

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

88 LLC)
1111 East-West Highway)
Silver Spring, MD 20910)
(Montgomery County))
)
Plaintiff,)
)
vs.)
)
RC MATRICE, LLC)
1121 Annapolis Road)
Suite 332)
Odenton, MD 21113)
(Anne Arundel County))
)
And)
)
RENE C. MITCHELL)
1121 Annapolis Road)
Suite 332)
Odenton, MD 21113)
(Anne Arundel County))
)
)
Defendants)
)

COMPLAINT AND
JURY DEMAND

COMPLAINT

Plaintiff, 88 LLC (“Plaintiff” or “88 LLC”), brings this complaint in the United States District Court of Maryland against RC Matrice, LLC, a Maryland limited liability company (“RC Matrice” or “Defendant RC Matrice”) and Rene C. Mitchell, an individual residing in Maryland (“Mitchell” or “Defendant Mitchell”) (collectively, “Defendants”), alleging as follows:

NATURE OF THE CASE

1. Plaintiff is a multi-media production company that provides products in video production, branding, motion graphics and sound design.

2. On information and belief, Defendant RC Matrice is a woman-owned certified Service Disabled Veteran Organization (SDVO) that was awarded a contract (the “Prime Contract”) by the US Army’s Office of the Surgeon General Health Policy and Services Proponency Office for Rehabilitation and Reintegration (the “OTSG”) to develop, inter alia, multi-media distance learning materials on the subject of traumatic brain injuries to be used to educate troops, their families, medics and others connected to the Army or other branches of the United States military about traumatic brain injuries.

3. On information and belief, the Prime Contract required “the development of professional graphics and animation for TBI [traumatic brain injury] education modules for health care providers and Soldiers/Families” and provided that the production contractor would provide “voiceover narration; direction, filming, and production of various module [sic]; arrange and facilitate content matter expert reviews; script writing assistance; graphic design and printing assistance.” These modules (referred to in this Complaint as the “TBI Modules”) were to include “content; interface design; a consistent look and feel for the program; 508 compliance; Shareable Content Object Reference Model (SCORM) version 2004 compliance; web based and DVD platforms; and hardcopy training materials.” The contractor was also to provide “conversion to Spanish and ...CME and CEU accreditation.” A copy of Part I of the Performance Work Statement included in the Prime Contract is attached hereto as Exhibit 1.

4. On information and belief, among the deliverables under the Prime Contract were the following TBI Modules, each of which was to contain a DVD in English and Spanish with closed captioning; a website for online training in English and Spanish with closed captioning; formatting for

the website to meet SCORM standards; and services to meet the requirements of Section 508 of the Americans with Disabilities Act:

- a. Traumatic Brain Injury: Get it Checked Out 101 (versions 101v.1 and 101v.2);
- b. Traumatic Brain Injury: Get it Checked Out 201;
- c. Traumatic Brain Injury: Get it Checked Out 301;
- d. Traumatic Brain Injury: Get it Checked Out 201/301; and
- e. Traumatic Brain Injury: Get it Checked Out 401a, 401b, 401c

The materials described in a-e above are collectively referred to in this Complaint as the “Initial TBI Modules.”

5. On or about mid-September 2009, Defendant Mitchell approached Plaintiff’s owner and president David Fogel (“Fogel”) to ask Plaintiff to work on an emergency basis to produce a promotional piece about the TBI Modules that was due imminently under the Prime Contract. Defendant Mitchell led Fogel to believe that, if the promotional piece were successfully completed, Plaintiff would be hired to do additional work in connection with the TBI Modules.

6. Based on such representations, Plaintiff produced the promotional piece for the TBI Modules on an emergency basis and at deeply discounted rates under an oral agreement (the “First Subcontract”). It was paid \$700 for the work.

7. Following completion of the First Subcontract, Defendant Mitchell represented to Fogel that if Plaintiff could work on an expedited schedule and do the work for the Initial TBI Modules within a limited budget, she would engage Plaintiff as the production team for all the work under the Prime Contract, totaling more than, on information and belief, 56 modules over a four-year period.

8. Plaintiff and Defendant RC Matrice entered into a second oral agreement, this time for work on the Initial TBI Modules (the “Second Subcontract”).

9. In reliance on and in order to fulfill its obligations under the Second Subcontract, Plaintiff entered into independent contractor agreements with a number of experienced colleagues (the “88 LLC Contractors”).

10. Plaintiff and the 88 LLC Contractors worked on the Initial TBI Modules, coordinating regularly with Ms. Mitchell and with the Army’s Contracting Officers during the period from mid-October to December 11, 2009, with Plaintiff periodically invoicing Defendant RC Matrice at heavily discounted rates.

11. Under the Second Subcontract, Plaintiff created original works of authorship; namely, motion pictures and audiovisual works, pictorial and graphic works, literary works, and sound recordings, all associated with the Initial TBI Modules (the “Work Product”). The Work Product was embodied in the digital files from which the Initial TBI Modules were created.

12. Plaintiff consistently received accolades for its work from Defendant Mitchell and from contracting officers of the U.S. Army (the “Army’s Contracting Officers”).

13. On December 11, 2009, during what was to be the final week of production of the Initial TBI Modules, Defendant Mitchell, without notice, told Plaintiff in an email that she was immediately transferring all production responsibility to Ignition72, a company Plaintiff had introduced to Defendant Mitchell to assist with certain web elements of the project, and, on information and belief, with which Defendant RC Matrice had contracted. Defendant Mitchell ordered Plaintiff to turn over to her all hard drives that had been used in connection with the project.

14. After corresponding with Defendant Mitchell by phone and email, Plaintiff instructed the 88 LLC Contractors to stop work and advised Defendant Mitchell of the stop-work order.

15. Aware that the Army needed the Initial TBI Modules for a training session on December 14, 2009, and relying on Defendant Mitchell's explicit written promise that she would pay Plaintiff on December 17, 2009, Plaintiff on December 12, 2009 turned over hard drives for the Initial TBI Modules to Defendant Mitchell, but specifically informed her in writing that it would not provide a license to use the Work Product until payment had been made.

