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9 *Attorneys for Plaintiff*
10 **LBW, LLC**

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

13 **LBW, LLC, a Mississippi limited**
14 **liability company,**

15 **Plaintiff,**

16 **v.**

17 **MICHAEL J. POLISH, an individual,**
18 **CATHERINE ANN BOSWORTH**
19 **p/k/a KATE BOSWORTH, d/b/a**
20 **MAKE PICTURES PRODUCTIONS,**
21 **an individual, GIANCARLO RUIZ, an**
22 **individual, and JESY MCKINNEY, an**
23 **individual,**

24 **Defendants.**

) **Case No.: 2:18-cv-7829**

)
) **PLAINTIFF’S COMPLAINT FOR**
) **DAMAGES AND INJUNCTIVE RELIEF:**

-) **1. DECLARATORY JUDGMENT;**
) **2. CLAIM AND DELIVERY;**
) **3. CONVERSION;**
) **4. BREACH OF CONTRACT; and**
) **5. BREACH OF CONTRACT;**

) **DEMAND FOR JURY TRIAL**

25 Plaintiff, LBW, LLC (“LBW” or “Plaintiff”), by and through its undersigned
26 counsel, hereby files its Complaint against Defendants Michael J. Polish (“Polish”),
27 Catherine Ann Bosworth p/k/a Kate Bosworth, d/b/a Make Pictures Productions
28 (“Bosworth”), Giancarlo Ruiz (“Ruiz”) and Jesy McKinney (“McKinney”) (collectively,

1 “Defendants”), and in support thereof, states as follows:

2 **NATURE OF ACTION**

3 1. This action arises out of Defendants’ clandestine campaign to unlawfully
4 commandeer and exploit Plaintiff LBW’s film entitled “Little Brother of War”, featuring
5 a rare, in-depth look at the game of stickball as played by the Mississippi Band of
6 Choctaw Indians (the “Film”).

7 2. Plaintiff LBW created and financed the Film in its entirety and is the
8 exclusive owner of the Film.

9 3. Summoning longstanding and trusting relationships with the Mississippi
10 Band of Choctaw Indians (“MBCI”), Plaintiff LBW navigated a strenuous vetting and
11 application process to gain seldom approved unrestricted access to film the MBCI’s
12 stickball competitions on Reservation lands. Seeking to honor the rich cultural history
13 and traditions surrounding the competitions, Plaintiff LBW was also permitted to conduct
14 numerous interviews with members of the MBCI regarding the importance of the game
15 of stickball within the Choctaw community.

16 4. Based upon Defendant Polish’s representations related to his ability to direct
17 a visually captivating film within a range of budget parameters, LBW commissioned the
18 services of Defendant Polish on a work made for hire basis to direct the Film.

19 5. Unbeknownst to Plaintiff LBW, however, after Plaintiff LBW
20 commissioned Defendant Polish’s services as the director of the Film, Defendant Polish
21 devised a scheme to conspire with at least two of LBW’s work-made-for-hire cameramen
22 to illegally commandeer Plaintiff LBW’s raw footage of the MBCI and thereafter edit
23 and release an infringing, unauthorized film of his own.

24 6. The MBCI are necessarily exceedingly vigilant and strict about filming
25 access, particularly given the long history of exploitation, stereotyping and trivialization
26 of Native Americans and Native American culture in film and television. In furtherance
27 of this conscientious oversight and protection of the MBCI culture and traditions, the
28 MBCI only grant authorization and access to film to a select few projects, and only then

1 after a scrupulous and stringent vetting process. Ultimately, the MBCI authorized LBW
2 to film on the MBCI Reservation lands. It did not authorize or grant any permission to
3 Defendant Polish to do so in his individual capacity or in any capacity separate and apart
4 from his circumscribed role as the Film director LBW commissioned.

5 7. Further, Plaintiff LBW's written agreement with the MBCI expressly
6 provides the MBCI the right to approve any final version of the Film or other footage that
7 is publicly exhibited.

8 8. Unfortunately, Defendant Polish refuses to honor his arrangement with
9 LBW and to honor and abide by the rules, regulations, traditions and wishes of the
10 MBCI. Instead, Defendants Polish and Bosworth have physically commandeered the
11 footage that has been shot for the Film, and intend to unilaterally release an unauthorized
12 version of the Film through their production company, "Make Pictures Productions".
13 This conduct violates the rights of LBW and is further in direct contravention of the letter
14 and spirit of LBW's agreement with the MBCI.

15 9. Moreover, in addition to wrongfully and unlawfully denying Plaintiff
16 possession of the footage and other Film assets, which is without question the physical
17 and intellectual property of LBW, Defendants have also claimed, without any basis in
18 law or in fact, to be "co-producers" of the Film. Defendant Polish is a commissioned
19 director, not a producer and not a copyright owner. Whatever term Defendant Polish
20 wishes to unilaterally adopt for himself does not change this reality, nor does it give him
21 any rights to the Film and its assets, including the raw footage.

22 10. Despite Plaintiff's best efforts to enter into a mutually acceptable
23 arrangement concerning Defendant Polish's involvement with the Film, Defendant Polish
24 has refused to cooperate.

25 11. Instead, Defendants Polish and Bosworth have proactively recruited the
26 other Defendants into their scheme to commandeer the Film's assets and sabotage
27 Plaintiff's ability to access and exploit its Film. As part of Defendants Polish and
28 Bosworth's scheme, Defendant Polish conspired with Defendants Ruiz and McKinney to

1 misappropriate the Film footage and induced them to abdicate their written work made
2 for hire agreements granting Plaintiff all ownership rights in and to their respective
3 contributions to the Film.

