

*D36*  
*Case assigned to Judge Gregory Alarcon*

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**FILED**  
LOS ANGELES SUPERIOR COURT

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8 Attorneys for Plaintiffs Benedict Fitzgerald  
9 and Obabbo, Inc.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES

12 BENEDICT FITZGERALD and OBABBO, )  
13 INC., a corporation, )  
14 ) Plaintiffs,

CASE NO. **BC385291**

15 v.

16 MEL GIBSON, VICKI CHRISTIANSON, )  
17 ICON PRODUCTIONS, LLC, a limited )  
liability company, ICON DISTRIBUTION, )  
18 INC., a corporation, MARQUIS FILMS, )  
LTD, a business organization, form unknown, )  
19 AIRBORNE PRODUCTIONS, INC., a )  
corporation, and DOES 1 through 100 )

COMPLAINT FOR  
FRAUD  
BREACH OF CONTRACT - WRITER'S  
AGREEMENT  
BREACH OF CONTRACT - WRITER'S  
GUILD OF AMERICA AGREEMENT (TO  
PAY RESIDUALS AND HEALTH,  
PENSION, AND WELFARE BENEFITS)  
BREACH OF THE COVENANT OF GOOD  
FAITH - WRITER'S AGREEMENT  
BREACH OF THE COVENANT OF GOOD  
FAITH - WRITER'S GUILD OF AMERICA  
AGREEMENT (TO PAY RESIDUALS AND  
HEALTH, PENSION, AND WELFARE  
BENEFITS)  
UNFAIR BUSINESS PRACTICES  
UNJUST ENRICHMENT  
COMMON COUNT  
ALTER EGO

20 Defendants.  
21  
22  
23  
24

JURY TRIAL DEMANDED

UNLIMITED JURISDICTION  
DAMAGES EXCEED \$25,000

01/08/08 11:00 AM  
RECEIPT # 0204790576  
DATE PAID: 02/11/08 09:31:45 AM  
PAYMENT: 4300.00  
RECEIVED  
CHECKS: 320.00  
CASH:  
CHANGES:  
TENDS:

1 Benedict Fitzgerald (Ben) and Obabbo, Inc. (Obabbo) allege:

2 1. When Ben agreed to write the screenplay of *The Passion* for Mel Gibson (Gibson), he  
3 became, unbeknownst to him, ensnared by a conspiracy of ongoing fraud, including its integral  
4 cover-up, perpetrated by Gibson and his associates, channeled through a complex of Gibson  
5 company conduits, and employing a series of stratagems, all with the express purpose of  
6 depriving Ben of the full fruits of his efforts as the screenwriter of *The Passion*.

7  
8 BACKGROUND

9 2. Ben is an accomplished and experienced screenwriter, with an outstanding reputation  
10 for screen adaptations of literary works. Included among his credits is the widely acclaimed  
11 theatrical motion picture adaptation of *Wise Blood* (Flannery O'Connor's first novel), directed by  
12 John Huston. His successful television adaptations include: Conrad's *Heart of Darkness*,  
13 Capote's *In Cold Blood*, and Melville's *Moby Dick*. Ben's original screenplay based on the life  
14 of F. Scott Fitzgerald's wife, Zelda, is another successful accomplishment.

15 3. Ben comes from a literary and scholarly family. His father, Robert Fitzgerald, was a  
16 professor at Harvard University and translated, in verse, the Homeric epics and Sophocles from  
17 the ancient Greek and Virgil from classical Latin. He was also a member of the American  
18 Academy of Arts and Sciences and was a Guggenheim fellow. Ben's Mother, Sally, one of the  
19 world's leading experts on Flannery O'Connor, edited her collected works and letters. O'Connor  
20 had lived with Ben's parents and their children while writing *Wise Blood*. The Fitzgeralds  
21 inculcated the love of learning, the classics, and literature in their six children.

22 4. Ben spent much of his childhood in Italy with his parents and siblings being schooled  
23 in languages, the classics, and the liberal arts. The Fitzgeralds were devout Catholics and brought  
24 up their children as such. Ben attended Harvard studying history and literature. Before  
25 graduating, he spent a year abroad studying pantomime with Marcel Marceau and Maximilien  
26 Decroux, broadening his studies into the performing arts. Literature, learning, and the arts  
27 characterize Ben's life. Writing is his professional calling.

28 5. During the late 90s, while living and working in Los Angeles, Ben met and worked

1 with Eveleen Bandy (Bandy), a development executive for Icon Productions, LLC (Icon), a  
2 Gibson owned company. Ben, Bandy, and others at Icon worked on two projects - a television  
3 series based on *The Iliad* and a project on the Italian mystic, Padre Pio. During that time, Ben  
4 first met Icon executives Steve McEveety (McEveety) and Bruce Davey (Davey).