16. On information and belief, Defendant RC Matrice gave Ignition72 a copy of the digital files containing the Work Product and instructed Ignition72 to copy the Work Product into the Initial TBI Modules and to create derivative works based on certain of Plaintiff's designs.

17. On information and belief, Ignition72 delivered the Initial TBI Modules to Defendants and to Army Contracting Officers within 14 hours of its receipt of files from Plaintiff.

18. On information and belief, the Initial TBI Modules containing copyrightable elements of Plaintiff's Work Product are currently reproduced, adapted, publicly performed, publicly displayed, and or distributed in copies by the Army, despite immediate and repeated notices by Plaintiff to both Defendant RC Matrice and the Army that such exploitation constitutes infringement of Plaintiff's copyright in the Work Product.

19. On information and belief, Ignition72 received on-screen credit in the Initial TBI Modules for Work Product done by Plaintiff.

20. Defendant RC Matrice has not paid Plaintiff for the Work Product despite repeated demands by Plaintiff and its counsel therefor.

21. On information and belief, Defendants portrayed to Army officials a false image of Plaintiff as having engaged in fraudulent conduct in connection with the Second Subcontract and therefore damaged Plaintiff's reputation and eligibility for further work on Army projects.

22. On information and belief, Defendant Mitchell's treatment of Plaintiff is consistent with her pattern of bad faith treatment of Plaintiff's predecessors on the project, whom, on information and belief, she terminated upon delivery of creative materials without paying them.

23. As set forth below, Defendants' actions constitute copyright infringement under federal law; and breach of contract, breach of the implied covenant of good faith and fair dealing, fraudulent misrepresentation, unjust enrichment, and/or defamation under the common law of the State of Maryland.

24. By this action, Plaintiff seeks fair redress for Defendants' infringement of its copyrights and violation of its contractual and other rights, including damages and injunctive relief, as allowable under the State of Maryland and federal laws.

PARTIES

26. Plaintiff is a Maryland limited liability company with its principal place of business at 1111 East-West Highway, Silver Spring, MD 20910.

27. On information and belief, Defendant RC Matrice is a Maryland limited liability company with a place of business at 1121 Annapolis Road, Suite 332, Odenton, MD 21113.

28. On information and belief, Defendant Mitchell is an individual, having a business address at 1121 Annapolis Road, Suite 332, Odenton, MD 21113, who serves as the managing member of Defendant RC Matrice.

JURISDICTION AND VENUE

29. This court has personal jurisdiction over Defendant RC Matrice because it resides in the state due to its principal place of business being located in Odenton, Maryland. This court has personal jurisdiction over Defendant Mitchell because she is an individual residing in and doing business in Maryland. Plaintiff's claims also arise directly from the actions of the Defendants within the forum state.

30. This case arises under the Copyright Act, 17 U.S.C. §101 et seq., as well as under the common law of the State of Maryland.

31. This court has subject matter jurisdiction to hear Plaintiff's copyright infringement claims under 17 U.S.C. §101 et seq; 28 U.S.C. §§ 1331 and 1338 and subject matter jurisdiction to hear Plaintiff's state law claims pursuant to 28 U.S.C. §1367.

32. Venue in this District is proper under 28 U.S.C. §§1400 (a) and 1391(b).

FACTUAL ALLEGATIONS RELATED TO ALL CLAIMS

A. Background and Defendant RC Matrice's Engagement of Plaintiff under the First Subcontract.

33. On information and belief, on or about August 2008, Defendant RC Matrice entered into a written contract with Visible Productions, a production company located in Colorado, to provide production support for development of the TBI Modules. On information and belief, Visible Productions worked on the Project for approximately one year until Defendant RC Matrice abruptly terminated its agreement with Visible Productions. On information and belief, Defendant RC Matrice

failed to pay Visible Productions for much of its work and is the defendant in a breach of contract suit by that company that is currently pending in state court in Colorado.

34. On information and belief on or about July 2009, Defendant RC Matrice engaged Filtered Water Productions LLC, a production company located in the District of Columbia, to take over the work previously done by Visible Productions and provided Filtered Water with materials, primarily original footage and scripts that had been produced by Visible Productions. On information and belief, Defendant RC Matrice abruptly terminated her agreement with Filtered Water on or about October 2009 and, on information and belief, has never paid Filtered Water for its work.

35. On information and belief, when Defendant RC Matrice terminated its agreement with Filtered Water, Defendant Mitchell was facing imminent deadlines for deliverables under the Prime Contract that it had no way to meet.

36. On or about mid-September 2009, Defendant Mitchell approached Fogel to ask him if Plaintiff would be willing to work on an emergency basis to help her avoid defaulting under the Prime Contract. At this time Fogel was aware that Defendant Mitchell had not been satisfied with the work produced by Visible Productions and Filtered Water but was unaware of her pattern of serial contract abuse; i.e., contracting for services, receiving creative work, and failing to pay for it.

37. As described above, Plaintiff and Defendant RC Matrice entered into the First Subcontract, under which Plaintiff produced a short promotional piece for the TBI Modules. Plaintiff was paid for its work.

B. Defendant RC Matrice's Engagement of Plaintiff Under the Second Subcontract.

38. Following completion of the promotional piece, Defendant Mitchell asked Fogel if Plaintiff would supply production support for the development of the Initial TBI Modules.

39. Defendant Mitchell represented to Fogel that if Plaintiff could work on an expedited schedule and within her limited budget for the Initial TBI Modules, she would engage Plaintiff as the production team for all the work under the Prime Contract, totaling more than 56 modules over a four-year period.

40. Based on Defendant Mitchell's representations, Plaintiff and Defendant entered into the "Second Subcontract." Fogel agreed that Plaintiff would provide the services on an expedited schedule and at deeply discounted rates and Mitchell agreed to pay Plaintiff for his work based on periodic invoices. There was no written work made for hire agreement; therefore, Plaintiff was the author and owner of all work produced under the Second Subcontract.