4 12. Consequently, this action concerns Defendants' unlawful conversion and
5 seizure of Plaintiff's valuable physical and intellectual property in the Film, including,
6 without limitation, all audiovisual components and underlying raw and edited footage, in
7 direct violation of Plaintiff's rights, title and interest to its Film.

8 13. Plaintiff now seeks a writ of possession to obtain all of the assets of the
9 subject Film, including, without limitation, all of the Film's audiovisual materials, raw
10 footage, edited footage, along with any notes, outlines, treatments, sketches, drawings or
11 other memorialized concepts related to the Film, and all other materials which comprise
12 the Film (collectively, the "Materials"), which Materials Defendants now unlawfully
13 possess and control to Plaintiff's detriment.

14 14. Plaintiff further seeks a declaration that Plaintiff LBW owns all rights, title
15 and interest in and to the Materials, including all audiovisual materials, raw and edited
16 footage and other materials which comprise the Film.

17 15. Alternatively, Plaintiff seeks a declaration that, by virtue of the parties'
18 dealings and relationship, Defendant Polish granted Plaintiff an irrevocable non-exclusive
19 license to publish, access, distribute and exploit any and all contributions, results and
20 proceeds of Defendant Polish to the Materials via any medium, in perpetuity, and that
21 Plaintiff LBW is entitled to immediate possession and access to all the Material.

22 **THE PARTIES**

23 16. Plaintiff LBW is a Mississippi limited liability company organized and
24 existing under the laws of the State of Mississippi, with its principal place of business in
25 Leake County, Mississippi.

26 17. As reflected and confirmed in each and every production call sheet, the sole
27 owner and production company of the Film is Plaintiff LBW, and the sole producers of
28 the Film are Keith Heard, Bryan Carpenter, Dawn Carpenter, Shannon Gaulding

1 (“Gaulding”), Gianni Nunnari (“Nunnari”) and Chrissy Heard (collectively, the
2 “Producers”). *See* Composite Exhibit “G”.

3 18. More specifically, Keith Heard is the sole executive producer of the Film,
4 Bryan Carpenter, Dawn Carpenter, Gaulding and Nunnari are producers, and Chrissy
5 Heard is a co-producer. *See* Composite Exhibit “G”.

6 19. Plaintiff, LBW, the holding company for the Film, was set up to produce the
7 Film, own the Film, and act as the consolidated owner of all the Film rights to ultimately
8 contract with sales agents and distributors to exploit and exhibit the Film. Each of the
9 Producers and/or their loan out entities and/or related companies are members in LBW.
10 Plaintiff LBW owns One Hundred Percent (100%) of the rights and constituent assets and
11 elements of the Film.

12 20. Defendant Polish is an American screenwriter and director. Plaintiff is
13 informed and believes, and based thereon alleges, that Defendant Polish is an individual
14 residing in Los Angeles County, California.

15 21. Defendant Bosworth is an American actress and model. Plaintiff is informed
16 and believes, and based thereon alleges, that Defendant Bosworth is an individual
17 residing in Los Angeles County, California.

18 22. Plaintiff is informed and believes, and based thereon alleges, that Defendant
19 Ruiz is an individual residing in Los Angeles County, California.

20 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant
21 McKinney is an individual residing in San Diego County, California.

22 **JURISDICTION AND VENUE**

23 24. This is a civil action arising under the United States Copyright Act, 17
24 U.S.C. § 101 *et seq.*, for a declaratory judgment of copyright ownership. The jurisdiction
25 of this Court is founded on 28 U.S.C. §§ 1331, 1338(a), 2201(a), and 2202.

26 25. This action for claim and delivery and breach of contract and declaratory
27 judgment is brought under the right of claim and delivery and copyright laws of the
28 United States, 17 U.S.C. § 101, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §

1 2201, *et seq.* and Sections 511.010-516.050 of the California Code of Civil Procedure.

2 26. This Court has original subject matter jurisdiction over this action pursuant
3 to 28 U.S.C. § 1331, as this action arises under the laws of the United States and raises
4 claims seeking a declaratory judgment of the parties' rights, title and interest of
5 intellectual property materials pursuant to the Declaratory Judgment Act, 28 U.S.C. §
6 2201, *et seq.*

7 27. This action presents an actual case or controversy within the Court's
8 jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

9 28. In addition, this Court has subject matter jurisdiction over this action by
10 reason of diversity of citizenship pursuant to 28 U.S.C. § 1332.

11 29. The amount in controversy in this action exceeds \$75,000.00, exclusive of
12 attorneys' fees, interest and costs.

13 30. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b)(1),
14 28 U.S.C. § 1391(c), and pursuant to 28 U.S.C. § 1391(b)(2) as a substantial part of the
15 events or omissions giving rise to the claims asserted in this action occurred in this
16 Judicial District, including with respect to Defendants' present and ongoing
17 commandeering of Plaintiff's intellectual property, and Defendants, and each of them,
18 reside and/or conduct ongoing and continuous business activities in this State and
19 District.

20 **FACTUAL ALLEGATIONS**

21 **The Mississippi Band of Choctaw Indians**

22 31. On or around May 8, 2018, Plaintiff LBW was created and formed to
23 produce the Film, own the Film, and act as the consolidated owner of all the Film rights
24 to ultimately contract with sales agents and distributors to exploit and exhibit the Film.

25 32. The Film is about the Native American team sport known as stickball,
26 specifically as currently played by the MBCI.

27 33. In or around March 2018, prior to LBW's formation, the LBW members
28 conceived of the idea for the Film and began taking concrete steps towards its realization.

1 34. Specifically, on or around March 15, 2018, while holding a casting call in
2 Mississippi in connection with an unrelated motion picture, Bryan Carpenter and Chrissy
3 Heard began discussing stickball with a member of the MBCI, including the various
4 tournaments and championship games the MBCI organizes and conducts each year.

