in an amount to be determined at trial.

100. Plaintiff has also suffered and will continue to suffer irreparable harm in the form of damage to its reputation as a result of Defendants' conduct described herein.

101. While an award of damages may be adequate to compensate Plaintiff for the loss of income, an award of damages will not be adequate to compensate Plaintiff for the damage to its reputation caused by Defendants. Plaintiff has suffered and will continue to suffer irreparable harm unless preliminary and permanent injunctive relief is granted.

COUNT IV

Tortious Interference with Prospective Economic Advantage

102. Plaintiff repeats and realleges the foregoing as if set forth at length.

103. Plaintiff and third parties, were actively involved in ongoing discussions, written and oral, regarding various aspects of the Film, including but not limited to securing a contract for the distribution rights in the Film.

104. There was a reasonable probability that Plaintiff and third parties would have entered into a contractual relationship.

105. Defendants knew of the third parties, the ongoing discussions, written and oral, regarding various aspects of the Film and that there was a reasonable probability that Plaintiff and third parties would have entered into a contractual relationship.

106. As a direct and proximate result of Defendants' conduct, Defendants have intentionally and wrongfully interfered the relationship between Plaintiff and those third parties and placed a cloud over the Film and effectively prevented the relationship between that Plaintiff and those third parties from developing further.

107. As a result of Defendants' actions, Plaintiff has been and continues to be damaged in an amount to be determined at trial.

108. Plaintiff has also suffered and will continue to suffer irreparable harm in the form of damage to its reputation as a result of Defendants' conduct described herein.

109. While an award of damages may be adequate to compensate Plaintiff for the loss of income, an award of damages will not be adequate to compensate Plaintiff for the damage to its reputation caused by Defendants. Plaintiff has suffered and will continue to suffer irreparable harm unless preliminary and permanent injunctive relief is granted.

COUNT V
Breach of Contract

110. Plaintiff repeats and realleges the foregoing as if set forth at length.

111. Plaintiff and Mr. Haefeli entered into the IP Assignment, the Operating Agreement, the Offer Letter, and the Unit Forfeiture Agreement.

112. Plaintiff duly performed its obligations thereunder.

113. Mr. Haefeli has breached his obligations under and pursuant to, *inter alia*, the IP Assignment, the Operating Agreement, the Offer Letter, and the Unit Forfeiture Agreement.

114. Mr. Haefeli's conduct constitutes a material breach of Mr. Haefeli's contractual obligations to the Company.

115. As a direct and proximate result of Mr. Haefeli's conduct, and as set forth more fully above, Mr. Haefeli breached the IP Assignment, the Operating Agreement, the Offer Letter, and the Unit Forfeiture Agreement and Plaintiff has suffered, and will continue to suffer, damages and irreparable harm to its business reputation.

COUNT VI
Breach of the Implied Covenant of Good Faith and Fair Dealing

116. Plaintiff repeats and realleges the foregoing as if set forth at length.

117. Plaintiff and Mr. Haefeli entered into the IP Assignment, the Operating Agreement, the Offer Letter, and the Unit Forfeiture Agreement.

118. Implied in each contract in New Jersey is a covenant of good faith and fair dealing, such that one contracting party shall not act to harm the other party.

119. By reason of the aforementioned conduct, Defendants breached the implied covenant of good faith and fair dealing with respect to, *inter alia*, the IP Assignment, the Operating Agreement, the Offer Letter, and the Unit Forfeiture Agreement by acting in bad faith with the

purpose of depriving Plaintiff of fruits and/or benefits it bargained for under the IP Assignment, the Operating Agreement, the Offer Letter, and the Unit Forfeiture Agreement.

120. As a consequence, Plaintiff was wrongfully deprived of the fruits and/or benefits of its bargain with Defendants, and Plaintiff has been, and will continue to be, severely damaged as a result.

COUNT VII
Common Law Fraud

121. Plaintiff repeats and realleges the foregoing as if set forth at length.

122. Mr. Haefeli misrepresented a presently existing and past fact by telling members of Plaintiff that he:

- i. was a highly respected director and producer in the music, film, and entertainment industries with ready and willing contacts and relationships for ongoing production business;
- ii. had no prior circumstances that would bring into question his integrity or his likelihood of success in the production business;
- iii. had no prior disputes with prior partners that he had caused that would impact his likelihood of success in the production business;
- iv. had a successful production company with ongoing revenues;
- v. had a reasonable likelihood of continued success in his production company;
- vi. had a reasonable likelihood of continued revenue in his production company; and
- vii. was a talented and creative film producer (the “Representations”).

