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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ROBERT "BUTCH" VALLEE, an  
Individual;

Plaintiff,

vs.

TERRY CIOTKA, an Individual;  
PANGAEA FOSSILS, LTD, an Alberta,  
Canada corporation; and DOES 1  
through 25, inclusive,

Defendants.

CASE NO. 8:17-cv-943

**COMPLAINT FOR:**

- 1. INTENTIONAL  
MISREPRESENTATION;**
- 2. NEGLIGENT  
MISREPRESENTATION;**
- 3. RESCISSION;**
- 4. BREACH OF WRITTEN  
CONTRACT; AND**
- 5. MONEY HAD AND  
RECEIVED**

**JURY TRIAL DEMANDED**

Plaintiff, ROBERT "BUTCH" VALLEE, an individual and doing business as  
THE CRYSTAL IMAGE, INC., (sometimes "Plaintiff") for causes of action against  
Defendants, and each of them, alleges as follows:

**JURISDICTION AND VENUE**

1. This is a civil action, for, among other things, Breach of Contract and Money  
Had and Received and where the amount in controversy exceeds three hundred thousand  
dollars (\$300,000).



1           8.     Plaintiff is informed and believes, and based upon such information and belief  
2 allege, that at all times herein mentioned defendants, and each of them, were the agents,  
3 employees, employers, partners, owners, joint ventures, representatives, or principals of  
4 the remaining defendants, and were at all times acting within the course and scope of such  
5 agency, employment, partnership, venture, or representation, and with the knowledge and  
6 consent, express or implied of each of the remaining defendants.

### 7                                   **COMMON ALLEGATIONS**

8           9.     On or about March 12, 2012, Mr. Vallee, as the “Purchaser,” and Mr.  
9 Ciotka, as the “Seller,” entered into a written agreement titled “Contract of Agreement”  
10 (the “Original Agreement”) whereby Mr. Ciotka agreed to sell to Mr. Vallee 220  
11 Tyrannosaurus Rex dinosaur bones discovered by a rancher in Montana, together with any  
12 additional Tyrannosaurus Rex bones belonging to the subject Tyrannosaurus Rex  
13 thereafter discovered (the “T-Rex”). A true copy of the “Original Agreement” is attached  
14 hereto as Exhibit “A” and by this reference incorporated here.

15          10.    Under the terms of the Original Agreement, Mr. Vallee was to make an initial  
16 “Deposit” payment of \$200,000, to be applied to the purchase price of \$6,500,000 to  
17 \$6,700,000 - depending on a payment option of either two or three years - (the “Purchase  
18 Price”).

19          11.    Pursuant to the Original Agreement, within two (2) months of receipt of the  
20 Deposit, (a) the skull bones of the T-Rex were to be prepared, with molds and a casting made  
21 of them to produce a replicated skull (the “Skull Cast”), and (b) Mr. Ciotka was to have  
22 prepared actual size line drawings on cloth sheets of the entire T-Rex. The Skull Cast and  
23 drawings were to be provided to Mr. Vallee to assist Mr. Vallee in promotion of the T-Rex  
24 to aid in a planned subsequent sale.

25          12.    Both orally and in the Original Agreement, Mr. Ciotka represented to Mr.  
26 Vallee that the T-Rex “*has many more than 220 bones, in addition to the most complete*  
27 *skull ever found to date,*” and as such was the most complete T-Rex specimen ever  
28 discovered. Mr. Vallee agreed to purchase the T-Rex and enter into the Original

1 Agreement largely based upon this specific representation.

2 13. Mr. Vallee made the Deposit payment on April 15, 2012. Within Six (6)  
3 months after payment of the Deposit, Mr. Vallee was to make an additional “Work in  
4 Progress” payment of \$100,000, which would also be applied to the Purchase Price.