41. In reliance on and in order to fulfill its obligations under the Second Subcontract, Plaintiff entered into work made for hire agreements with the 88 LLC Contractors.

C. Plaintiff's Performance of Services Under the Second Subcontract.

42. Plaintiff's assignment under the Second Subcontract was to create new copyrightable elements, including but not limited to a new look and feel for the TBI Modules.

43. Defendant Mitchell delivered to Plaintiff and instructed him to use within the Initial TBI Modules certain scripts and interview footage which, on information and belief, had been created by Visible Productions and/or Filtered Water for use in development of the TBI Modules. Plaintiff had no knowledge that these parties had not been paid for their work.

44. Plaintiff worked on the Initial TBI Modules, coordinating regularly with Defendant Mitchell and with the Army's Contracting Officers, during the period of mid-October to December 11, 2009.

45. In addition to creating, pursuant to directions from Ms. Mitchell, a new and unique overall look and feel for the Initial TBI Modules, Plaintiff:

- based on scripts furnished by Defendant Mitchell, produced and edited video footage of interviews with top Army officials; produced, directed and edited video footage of actors in a green-screen studio environment; produced, directed and edited actors in Spanish and English voice-over record sessions, and made all arrangements for the aforementioned work.
- Edited video footage furnished by Ms. Mitchell, including creating a new combined version of the 201/301 module.
- Created motion graphics.
- Created other graphic design elements, including “lower thirds” to identify speakers.
- Created packaging for the DVDs.
- Coordinated on- and off-camera talent.
- Created digital files and web interfaces.

46. Throughout its work under the Second Subcontract, Plaintiff periodically delivered materials and invoiced Defendant RC Matrice, always at deeply discounted rates in reliance on her promises of future work. Defendant Mitchell never raised any questions about Plaintiff’s invoices.

47. In an email to Fogel dated October 22, 2009, Defendant Mitchell said, “One thing I can promise you is I am gonna’ make you millions! Your hard work and go get it attitude is exactly what I have been looking for! Oh you r FAB!!!! Thanks for everything you have really saved me. Rene.” A copy of that email is attached hereto as Exhibit 2.

48. Defendant Mitchell told Plaintiff it would be paid in installments as it delivered work under the Second Subcontract and as she received funds from OTSG. Plaintiff was initially scheduled to receive its first payment under the Second Subcontract during the first week of December 2009, but this date was subsequently postponed by Defendant Mitchell to mid-December. In good faith reliance on Defendant Mitchell's promises, Plaintiff continued to perform services under the Second Subcontract and continued its engagement of the 88 LLC Contractors.

49. Defendant Mitchell, both orally and in emails, repeatedly praised Plaintiff's work.

50. For example, in a MediaSilo posting¹ dated December 9, 2009, Ms. Mitchell said: "The segment between Sutton and Jaffee is dead on!! LOVE IT LOVE IT LOVE IT!!!! GREAT JOB! THIS IS THE FLOW I AM LOOKING FOR THROUGH OUT THIS MODULE>SEAMLESS CLEAN AND POWERFUL!! GREAT JOB!!" A copy of that MediaSilo posting is attached hereto as Exhibit 3.

51. In a MediaSilo posting dated December 10, 2009, she said: "YOU DID AN EXCELLENT JOB ON THESE GRAPHICS". A copy of that posting is attached hereto as Exhibit 4.

52. In addition, in a December 9, 2010 MediaSilo posting to 88 LLC Contractor S. Lynn Hughes, Lt. Col. Lynne Lowe, the Army's Contracting Officer in charge of the project, expressed great satisfaction with Plaintiff's work ("...I want you to know you hit a home run..."). A copy of that posting is attached hereto as Exhibit 5.

53. In addition, Plaintiff was orally advised by top officials in the Army who were interviewed for the TBI Modules that its work was excellent.

¹ MediaSilo is an online video platform used by some production companies to post videos for clients to view and exchange comments. The operative date for the postings included as exhibits to this Complaint are the dates in the headers and not the dates on the annotations themselves since Defendant Mitchell fixed that date as November 19, 2009 and neglected to update it.

54. As late as December 11, 2010, hours prior to taking Plaintiff off the job, in an email to Ms. Hughes, Defendant Mitchell praised Plaintiff's work ("You are doing great work, you are appreciated."). A copy of that email is attached hereto as Exhibit 6.

55. In mid-November 2009, Plaintiff introduced Defendant Mitchell to Ignition72, a Baltimore-based web production company that Plaintiff had enlisted to help with limited internet-related elements of the project. Plaintiff had no legal relationship with Ignition72 and, on information and belief, Ignition72 worked directly for Defendant RC Matrice.

56. Plaintiff and Ignition72 worked together on the Initial TBI Modules, and Plaintiff believed they would continue to work together on future modules. As part of their collaboration, on several occasions, Plaintiff transferred files it had created to Stefan Muirhead, president of Ignition72. Further, like Plaintiff, Ignition72 had access to an online sharing site operated by Google.

57. Plaintiff was on target to meet the deadline of December 12, 2009 for delivery of the completed Initial TBI Modules.

58. During this period Plaintiff was led to believe by Defendant Mitchell that it would soon be working on the next TBI Modules.

D. Defendant RC Matrice's Termination of the Second Subcontract and Direct Copying of the Work Product

59. On December 11, 2009, during what was to be the final week of production of the Initial TBI Modules with Plaintiff on schedule for delivering final materials, Defendant Mitchell, without notice, told Plaintiff in an email that she was immediately transferring all production responsibility to Ignition72. As basis for the transfer order, Defendant Mitchell falsely stated that Ignition72 had "a more robust rendering system" than Plaintiff. Defendant Mitchell ordered Plaintiff to turn over to her all hard drives used in connection with the project and all digital files containing the Work Product.