123. These Representations were material to Cove, LLC's decision to contract and partner with Mr. Haefeli and form Plaintiff.

124. Mr. Haefeli knew that the Representations were false when he made them and did so with the intent of misleading Cove, LLC into forming 4C4 with Haefeli.

125. Plaintiff reasonably relied on the Representations to its detriment.

126. As a result of such reasonable reliance, Plaintiff has suffered and will continue to suffer damages and irreparable harm to its business reputation.

COUNT VIII

Prohibited Officer Actions Under the Ultra Vires Doctrine

127. Plaintiff repeats and realleges the foregoing as if set forth at length.

128. Mr. Haefeli undertook conduct which exceeded his authority.

129. Prior to his suspension and resignation, Company contacted Mr. Haefeli via e-mail and explicitly instructed him to "cease and desist from any activity on behalf of 4C4."

130. Shortly thereafter, Mr. Haefeli resigned from Plaintiff.

131. Accordingly, Mr. Haefeli was without authority to direct Mr. Florin to create a copy of the Work and provide him with such copy.

132. Plaintiff did not ratify Mr. Haefeli's action, and, as such, this action was *ultra vires* and is void.

133. As a result of such Mr. Haefeli's conduct, Plaintiff has suffered and will continue to suffer damages and irreparable harm to its business reputation.

COUNT IX

Breach of Member/Officer Duties

134. Plaintiff repeats and realleges the foregoing as if set forth at length.

135. As a member and manager of 4C4, Mr. Haefeli owed Plaintiff standards of conduct.

136. Mr. Haefeli owed Plaintiff the duties of loyalty and care as a member and manager including, but not limited to, the fiduciary duty of loyalty to:

- a. account to the Company and to hold as trustee for it any property, profit, or benefit derived by the member;
 - i. in the conduct or winding up of the Company's activities;
 - ii. not misuse Company property; or
 - iii. misappropriate Company opportunities;
- b. refrain from dealing with the Company in the conduct or winding up of the Company's activities as or on behalf of a person having an interest adverse to the Company; and
- c. refrain from competing with the Company in the conduct of the Company's activities before the dissolution of the Company (the "Loyalty Duties").

137. Mr. Haefeli owed Plaintiff the duty of care to refrain from:

- a. engaging in grossly negligent or reckless conduct;
- b. intentional misconduct; or
- c. a knowing violation of law (the "Care Duties").

138. Mr. Haefeli breached each and every one of the Loyalty Duties and Care Duties owed to Plaintiff.

COUNT X

**Declaratory Relief Pursuant to 28 U.S.C. § 2201, *et seq.* (Declaratory Judgment Act)
and the Copyright Act (Title 17 of the U.S. Code)**

139. Plaintiff repeats and realleges the foregoing as if set forth at length.

140. Plaintiff is entitled to and requests a Declaration of its ownership of the Film, the ancillary materials associated with the Film and the Contributed Work.

141. There is a real and actual controversy between Plaintiff and Defendants regarding the foregoing.

142. Such controversy has impacted Plaintiff's ability to work on the Film and forced Plaintiff to incur significant legal expenses in protecting its copyright in the Film.

143. The controversy between Plaintiff and Defendants is thus real and substantial and demands specific relief through a decree of a conclusive character.

144. Accordingly, Plaintiff is entitled to declaratory judgment that it owns the Film, the ancillary materials associated with the Film and the Contributed Work.

COUNT XI

Federal Unfair Competition and False Designation of Origin
15 U.S.C. § 1125(a)

145. Plaintiff repeats and realleges the foregoing as if set forth at length.

146. Plaintiff has acquired the exclusive rights to reproduce and distribute the Film and to use the name and trademark a Billion Dollar Power Station and colorable variations thereof ("Plaintiff's Mark"), including the Power Station Film and alternate, abbreviated or reconstituted version of the Film and outtakes and unused source materials.