5 6. In 1999, Ben moved with his family to Perugia, Italy so that his children could learn  
6 Italian and widen their sense of the world.

7 7. In the Spring of 2001, while Ben was residing in Perugia, Bandy contacted him about  
8 writing a dramatization of *The Passion of Our Lord* (which became *The Passion*) for Gibson.

9 8. Bandy informed Ben that Gibson had wanted for many years to produce and direct a  
10 small independent film on the subject. Gibson was eager to start the project but had to find the  
11 right screenwriter; Bandy had recommended Ben. Bandy told Ben the film's budget was four to  
12 seven million dollars, and that it was a "passion" project for Gibson, a devout, traditional  
13 Catholic. Gibson would finance the film himself thus giving him the creative freedom he  
14 wanted. Gibson was the decision maker concerning *The Passion*, including the amount of money  
15 spent on producing the film.

16 9. Ben had positive preliminary discussions with Bandy and thereafter Gibson called  
17 Ben in Perugia. Ben agreed to meet Gibson in California, and he immediately came out. They  
18 spent time together over five days discussing *The Passion*, their similar backgrounds, and their  
19 common Catholic faith. During those discussions, Gibson repeatedly told Ben that *The Passion*  
20 was a small four to seven million dollar film, and that he would finance the film from his own  
21 funds. It was during these exchanges that Gibson told Ben that, because he was so rich, if the  
22 movie was made and distributed, whatever money might be made would be distributed among  
23 the people, excluding Gibson, who worked on the picture because he, Gibson, did not need the  
24 money. Nor, Gibson stated, did he want money on the back of what he considered a personal gift  
25 to his faith.

26 10. During this time, Ben's agent, Irving Schwartz (Schwartz), negotiated Ben's Writing  
27 Services Agreement (Agreement) with James Meenaghan purportedly on behalf of Marquis  
28 Films, Ltd., just one of the Gibson owned foreign companies involved in the movie. Marquis

1 Films, Ltd. signed the Agreement as "PRODUCER" (Agreement, page 9), even though  
2 Meenaghan was a staff attorney for Gibson's Icon Productions, LLC. The standard contractual  
3 notice provision (Agreement page 8, paragraph 10) required notices to Ben to be in c/o of his  
4 agent and to "Producer" to be in c/o Icon Productions in Los Angeles, California. Further,  
5 nowhere on the main or end titles (credits) of the film does the entity Marquis Films, Ltd. appear,  
6 whether in the capacity of producer or otherwise. Rather, Icon Productions, LLC, produced *The*  
7 *Passion* pursuant to an agreement made on or about June 4, 2002 between Icon Distribution, Inc.  
8 and Icon Productions, LLC, in which Icon Productions, LLC was to act as producer of the  
9 picture. Vicki Christianson (Christianson), each company's operating executive, signed the  
10 agreement for both companies. Icon Productions, LLC produced *The Passion*. Accordingly,  
11 Icon Productions, LLC took credit in the theatrical film titles, in the DVD home video packaging  
12 and the DVD, in commercial advertising, and otherwise, as the actual production company, and  
13 has received over \$17,000,000 in producer fees and costs of production related payments. Ben's  
14 writing services were in fact performed for and used by Icon Productions, LLC, a signatory to the  
15 WGA Basic Agreement (a collective bargaining agreement). The recitation of Marquis as  
16 producer was an artifice designed to evade and to circumvent the collective bargaining  
17 agreement.

18 11. During this negotiation, Meenaghan also told Schwartz that *The Passion* was a small  
19 four to seven million dollar film and accordingly the amount available for a writer's fee was  
20 relatively small. He also stated that Gibson would not take any money from the film.

21 12. After his initial meeting with Gibson, and after having agreed to write the screenplay,  
22 Ben returned to Italy where he began work on the script. Ben received the completed Writing  
23 Services Agreement (Agreement) drafted in the form of a loan out agreement with his company,  
24 Obbabo, Inc. (Obbabo). Ben and Obbabo executed the Agreement and faxed it back.

25 13. Ben completed the first draft and mailed it to Gibson/Icon on September 11, 2001.  
26 Not hearing back from Gibson and attributing it to the after shock of 9/11, Ben, on his own  
27 volition, immediately prepared a substantially revised second draft, adding new creative elements  
28 that occurred to him after the first draft. Ben then flew to Los Angeles, at his own expense, and

1 personally delivered it to Gibson's office. Thereafter, Gibson called Ben and told him he loved  
2 the script and that it moved him to tears. Even after Ben had written and Gibson had read the  
3 script, Gibson in fact repeated the very same oath that whatever money might be made would be  
4 distributed among the other people who worked on the film.

5 14. Gibson immediately ordered the start of pre-production for the film. The project went  
6 forward. The movie was filmed and released. It moved and inspired audiences worldwide, and  
7 became a global, groundbreaking, success.

8 15. Ben, who is married with three children, makes his living as a screenwriter. But in  
9 this instance, because of his background, because of his deep and *personal* religious convictions  
10 (which he believed to be shared by Gibson), and because of his passion for the project, Ben  
11 forewent pursuing other scripts and exclusively devoted the following years of his life to *The*  
12 *Passion*, without requesting or receiving any additional compensation.

13 16. Thus, for example, Ben prepared a third draft of the script, worked on rewrites,  
14 revisions, and polishes, prepared a shooting script and "as shot" script, worked on pre-  
15 production, *i.e.*, scouted locations for filming, worked with local production staff, and the like.  
16 *The Passion* was filmed in Italy. Having spent a great deal of time in Italy, Ben was of great  
17 help, for example, in dealing with local staff and crew, interpreting, and advising on the  
18 photographic look and feel of locations and the production design. Generally, in the motion  
19 picture industry, this results in additional compensation.

20 17. But Ben was committed to the work and believed Gibson's representations, *inter alia*,  
21 that:

- 22 a. *The Passion* was a small four to seven million dollar film;
- 23 b. Gibson was not taking any money from the film;
- 24 c. If *The Passion* was made and distributed, whatever money might be made would  
25 be distributed among the people who worked on the picture other than Gibson;
- 26 d. Gibson was motivated by his desire to give back to his faith.

27 18. Because Gibson yet again reiterated that he would not take money from the film, and  
28 he wanted only that the film did not kill his career, Ben, too, was willing to sacrifice.

## NATURE OF ACTION

1  
2 19. Ben agreed to a relatively small salary (by Hollywood standards) to write *The*  
3 *Passion*. The writing credit which was anticipated to be solely his, that is, not shared with or in  
4 collaboration with anybody else, would surely serve to enhance his career. The collective  
5 bargaining agreement between the Writer's Guild of America (WGA) and producers generally  
6 governs terms and conditions of a writer's services. The WGA has jurisdiction when a producer  
7 is a signatory or is a joint principal or employer with a signatory. Defendants' flimsy and failed  
8 attempt to circumvent fails. Even though the Gibson Empire caused Marquis Films, Ltd. to be a  
9 titular signatory to the writing services agreement with Ben, this does not serve to insulate Icon  
10 Productions, LLC from the terms and conditions of the WGA agreement. The writing services  
11 agreement with Ben did require WGA credit guidelines to govern. But even this aspect was  
12 mocked by Defendants.

13 20. Ben's Agreement provided that if Ben received sole writing credit, he would receive a  
14 production bonus of \$75,000 and an additional \$75,000 if the picture broke even. No one else  
15 provided writing services for the film. Often, if there are "problems" with the script, additional  
16 writers are brought in. That did not occur here. Ben was the sole writer of *The Passion*.

17 21. Because of the length of time Ben expended on the project, including very substantial  
18 non-compensated post-writing work, he experienced substantial cash flow problems. His  
19 dedication trumped fiscal self-interest.

20 22. Ben thereupon requested payment of the \$75,000 production bonus because the film  
21 was about to go into production and it was clear that no other writer would be working on the  
22 script. However, Ben was falsely told by McEveety, now a producer of *The Passion*, that any  
23 such sum was not due unless and until the film had "broken even" after being placed into  
24 distribution. In truth, there was to be a separate \$75,000 bonus if the movie broke even. The  
25 first bonus was to have occurred when the final writing credits were determined.

26 23. McEveety further stated that Icon Productions, LLC would advance the \$75,000  
27 production bonus if Ben was willing to share the writing credit with Gibson. *The bonus had*  
28 *already been earned*. Nevertheless, Ben, in desperation, instructed his agent to arrange for an

1 amendment to the contract which would reflect the coercion. Gibson seized upon his goal to  
2 evade Writer's Guild jurisdiction to act as he did. Had Ben received his rightful sole writing  
3 credit, the positive impact accruing to his career would have been substantial.

4 24. The initial draft of the amendment tried to further cheat Ben. It purported to limit the  
5 production bonus to \$37,500 instead of the contractually required \$75,000.

6 25. Ben notified his agent of the deception, the amendment was corrected, and Ben  
7 received the \$75,000 sum because he permitted writing credit to be shared with Gibson. But Ben  
8 had thrown himself into the project to such an extreme over the course of three years (he started  
9 writing in early 2001 and filming was not completed until 2003), that the \$75,000 received in late  
10 2002 could not sustain him. Necessarily, he had to borrow \$200,000 from defendant in  
11 December 2003, collateralized by his interest in the film's revenues.

12 26. Gibson did not limit his expropriation to credit alone.

13 27. From the very beginning of their relationship in 2001, and continuously, incessantly,  
14 and defiantly through the present time, Gibson, his owned and associated entities, and his  
15 representatives and associates have engaged in a chronic and conspiratorial pattern of deceit.

16 28. Gibson preyed monetarily on Ben, taking advantage of his unbridled enthusiasm for  
17 the project and with full cognizance of Ben's fundamental *personal* and spiritual beliefs. In  
18 making a mockery of his own purported belief system, Gibson callously and greedily exploited  
19 Ben. He shamelessly minted and cobbled gobbles of money from *The Passion*. And just as  
20 Gibson extracted shared screenplay credit from Ben, he also extracted sums of money due Ben.  
21 This fraudulent intention was implemented at the inception of the relationships between the  
22 parties, has continued throughout, and the perpetration of fraud persists today.

23 29. As is common in the motion picture industry, Ben's agent negotiated for a contingent  
24 participation based on defined revenues – in this case 5%. No one anticipated the gargantuan  
25 financial success of this film. So, the Gibson Empire employed methods to render the 5% a  
26 mirage so as to reduce Ben's monetary participation.

27 30. Gibson and his representatives had initially represented to Ben production costs of the  
28 film; i.e., it was to be a \$4 to \$7 million movie. But the participation statements, upon which

1 Ben's contingent compensation is based, listed the production cost at a purported \$50,000,000.  
2 And yet the internet encyclopedia, *Wikipedia*, lists the production costs at \$25,000,000. Other  
3 internet publications such as MOJO and IMDbPro list production costs at \$30,000,000. *Forbes*  
4 also places the production cost at \$30,000,000. *Wikipedia* pegged the costs for advertising and  
5 striking prints at \$10,000,000 whereas Gibson's company, Icon Productions, LLC, reported these  
6 costs in excess of \$110,000,000. The \$50,000,000 and the \$110,000,000 are deducted against  
7 defined revenues before calculating Ben's participation amount. The aggregate differential of at  
8 least \$120,000,000 yields \$6,000,000 of unpaid contingent compensation due Ben.

9 31. Gibson was not to be a revenue participant. This is what he and his representatives  
10 falsely told Ben and his agent. It rather turned out there was a myriad of contracts and  
11 accounting devices conferring upon Gibson and his companies multi-millions of dollars of fees  
12 for supervision, fees for directing, fees for producing the picture, added to which are double  
13 dipping, overcharging, underreporting, *et al.* Thus, Gibson who repeatedly stated that he would  
14 take nothing, took \$5,000,000 just to direct, together with 10% of the gross from the first dollar  
15 received from third party distributors and sub-distributors. Gibson's companies took another 5%  
16 of gross revenues. All of this was discovered during the audit initiated on or about March 1,  
17 2006.

18 32. There are also fees for overhead, charges for interest which continued to accrue even  
19 when production costs had been recouped, duplicate fees buried under different labels, and fees  
20 for distribution (even though sub-distributors actually distributed the feature). This skimming  
21 added further hundreds of millions to the Gibson Empire, and was not discovered until the audit  
22 was initiated on or about March 1, 2006. This labyrinth was designed and operated to and did  
23 outrageously reduce Ben's participation, further lining Gibson's already stuffed pockets.

24 33. Gibson was not content to enjoy the hundreds of millions of dollars that *The Passion*  
25 otherwise brought to him, nor was he satisfied with having used his enormous bargaining power  
26 to contractually limit Ben's contingent participation in defining the manner in which proceeds  
27 were calculated. As discovered during the audit, Gibson also chose to engage in fraud and to  
28 cleave away monies from Ben. As determined to date, this staggering fraud and manipulation, all

1 by itself, has benefited the Gibson Empire in the hundreds of millions of dollars.

2 34. At least the following Gibson companies had the appearance of being involved  
3 and/or were involved in the production, distribution, and/or receipt of monies from *The Passion*:  
4 Icon Productions, LLC, Icon Distribution, Inc., Icon Film Distribution, Marquis Films, Ltd., and  
5 Airborne Productions, