

BY FAX

NOLAN HEIMANN LLP  
Jordan Susman, Esq. (SBN 246116)  
Margo Arnold, Esq. (SBN 278288)  
16133 Ventura Boulevard, Suite 820  
Encino, California 91436  
Telephone: (818) 574-5710  
E-mail: jsusman@nolanheimann.com  
marnold@nolanheimann.com

Attorneys for Plaintiffs  
Cheryl Dunye, Alexandra Juhasz  
and Jingtowntown Films

**FILED**  
San Francisco County Superior Court

OCT 08 2020

CLERK OF THE COURT  
BY: Galene Habris  
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

CHERYL DUNYE, an individual;  
ALEXANDRA JUHASZ, an individual;  
JINGLETOWN FILMS, a California  
corporation,

Plaintiffs

vs.

MARC SMOLOWITZ, an individual; 13TH  
GEN INC., a California corporation,

Defendants.

Case No.: **CCC-20-587035**

**COMPLAINT FOR**

(1) **CONVERSION**  
(Dunye and Juhasz against all Defendants)

(2) **CONVERSION**  
(Dunye against all Defendants)

(3) **BREACH OF FIDUCIARY DUTY**  
(Dunye and Juhasz against all Defendants)

(4) **BREACH OF FIDUCIARY DUTY**  
(Dunye against all Defendants)

(5) **ACCOUNTING**  
(Dunye and Juhasz against all Defendants)

(6) **ACCOUNTING**  
(Dunye against all Defendants)

(7) **DECLARATORY RELIEF**  
(Dunye against all Defendants)

(8) **DECLARATORY RELIEF**  
(Dunye and Jingtowntown against all  
Defendants)

(9) **UNFAIR BUSINESS PRACTICES**  
(BUS. & PROF. CODE § 17200)  
(All Plaintiffs against All Defendants)

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Cheryl Dunye, Alexandra Juhasz, and Jingletown Films (collectively, "Plaintiffs")  
2 hereby allege as follows:

3 **THE PARTIES**

4 1. Plaintiff Cheryl Dunye ("Ms. Dunye"), an individual, is a resident of Alameda County,  
5 California.

6 2. Plaintiff Alexandra Juhasz ("Ms. Juhasz"), an individual, is a resident of Kings County,  
7 New York.

8 3. Plaintiff Jingletown Films ("Jingletown") is a California corporation with its principal  
9 place of business in Alameda County, California. Ms. Dunye is the principal of Jingletown.

10 4. On information and belief, Plaintiffs allege that defendant Marc Smolowitz  
11 ("Smolowitz"), an individual, is a resident of San Francisco City and County, California.

12 5. On information and belief, Plaintiffs allege that defendant 13th Gen, Inc. ("13th Gen") is,  
13 and all times relevant hereto has been, a California Corporation with its principal place of business in  
14 San Francisco City and County, California. Smolowitz is the principal of 13th Gen. Smolowitz and  
15 13th Gen are referred to collectively herein as "Defendants."

16 6. On information and belief, Plaintiffs allege that at all times herein mentioned, each  
17 defendant was the agent and/or employee of the other, and at all times were and are acting within the  
18 purpose and scope of such agency and/or employment, and with knowledge, authorization, permission,  
19 consent, and/or subsequent ratification and approval of each other. Plaintiffs further allege on  
20 information and belief that each Defendant knowingly and willfully conspired and agreed among  
21 themselves to deprive Plaintiffs of their rights and to cause the damages described herein.

22 **FACTS COMMON TO ALL CAUSES OF ACTION**

23 **The Watermelon Woman**

24 7. Ms. Dunye is an award-winning film and television director, producer, screenwriter,  
25 editor and actress. Ms. Dunye's feature film debut, *The Watermelon Woman*, is widely considered a  
26 classic of queer cinema and was the first feature-length narrative film written and directed by an out  
27 Black lesbian about Black lesbians. *The Watermelon Woman* premiered at the 1996 Berlin International  
28 Film Festival (where it won the Teddy Award for Best Feature Film), and played numerous other film

1 festivals, including L.A. Outfest, (where it won the Audience Award for Outstanding Narrative Feature),  
2 the New York Lesbian & Gay Film Festival, the San Francisco International Lesbian & Gay Film  
3 Festival, the Tokyo International Lesbian & Gay Film Festival, the Créteil International Women's Film  
4 Festival, the London Lesbian and Gay Film Festival, and the Toronto International Film Festival. Ms.  
5 Dunye's other works includes the films *Stranger Inside*, *My Baby's Daddy*, *The Owls*, *Black is Blue*, and  
6 directing episodes of the television series *Queen Sugar*, *Dear White People*, *The Chi*, *The Fosters*,  
7 *Claws*, and *Lovecraft Country*.