147. Pursuant to 15 U.S.C. § 1125(a), a non-registered trademark owner may be granted injunctive relief to prevent or restrain infringement of its well-known mark and may petition the Court to award damages, disgorgement of profits, and attorneys' fees as a result of the trademark infringement.

148. Defendant's acts described above have caused or are likely to cause confusion, mistake, deception, or misunderstanding as to the source, origin, sponsorship, affiliation, or approval of Defendant's goods and services, and constitutes infringement of Plaintiff's Mark and

unfair competition in violation of the Lanham Act, and common law trademark and unfair competition laws.

149. Further, Defendant's acts described above constitute materially false representations of fact that are likely to cause confusion, mistake, or deception as to the source, origin, sponsorship, affiliation, or approval of Defendant's goods and services, all in violation of 15 U.S.C. §1125(a).

150. Defendant's infringement of Plaintiff's Mark is willful.

151. Even after being placed on notice of Plaintiff's rights in April 2016, Defendant continues to use confusingly similar marks and trade dress in commerce.

152. Upon information and belief, Defendant is willfully offering for sale and selling goods and services that infringe Plaintiff's Trade Dress in order to benefit from Plaintiff's goodwill and reputation.

153. Furthermore, Defendant is falsely creating an association between Defendant's goods and Plaintiff and Plaintiff's products.

154. Defendant's actions have damaged Plaintiff's business, reputation, and goodwill and have interfered with Plaintiff's own use of Plaintiff's Mark and Trade Dress. Unless restrained and enjoined by this Court, Defendant will persist in its activities, causing irreparable harm and injury to Plaintiff.

155. Defendant should be preliminarily, and upon final hearing, permanently enjoined from using Plaintiff's Mark and Trade Dress, pursuant to 15 U.S.C. § 1116.

156. Plaintiff is entitled, under 15 U.S.C. § 1117(a), to recover from Defendant:

- a. Defendant's profits in providing its goods using Plaintiff's Mark and Trade Dress;

- b. damages sustained by Plaintiff due to Defendant's providing its goods and services using marks identical or confusingly similar to Plaintiff's Mark and Trade Dress;
and
- c. the costs of this action.

157. Because this is an exceptional case, involving willful misconduct by Defendant, Plaintiff is also entitled, under 15 U.S.C. § 1117(a), to recover: (i) exceptional damages for intentional infringement, bad faith, and willful conduct equal to three times profits or damages, whichever is greater; and (ii) attorney fees and costs.

158. Defendant's conduct as described above has been intentional, willful, deliberate, malicious, and intended to injure Plaintiff, in clear disregard of Plaintiff's legal rights.

159. Defendant's acts described above greatly and irreparably damage Plaintiff and will continue to damage Plaintiff unless enjoined by this Court.

COUNT XII

Common Law Unfair Competition

160. Plaintiff repeats and realleges the foregoing as if set forth at length.

161. Plaintiff is the owner of common law rights in Plaintiff's Mark.

162. Plaintiff has invested substantial time, labor, skill, and money in the development of Plaintiff's Mark.

163. Through its conduct described above, including the unauthorized use of Plaintiff's Mark and making false or misleading representations of fact in connection with the sale and offering for sale of Defendant's goods and services confusingly similar to Plaintiff's, Defendant has passed off their products as those of Plaintiff or being in connection or affiliation with Plaintiff, and has intentionally misappropriated.

164. Plaintiff's labors, investments, and expenditures and intentionally exploited Plaintiff's Mark and Plaintiff's reputation and goodwill associated therewith.

165. Defendant's conduct is intended and likely to cause confusion, deception, or mistake among consumers as to the source, origin, sponsorship, affiliation, or approval of Defendant's goods and services by Plaintiff.

166. Defendant has used marks and trade dress that are confusingly similar to Plaintiff, in relation to identical or highly similar goods as Plaintiff's and in competition with Plaintiff, all of which provided and continues to provide Defendant an unfair advantage, because Defendant bore little or no burden of the expense of development and promotion of those goods.

167. Defendant's conduct was made in bad faith, with full knowledge of Plaintiff's ownership of and/or exclusive right to use and license Plaintiff's Mark.

168. By knowingly competing against Plaintiff using confusingly similar marks for identical or highly similar goods and services, Defendant has misappropriated a commercial advantage belonging to Plaintiff.

