



4. Plaintiff Christopher N. Harding is an individual who resides at 222 E. Witherspoon St., Suite 1005, Louisville, Kentucky, 40202. Plaintiff's Florida driver's license number is XXXXX028-0, and his Social Security Number is XXX-XX-X044.

5. Defendant Michael Irvin is an individual who resides at and may be served with citation and process at 6613 Old Gate Rd., Plano, Texas 75024-7409.



**III. JURISDICTION AND VENUE**

6. Subject-matter jurisdiction is proper in this Court because the amount in controversy exceeds the Court's minimum jurisdictional limit.

7. In accordance with Section 15.002, *et seq.* of the Texas Civil Practice & Remedies Code, venue is proper in this Court because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

8. The Court has personal jurisdiction over Defendant because Defendant committed the acts complained of in whole or in part Dallas County, Texas.

**IV. FACTS APPLICABLE TO ALL COUNTS**

9. Plaintiffs Jordan Bealmear, Shannon Clark, and Chris Harding developed a reality television show called "Guts to Glory," the concept of which revolved around an open tryout by reality contestants for a position on a professional football team (the "Show"). Plaintiffs spent substantial time, effort, money and other resources developing the Show. Plaintiffs determined that their Show should have a well-known, former NFL player to act as a host. Among other people, Plaintiffs determined they would like to work with Michael Irvin on the Show.

10. Accordingly, Plaintiffs presented the Show to Bonnie Jill-Lafin, who was able set up a meeting for Plaintiffs with Michael Irvin, former member of the Dallas Cowboys.

11. On or about August 12, 2007, Plaintiffs Bealmear and Clark presented the Show to Irvin and his agent and representative, Kraig Brooks. At the conclusion of the meeting, Irvin asked

Plaintiffs to provide him something in writing regarding how he would be involved in Plaintiffs' Show. Shortly thereafter, on August 17, 2007, in response to Irvin's request, Bealmear emailed Brooks concerning how Irvin would be involved in the show. Via email, Brooks responded "[I]et's move forward" on August 21, 2007.

12. On or about September 10, 2007, as requested, the Plaintiffs sent the first Memorandum of Agreement (the "deal memo") for the services of Irvin to Brooks. The agreement provided, among other things, that Irvin and his agent, Brooks, would receive 25 percent of the aggregate executive producing fee received in connection with the Show by Playmaker Productions (Irvin's company) and Plaintiffs. Plaintiffs would share the remaining 75 percent. Later that month, Brooks requested an amendment to the agreement letter including his services in Irvin's percentage.

13. Shortly thereafter, in early October, Plaintiffs held a conference call with Brooks and Irvin concerning the Show's format in greater detail and Irvin represented that he wanted to present the Show to Jerry Jones, owner of the Dallas Cowboys, and have the Dallas Cowboys as the team for the Show's open tryout competition.

14. Before Irvin could present the Show to Jones, he was required to obtain the approval of Rich Dalrymple, head of public relations for the Cowboys. In furtherance of this presentation, Plaintiffs sent a detailed marketing package, including storyboards and a poster, to Irvin via Brooks. However, claiming that Jones would not be likely to give approval to a television show with any names unfamiliar to him, Brooks and Irvin insisted that Plaintiffs Bealmear, Clark, and Harding be removed from, among other places, the title page as "creators." In addition, Brooks and Irvin insisted that Jill-Laflin's name be removed as "field correspondence."

15. After Dalrymple approved, Irvin took the marketing materials prepared by Plaintiffs and presented them, along with Plaintiffs' Show, to Jones. Shortly after the meeting, Brooks informed Plaintiffs that Jones has agreed that the Dallas Cowboys would be the Show's team.

16. Bealmear and Clark told Brooks that Plaintiffs required their deal memo signed by Irvin and a letter of intent from Jones prior to approaching production companies. Brooks insisted that each of the Plaintiffs be listed on the Letter of Intent so everyone would be protected.

17. Plaintiffs provided the Letter of Intent to Irvin via Brooks for Jones to sign. Shortly thereafter, in January, Brooks represented to Bealmear that Jones had signed the Letter of Intent. On January 19, 2008, Brooks set up a meeting between Irvin and Bealmear in Los Angeles, California, where Irvin was to provide Jones' signed Letter of Intent to Bealmear. At the meeting, Irvin showed Bealmear the Letter of Intent signed by Jones, but did not provide the letter to Bealmear.