8 8. Ms. Juhasz is Distinguished Professor of Film at Brooklyn College, CUNY. She is a core  
9 faculty member in the Interactive Technology and Pedagogy Certificate Program at the CUNY Graduate  
10 Center. She has a Ph.D. in Cinema Studies from NYU (1991) and attended the Whitney Independent  
11 Studio program as a videomaker (1988). Ms. Juhasz is the author of *AIDS TV* (Duke, 1995), *Women of*  
12 *Vision: Histories in Feminist Media* (Minnesota, 2001), *F is for Phony: Fake Documentary and Truth's*  
13 *Undoing* with Jesse Lerner (Minnesota, 2005), *Learning from YouTube* (MIT Press, 2011), *The*  
14 *Blackwell Companion on Contemporary Documentary* with Alisa Lebow (2016), *Sisters in the Life: 25*  
15 *Years of Out African-American Lesbian Filmmaking* with Yvonne Welbon (Duke 2018), *AIDS and the*  
16 *Distribution of Crises* with Jih-Fei Cheng and Nishant Shahani (Duke 2020), and *My Phone Lies to Me*  
17 (The Operating System, 2020). She is the producer of educational videotapes on feminist issues from  
18 AIDS to teen pregnancy and the feature films *The Watermelon Woman* and *The Owls*.

19 9. Smolowitz is an independent film producer and sales agent who operates through 13th  
20 Gen.

21 10. In or about 2015, Ms. Dunye, Ms. Juhasz, and Smolowitz formed a joint venture, the  
22 purpose of which was to restore and distribute *The Watermelon Woman* in time for its 20th anniversary.  
23 Prior to forming the joint venture, Smolowitz had no involvement of any kind in *The Watermelon*  
24 *Woman*—other than acting as a sales agent—which Ms. Dunye and Ms. Juhasz made without his  
25 involvement almost 20 years earlier. Smolowitz would be responsible for restoring the film and  
26 continuing to act as its sales agent, and in return received credit as the film's "Restoration Producer."  
27 Ms. Dunye and Ms. Juhasz worked together and independently to *inter alia*: (i) organize Black lesbian  
28 curators who would create art shows across the country connected to the themes of *The Watermelon*

1 *Woman*; (ii) locate, connect, and coordinate with the film's actors, crew, and funders to engage them in  
2 re-release activities; (iii) engage museums and archives to promote the film's re-release; (iv) pursue  
3 funding from, and events at, universities; (v) activate their extensive contacts in the film industry, art  
4 world, and queer communities to plan art shows, conferences, and press. Ms. Dunye, Ms. Juhasz, and  
5 Smolowitz agreed to share equally in the costs and profits of the joint venture.

6 11. Pursuant to his role and responsibilities in the joint venture, in or about January 2018,  
7 Smolowitz licensed the United Kingdom distribution rights for *The Watermelon Woman* to a third party,  
8 Peccadillo Pictures. In so doing, Smolowitz exposed Ms. Dunye and Ms. Juhasz to significant liability,  
9 because in February 2015, Smolowitz had already executed an exclusive 10-year worldwide distribution  
10 agreement for *The Watermelon Woman* with Four Way Features, Inc. dba First Run Features.

11 12. As the sales agent for *The Watermelon Woman*, Smolowitz was in a superior position of  
12 knowledge regarding monies received from the distribution of the film and under a continuous duty to  
13 disclose to Ms. Dunye and Ms. Juhasz these amounts. Ms. Dunye and Ms. Juhasz were under no duty to  
14 investigate Smolowitz's failure to distribute proceeds from the film's distribution and had no reason to  
15 believe Smolowitz would redirect payments to himself and/or 13th Gen. Furthermore, Smolowitz's  
16 concealment of such redirection prevented Ms. Dunye and Ms. Juhasz from reasonably discovering  
17 Defendants' misconduct.