5 35. Following these discussions, Bryan Carpenter and Chrissy Heard
6 immediately began exploring the possibility of developing and producing a Film about
7 the cultural significance of stickball to the MBCI.

8 36. The executive producer of the Film, Keith Heard, is the president of Key
9 Impact Strategies (“KIS”), a lobbying firm with offices in Washington, DC and Jackson,
10 Mississippi, which is an official lobbyist for the MBCI.

11 37. As a lobbyist for the MBCI, Keith Heard has spent years forging close
12 relationships with the members of the MBCI, including the MBCI’s current leader, Chief
13 Phyliss J. Anderson, while zealously advocating for legislation designed to support the
14 MBCI in Washington D.C. and Jackson, Mississippi.

15 38. Based upon his work on behalf of the MBCI, Keith Heard was able to
16 provide crucial assistance in facilitating the introductions and meetings between Plaintiff
17 LBW, the MBCI and the Attorney General that were necessary to secure permission and
18 approval for filming on MBCI Reservation lands.

19 39. The MBCI Reservation lands are a sovereign territory free from state
20 regulation.

21 40. The laws, ordinances and regulations of the MBCI do not permit film crews
22 to have free reign over the Reservation lands, and, the MBCI is hyper-meticulous in
23 scrutinizing and vetting anyone who seeks the requisite permission to enter and film on
24 the MBCI Reservation lands.

25 41. By and through the assistance of Keith Heard, these protracted meeting and
26 communications between Plaintiff LBW and the MBCI commenced on or around March
27 19, 2018 and extended for almost three months.

28 42. The highly-intensive and rigorous application process, designed by the

1 MBCI to ensure the integrity and protection of its culture and heritage, included dozens
2 of phone calls and meetings as part of the MBCI's review and assessment of whether to
3 grant access to its Reservation lands.

4 43. Finally, on June 13, 2018, following months of discussions, vetting and
5 application review tiers, the Office of the Tribal Chief Phyliss J. Anderson, on behalf of
6 the MBCI, granted LBW permission, for a limited time (June 13, 2018 through August
7 17, 2018), to film/shoot the traditional game of stickball on Reservation lands solely for
8 the Film "Little Brothers of War" (the "MBCI Letter Agreement"). A true and correct
9 copy of the MBCI Letter Agreement is attached hereto as Exhibit "A".

10 44. More specifically, the MBCI made clear in the MBCI Letter Agreement that
11 the MBCI filming permissions and allowances were granted solely in connection with
12 Plaintiff LBW's Film, "Little Brothers of War", with all other filming prohibited absent
13 the prior written approval of the MBCI. *See* Exhibit "A".

14 45. The MBCI Letter Agreement is exclusively between the MBCI and LBW,
15 and expressly grants LBW, **and only LBW**, the necessary rights and permissions to enter
16 Reservation lands and film and interview the MBCI members.

17 46. Further crystallizing the targeted permission the MBCI granted, the MBCI
18 Letter Agreement MBCI Tribal Chief Phyliss J. Anderson concludes the MBCI Letter
19 Agreement by explicating stating that MBCI looks forward to working with "your
20 company", that being Plaintiff LBW.

21 47. Pursuant to the MBCI Letter Agreement, to ensure correct factual and
22 cultural representation, the MBCI maintains the opportunity and right to review a final
23 cut of the Film prior to public display and exhibition. *See* Exhibit "A".

24 48. None of the Defendants were involved in LBW's application process with
25 the MBCI.

26 Pre-Production

27 49. Contemporaneous with Plaintiff LBW's extensive efforts to obtain the
28 permission of the MBCI to film MBCI members on sovereign Reservation lands in

1 connection with the Film, LBW undertook all of the required efforts to prepare for the
2 production of the Film.

3 50. On May 9, 2018, one of the members of LBW registered the title of the Film
4 with the Motion Picture Association of America (“MPAA”).

5 51. On June 8, 2018, Plaintiff LBW procured a film insurance policy that
6 provided entertainment general liability production coverage for the Film (the “Insurance
7 Policy”). The Insurance Policy was issued in the name of Plaintiff LBW and LBW paid
8 the entirety of the Insurance Policy Premium. A true and correct copy of the Insurance
9 Policy details and summary is attached hereto as Exhibit “B”.

10 52. In addition, Plaintiff LBW has produced the Film in line and in compliance
11 with the Mississippi Motion Picture Incentive Act, has ensured compliance with the Act,
12 and has applied for and secured the applicable tax rebate. A true and correct copy of the
13 June 13, 2018 qualification letter from the Mississippi Development Authority to Plaintiff
14 LBW for eligibility under the Mississippi Motion Picture Incentive Act is attached hereto
15 as Exhibit “C”.

16 53. In connection with LBW’s selection of the Film’s director, LBW Producer
17 Bryan Carpenter had recently helped Defendants Polish and Bosworth finance their
18 independent feature film *Nona*, filmed in Honduras on a limited budget.

19 54. Specifically, in addition to providing critical security services for the *Nona*
20 production team and while personally advancing all labor and travel costs associated with
21 such services, totaling approximately \$40,000.00, at Defendants Polish and Bosworth’s
22 express request, Bryan Carpenter also personally provided approximately \$23,000.00 of
23 cash financing and equipment to Defendants Polish and Bosworth for the production of
24 their film *Nona*.

25 55. In exchange for both Bryan Carpenter’s provision of valuable security
26 services, including the personal payment of all related labor and travel expenses, and
27 Bryan Carpenter’s separate personal investment of \$23,000.00 into *Nona*, Defendants
28 Polish and Bosworth verbally promised Bryan Carpenter that he would receive three (3)

1 percent of the gross revenue from all sales or exploitation of *Nona*. To date, Defendants
2 Polish and Bosworth have not paid Bryan Carpenter anything in connection with *Nona*;
3 no sums towards recoupment of his investment in *Nona* nor any compensation or monies
4 in exchange for the valuable services he provided.