18. Later that month, Brooks called Bealmear and Clark and stated that Irvin agreed to the 75-25 percent split with respect to the Show, where Irvin received the 75 percent share. In addition, Brooks stated that Irvin agreed that any adaptations of the Show for other sports would be split 50-50 percent. Plaintiffs agreed to this arrangement, forming an oral contract. Brooks then invited Bealmear, Clark and Harding to Dallas, Texas, to memorialize the deal at Larry Friedman's law offices, Friedman & Feiger, LLP. As a result, Bealmear, Clark and Harding flew to Dallas, Texas for the meeting.

19. Prior to the meeting, on March 8, 2008, Friedman emailed Clark requesting that he call him back over the weekend to discuss the upcoming meeting in Dallas. Clark called Friedman and they discussed how Plaintiffs provided Irvin with the idea for the Show and everything he needed to present it to Jones. Clark also explained to Friedman his understanding that the deal was done and the flight to Dallas was merely to get the deal memo signed.

20. On March 10, 2008, the Plaintiffs arrived in Dallas to memorialize their prior agreement with Irvin at the percentages Irvin agreed upon, 75-25 percent (with Plaintiffs splitting the 25 percent). This meeting was held in Dallas County, Texas, in the conference room of Friedman & Feiger, LLP, with Larry Friedman present. After the meeting commenced, Plaintiffs were escorted

out of the conference room and the meeting proceeded without Plaintiffs. With Plaintiffs outside of the conference room, the various people remaining spoke with Larry Kopeikin, Plaintiffs' counsel, who was attending the meeting via telephone:

21. When Plaintiffs were finally brought back into the conference room, Clark asked Irvin when he would sign the deal memo as he had previously represented via Brooks, his agent. At that point, Steve Mandell, whom Plaintiffs had not previously met, answered for Irvin that they would have to review the deal memo prior to signing.

22. Finally, on or about March 15, 2008, Mandell called Bealmear and, contrary to Irvin's prior representations, stated that Irvin would only agree to a 95-5 percent split, with Plaintiffs sharing the 5 percent. Then, just five days later, Irvin sent Clark an email stating he had never used the storyboard in his the presentation to Jones. Despite demand, Irvin has not returned the property Plaintiffs' provided him in connection with the Show.

23. Despite the fact that Plaintiffs created the Show, Irvin has misappropriated Plaintiffs' Show (and related information and intellectual property) and renamed it "Fourth and Long." Reports indicate the show will air on Spike TV beginning on May 18, 2009.

24. As a result of Defendants actions, Plaintiffs bring the following causes of action.

## **V. CLAIMS**

### **COUNT ONE: FRAUD**

25. Plaintiffs incorporate and reallege the matters set forth in the preceding paragraphs as if set forth at length.

26. As set forth above, Defendant personally, through his agents, representatives, and/or employees, made false and material misrepresentations to Plaintiffs concerning his agreement to the terms of the deal memo, including the 75-25 percent split, and that he was never provided the storyboard in connection with his presentation to Jones.

27. These representations were false and, at the time of they were made, Defendant knew they were false and/or Defendant made the representations recklessly, as a positive assertion, without knowledge of their truth.

28. Defendant made these material misrepresentations with the intent that Plaintiffs act on them, including, among other things, by providing Defendant proprietary, confidential information, and/or by continuing to work with Defendant on their creation, the Show, which Defendant later misappropriated.

29. Plaintiffs detrimentally relied on Defendant's representations.

30. As a result of Defendant's fraud, Plaintiffs have sustained substantial injury for which they seek appropriate judicial relief including, but not limited to, the recovery of actual and special monetary damages (including compensatory and consequential damages), interest, costs of court, attorneys' fees, and exemplary damages in a sum within the jurisdictional limits of the Court.

**COUNT TWO: FRAUD BY NONDISCLOSURE**

31. Additionally, and/or in the alternative, Defendant concealed from or failed to disclose certain material facts to Plaintiffs, which Defendant had a duty to disclose, including, among other things that Defendant did not intend to abide by the deal memo, contrary to his other representations and/or the representations of his agent(s) or representative(s).

32. When the particular circumstances imposed a duty on Defendant to disclose this information, Defendant deliberately remained silent and failed to meet such duty of disclosure.

33. Defendant knew that these failures to disclose were improper, false, or fraudulent. Defendant further knew that the Plaintiffs were ignorant of these facts and that Plaintiffs did not have an equal opportunity to discover the facts.

34. By failing to disclose the facts, Defendant intended to induce the Plaintiffs to take some action or refrain from acting, such as, among other things, providing Defendant proprietary

and/or confidential information, including the Show concept and related materials. Thus, Defendant's intentional nondisclosure is equivalent to a false representation.

35. The Plaintiffs were injured as a result of acting without the knowledge of the undisclosed facts. Plaintiffs seek appropriate judicial relief as a result of this injury including, but not limited to, the recovery of actual and special monetary damages (including compensatory and consequential damages), interest, costs of court, attorneys' fees, and exemplary damages in a sum within the jurisdictional limits of the Court.