5 14. Although Mr. Vallee tendered the Deposit, in breach of the Original  
6 Agreement, Mr. Ciotka failed to ever provide the Skull Cast or the line drawings. In  
7 addition, in August of 2012, Mr. Ciotka informed Mr. Vallee that the “bone count”  
8 (originally represented to be at least 220 bones) might be less than originally represented,  
9 but was in the “190 to 195” individual bone range, with other bones likely to be found.

10 15. In October of 2012, as a result of the delay in getting the bones out of the  
11 ground (and failure to timely provide the Skull Cast), Mr. Ciotka offered to extend the  
12 time for tendering the Work in Progress payment to December 30, 2012. In November  
13 of 2012, Mr. Ciotka agreed to reduce the Purchase Price to \$5,200,000, in part because  
14 of the lower number of T-Rex bones than originally represented.

15 16. On November 23, 2012, Mr. Ciotka then further breached the Original  
16 Agreement by informing Mr. Vallee that the terms of the Original Agreement were to  
17 unilaterally changed, and demanded payment of \$1,200,000 by December 20, 2012, under  
18 threat of forfeiture of Mr. Vallee’s \$200,000 Deposit. Mr. Ciotka also refused to provide  
19 the Skull Cast or line drawings.

20 17. As a result of the breaches and actions by Mr. Ciotka, a dispute arose  
21 between Mr. Ciotka and Mr. Vallee, which dispute was eventually resolved by the entry  
22 of the parties into a new agreement intended to replace the Original Agreement.

23 18. On or about January 22, 2013, Mr. Vallee, as the “Purchaser,” and Pangea,  
24 as the “Seller,” entered into a written agreement titled “Agreement for the Purchase of  
25 Goods and Services” (the “New Purchase Agreement”) whereby Pangea agreed to sell to  
26 Plaintiff (a now again reduced) 157 Tyrannosaurus Rex dinosaur bones, together with any  
27 additional Tyrannosaurus Rex bones belonging to the subject Tyrannosaurus Rex  
28 thereafter discovered (the “T-Rex Bones”). A true copy of the “New Purchase

1 Agreement” is attached hereto as Exhibit “B” and by this reference incorporated here.

2 18. On or about March 28, 2013, Plaintiff and Pangea entered into a written  
3 “Amendment to Agreement for the Purchase of Goods and Services” (the “Amendment”).  
4 A true copy of the Amendment is attached hereto as Exhibit “C” and by this reference  
5 incorporated here. The Purchase Agreement and the Amendment are collectively referred  
6 to as the “New Agreement.”

7 19. As an inducement to Mr. Vallee for entering into the New Agreement and  
8 going forward with the purchase, Mr. Ciotka represented to Mr. Vallee, that there was a  
9 confirmed bone count of 157 T-Rex bones (and possibly others still to be discovered and  
10 uncovered).

11 20. Under the terms of the New Agreement, Mr. Vallee agreed to pay \$5,550,000  
12 for the T-Rex Bones (the “New Purchase Price”) payable in five installments, to wit:

- 13 a. The initial Deposit of \$200,000, which the New Agreement  
14 acknowledges was previously made by Plaintiff on April 15, 2012.
- 15 b. An additional payment of \$100,000 to be paid upon execution of the  
16 New Agreement (the “Work in Progress Deposit”).
- 17 c. A payment of \$2,625,000 on or before April 15, 2013 (“Payment A”);
- 18 d. A payment of \$2,550,000 on or before nine months after payment of  
19 Payment A (“Payment B”); and
- 20 e. A “Hold Back” payment of \$75,000 conditioned upon delivery and  
21 final assembly of the T-Rex Bones.

22 21. Mr. Valle timely paid defendants the \$100,000 work in Progress Deposit  
23 required by the New Agreement. However, Mr. Valle was unable to make Payment A.  
24 And, after Pangea provided notice required by the Amendment and upon expiration of the  
25 proscribed “grace period,” the obligation of Pangea to sell the T-Rex Bones under the  
26 New Agreement was claimed by Pangea to have been terminated.