5 56. Based upon Bryan Carpenter's financing of a substantial portion of the
6 production budget for *Nona*, following Polish and Bosworth's completion of *Nona*,
7 Bryan Carpenter intermittently remained in contact with Polish and Bosworth to receive
8 updates regarding the potential sale and/or distribution of *Nona*, particular as Polish and
9 Bosworth had promised Bryan Carpenter three (3) percent of the gross revenue
10 generated by *Nona* in exchange for his significant investment into the film.

11 57. In or around April 2018, while attending a screening of *Nona* in Richmond,
12 Virginia, Bryan Carpenter met with Defendants Polish and Bosworth to discuss their
13 distribution strategy for *Nona*.

14 58. Because Bryan Carpenter had previously contributed valuable services and
15 significant financing to Defendants Polish and Bosworth's film, the premise of Bryan
16 Carpenter's suggestion was such that even though Defendant Polish would not provide
17 any financing for the Film "Little Brother of War", Defendant Polish would similarly
18 provide his director services in exchange for back-end adjusted gross proceeds, and for
19 no other fees or compensation.

20 59. After learning more about the elevated intensity and intrigue underpinning
21 these Native American stickball tournaments, Defendant Polish expressed increasing
22 interest in directing the Film.

23 60. Thereafter, in or around May 2018, Plaintiff LBW and Defendant Polish
24 entered into verbal agreement confirming this prior understanding regarding Defendant
25 Polish's provision of director services for the Film, which specifically provided that
26 Defendant Polish would be commissioned as a work-made-for-hire director and
27 compensated solely on the back-end without upfront fees (provided Defendant Polish
28 was not in default of his services and completed his services) by receiving Thirty-Three

1 and One Third (33.3%) of the Producer’s Share of the adjusted gross proceeds from the
2 film, paid out of the Producer's Share on a *pari passu* basis with other above the line
3 talent (the “Director Agreement”). A true and correct copy of a draft of an unsigned
4 written agreement capturing the terms of the parties’ verbal Director Agreement is
5 attached hereto as Exhibit “D”.

6 61. While a written document reflecting the parties’ verbal Director Agreement
7 was provided to Polish in July 2018, Polish repeatedly ignored and delayed his execution
8 of the written agreement.

9 62. Notwithstanding the fact that Polish never ultimately signed the written
10 agreement, Polish never objected to, and indeed agreed to, the core material terms of the
11 parties’ Director Agreement, including agreeing that all results and proceeds of Polish’s
12 contributions to the Film were solely for the benefit of LBW in exchange for Polish’s
13 back-end participation. Polish at all relevant times acted in a manner consistent with the
14 parties’ intention that Polish was serving solely in the capacity of a work-made-for-hire
15 director for LBW with LBW owning all of the results and proceeds of Polish’s work.

16 63. In connection with the parties’ Director Agreement, Defendant Polish
17 explicitly requested that LBW retain the services of two camera operators, Defendants
18 Ruiz and McKinney. Upon information and belief, Defendant Polish maintained a
19 preexisting working relationship with Defendants Ruiz and McKinney, having worked
20 with them on multiple films, including *Nona*.

21 64. In or around July, 2018, and based upon Polish’s request, Plaintiff LBW
22 entered into written deal memos with both Defendants Ruiz and McKinney, retaining
23 their services as camera operators for the Film.

24 65. Executed on or around July 6, 2018, LBW’s deal memo with Defendant
25 Ruiz expressly provides that all of the results and proceeds of Defendant Ruiz’s services
26 in connection with the Film were specially ordered by LBW for use as a part of a motion
27 picture and were a “work-made-for-hire” for LBW with LBW owning all of the results
28 and proceeds of Ruiz’ work (the “Ruiz Deal Memo”). A true and correct copy of the Ruiz

1 Deal Memo, redacted where appropriate, is attached hereto as Exhibit “E”.

2 66. Likewise executed on or around July 6, 2018, LBW’s deal memo with
3 Defendant McKinney similarly provides that all of the results and proceeds of Defendant
4 McKinney’s services in connection with the Film were specially ordered by LBW for use
5 as a part of a motion picture and were a “work-made-for-hire” for LBW with LBW
6 owning all of the results and proceeds of McKinney’s work (the “McKinney Deal
7 Memo”). A true and correct copy of the McKinney Deal Memo, redacted where
8 appropriate, is attached hereto as Exhibit “F”.

9 67. As with Defendant Polish, and as reflected in the Ruiz Deal Memo and
10 McKinney Deal Memo, Defendants Ruiz and McKinney were at all times acutely aware
11 that LBW was the sole author and owner of the Film, and that the results and proceeds of
12 their work on the Film was solely for the benefit of LBW and solely to be utilized in a
13 form and manner determined at LBW’s discretion in the Film.

14 68. Based upon this understanding, Defendants Ruiz and McKinney executed
15 their respective deal memos expressly acknowledging and granting LBW all rights in and
16 to the Film.

17 69. In addition, at all times, Plaintiff LBW provided and furnished each and
18 every camera and other related filming equipment at LBW’s sole cost and expense.

19 70. Moreover, at all times, LBW was the only company or person authorized to
20 film on MBCI Reservation lands. To the extent Defendants surreptitiously obtained
21 footage for their own independent use with their own personal devices, such filming
22 would be unauthorized and illegal and in direct contravention of the governing rules and
23 regulations of the MBCI.

24 71. Despite failing and/or refusing to execute the written Director Agreement,
25 Polish, as an experienced film director, understood and accepted that the results and
26 proceeds of his work on the Film were for the sole benefit of LBW, and further
27 understood and agreed that the results and proceeds of his work was solely to be utilized
28 in a form and manner determined at LBW’s sole discretion in the Film.