60. Stunned by Defendant Mitchell's actions, Plaintiff nevertheless instructed the 88 LLC Contractors to stop work and advised Defendant Mitchell of the stop-work order.

61. On December 11, 2009, Defendant Mitchell sent Plaintiff an email in which she explicitly promised to pay him on December 17, 2009. A copy of that email is attached hereto as Exhibit 7.

62. Based on this promise, and aware that the Army needed the Initial TBI Modules for a training session on December 14, 2009, Plaintiff sent Defendant Mitchell an email on December 11, 2009. He attached to this email a final invoice and a draft contract intended to memorialize the Second Subcontract between Plaintiff and RC Matrice. A copy of the December 11, 2009 email from Plaintiff to Defendant Mitchell is attached hereto as Exhibit 8.

63. In his aforementioned email of December 11, 2009, Fogel said: "If you choose not to sign the letter of agreement we will give you all of your assets but not be able to hand over or give you the rights to use our intellectual property."

64. The draft contract that Plaintiff sent to Defendant Mitchell on December 11, 2009 included a provision requiring production credit to Plaintiff in accordance with its usual practices.

65. Defendant Mitchell refused to sign the draft contract sent by Plaintiff on December 11, 2009.

66. In a subsequent email dated December 12, 2009, Fogel reiterated that Plaintiff would not provide rights to use the Work Product until full payment had been made ("without a binding agreement with us, copyright will only be conveyed when payment is made in full."). A copy of that email is attached hereto as Exhibit 9.

67. On December 12, 2009, Plaintiff turned over hard drives containing its Work Product to Mitchell.

68. On information and belief, Defendant Mitchell gave the hard drives containing Plaintiff's Work Product to its agent, Ignition72.

69. On information and belief, Defendant Mitchell instructed Ignition72 to copy certain elements of the Work Product by direct transfer from Plaintiff's digital files into the Initial TBI Modules. On information and belief, Defendant Mitchell instructed Ignition72 to copy certain elements of the Work Product by recreating the necessary digital files. On information and belief, Defendant Mitchell instructed Ignition72 to create numerous derivative works based on elements of the Work Product.

70. On information and belief, Defendant Mitchell instructed Ignition72 to alter certain elements of the Work Product in order to disguise the copying from Plaintiff's Work Product.

71. On information and belief, at or around the time that Plaintiff turned over the Work Product to Defendants, Defendant Mitchell communicated to Army officials via email that she had "worked tirelessly to obtain *our* property and the governments (sic) assets [from Plaintiff]" (emphasis supplied). In making such statements, Defendant Mitchell denounced Plaintiff's ownership of copyright in the Work Product to the Army officials. A copy of the email is attached hereto as Exhibit 10.

72. Plaintiff further told Army officials (i) that she was "taking [the digital files turned over by Plaintiff] immediately to the engineers and my attorney will met (sic) me there so we can ascertain the damages and provide you a full report." See Exhibit 10.

73. Defendant Mitchell further told Army officials that she would not be submitting additional invoices for Plaintiff's work since it would be very difficult for her to determine if she "would

be submitting false and fraudulent invoices based on the actions of these individuals....” In making this statement, Defendant Mitchell implied false and fraudulent conduct by Plaintiff. See Exhibit 10.

74. On information and belief, Ignition⁷² delivered the Initial TBI Modules to Defendants and to the Army on December 12, 2009, within 14 hours of its receipt of Plaintiff’s files.

75. On information and belief, certain minor changes were made to the Initial TBI Modules within a few days after December 12, 2009. These materials that are presently in use by the Army reflect these minor changes.

76. On information and belief, Defendant RC Matrice did invoice the Army for Plaintiff’s services and received payment therefor in periodic installments, but failed to use such funds to pay its obligations under the Second Subcontract.

77. Despite repeated demands by Plaintiff and its counsel, Defendant RC Matrice has not paid Plaintiff for the Work Product and, on information and belief, has taken no steps to stop its infringements.

78. In addition, during the term of its work on the Initial TBI Modules, Plaintiff, on behalf of Defendant RC Matrice, coordinated the activity of certain vendors who were not among the 88 LLC Contractors. On information and belief, these vendors were instructed to invoice Defendant RC Matrice directly. On information and belief, these vendors have not been paid for their services and are threatening to sue Plaintiff.

E. Defendants’ Infringement of the Work Product.

79. On March 30, 2010, after much discussion with OTSG’s Freedom of Information Act (“FOIA”) officer concerning OTSG’s refusal to provide Plaintiff with files containing the final version

of the Initial TBI Modules, Plaintiff and its counsel were allowed to view the DVDs that were produced as one part of the Initial TBI Modules. Plaintiff's request to copy the DVDs was denied.

80. Upon viewing the DVDs, it was immediately apparent to Plaintiff that its Work Product had been copied and exploited.

81. The Work Product was exploited in the DVDs despite immediate and repeated notices to both Defendants and the Army by Plaintiff and its counsel that such exploitation constitutes infringement of Plaintiff's copyright rights.

82. The DVD elements of the Initial TBI Modules are substantially similar to the Work Product in that they replicate the ideas and overall aesthetic conveyed by Plaintiff's package designs, organization of factual information, pattern of story development, visual layout, sequencing of graphic images and other visual effects, allocation of screenspace in each frame, the treatment of the lower third of each frame, and the look, feel, and pace of still and motion graphics, screen transitions, and editing.

83. The similarity of the concept and feel between the Work Product and Defendants' final product is especially evident in TBI Module 101 v.2, which sets the tone for the remaining TBI modules.

84. The DVD elements of the Initial TBI Modules are substantially similar to the Work Product in that the DVD elements incorporate numerous graphical elements, both static and dynamic, that are identical to Plaintiff's copyrighted authorship. These include the following:

- Plaintiff's original motion graphics and visual effects, including but not limited to pop-up graphics, rotation effects, and reveal sequences, are included in TBI Modules 101 v.2 and 101 Spanish version;
- Plaintiff's original Graphic 5 Mandates are incorporated into the Initial TBI Modules;
- Plaintiff's original Graphic 6 Mandates are incorporated into the Initial TBI Modules;

- A reversed copy of Plaintiff’s “Heads Graphic” is incorporated into TBI Module 101 v.1;
- A derivative work based on Plaintiff’s “Map Graphic” appears in TBI Module 101 v.1 (the map graphic is the same, with the same popping of red cross icons; background colors have been changed and red cross icon has been located outside, rather than inside circle);
- A derivative work based on Plaintiff’s “Pie Chart” graphic appears in TBI Module 101 v.1 (the Pie Chart graphic is the same; image of soldier has been reversed and color within the percentage chart has been changed).
- A derivative work based on Plaintiff’s image of General Sutton appears in TBI Module 101 v. 2. The same image and text are used; the subtle blurring effect between General Sutton’s face and the screen created by Plaintiff has been lost, and Plaintiff’s placement and graduation of the text in relation to the General’s face has been replaced by a block format on the upper left side of the screen.
- A five-minute DVD that is a combination of Modules 101 v.1 and 101 v.2 was created and, according to the Army’s Contracting Officer, was being shown by other branches of the US military and is expected to be widely distributed.

85. The DVD elements of the Initial TBI Modules incorporate Plaintiff’s original selection, arrangement, and sequencing of disparate elements within the Work Product. The substantial similarity in this regard is particularly evident in TBI Module 201/301, a merged version of TBI Modules 201 and 301.

86. The substantial similarity between the Initial TBI Modules and the Work Product extends to Plaintiff’s video footage of interviews with Army officials. This footage, which was produced and

directed by Plaintiff and filmed by one of the 88 LLC Contractors, is included in TBI Module 101 v.2 and 101 Spanish version.

87. The substantial similarity between the Work Product and the final Initial TBI Modules is not coincidental; it evidences Defendants' copying from the materials to which they had access. The substantial similarity between the Work Product and the final Initial TBI Modules extends to protectable elements of Plaintiff's original authorship.

88. On information and belief, Ignition72 received on-screen credit in the Initial TBI Modules for having performed the work done by Plaintiff.

89. On information and belief, on or about December 14, 2009, the Army began reproducing, distributing, publicly displaying, and publicly performing the Initial TBI Modules to troops in the United States. On information and belief, the Army continues to use the Initial TBI Modules in this manner.

90. On information and belief, the Army and other branches of the US military plan to expand distribution and public performance of the Initial TBI Modules.

91. On information and belief, Defendant RC Matrice is now working on additional TBI Modules under the Prime Contract. On information and belief, she is obligated to use Plaintiff's original look and feel, as well as other elements of the Work Product, in connection with such additional TBI Modules.

F. Defendant Mitchell's Attempts to Lure The 88 LLC Contractors Away from Plaintiff.

92. On information and belief, at or about the time she terminated the Second Subcontract, Defendant Mitchell approached three of the 88 LLC Contractors, Mary Stephens, Kamil Nawratil (who worked for 2Stimuli LLC), and Jeff Trussell. On information and belief, she offered to pay them directly for work they had done pursuant to work made for hire agreements with Plaintiff and she asked

them to join her in forming her own production entity. On information and belief, Defendant Mitchell also encouraged Ms. Stephens to circumvent Plaintiff and deliver portions of the Work Product to her without Fogel's knowledge.

93. On information and belief, on or about March 9, 2010, Defendant Mitchell contacted Jay Schlossberg, whose company Media Central, LLC, one of the 88 LLC Contractors, had provided a video crew and equipment to film interviews at the Pentagon for Initial TBI Module 101. On information and belief, Defendant Mitchell offered to pay Mr. Schlossberg for work he did pursuant to a work made for hire agreement with Plaintiff and she invited him to bid on work for 51 new TBI Modules. She then had her assistant send a follow-up email attaching a work for hire agreement for him to sign. A copy of the March 9, 2010 email from Defendant Mitchell's assistant is attached hereto as Exhibit 11.

94. On information and belief, Mr. Schlossberg advised Defendant Mitchell by email that he would not accept the money since it was owed to Plaintiff, would not sign the work for hire agreement with Defendant RC Matrice for work he had done for Plaintiff, and would not bid on new work directly with her since he had an agreement to work for Plaintiff. A copy of Mr. Schlossberg's reply email dated March 10, 2010 is attached hereto as Exhibit 12.

COUNT I

COPYRIGHT INFRINGEMENT PURSUANT TO 17 U.S.C. §101 et seq. AGAINST DEFENDANT RC MATRICE

95. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-94, inclusive.

96. The Work Product and each element comprised by the Work Product is an original work of authorship in which Plaintiff owns copyright. A Certificate of Registration for TBI Module 101 v. 2, which encompasses substantially all elements of the Work Product, is attached hereto as Exhibit 13.

97. At all times relevant hereto, Plaintiff has been the sole author and owner of all copyright rights in and to the Work Product, and it never assigned, licensed or otherwise transferred its copyright rights to Defendant RC Matrice or to any third party.

98. Prior to December 12, 2009, Defendant RC Matrice's agent, Ignition72, had access to Plaintiff's Work Product via an online file-sharing system.

99. On December 12, 2009, Plaintiff gave a digital copy of the Work Product to Defendant RC Matrice, and therefore, Defendant RC Matrice had access to Plaintiff's Work Product.

100. On information and belief, on December 12, 2009, Defendant RC Matrice gave a digital copy of the Work Product to its agent, Ignition72, and therefore, Defendant's agent had access to the Work Product.

101. On information and belief, Defendant RC Matrice instructed Ignition72 to copy the Work Product into the Initial TBI Modules by direct transfer from the digital files created by Plaintiff and, to the extent necessary, by the recreation of Plaintiff's digital files.

102. On information and belief, the Initial TBI Modules incorporate Plaintiff's authorship as directly copied from the Work Product.

103. The Initial TBI Modules are substantially similar to Plaintiff's Work Product and the substantial similarity extends to Plaintiff's original, copyright-protected authorship.

104. The Initial TBI Modules are strikingly similar to Plaintiff's Work Product and the striking similarity extends to Plaintiff's original, copyright-protected authorship. The similarities between the Work Product and the Initial TBI Modules are so striking as to be independently probative of the fact that Defendant RC Matrice and its agent had access to and copied from the Work Product.

105. Directly and through its agent, Ignition72, Defendant RC Matrice has reproduced the Work Product; created derivative works based on the Work Product; and publicly performed, publicly displayed, and distributed copies of the Work Product and copies of derivative works based on the Work Product to the Army and to other third parties, all in violation of 17 U.S.C. §106.

106. The infringement of the Work Product by Defendant RC Matrice was willful in that the entity's managing member, Defendant Mitchell, acted with actual or constructive knowledge that her actions on behalf of the entity constituted infringement of the Work Product or acted with reckless disregard as to Plaintiff's rights.

107. By virtue of the infringements by Defendant RC Matrice, Plaintiff has sustained and will continue to sustain substantial injury, loss and damage to its ownership rights in the Work Product. The Work Product was custom-created for use within the Initial TBI Modules and the infringement by Defendant RC Matrice has left Plaintiff with no legitimate market for the Work Product.

108. Unless enjoined by this Court, Defendant RC Matrice will continue to willfully infringe Plaintiff's copyrights in and relating to the Work Product because RC Matrice has a contractual obligation to create and deliver additional TBI Modules based on the Work Product.

109. Plaintiff is entitled to receive all appropriate injunctive relief with respect to Defendant RC Matrice, including but not limited to the relief available under 17 U.S.C. §§502-503.

110. Plaintiff is further entitled to recover from Defendant RC Matrice the damages, including attorneys' fees, that it has sustained and will sustain, and any gains, profits and advantages obtained by Defendant RC Matrice as a result of Defendants' willful acts of infringement alleged in this Complaint, including but not limited to such damages and awards as are available under 17 U.S.C. §§ 504-505.

COUNT II

COPYRIGHT INFRINGEMENT PURSUANT TO 17 U.S.C. §101 et seq. AGAINST DEFENDANT MITCHELL

111. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-110, inclusive.

112. As the managing member of Defendant RC Matrice, Defendant Mitchell had the opportunity to supervise the infringing activity and had a financial interest in having the Work Product reproduced, adapted, publicly displayed, publicly performed, and distributed within the Initial TBI Modules, all in violation of 17 U.S.C. §106.

113. Defendant Mitchell did in fact supervise the infringing activity and did in fact derive financial reward from infringement of the Work Product.

114. Defendant Mitchell's supervision of the infringing activity, in which she had a financial interest, constitutes willful infringement in that Defendant Mitchell acted with actual or constructive knowledge that use of the Work Product within the Initial TBI Modules constituted infringement or acted with reckless disregard as to Plaintiff's rights.

115. By the actions described and alleged in this Complaint, Defendant Mitchell personally participated in the chain of events by which Defendant RC Matrice infringed copyright in Plaintiff's Work.

116. Defendant Mitchell's personal participation in infringement of the Work Product constitutes willful infringement in that she acted with actual or constructive knowledge that use of the Work Product within the Initial TBI Modules constituted infringement or acted with reckless disregard as to Plaintiff's rights.

117. By reason of the infringements that Defendant Mitchell supervised and with respect to which she had a financial interest, Plaintiff has sustained and will continue to sustain substantial injury, loss and damage to its ownership of the Work Product.

118. By reason of the infringements in which Defendant Mitchell personally participated, Plaintiff has sustained and will continue to sustain substantial injury, loss and damage to its ownership of the Work Product.

119. Unless enjoined by this Court, Defendant Mitchell will continue to supervise, maintain a financial interest in, and personally participate in the infringement of Plaintiff's Work Product, because she remains the managing member of Defendant RC Matrice and because RC Matrice has a contractual obligation to create and deliver additional TBI Modules based on the Work Product.

120. Plaintiff is entitled to receive all appropriate injunctive relief with respect to Defendant Mitchell, including but not limited to the relief available under 17 U.S.C. §§502-503.

121. Plaintiff is further entitled to recover from Defendant Mitchell, in her personal capacity, the damages, including attorneys' fees, it has sustained and will sustain, and any gains, profits and advantages obtained by Defendants or Defendant Mitchell as a result of Defendant Mitchell's willful acts of infringement alleged in this Complaint, including but not limited to such damages and awards as are available under 17 U.S.C. §§ 504-505.

COUNT III

BREACH OF CONTRACT AGAINST DEFENDANT RC MATRICE

122. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-121, inclusive.

123. Plaintiff has duly performed each and every covenant and/or condition of the Second Subcontract.

124. As described above, Defendant RC Matrice had a contractual obligation to compensate Plaintiff per its invoices but failed to do so.

125. Defendant RC Matrice had a contractual obligation to provide Plaintiff with industry-standard credit in the Initial TBI Modules but failed to provide such credit and misattributed Plaintiff's work to Ignition72.

126. Defendant RC Matrice had a contractual obligation to hire Plaintiff for additional work on the TBI Modules since it met her need for an expedited schedule and billed at discounted rates, but Defendant RC Matrice failed to meet this obligation.

127. By reason of such breach by Defendant RC Matrice, Plaintiff was forced to breach its contracts with the 88 LLC Contractors.

128. By reason of its failure to compensate and credit Plaintiff and its failure to hire Plaintiff for additional work on the TBI Modules, Defendant is liable to Plaintiff for breach of contract and monetary damages, measured at Plaintiff's normal, undiscounted billing rates or, in the alternative, monetary damages measured at Plaintiff's discounted rates plus the loss of future expected earnings based on Defendants' promises of years of work on the TBI Modules.

COUNT IV

BREACH OF THE IMPLIED CONTRACTUAL COVENANT OF GOOD FAITH AND FAIR DEALING AGAINST DEFENDANT RC MATRICE

129. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-128 inclusive.

130. As described above, Defendant RC Matrice, *inter alia*, acted in bad faith by luring Plaintiff into performing services on an emergency and deeply discounted basis, continuing to accept and praise such services while making excuses for not paying Plaintiff; terminating Plaintiff without

notice while promising to pay him and then failing to do so; turning the Work Product over to another company and directing that company to copy and alter it and pass it off as its own work.

131. The conduct described herein constitutes a breach of Defendant RC Matrice's implied-in-law covenants of good faith and fair dealing with respect to the Second Subcontract.

132. Plaintiff has been damaged by reason of Defendant RC Matrice's breach of its implied-in-law covenants of good faith and fair dealing with respect to the Second Subcontract.

133. By reason of its breach of the implied-in-law covenants of good faith and fair dealing with respect to the Second Subcontract, Defendant RC Matrice is liable to Plaintiff for general and special compensatory damages and punitive damages.

COUNT V

UNJUST ENRICHMENT AGAINST DEFENDANT RC MATRICE

134. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1- 133 inclusive.

135. As described above, Plaintiff provided valuable services to Defendant RC Matrice pursuant to the Second Subcontract, under which RC Matrice was obliged, *inter alia*, to provide Plaintiff with public recognition in the form of an industry-standard credit for its authorship and production services in connection with the Initial TBI Modules.

136. Defendant RC Matrice accepted, used and enjoyed the benefits of Plaintiff's services under the Second Subcontract.

137. Defendant RC Matrice failed to provide Plaintiff with the contracted-for industry-standard credit for its authorship and production services in connection with the Initial TBI Modules.

138. Defendant RC Matrice has been enriched by its failure to provide Plaintiff with the aforementioned industry-standard credit for its authorship and production services in connection with

the Initial TBI Modules and/or by the resulting opportunity to grant such credit to Ignition72, an entity that is unrelated to Defendant.

139. The enrichment of Defendant RC Matrice at Plaintiff's expense is unjust.

140. By reason of the actions alleged in this Count, Defendant RC Matrice is liable to Plaintiff for monetary damages arising from Defendant's wrongful usurpation and subsequent alienation of the industry-standard authorship and production credits due to Plaintiff.

COUNT VI

FRAUDULENT MISREPRESENTATION AGAINST DEFENDANT RC MATRICE

141. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-140 inclusive.

142. Defendant RC Matrice, acting by and through its managing member, Defendant Mitchell, engaged in a pattern of fraudulent misrepresentation by (i) inducing Plaintiff to enter into the Second Subcontract by assuring it that if Plaintiff could meet the delivery deadline for the Initial TBI Modules, and if Plaintiff charged for its work at deeply discounted rates, Defendant RC Matrice would make sure that Plaintiff had a steady stream of work in connection with the Prime Contract for the next four years and (ii) securing Plaintiff's continuing performance under the Second Subcontract by reassuring Plaintiff as stated in clause (i) above on numerous subsequent occasions.

143. Plaintiff relied on the representations of Defendant RC Matrice in agreeing to enter into the Second Subcontract, in engaging contractors to fulfill its commitments, and in continuing to perform services under the Second Subcontract.

144. Defendant RC Matrice, acting by and through its managing member, Defendant Mitchell, made the representations complained of herein with the intent to fraudulently induce Plaintiff to (i) enter into the Second Subcontract and (ii) continue performing under the Second Subcontract.

145. Defendant RC Matrice, acting by and through its managing member, Defendant Mitchell, knew that Plaintiff would rely on its express and repeated promises as set forth above.

146. Defendant RC Matrice, acting by and through its managing member, Defendant Mitchell, knew that its statements were false or with reckless disregard as to whether they were true or false.

147. As a proximate result of the fraudulent misrepresentations alleged herein, Plaintiff suffered economic loss when Defendant RC Matrice failed to fully compensate and credit Plaintiff for work performed under the Second Subcontract.

148. As a proximate result of the fraudulent misrepresentations alleged herein, Plaintiff suffered a loss of prospective business; namely, the opportunity to create, be compensated for, and be credited for work on additional TBI Modules due under the Prime Contract.

149. As a result of Defendant the fraudulent misrepresentations alleged herein, Plaintiff suffered damage to its relationships with the 88 LLC Contractors and damage to its professional reputation in its field.

150. As a result of the fraudulent misrepresentations alleged herein, Plaintiff's principal, David Fogel, has suffered mental anguish that has interfered with his ability to work, resulting in a loss of current and prospective income to Plaintiff.

151. By reason of the fraudulent misrepresentations alleged herein, Defendant RC Matrice is liable to Plaintiff for general and special compensatory damages and punitive damages.

COUNT VII

FRAUDULENT MISREPRESENTATION AGAINST DEFENDANT MITCHELL

152. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-151, inclusive.

153. By the actions described and alleged in this Complaint, Defendant Mitchell personally participated in the chain of events by which Defendant RC Matrice made the fraudulent misrepresentations to Plaintiff that are alleged in Paragraph 142.

154. Defendant Mitchell acted with knowledge that Plaintiff would rely on the fraudulent misrepresentations alleged in Paragraph 142.

155. Defendant Mitchell acted with knowledge that the representations alleged in Paragraph 142 were false or acted with reckless disregard as to whether they were true or false.

156. As a proximate result of the fraudulent misrepresentations in which Defendant Mitchell personally participated, Plaintiff suffered damages as described and alleged in Paragraphs 147-150.

157. By reason of her personal participation in the fraudulent misrepresentations that are alleged in this Complaint, Defendant Mitchell is personally liable to Plaintiff for general and special compensatory damages and punitive damages.

COUNT VIII

DEFAMATION AGAINST DEFENDANT RC MATRICE

158. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-157 inclusive.