27 22. Pursuant to the Section 9.1(a) of the New Agreement, if Mr. Vallee “*fails to*  
28 *satisfy Payment A, then the Seller agrees to refund the Deposit [\$200,000] to the*

1 *Purchaser.*” The \$100,000 Work in Progress Payment was to be forfeited.

2 23. Despite demands made by Mr. Vallee to Pangea and Mr. Ciotka, the no part  
3 of the Deposit was ever refunded to Mr. Vallee. The Work in Progress Deposit has never  
4 been returned to Mr. Vallee.

5 **FIRST CAUSE OF ACTION**

6 (Intentional Misrepresentation - Against All Defendants)

7 24. Plaintiff refers to paragraphs 1 through 23 of the Common Allegations and  
8 by this reference incorporates those paragraphs here as though set forth in full.

9 25. Rarely are the fossil remains of a dinosaur ever complete. This is especially  
10 true the larger the dinosaur specimen. For display purposes, missing bones are filled in  
11 with cast copies from other known specimens. The number of original bones  
12 (“completeness”) of a fossil skeleton of a dinosaur, and of a specimen of a Tyrannosaurus  
13 Rex, bear a very large and significant impact on the value of the specimen. The difference  
14 in the percentage of completeness of a T-Rex specimen can result in a difference of  
15 millions of dollars in value.

16 26. Mr. Ciotka’s representations as to the number of T-Rex bones was one of the  
17 most material terms of the New Agreement.

18 27. At the time of entering into the New Agreement, Mr. Ciotka affirmatively  
19 made the representation to Mr. Vallee that there were 157 confirmed T-Rex bones. Mr.  
20 Vallee’s decision to enter into the New Agreement rather than walking away from the  
21 transaction with his original \$200,000 Deposit, was entirely predicated on the  
22 representation by in the New Agreement that 157 T-Rex bones had been excavated and  
23 were confirmed.

24 28. This representation by Mr. Ciotka was in fact false. At the time Mr. Ciotka  
25 represented to Mr. Vallee that there were 157 confirmed T-Rex bones, Mr. Ciotka knew  
26 that there were only approximately 108 T-Rex bones (which fact would affect the value  
27 of T-Rex by millions on dollars). Mr. Ciotka concealed the true facts from Mr. Vallee in  
28 an attempt to induce Mr. Vallee to go forward with the purchase of the T-Rex under the

1 New Agreement.

2 29. Mr. Vallee reasonably relied upon Mr. Ciotka's representations, because:

3 A. Mr. Ciotka is considered an expert on dinosaur fossils;

4 B. Mr. Ciotka's company, Pangea, had previously successfully sold  
5 many large dinosaur fossils;

6 C. The number of bone was specifically spelled out in the New  
7 Agreement, which New Agreement was prepared by Mr. Ciotka's  
8 attorneys; and

9 D. Mr. Vallee was not permitted to inspect - or have inspected- the T-  
10 Rex (which was still not "prepared") to confirm the number of bones.

11 30. Mr. Valle did not discover the true facts concerning the actual number of T-  
12 Rex bones until long after entering into the New Agreement and long after demanding  
13 return of the Deposit from defendants, and certainly within three (3) years of the filing of  
14 this action. This delayed discovery was due to Mr. Ciotka's active concealment of the  
15 true facts from Mr. Vallee.

16 31. Had Mr. Vallee know the true facts, he would:

17 A. Not have entered into the New Agreement;

18 B. Have had the \$200,000 Deposit returned to him; and

19 C. Not have made payment of the \$100,000 Work in Progress Deposit  
20 to defendants.

21 32. As a direct and proximate result of the misrepresentations of defendants and  
22 each of them Mr. Vallee has not received return of either the Deposit or the Work in  
23 Progress Deposit, and has invested significant time, energy and financial and other  
24 resources attempting to purchase the T-Rex bones and market them to various individuals  
25 and museums, all to his damage in an amount in excess of \$300,000.

26 33. The conduct of defendants, and each of them, were intentional acts calculated  
27 and designed to deprive Mr. Vallee of his property and rights. The conduct of defendants,  
28 and each of them, was outrageous and despicable conduct that should not be tolerated,

1 justifying an award of punitive damages in an amount to be determined according to proof  
2 at the time of trial.

3 **SECOND CAUSE OF ACTION**

4 (Negligent Misrepresentation - Against All Defendants)

5 34. Plaintiff refers to paragraphs 1 through 23 of the Common Allegations and  
6 paragraphs 25 through 27 of the First Cause of Action, and by this reference incorporates  
7 those paragraphs here as though set forth in full.

8 35. This representation by Mr. Ciotka was in fact false. At the time Mr. Ciotka  
9 represented to Mr. Vallee that there were 157 confirmed T-Rex bones, Mr. Ciotka had no  
10 grounds for believing them to be true. Mr. Ciotka knew that a detailed inventory of the T-  
11 Rex bones had not been undertaken by an expert, nor had the T-Rex bones been fully  
12 cleaned and separated from the surrounding rock, steps necessary to affirmatively know  
13 the true number of bones.

14 36. In fact, it was later determined, by an independent expert employed by Mr.  
15 Ciotka, that there were only approximately 108 T-Rex bones (which fact would affect the  
16 value of T-Rex by millions on dollars).

17 37. Mr. Ciotka concealed his lack of basis for making this representation from  
18 Mr. Vallee in an attempt to induce Mr. Vallee to go forward with the purchase of the T-  
19 Rex under the New Agreement. Mr. Ciotka also concealed the later discovery of the actual  
20 number of T-Rex bones from Mr. Vallee.

21 38. Mr. Vallee reasonably relied upon Mr. Ciotka's representations, because:

- 22 A. Mr. Ciotka is considered an expert on dinosaur fossils;
- 23 B. Mr. Ciotka's company, Pangea, had previously successfully sold  
24 many large dinosaur fossils;
- 25 C. The number of bone was specifically spelled out in the New  
26 Agreement, which New Agreement was prepared by Mr. Ciotka's  
27 attorneys; and
- 28 D. Mr. Vallee was not permitted to inspect - or have inspected- the T-



1 Rex (which was still not “prepared”) to confirm the number of bones.

2 39. Mr. Valle did not discover the true facts concerning the actual number of T-  
3 Rex bones until long after entering into the New Agreement and long after demanding  
4 return of the Deposit from defendants, and certainly within three (3) years of the filing of  
5 this action. This delayed discovery was due to Mr. Ciotka’s concealment of his lack of  
6 grounds for representing the number of T-Rex bones at 157 and concealment from Mr.  
7 Vallee of the later discovery that the T-Rex only had approximately 108 bones.

8 40. Had Mr. Vallee know the true facts, he would:

- 9 A. Not have entered into the New Agreement;  
10 B. Have had the \$200,000 Deposit returned to him; and  
11 C. Not have made payment of the \$100,000 Work in Progress Deposit  
12 to defendants.

13 41. As a direct and proximate result of the misrepresentations of defendants and  
14 each of them Mr. Vallee has not received return of either the Deposit or the Work in  
15 Progress Deposit, and has invested significant time, energy and financial and other  
16 resources attempting to purchase the T-Rex bones and market them to various individuals  
17 and museums, all to his damage in an amount in excess of \$300,000.

18 42. The conduct of defendants, and each of them, were intentional acts calculated  
19 and designed to deprive Mr. Vallee of his property and rights. The conduct of defendants,  
20 and each of them, was outrageous and despicable conduct that should not be tolerated,  
21 justifying an award of punitive damages in an amount to be determined according to proof  
22 at the time of trial.

23 **THIRD CAUSE OF ACTION**

24 (Rescission - Against All Defendants)

25 43. Plaintiff refers to paragraphs 1 through 23 of the Common Allegations,  
26 paragraphs 25 through 32 of the First Cause of Action, and paragraphs 35 through 41 of  
27 the Second Cause of Action, and by this reference incorporates those paragraphs here as  
28 though set forth in full.

1           44. By reason of the misrepresentations made by defendants concerning and in  
2 the New Agreement as alleged above, as well as the mutual mistake of the parties  
3 concerning material terms affecting the Original Agreement, Mr. Vallee is entitled to  
4 rescind the New Agreement and/or the Original Agreement and, in either event, is entitled  
5 to the return of both the Deposit and Work in Progress Deposit, totaling \$300,000, from  
6 defendants and each of them.

7                                   **FOURTH CAUSE OF ACTION**

8                   (Damages for Breach of Written Contract - Against All Defendants)

9           45. Plaintiff refers to paragraphs 1 through 23 of the Common Allegations,  
10 paragraphs 25 through 32 of the First Cause of Action, paragraphs 35 through 41 of the  
11 Second Cause of Action, and by this reference incorporates those paragraphs here as  
12 though set forth in full.

13           46. Except as to the completion of the purchase of the T-Rex Bones by Mr.  
14 Vallee – as alleged above – and any obligations which Plaintiff was prevented or excused  
15 from performing, Mr. Vallee has performed all other obligations required to be performed  
16 by him under the New Agreement.

17           47. On or after July 1, 2013, Defendants breached the New Agreement by failing  
18 and refusing to return the Deposit to Plaintiff.

19           48. Plaintiff has made written demand for return of the Deposit, but Defendants  
20 have failed and refused, and continue to fail and refuse, to return the Deposit to Plaintiff.

21           49. As a direct and proximate result of Defendants' breach of the New  
22 Agreement, Plaintiff has been damaged in an amount of \$200,000, representing the  
23 Deposit which has not been repaid to Plaintiff.

24                                   **FIFTH CAUSE OF ACTION**

25                   (Common Count - Money Had and Received - Against All Defendants)

26           45. Plaintiff refers to paragraphs 1 through 23 of the Common Allegations,  
27 paragraphs 25 through 32 of the First Cause of Action, paragraphs 35 through 41 of the  
28 Second Cause of Action, and paragraphs 46 through 48 of the Fourth Cause of Action, and

1 by this reference incorporates those paragraphs here as though set forth in full. .

2 46. Defendants owe Plaintiff \$200,000 for the Deposit which was received by  
3 defendants on April 15, 2012 and which was to be paid to Plaintiff on or after July of  
4 2013.

5 **WHEREFORE**, Plaintiff prays for judgment as follows:

6 **ON FIRST CAUSE OF ACTION**

7 1. For damages in the amount of \$300,000.00;

8 2. For punitive damages in an amount to be determined according to proof;

9 **ON SECOND CAUSE OF ACTION**

10 3. For damages in the amount of \$300,000.00;

11 4. For punitive damages in an amount to be determined according to proof;

12 **ON THIRD CAUSE OF ACTION**

13 5. For rescission of the New Contract and the Original Contract;

14 6. For damages in the amount of \$300,000.00;

15 **ON FOURTH CAUSE OF ACTION**

16 7. For damages in the amount of \$200,000.00;

17 **ON FIFTH CAUSE OF ACTION**

18 8. For damages in the amount of \$200,000.00;

19 **ON ALL CAUSES OF ACTION**

20 9. For prejudgment interest from July 1, 2013 to the date of judgment;

21 10. For Costs of suit incurred,

22 11. For such other and further relief as may be just and proper.

23  
24 LAW OFFICES OF RANDY K. VOGEL

25  
26 DATED: June 1, 2017

27 By Randy K. Vogel  
Randy K. Vogel, Attorneys for  
28 Plaintiff Robert "Butch" Vallee

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**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial on all issues triable by right of jury as provided by Federal Rule of Civil Procedure 38.

LAW OFFICES OF RANDY K. VOGEL

DATED: June 1, 2017

By Randy K. Vogel  
Randy K. Vogel, Attorneys for  
Plaintiff Robert “Butch” Vallee