Principal Photography

1
2 72. Plaintiff commenced principal photography for the Film on MBCI
3 Reservation lands on or around June 13, 2018.

4 73. During principal photography, Plaintiff LBW issued and distributed various
5 “call sheets” to the Film production crew informing them of the day’s schedule
6 (collectively, the “Call Sheets”). True and correct copies of a compilation of several of
7 the Film’s daily call sheets are attached hereto as Composite Exhibit “G”.

8 74. Each of the Film’s Call Sheets distributed to the Film production crew
9 expressly identifies LBW as the sole production company, and further identifies Keith
10 Heard, Bryan Carpenter, Dawn Carpenter, Gaulding, Nunnari and Chrissy Heard as the
11 Film’s sole producers. *See* Composite Exhibit “G”.

12 75. The Call Sheets further include various notes and directives, including a note
13 that “[a]ll expenses must be approved by producers”. *See* Composite Exhibit “G”.

14 76. In addition, during the shooting days, Defendants Polish, McKinney and
15 Ruiz directly witnessed numerous interviewees and film participants executing releases,
16 pursuant to which such interviewees and film participants granted Plaintiff LBW the right
17 to use their name and likeness in connection with the distribution of the Film
18 (collectively, the “Releases”). True and correct copies of certain Film interview Releases,
19 redacted where appropriate, are attached hereto as Composite Exhibit “H”.

20 77. The rights in the Releases were granted solely to Plaintiff LBW, and not to
21 Defendants Polish, Bosworth, McKinney, Ruiz or any other person or entity.

22 78. Of the total twenty-three (23) shooting days for the Film, Defendant Polish
23 was ultimately only present for six (6) days, leaving a vast bulk of the filming to, among
24 other camera operators, Defendants Ruiz and McKinney, who shot footage on a work-
25 made-for-hire basis for LBW, the sole owner of the results and proceeds of all of their
26 contributions.

27 79. Of the total 163.5 recorded hours from all camera operators for the Film,
28 Defendant Polish was only present for approximately 18.5 of those hours (approximately

1 eleven percent).

2 80. Plaintiff LBW was likewise responsible for and did in fact pay for all Film
3 costs and expenses, including Defendants Polish, McKinney and Ruiz's travel expenses
4 to and from the MBCI Reservation lands and each of their accommodation and related
5 expenses in connection with the production of the Film.

6 81. Defendants never, at any time, contributed any funds or made any monetary
7 investment for the benefit of the Film.

8 Post-Production

9 82. Principal photography of the Film concluded on or around July 14, 2018.

10 83. Thereafter, to advance their preconceived contrivance of attempting to
11 exploit the MBCI members and culture by illicitly converting all of LBW's Film footage
12 and Materials and then editing and releasing their own independent, unauthorized version
13 of a film depicting the MBCI, all without LBW's or the MBCI's knowledge or consent,
14 Defendants Polish and Bosworth collectively escalated their efforts to commandeer
15 complete control of the Film elements and Materials.

16 84. Specifically, following principal photography, because Defendant Ruiz was
17 further commissioned to edit the Film, a certain portion of the Film raw footage and
18 Materials was left in the possession of Defendant Ruiz, who, pursuant to the Ruiz Deal
19 Memo, had expressly acknowledged and contractually agreed that LBW owned all such
20 footage and Materials and that all such footage and Materials were the property of LBW.

21 85. Nonetheless, on or around August 4, 2018, in direct abdication of Defendant
22 Ruiz's contractual obligations owed to Plaintiff LBW, and in further violation of the
23 MBCI's rules and regulations, Defendant Ruiz conspired with Defendant Polish to
24 deliver all of the Film Materials in his possession to Defendant Polish.

25 86. Following his receipt of the Film Materials, Defendant Polish illegally
26 retained and converted to his physical custody certain elements of the Materials,
27 including raw footage, which illegally remain in his possession, custody and/or control.
28 To date, despite multiple written demands, Defendant Polish has refused to return the

1 entirety of the Film footage and Materials in his possession to Plaintiff.

2 87. Rather, in furtherance of Defendants' collective scheme and conspiracy to
3 commandeer Plaintiff's Film and Materials and exploit their unauthorized footage of the
4 MBCI without permission, Defendants induced Natalya Al-Omary ("Al-Omary"), a
5 production crew member previously retained by Plaintiff LBW during the production of
6 the Film, to provide editing services on the Film footage and Materials Defendants'
7 unlawfully commandeered.

8 88. Specifically, on or around July 7, 2018, Al-Omary executed a deal memo
9 with Plaintiff LBW, whereby Al-Omary agreed that the results and proceeds of Al-
10 Omary's services in connection with the Film were specially commissioned by LBW for
11 use as a part of a motion picture and was a "work-made-for-hire" for LBW and solely for
12 LBW (the "Al-Omary Deal Memo"). A true and correct copy of the Al-Omary Deal
13 Memo, redacted where appropriate, is attached hereto as Exhibit "I".

14 89. In or around August 2018, Defendants induced Al-Omary to unwittingly
15 violate the Al-Omary Deal Memo by providing her editing services for the sole benefit of
16 Defendants in connection with the Film Materials Defendants had illegally
17 commandeered.

18 90. As part of their scheme, Defendants contacted Al-Omary and requested that
19 she perform editing services for the Film. Because Al-Omary had just worked with
20 Defendants Polish, McKinney and Ruiz on the Film during principal photography, and
21 believing Defendant Polish be acting in his capacity as the Film's director, Al-Omary
22 presumed this was standard practice and protocol.

23 91. To advance their scheme and conspiracy, Defendants Polish, McKinney and
24 Ruiz manufactured a contrived narrative that certain members of LBW were engaged in
25 an internal dispute, and expressly instructed Al-Omary that her editing services should be
26 kept confidential until the "dispute" was resolved.