18 13. Ms. Dunye and Ms. Juhasz have repeatedly requested from Defendants an accounting for  
19 *The Watermelon Woman*, which Defendants have failed and refused to provide.

20 14. By this action, Ms. Dunye and Ms. Juhasz seek to hold Smolowitz and 13th Gen  
21 accountable for their illegal withholding of monies received from the exploitation of *The Watermelon*  
22 *Woman* that Smolowitz and 13th Gen owed to them under the joint venture.

### 23 **Tolling and Estoppel**

24 15. Any applicable statutes of limitations that might otherwise bar any of Ms. Dunye's and  
25 Ms. Juhasz's claims, whether in whole or in part, are tolled by Defendants' knowing and active  
26 concealment of the wrongful diversion of monies received from the joint venture, resulting in delayed  
27 discovery of Defendants' misconduct by Ms. Dunye and Ms. Juhasz. (See, e.g., *Prakashpalan v.*  
28 *Engstrom, Lipscomb & Lack*, 223 Cal. App. 4th 1105, 1125 (2014) (finding basis for delayed discovery

1 where defendant's concealment prevented plaintiff, who had no other sources of information but  
2 defendant, from being put on notice of wrongdoing)).

3 16. Defendants, by their handling of all financial matters within the joint venture, were in a  
4 superior position of knowledge relative to Ms. Dunye and Ms. Juhasz to know the full amount of monies  
5 received by the joint venture and owed to the joint venture, Ms. Dunye and Ms. Juhasz. As such,  
6 Defendants maintained a fiduciary obligation to honestly and accurately inform Ms. Dunye and Ms.  
7 Juhasz of these amounts, and Ms. Dunye and Ms. Juhasz were entitled to rely on the accuracy of  
8 Defendants' statements due to the parties' fiduciary relationship. (See, e.g., *WA Southwest. 2, LLC v.*  
9 *First Am. Title Ins. Co.*, 240 Cal. App. 4th 148, 157 (2015) ("Where a fiduciary obligation is present . . .  
10 [t]he existence of a trust relationship limits the duty of inquiry.")).

11 17. Defendants prevented Ms. Dunye and Ms. Juhasz from learning of their misconduct by  
12 concealing and misrepresenting the same, and due to this conduct, Ms. Dunye and Ms. Juhasz could not  
13 have reasonably discovered the sums being diverted from the joint venture. Defendants are therefore  
14 estopped from relying on any statutes of limitation in defense of this action.

15 18. In addition, Defendants' breaches of their obligations as described herein constitute  
16 continuing wrongs such that the statute of limitations on these breaches have been tolled and will not  
17 begin to run until the commission of the last wrongful act of Defendants. (See *Britton v. Girardi*, 235  
18 Cal. App. 4th 721, 734 (2015) ("Where a fiduciary relationship exists . . . delaying accrual of the statute  
19 [of limitations] prevents the fiduciary from obtaining immunity for an initial breach of duty by a  
20 subsequent breach of the obligation of disclosure.") (quotes and citations omitted)).

21 **Black Is Blue: The Short Film**

22 19. In or about, 2014, Ms. Dunye directed a short film entitled *Black Is Blue* based upon an  
23 original script of hers. Halfway through filming, Smolowitz came on board as the producer on the film,  
24 and 13th Gen was the film's distributor.

25 20. Ms. Dunye holds all right, title and interest in the *Black Is Blue* short film, including the  
26 copyright.

27 21. Smolowitz and 13th Gen hold no ownership rights in the film *Black Is Blue*.









1           49. Defendants have wrongfully exercised control over the physical elements of the film  
2 *Black Is Blue*.

3           50. Defendants intentionally and substantially interfered with Ms. Dunye's rights by refusing  
4 to deliver to her all of the physical elements of the film *Black Is Blue*.

5           51. At all relevant times, Ms. Dunye had ownership rights in, or the right to possess, revenue  
6 from the exploitation of the film *Black Is Blue* withheld by Defendants. These specific sums are capable  
7 of identification through an accounting of Defendants' records.