169. Defendant's conduct is illegal and actionable under the common laws of the State of New Jersey.

170. Defendant's actions described above constitute unfair competition in violation of New Jersey common law.

171. Defendant's conduct as described above has been intentional, willful, deliberate, malicious, and intended to injure Plaintiff, in clear disregard of Plaintiff's legal rights.

172. Plaintiff has no adequate remedy at law inasmuch as money damages alone would not adequately compensate Plaintiff for the harm to its rights, goodwill, and business reputation.

173. Defendant's acts described above greatly and irreparably damage Plaintiff and will continue to damage Plaintiff unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- A. Enter judgment Declaring Plaintiff the owner of all right, title and interest in and to the Film;
- B. Enter judgment against Defendants and in favor of Plaintiff for violation of Plaintiff's rights under the Copyright Act (17 U.S.C. § 501 *et seq.*);
- C. Enter judgment against Defendants and in favor of Plaintiff for libeling and/or defaming Plaintiff;
- D. Enter judgment against Defendants and in favor of Plaintiff for breach of contract;
- E. Enter judgment against Defendants and in favor of Plaintiff for breach of the implied covenant of good faith and fair dealing;
- F. Enter judgment against Defendants and in favor of Plaintiff for tortious interference with contractual relations;
- G. Enter judgment against Defendants and in favor of Plaintiff for tortious interference with prospective contractual relations;
- H. Enter judgment against Defendants and in favor of Plaintiff for fraud;
- I. Enter judgment against Defendants and in favor of Plaintiff for conduct constituting *ultra vires* acts for which Defendants are individually liable;
- J. Enter judgment against Defendants and in favor of Plaintiff for breaching the Duties of Loyalty and Duties of Care;

K. Enter a judgment, permanently enjoining Defendants their respective agents, servants, employees, successors and assigns, and all other persons acting in concert with or in conspiracy with or affiliated with Defendants, from:

- a. editing, altering, reproducing, distributing, or otherwise publicly displaying: (i) the Film, or (ii) any adulterated, alternate, abbreviated or reconstituted copy of the Film or the Film's outtakes and/or unused source materials, including one that lists Defendants as the copyright owner (or otherwise attributes ownership to Defendants);
- b. offering for sale, selling, marketing or promoting: (i) the Film, or (ii) any adulterated, alternate, abbreviated or reconstituted copy of the Film or the Film's outtakes and unused source materials, including one that lists Defendants as the copyright owner (or otherwise attributes ownership to Defendants);
- c. creating derivative works derived from: (i) the Film, or (ii) any adulterated, alternate, abbreviated or reconstituted copy of the Film or the Film's outtakes and unused source materials, including one that lists Defendants as the copyright owner (or otherwise attributes ownership to Defendants);
- d. engaging in acts of interferences with Plaintiff's marketing and selling of (i) the Film, or (ii) any alternate, abbreviated or reconstituted version of the Film or the Film's outtakes and unused source materials, including, but not limited to, interfering with Plaintiff's work with existing or prospective vendors for the Film; and

- e. engaging in any other acts which puts a cloud on the ownership, development or distribution of: (i) the Film, or (ii) any alternate, abbreviated or reconstituted version of the Film or the Film's outtakes and unused source materials, including, but not limited to, Defendants holding themselves out as the owner of the Film.
- L. Plaintiff be awarded all losses of Plaintiff, the exact sum to be proven at the time of trial, as available under the Copyright Act, 17 U.S.C. § 101 et seq. and the Lanham Act 15 U.S.C. § 1051 et seq.;
- M. Plaintiff be awarded all profits of Defendants;
- N. Awarding Plaintiff reasonable attorneys' fees, costs and disbursements, as provided in, *inter alia*, the Copyright Act, 17 U.S.C. § 101 et seq. and the Lanham Act 15 U.S.C. § 1051 et seq.;
- O. Awarding Plaintiff statutory, enhanced and treble damages as provided in such applicable law and regulations, including reasonable attorneys' fees, costs and disbursements, as provided in, *inter alia*, the Copyright Act, 17 U.S.C. § 101 et seq. and the Lanham Act 15 U.S.C. § 1051 et seq.; and
- P. Enter such other and further relief to which Plaintiff may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

THE MCHATTIE LAW FIRM

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