27 92. On or around August 20, 2018, however, LBW co-producer Chrissy Heard
28 and Al-Omary spoke on the phone about Al-Omary's career in the entertainment

1 industry. During this conversation, Al-Omary casually referenced her progress with
2 editing the Film.

3 93. Incredulous to learn of Defendants Polish, McKinney and Ruiz's scheme to
4 were surreptitiously commandeer Plaintiff LBW's Film Materials and unilaterally edit the
5 raw footage to release an illegal, unauthorized version of the Film, Chrissy Heard
6 explained to Al-Omary that Defendants Polish, McKinney and Ruiz were in unlawful
7 possession of the Film and its Materials and requested that Al-Omary immediately cease
8 and desist any further editing in contravention of Al-Omary Deal Memo.

9 94. Stunned by this development, Al-Omary opted to honor her contractual
10 commitments owed to Plaintiff LBW as set forth in the Al-Omary Deal Memo.
11 Specifically, Al-Omary agreed to cease and desist from the provision of any additional
12 editing services on behalf of Defendants Polish, McKinney and Ruiz.

13 95. On or around August 20, 2018, in confirmation of this decision, Al-Omary
14 sent an email to LBW producer Gaulding, stating as follows:

15 Dear Shannon,

16 As discussed, I contacted Giancarlo and have backed out of any involvement
17 with LBW. There was no doubt that this was the right thing to do.

18 I am still disappointed and in shock of this situation and hope everything
19 will be resolved sooner than later.

20 Thank you and I appreciate your time.

21 Best,

22 Natalya

23 96. Undeterred, upon information and belief, Defendants proceeded to retain, or
24 are in the process of seeking to retain, the services of various additional third-parties in
25 furtherance of their ongoing unlawful attempt to edit and exploit the Film footage and
26 Materials on their own.

27 97. To date, Defendants Polish and Bosworth persist in their bad faith collective
28 contrivance to unlawfully retain and commandeer footage of the MBCI to thereafter

1 exploit the MBCI members and culture without their permission, all for their personal
2 aggrandizement and gain.

3 98. All conditions precedent to the bringing of this action have occurred, been
4 waived or performed.

5 99. On or around September 2, 2018, Plaintiff LBW completed an application
6 and paid the requisite fee for a copyright preregistration with the United States Copyright
7 Office for the Film, specifically, the motion picture work entitled *Little Brother of War*,
8 receiving a preregistration number of PRE000010437.

9
10 **COUNT I**
DECLARATORY JUDGMENT OF COPYRIGHT OWNERSHIP
(17 U.S.C. §§ 101, et seq.)
11 *(As Against All Defendants)*

12 100. Plaintiff repeats and re-alleges each and every allegation contained in
13 paragraphs 1 through 99 as if fully set forth herein.

14 101. Pursuant to 28 U.S.C. § 2201 and 17 U.S.C. § 101 *et seq.*, this Court may
15 declare the rights and other legal relations of any interested party seeking such
16 declaration, whether or not further relief is or could be sought. Any such declaration shall
17 have the force and effect of a final judgment or decree and shall be reviewable as such.

18 102. An actual controversy has arisen and now exists between Plaintiff and
19 Defendants as to whether Plaintiff LBW is the sole owner of all rights, title and interest in
20 and to the Film and the Materials, including all footage shot by any of the Defendants on
21 MBCI Reservation lands.

22 103. Plaintiff is the sole author and owner of Film. Plaintiff is also the entity to
23 whom the Film owes its origin and who superintended the whole work.

24 104. By virtue of Plaintiff's creation and development of Film, including the
25 work made for hire agreements with Defendants Ruiz and McKinney, the camera
26 operators, Plaintiff LBW is the sole owner of all rights, title and interest in and to the
27 copyrights in Film and Materials.

28 105. Plaintiff LBW contends that Defendants do not have any right to use, sell,

1 alienate or enter into a license agreement with respect to the Film or any of the Materials,
2 as all ownership rights to the Film and Materials belong to Plaintiff.

3 106. In refusing to deliver to Plaintiff any and all audiovisual files, works and
4 Materials associated with the Film, including any and all edited and unedited footage
5 comprising the Film, Defendants Polish and Bosworth have definitively asserted that the
6 Film was somehow a purported co-production with Polish and Bosworth's "production
7 company", Make Pictures, and that Defendants Polish and Bosworth are joint owners of
8 the Film and, in addition, are sole owners of their personal creative contributions to the
9 Film.

10 107. Plaintiff has no adequate remedy at law.

11 108. Plaintiff therefore seeks a judicial declaration and determination that:

12 a. Plaintiff is the sole author and sole owner of the Film and the
13 corresponding Materials;

14 b. Plaintiff is the sole author and sole owner of all edited and unedited
15 footage comprising the Film and is the sole author and sole owner of all corresponding
16 production videos, raw footage, unedited footage and edited footage; *and*

17 c. Plaintiff has not executed a valid transfer of ownership in copyright in
18 the Film to Defendants, or any of them;

19 109. Plaintiff further seeks a judicial declaration and determination that, as a
20 result of its ownership of the Film and all corresponding Materials as referenced above,
21 that Defendants, their agents, servants, employees, and attorneys and anyone acting in
22 concert with them, did not and do not have the right to use, sell, or enter into any
23 licensing agreements with respect to the Film or the Materials and have not had and do
24 not have intellectual property rights in the Film superior to those of Plaintiff LBW, and
25 that any and all assignments and/or transfers and/or licenses of the Film or any of the
26 Materials by Defendants, or any of them, are null and void.