8           52. Defendants have wrongfully exercised control over monies due and owing to Ms. Dunye  
9 from the exploitation of the film *Black Is Blue*.

10           53. Defendants intentionally and substantially interfered with Ms. Dunye's rights by refusing  
11 to properly account for and pay all monies owed to Ms. Dunye from their exploitation and licensing of  
12 the film *Black Is Blue*. Defendants' actions prevented Ms. Dunye from accessing her rightful property.

13           54. At all relevant times, Ms. Dunye had ownership rights in, or the right to possess, revenue  
14 from the exploitation of the Early Works withheld by Defendants. These specific sums are capable of  
15 identification through an accounting of Defendants' records.

16           55. Defendants have wrongfully exercised control over monies due and owing to Ms. Dunye  
17 from the exploitation of the Early Works.

18           56. Defendants intentionally and substantially interfered with Ms. Dunye's rights by refusing  
19 to properly account for and pay all monies owed to Ms. Dunye from their exploitation and licensing of  
20 the Early Works. Defendants' actions prevented Ms. Dunye from accessing her rightful property.

21           57. Ms. Dunye did not consent to Defendants' actions as described above.

22           58. Ms. Dunye has suffered harm through Defendants' actions.

23           59. Defendants' conduct was a substantial factor in causing Ms. Dunye's harm.

24           60. As a direct and proximate result of Defendants' conduct as above-described, Ms. Dunye  
25 has been damaged in a sum which is presently unascertained, but which Ms. Dunye is informed and  
26 believes, and based thereon alleges to be in excess of the jurisdictional limitations of this Court,  
27 exclusive of interest and costs. Ms. Dunye is entitled to actual damages sustained as a result of  
28 Defendants' wrongful acts, including an award of Defendants' unjust profits, as well as sums sufficient

1 to compensate Ms. Dunye for all harm suffered as a result of Defendants' conduct, and punitive  
2 damages.

3 61. In committing the acts alleged, Defendants acted with full knowledge of, and with  
4 reckless disregard for, the consequences and damages inflicted upon Ms. Dunye, and Defendants'  
5 conduct was willful, oppressive and malicious, such as to entitle Ms. Dunye an award of punitive  
6 damages in an amount to punish Defendants and serve as an example to others similarly situated

7 **THIRD CAUSE OF ACTION**  
8 **(Breach of Fiduciary Duty)**  
9 **(Ms. Dunye and Ms. Juhasz Against All Defendants)**

10 62. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding  
11 paragraphs as if fully set forth herein.

12 63. Smolowitz (and 13th Gen through its role as Smolowitz's agent) at all times owed a  
13 fiduciary obligation to Ms. Dunye and Ms. Juhasz to deal fairly and in good faith in connection with  
14 their joint venture accounting and related practices and roles.

15 64. Defendants have breached their fiduciary obligations to Ms. Dunye and Ms. Juhasz by  
16 committing each of the acts set forth above, including by withholding of monies due from the  
17 exploitation of *The Watermelon Woman* owed to Ms. Dunye and Ms. Juhasz, diverting such withheld  
18 royalties to Defendants, concealing this diversion by failing to provide accounting reports, and refusing  
19 to permit Ms. Dunye and Ms. Juhasz to exercise their rights to inspect Defendants' books and records.  
20 Defendants have thus favored their own interests over the interests of Ms. Dunye and Ms. Juhasz,  
21 abused their superior position of knowledge and control of finances and revenues related to *The*  
22 *Watermelon Woman*, engaged in self-dealing, failed to account to Ms. Dunye and Ms. Juhasz, and failed  
23 to provide Ms. Dunye and Ms. Juhasz with full transparency and accurate financial disclosures related to  
24 the joint venture's income.

25 65. By agreeing to share equally in the costs and profits of the joint venture, Defendants  
26 assumed the position of a fiduciary with respect to Ms. Dunye and Ms. Juhasz. As such, Defendants  
27 assumed the highest duty of fidelity, good faith, and fair dealing to fully, promptly, and accurately  
28 account for all monies owed to Ms. Dunye and Ms. Juhasz, and to put Ms. Dunye's and Ms. Juhasz's  
interests on the same or on a greater level than their own in connection with the administration of

1 monies received from the exploitation of *The Watermelon Woman*.

2 66. In reasonable reliance upon these and all other representations by Defendants, as well as  
3 the Defendants' fiduciary role, Ms. Dunye and Ms. Juhasz reasonably reposed special faith and trust and  
4 confidence in Defendants to fully and faithfully execute their duties, including, among other things, to  
5 accurately account to Ms. Dunye and Ms. Juhasz and to promptly distribute monies received from the  
6 exploitation of *The Watermelon Woman* in a manner consistent with their representations that  
7 Defendants could be trusted to discharge these duties and obligations faithfully and to act in Ms.  
8 Dunye's and Ms. Juhasz's best interests in these matters.

9 67. As a direct and proximate result of Smolowitz's breaches as above-described, Ms. Dunye  
10 and Ms. Juhasz have been damaged in a sum which is presently unascertained, but which Ms. Dunye  
11 and Ms. Juhasz are informed and believe, and based thereon allege, to be in excess of the jurisdictional  
12 limitations of this Court, exclusive of interest and costs.

13 68. In committing the acts alleged, Defendants acted with full knowledge of, and with  
14 reckless disregard for, the consequences and damages inflicted upon Ms. Dunye and Ms. Juhasz, and  
15 Defendants' conduct was willful, oppressive and malicious, such as to entitle Ms. Dunye and Ms. Juhasz  
16 an award of punitive damages in an amount to punish Defendants and serve as an example to others  
17 similarly situated.

18 **FOURTH CAUSE OF ACTION**  
19 **(Breach of Fiduciary Duty)**  
20 **(Ms. Dunye Against All Defendants)**

21 69. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding  
22 paragraphs as if fully set forth herein.

23 70. Defendants at all times owed a fiduciary obligation to Ms. Dunye to deal fairly and in  
24 good faith in connection with producing, selling, and distributing the film *Black Is Blue*. As the  
25 producer, distributor and sales agent for the film *Black Is Blue*, Defendants were in a superior position of  
26 knowledge regarding monies received from the distribution of the film and under a continuous duty to  
27 disclose to Ms. Dunye these amounts.

28 71. Defendants have breached their fiduciary obligations to Ms. Dunye by committing each  
of the acts set forth above, including by withholding of monies due from the exploitation of the film

1 *Black Is Blue* owed to Ms. Dunye, diverting such withheld monies to Defendants, concealing this  
2 diversion by failing to provide accounting reports, and refusing to permit Ms. Dunye to exercise her  
3 rights to inspect Defendants' books and records. Defendants have thus favored their own interests over  
4 the interests of Ms. Dunye, abused their superior position of knowledge and control of finances and  
5 revenues related the film *Black Is Blue*, engaged in self-dealing, failed to account to Ms. Dunye, and  
6 failed to provide Ms. Dunye with full transparency and accurate financial disclosures related to the  
7 distribution and exploitation of the film *Black Is Blue*.

8         72. By agreeing to be the producer, distributor, and sales agent for the film *Black Is Blue*,  
9 Defendants assumed the position of fiduciary with respect to Ms. Dunye. As such, Defendants assumed  
10 the highest duty of fidelity, good faith, and fair dealing to fully, promptly, and accurately account for all  
11 monies owed to Ms. Dunye, and to put Ms. Dunye's interests on the same or on a greater level than their  
12 own in connection with the administration of monies received from the exploitation of the film *Black Is*  
13 *Blue*.

14         73. In reasonable reliance upon these and all other representations by Defendants, as well as  
15 the Defendants' fiduciary role, Ms. Dunye reasonably reposed special faith and trust and confidence in  
16 Defendants to fully and faithfully execute their duties, including, among other things, to accurately  
17 account to Ms. Dunye and to promptly distribute the monies so accounted to Ms. Dunye in a manner  
18 consistent with their representations that Defendants could be trusted to discharge these duties and  
19 obligations faithfully and to act in Ms. Dunye's best interests in these matters.

20         74. As a direct and proximate result of Defendants' breaches as above-described, Ms. Dunye  
21 has been damaged in a sum which is presently unascertained, but which Ms. Dunye is informed and  
22 believes, and based thereon alleges, to be in excess of the jurisdictional limitations of this Court,  
23 exclusive of interest and costs.