**COUNT THREE: BREACH OF CONTRACT**

36. Plaintiffs hereby incorporate and reallege the matters set forth in the preceding paragraphs as if set forth at length.

37. A valid and enforceable contract exists between Plaintiffs and Defendant. Plaintiffs have complied with and performed all of their obligations arising under the contract made the basis of this litigation. Despite demand, Defendant has refused to perform in accordance with the material terms of the contract. Defendant has failed to fulfill his contractual obligations and is in material breach of the contract. Plaintiffs have fully satisfied and performed all conditions precedent, including paying all appropriate premiums.

38. As a direct and proximate result of Defendant's breach of the contract, Plaintiffs have suffered and sustained injury for which they seek appropriate judicial relief including, but not limited to, the recovery of actual and special monetary damages (including compensatory and consequential damages), interest, and attorneys' fees in a sum within the jurisdictional limits of the Court.

**COUNT FOUR: *QUANTUM MERUIT***

39. Plaintiffs hereby incorporate and reallege the matters set forth in the preceding paragraphs as if set forth at length.

40. In the alternative to Plaintiffs' breach of contract claim, Plaintiffs show the following in support of their cause of action for *quantum meruit*.

41. Plaintiffs provided valuable services and materials to Defendant and Defendant accepted the services or materials. Defendant had reasonable notice that the Plaintiff expected compensation for the services or materials.

42. As a result, Plaintiffs have suffered and sustained injury for which they seek appropriate judicial relief including, but not limited to, the recovery of actual and special monetary damages (including compensatory and consequential damages), interest, and attorneys' fees in a sum within the jurisdictional limits of the Court.

#### **VI. DAMAGES**

43. Among others, Plaintiffs sustained actual and consequential damages as a result of the actions and/or omissions of Defendant described above, such as contractual damages, including, but not limited to, Plaintiffs' expectancy, benefit-of-the-bargain, reliance, and/or restitution damages, out of pocket expenses and reasonable and necessary attorneys' fees.

44. In addition, Plaintiffs are entitled to, and seek recovery of mental anguish damages because Defendant's actions involved intentional and malicious conduct.

#### **VII. EXEMPLARY DAMAGES**

45. Plaintiffs further allege that because Defendant's actions were fraudulent and/or malicious, Plaintiffs request that exemplary damages be awarded against Defendant in a sum within the jurisdictional limits of the Court.

#### **VIII. REQUEST FOR RULE 194 DISCLOSURE**

46. Defendant is requested to disclose to Plaintiffs, within 50 days of service of this request, the information or materials described in Rule 194.2 of the TEXAS RULES OF CIVIL PROCEDURE. Defendant may comply with this request by mailing copies of the documents and

information required by Rule 194.2 to Mark Taylor, Cash Powers Taylor LLP, 8150 North Central Expressway, Suite 1575, Dallas, Texas 75206, counsel for Plaintiffs.

**IX. ATTORNEYS' FEES AND COSTS OF COURT**

47. Plaintiffs hereby incorporate and reallege the matters set forth in the preceding paragraphs as if set forth at length.

48. Plaintiffs have retained the firm of Cash Powers Taylor LLP to represent them in this action and have agreed to pay the firm reasonable and necessary attorneys' fees.

49. Under, among other things, § 38.001 of the Texas Civil Practice & Remedies Code Plaintiffs seek their reasonable attorneys' fees and costs in pursuing this action. Further, Plaintiffs seek an award of reasonable and necessary attorneys' fees under § 37.009 of the Texas Civil Practice & Remedies Code because such an award would be equitable and just.

**X. DEMAND FOR JURY TRIAL**

50. Plaintiffs demand a trial by jury.

**XI. REQUEST FOR RELIEF**

51. Considering the premises, Plaintiffs respectfully request that upon trial this Court enter a judgment in favor of Plaintiffs against Defendant for the following relief:

- a. An award of Plaintiffs' actual and special damages as pleaded herein, including compensation for Plaintiffs' reliance, restitution and/or expectation interest, including compensatory and/or consequential damages;
- b. Plaintiffs' reasonable attorneys' fees;
- c. Costs of Court;
- d. Pre-judgment and post-judgment interest at the highest rate(s) allowed by law;
- e. Statutory damages allowed by law;
- f. Mental Anguish damages;
- g. Exemplary damages; and

- h. Such other and further relief, at law or in equity, to which Plaintiffs may be entitled and which this Court deems just and fair.

By:



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**ATTORNEYS FOR PLAINTIFFS**