27 110. In the alternative, Plaintiff seeks a judicial declaration and determination
28 that, at a minimum, in exchange for Plaintiff LBW's expenditure of substantial sums of

1 money on Defendant Polish's travel, accommodation and related expenses, and LBW's
2 contractual promise to compensate Defendant Polish a certain percentage of the Film's
3 gross proceeds, Plaintiff LBW has and maintains an irrevocable non-exclusive license
4 (whether written, oral or implied from conduct) to publish, access, distribute and exploit
5 all footage purportedly shot and/or edited by Defendant Polish while on MBCI
6 Reservation lands and/or otherwise in connection with the Film, via any medium, in
7 perpetuity, without payment of any additional royalty, including all corresponding
8 production videos and raw footage.

9 111. Such a declaration is necessary and appropriate at this time in order that the
10 parties hereto may ascertain rights and duties with respect to the Film and so that Plaintiff
11 LBW may obtain information necessary to finalize its registration of the Film as
12 copyrighted material with the United States Copyright Office.

13 112. Further, a declaration of rights is necessary and appropriate to enable LBW
14 to recover damages and obtain injunctive relief for copyright infringement based on
15 Defendants' potential use and/or exploitation of the Film or the Materials.

16 **COUNT II**
17 **CLAIM AND DELIVERY**
18 *(As Against All Defendants)*

19 113. Plaintiff repeats and re-alleges each and every allegation contained in
20 paragraphs 1 through 99 as if fully set forth herein.

21 114. Plaintiff is informed and believes that Defendants, and each of them, have
22 wrongfully and without Plaintiff's consent wrongfully and without Plaintiff's consent
23 maintained possession of the Film and the Materials, including certain underlying
24 audiovisual materials and raw footage, despite Plaintiff's demand for possession. Since
25 that time Defendants have been, and now are, in wrongful possession of the Film and
26 Materials in violation of Plaintiff LBW's right to immediate possession.

27 115. As a direct and proximate result of Defendants' conduct, Plaintiff LBW has
28 been and will continue to be damaged in an amount presently unknown, including actual

1 damages for loss of competitive advantage gained by such materials and information, loss
2 of profits, costs incurred attempting to mitigate damages, and legal costs and expenses.

3 116. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff
4 LBW has been and will continue to be damaged in an amount yet unknown, but in no
5 event less than \$500,000.00.

6 117. Plaintiff LBW is informed and believes and on that basis alleges that
7 Defendants' acts and omissions were intentional, malicious and oppressive, and they
8 were done with the intent and design to damage LBW. Plaintiff LBW is entitled,
9 therefore, to recover punitive damages, in an amount to be determined at the time of trial.

10 118. LBW is entitled to immediate possession of the Film and all corresponding
11 Materials, both as a provisional remedy and as an auxiliary remedy pursuant to Sections
12 511.010-516.050 of the California Code of Civil Procedure.

13 **COUNT III**
14 **CONVERSION**

15 *(As Against All Defendants)*

16 119. Plaintiff repeats and re-alleges each and every allegation contained in
17 paragraphs 1 through 99 as if fully set forth herein.

18 120. As the production company for the Film, and through work-made-for-hire
19 agreements with the camera operators and other cast and crew, Plaintiff LBW is the
20 owner of all tangible footage and other Materials from the production of the Film,
including to all footage contained on hard drives.

21 121. At all relevant times, LBW was, and still is the owner of the Film and was,
22 and still is entitled to exclusive possession of the Film and all corresponding Materials.

23 122. Defendants Ruiz and McKinney gained possession of the footage for the
24 Film pursuant to their respective work-made-for-hire deal memos as the camera
25 operators.

26 123. Defendants Ruiz and McKinney then unlawfully transferred possession of
27 the footage to Defendants Polish and Bosworth.
28

1 124. Plaintiff LBW is informed and believes that Defendants have failed and
2 refused to deliver the Film and all Materials to LBW and have, instead, converted the
3 Materials to their own use, including an entire production drive of Film footage.

4 125. Plaintiff LBW is further informed and believes that Defendants have
5 attempted to retain the services of an editor to edit the raw footage materials of the Film
6 for their own use.

7 126. To date, Defendants continue to wrongfully retain the Materials and other
8 property belonging to Plaintiff.

9 127. As a direct and proximate result of Defendants' wrongful conduct, LBW has
10 been and will continue to be damaged in an amount yet unknown, but in no event less
11 than \$500,000.00.

12 128. Defendants' acts and omissions were intentional, malicious and oppressive,
13 and they were done with the intent and design to damage LBW. Plaintiff LBW is
14 therefore entitled to recover punitive damages, in an amount to be determined at the time
15 of trial.

16 **COUNT IV**
17 **BREACH OF CONTRACT**
18 *(As Against Defendant Polish)*

19 129. Plaintiff repeats and re-alleges each and every allegation contained in
20 paragraphs 1 through 128 as if fully set forth herein.

21 130. Defendant Polish and Plaintiff entered into the Director Agreement.

22 131. Plaintiff performed its obligations under the Director Agreement.

23 132. Plaintiff performed all of the conditions, covenants, and promises required
24 on its part to be performed in accordance with the terms of the Director Agreement,
25 including paying for all of Defendant Polish's travel, accommodations, and expenses in
26 connection with the Film.

27 133. Defendant Polish failed and/or refused to perform his obligations in
28 accordance with the Director Agreement, including failing to participate and render

1 complete director services on the Film, abandoning the Film production for alternative
2 pursuits, including launching an arts class at a college in Montana, interfering with the
3 production of the Film by conspiring with Plaintiff LBW's work-made-for-hire camera
4 operators to commandeer Plaintiff's audio and hard drives containing Film Footage and
5 Materials, and refusing to deliver and return to Plaintiff certain raw footage and other
6 film elements and Materials associated with the Film, all of which Plaintiff owns.