159. Defendant RC Matrice, acting by and through its managing member, Defendant Mitchell, made false and defamatory statements to Army contracting officials concerning Plaintiff, including the following: (a) Defendant RC Matrice falsely communicated to Army contracting officials via email the circumstances surrounding the termination of the Second Subcontract, namely that Plaintiff's actions were the cause; (b) Defendant RC Matrice falsely claimed that Plaintiff was not the rightful owner of copyright in the Work Product; (c) Defendant RC Matrice falsely communicated to Army contracting officials that Plaintiff may have tampered with or caused deliberate damage to the Work Product; and

(d) Defendant RC Matrice falsely told Army contracting officials that Plaintiff's actions might cause Defendant to submit fraudulent and false invoices to the Army for Plaintiff's work, thus implying that Plaintiff committed fraud on the Defendant and the Army.

160. The false and defamatory statements complained of herein were attacks on Plaintiff's professional reputation and standing in the media field, and discouraged Army contracting officials and others from having a good opinion of, or associating with, Plaintiff.

161. The false and defamatory statements complained of herein were made with knowledge on the part of Defendant RC Matrice's managing member that such statements were false or were made with reckless disregard on the part of Defendant RC Matrice's managing member for the truth of such statements and for the damage to Plaintiff's reputation that would follow from such statements.

162. The injurious character of the statements alleged in Paragraph 159 is self-evident and therefore constitutes defamation per se for which no showing of damages is required. Moreover, as a proximate result the false and defamatory statements alleged herein, Plaintiff has suffered harm to its professional reputation in its field. In addition, Plaintiff's principal, David Fogel, has suffered mental anguish that has compromised his ability to work, thereby resulting in a loss of current and prospective income to Plaintiff.

163. By reason of the false and defamatory statements described and alleged herein, Defendant RC Matrice is liable to Plaintiff for general and special compensatory damages and for punitive damages.

COUNT IX

DEFAMATION AGAINST DEFENDANT MITCHELL

164. Plaintiff realleges and incorporates herein the allegations in Paragraphs 1-163, inclusive.

165. By the actions described and alleged in this Complaint, Defendant Mitchell personally participated in the chain of events by which Defendant RC Matrice made the statements complained of in Paragraph 159.

166. The statements alleged in Paragraph 159 were made with knowledge on the part of Defendant Mitchell that such statements were false or with reckless disregard on the part of Defendant Mitchell for their truth and for the damage to Plaintiff's reputation that would follow from such statements.

167. As a proximate result of the defamation in which Defendant Mitchell personally participated, Plaintiff suffered damages as described and alleged in Paragraphs 162.

168. By reason of her personal participation in the defamation that is alleged herein, Defendant Mitchell is personally liable to Plaintiff for general and special compensatory damages and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Preliminary and permanent injunctions barring Defendant RC Matrice and Defendant Mitchell; along with each officer, agent, servant, employee, shareholder, and attorney of a Defendant; each person acting for, by, through, or under a Defendant; and each person in active concert or participation with a Defendant and having actual notice of this Order by personal service or otherwise from:

1. directly or vicariously exploiting Plaintiff's copyrights in the Work Product in any manner in any medium, including but not limited to exploiting Plaintiff's copyrights by reproducing the Work Product, publicly performing or publicly displaying copies of the Work Product, distributing

copies of the Work Product, preparing any derivative work based on the Work Product, and/or reproducing, publicly performing, publicly displaying, or distributing copies of any derivative work based on the Work Product.

2. contributing to the exploitation of Plaintiff's copyrights in the Work Product in any manner in any medium, including but not limited to contributing to such exploitation by providing a copy of the Work Product, or a copy of any work that incorporates or is derived from the Work Product, to the United States Army; to any contractor or subcontractor of a Defendant; or to any officer, agent, servant, employee, attorney, contractor, or subcontractor of, or any other person in privity, active concert, or participation with, a Defendant, the United States Army, or any contractor or subcontractor of a Defendant.

3. failing to provide Plaintiff with an industry-standard credit in the TBI Modules for his services as the author and producer of the Work Product and/or falsely identifying third parties as the authors or producers of Plaintiff's Work Product;

B. An order requiring Defendants to file with this Court and serve upon Plaintiff, within 20 days after the service of any injunction, an affidavit, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied with all injunctions and orders granted hereunder.

C. An order requiring Defendants to provide Plaintiff with industry-standard credit in the TBI Modules for his services as author and producer of all Work Product exploited therein.

D. An order requiring Defendants to take appropriate action to correct all erroneous impressions that have been created concerning the nature, characteristics, ownership or authorization regarding the Work Product, including without limitation, by providing notification to OTSG that

Plaintiff did not engage in any improper billing practices and the prominent placement of corrective notifications in the TBI Modules.

E. An order requiring Defendants to provide an accounting of all revenues and profits received by each Defendant as a result of its unlawful conduct.

F. An order declaring that Plaintiff has no liability to Defendants' vendors as referenced in Paragraph 78.

C. An award to Plaintiff of: (i) Defendants' profits realized as a result of the copyright infringement; (ii) Plaintiff's damages as a result of the copyright infringement, including damages arising from Defendants' intentional and willful infringement of the Plaintiff's copyrights; (iii) Plaintiff's damages for breach of contract and/or unjust enrichment, including damages arising out of Defendant RC Matrice's failure to properly credit Plaintiff as the author and producer of the Work Product; (iv) damages sustained by Plaintiff as a result of the fraudulent misrepresentations alleged herein; (v) damages sustained by Plaintiff as a result of the defamation alleged herein; and (vi) the costs of this action.

D. An award of statutory damages, costs, and attorney's fees pursuant to 17 U.S.C. §§ 504-505.

E. An award of punitive damages in an amount to be determined.

F. An award of Plaintiff prejudgment and post-judgment interest on any monetary award in this action.

G. Such other and further relief as to this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: June 16, 2010

LUTZKER & LUTZKER LLP

By _____/s/_____

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