24         75. In committing the acts alleged, Defendants acted with full knowledge of, and with  
25 reckless disregard for, the consequences and damages inflicted upon Ms. Dunye, and Defendants'  
26 conduct was willful, oppressive and malicious, such as to entitle Ms. Dunye an award of punitive  
27 damages in an amount to punish Defendants and serve as an example to others similarly situated.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**FIFTH CAUSE OF ACTION**  
**(Accounting)**  
**(Ms. Dunye and Ms. Juhasz Against All Defendants)**

76. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

77. As set forth above, Ms. Dunye and Ms. Juhasz are informed and believe that Defendants have misappropriated monies owed and payable to them by converting and using those funds to benefit Defendants personally.

78. The exact amounts of monies received by Defendants from the exploitation of *The Watermelon Woman* and the exact amounts of monies that should have been credited and paid to Ms. Dunye and Ms. Juhasz are unknown to Ms. Dunye and Ms. Juhasz, as Defendants maintained control of the joint venture's books and records. An accounting of the books and records of the Defendants is therefore necessary to determine the amount of misappropriated monies (and thereby determine the amount of monies due to Ms. Dunye and Ms. Juhasz). Ms. Dunye and Ms. Juhasz are informed and believe, and based thereon allege, that these unpaid royalties are in excess of the jurisdictional limitations of this Court, exclusive of interest and costs.

79. Ms. Dunye and Ms. Juhasz have demanded (in writing) that Defendants account for the foregoing misappropriation of monies, but Defendants have failed and refused, and continue to fail and refuse, to provide the requested accounting.

80. Accordingly, an accounting is necessary and appropriate regarding the past and ongoing misappropriation of monies by Defendants.

24  
25  
26  
27  
28

**SIXTH CAUSE OF ACTION**  
**(Accounting)**  
**(Ms. Dunye Against All Defendants)**

81. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

82. As set forth above, Ms. Dunye is informed and believes that Defendants have misappropriated monies owed and payable to her by converting and using those funds to benefit Defendants personally.

83. The exact amounts of monies received by Defendants from the exploitation of the film

1 *Black Is Blue* and the Early Works and the exact amounts of monies that should have been credited and  
2 paid to Ms. Dunye are unknown to Ms. Dunye, as Defendants maintained control of the films' books  
3 and records. An accounting of the books and records of the Defendants is therefore necessary to  
4 determine the amount of misappropriated monies (and thereby determine the amount of monies due to  
5 Ms. Dunye). Ms. Dunye is informed and believes, and based thereon alleges, that these unpaid royalties  
6 are in excess of the jurisdictional limitations of this Court, exclusive of interest and costs.

7 84. Ms. Dunye has demanded (in writing) that Defendants account for the foregoing  
8 misappropriation of monies, but Defendants have failed and refused, and continue to fail and refuse, to  
9 provide the requested accounting.

10 85. Accordingly, an accounting is necessary and appropriate regarding the past and ongoing  
11 misappropriation of monies by Defendants

12 **SEVENTH CAUSE OF ACTION**  
13 **(Declaratory Relief)**  
14 **(Ms. Dunye and Jingtowntown Against All Defendants)**

15 86. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding  
16 paragraphs as if fully set forth herein.

17 87. Ms. Dunye has written a feature length screenplay for *Black Is Blue* with a third party.

18 88. Ms. Dunye and Jingtowntown contend that Smolowitz and 13th Gen hold no right, title or  
19 interest in the *Black Is Blue* feature film script.

20 89. Ms. Dunye and Jingtowntown are informed and believe and based thereon allege that  
21 Defendants contend that they have certain rights in the feature length screenplay for *Black Is Blue*,  
22 including the right to receive producer credits when and if the feature script is ever made into a motion  
23 picture.

24 90. Based upon the foregoing, there exists an actual dispute or controversy between Ms.  
25 Dunye and Jingtowntown, on the one hand, and Defendants, on the other hand, with respect to their rights  
26 and duties related to the feature length screenplay for *Black Is Blue* and any future film based upon  
27 same.

28 91. Ms. Dunye and Jingtowntown accordingly request a declaration that Smolowitz and 13th  
Gen hold no right, title or interest in the *Black Is Blue* feature film script and Ms. Dunye and Jingtowntown

1 owe them no obligations related to the feature length screenplay for *Black Is Blue* or any future film  
2 project based upon same.

3 **EIGHTH CAUSE OF ACTION**  
4 **(Declaratory Relief)**  
5 **(Ms. Dunye and Jingtowntown Against All Defendants)**

6 92. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding  
7 paragraphs as if fully set forth herein.

8 93. The “Co-Ownership Agreement” is the only agreement among and between Ms. Dunye  
9 and Jingtowntown, on the one hand, and Smolowitz and 13th Gen, on the other hand, related to the book  
10 *The Gilda Stories*

11 94. Ms. Dunye and Jingtowntown contend that the Co-Ownership Agreement will expire on  
12 October 31, 2020, and all obligations and rights among and between Ms. Dunye and Jingtowntown, on the  
13 one hand, and Smolowitz and 13th Gen, on the other hand, related to *The Gilda Stories* will expire at  
14 that time.

15 95. Jingtowntown and Ms. Dunye are informed and believe and based thereon allege that  
16 Smolowitz and 13th Gen contend that they must be accorded producer credits on any feature film of *The*  
17 *Gilda Stories* that Jingtowntown or Ms. Dunye make after the Co-Ownership Agreement terminates on  
18 October 31, 2020.

19 96. Based upon the foregoing, there exists an actual dispute or controversy between the Ms.  
20 Dunye and Jingtowntown, on the one hand, and Smolowitz and 13th Gen, on the other hand, with respect to  
21 their rights and duties related to the Co-Ownership Agreement and *The Gilda Stories*.

22 97. Ms. Dunye and Jingtowntown accordingly request a declaration that all obligations and  
23 rights among and between Ms. Dunye and Jingtowntown, on the one hand, and Smolowitz and 13th Gen,  
24 on the other hand, related to *The Gilda Stories* will expire on October 31, 2020.

25 **NINTH CAUSE OF ACTION**  
26 **(Unfair Business Practices: Bus. & Prof. Code §§ 17200 et seq.)**  
27 **(All Plaintiffs Against All Defendants)**

28 98. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding  
29 paragraphs as if fully set forth herein.

99. California’s Unfair Competition Law (the “UCL”), set forth in California Business &

1 Professions Code §§ 17200, et seq., provides that unfair competition shall mean and include any  
2 unlawful and unfair business act or practice.

3 100. Defendants' acts and practices as set forth herein include, but are not limited to, tortious  
4 business practices. These constitute unlawful and unfair business acts and practices under California  
5 Business & Professions Code §§ 17200 *et seq.*, because such acts are unscrupulous, unethical, unfair,  
6 and injurious to Plaintiffs. This constitutes a violation of the UCL.

7 101. As a direct and proximate result of Defendants' unlawful and unfair business acts and  
8 practices, they have been unjustly enriched, and Plaintiffs have suffered monetary harm. Plaintiffs thus  
9 seek disgorgement and restitution of all monies Defendants wrongfully withheld from Plaintiff.

10  
11 WHEREFORE, Plaintiffs pray for an award against Defendants as follows:

12 **On the First Cause of Action**

- 13 1. For damages according to proof;  
14 2. Alternatively, for damages and repossession of the converted property upon election of  
15 remedies at trial by Ms. Dunye and Ms. Juhasz;  
16 3. Compensation for the time and money expended in pursuit of the converted property;  
17 4. For punitive and exemplary damages;

18 **On the Second Cause of Action**

- 19 1. For damages according to proof;  
20 2. Alternatively, for damages and repossession of the converted property upon election of  
21 remedies at trial by Ms. Dunye;  
22 3. Compensation for the time and money expended in pursuit of the converted property;  
23 4. For punitive and exemplary damages;

24 **On the Third Cause of Action**

- 25 1. For compensatory damages according to proof;  
26 2. For punitive damages against Defendants in an amount appropriate to punish or set an  
27 example of Defendants and to deter such conduct in the future, the exact amount of such  
28 damages subject to proof at the time of trial;