7 134. In addition, in direct contravention of the parties' Director Agreement and
8 Plaintiff's ownership of the Film, Defendant Polish has retained and/or has attempted to
9 retain the services of various third-parties in an effort to edit and exploit the raw footage
10 and other Film elements and Materials currently and unlawfully in his possession,
11 custody and/or control.

12 135. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff
13 LBW has been and will continue to be damaged in an amount yet unknown, but in no
14 event less than \$500,000.00.

15 **COUNT V**
16 **BREACH OF CONTRACT**
17 *(As Against Defendants Ruiz and McKinney)*

18 136. Plaintiff repeats and re-alleges each and every allegation contained in
19 paragraphs 1 through 135 as if fully set forth herein.

20 137. Defendants Ruiz and McKinney entered into the Ruiz Deal Memo and the
21 McKinney Deal Memo with Plaintiff (collectively, the "Deal Memos").

22 138. Plaintiff performed all of the conditions, covenants, and promises required
23 on its part to be performed in accordance with the terms of the Deal Memos.

24 139. Defendants Ruiz and McKinney failed and/or refused to perform their
25 obligations in accordance with the Deal Memos, expressly refusing to return the Film and
26 corresponding raw footage and Materials to Plaintiff upon written demand.

27 140. In direct contravention of the Deal Memos, Defendants Ruiz and McKinney
28 disregarded LBW's written demand for the immediate return of the Film footage and

1 Materials and, on or around August 4, 2018, Defendants Ruiz and McKinney unlawfully
2 transferred and delivered all of the Film footage in their possession to Defendant Polish.

3 141. Defendants Ruiz and McKinney transferred and delivered all of the Film
4 footage and Materials in their possession to Defendant Polish with the express knowledge
5 and understanding that Defendant Polish was unlawfully commandeering the Film and
6 Materials and illegally attempting to edit and exploit the Film footage and Materials
7 without the involvement and/or approval of either Plaintiff or the MBCI.

8 142. Defendants Ruiz and McKinney further breached the Deal Memos through
9 their efforts to assist Defendants Polish and Bosworth in their unlawful endeavor to edit
10 and exploit the Film footage and Materials without the involvement and/or approval of
11 either Plaintiff or the MBCI.

12 143. As a direct and proximate result of Defendants Ruiz and McKinney's willful
13 and material breaches of the Deal Memos, Plaintiff LBW has been and will continue to
14 be damaged in an amount yet unknown, but in no event less than \$500,000.00.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff LBW, LLC respectfully requests that this Court enter
17 judgment in its favor and as against Defendants Michael J. Polish, Catherine Ann
18 Bosworth p/k/a Kate Bosworth, d/b/a Make Pictures Productions, Giancarlo Ruiz and
19 Jesy McKinney, jointly and severally, as follows:

- 20 i. That the Court enter Declaratory Judgment, pursuant to the Federal
21 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 and the Copyright
22 Act 17 U.S.C. §§ 101, *et seq.*, that Plaintiff LBW owns the copyright in and
23 to Film and Materials and that Defendants have no copyright ownership
24 interest or other claim to title in or to the Film or the underlying Film
25 footage and Materials;
- 26 ii. That the Court enter Declaratory Judgment, pursuant to the Federal
27 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, that declares that
28 Defendants' unauthorized conduct violates Plaintiff LBW's rights under the
Federal Copyright Act;
- iii. That the Court enter an Order requiring Defendants to return all raw footage
and/or Materials in their possession related to the Film;

- 1 iv. That the Court enter a judgment for possession of Plaintiff LBW’s Materials
2 and an order granting the issuance of a writ of possession granting Plaintiff
3 possession of all Film footage and Materials, including costs, and damages
4 against Defendants for the wrongful detention of the subject Materials;
5 v. That the Court enter an Order declaring that Defendants cannot use, sell,
6 alienate or license any of the raw footage or Materials under the Federal
7 Copyright Act;
8 vi. For a preliminary and permanent injunction under the Copyright Act
9 enjoining and barring Defendants and all persons acting in concert with them
10 from manufacturing, reproducing, displaying, distributing, or publishing any
11 of the Film footage or Materials;
12 vii. An order directing Defendants, and their respective officers, agents,
13 servants, employees, attorneys, parent, subsidiary, and related companies
14 and all persons acting for, with, by, through, or under Defendants, and each
15 of them, pursuant to 17 U.S.C. § 503, to deliver up to the Clerk of this Court
16 for impoundment during the pendency of this litigation, and for destruction
17 upon the entry of a Final Judgment, any and all copies, duplicates, or digital
18 copies (regardless of the medium in which they may be embodied) of the
19 Film footage and Materials;
20 viii. That this Court enter judgment in Plaintiff’s favor and as against Defendant
21 Polish for breach of the Director Agreement, and the contractual obligations
22 contained therein, and that Plaintiff LBW be awarded all actual and
23 compensatory damages suffered from these breaches in an amount to be
24 determined at trial, plus prejudgment interest and costs;
25 ix. That this Court enter judgment in Plaintiff favor and as against Defendants
26 Ruiz and McKinney for breach of the Deal Memos, and the contractual
27 obligations contained therein, and that Plaintiff LBW be awarded all actual
28 and compensatory damages suffered from these breaches in an amount to be
 determined at trial, plus prejudgment interest and costs;
 x. For costs and reasonable attorney’s fees pursuant to 17 U.S.C. § 505; *and*
 xi. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

1 DATED: September 7, 2018

Respectfully submitted,

2 **SINGH, SINGH & TRAUBEN, LLP**
3 **MICHAEL A. TRAUBEN**

4
5 By: /s/ Michael A. Trauben
6 Michael A. Trauben

7 *Attorneys for Plaintiff*
8 LBW, LLC

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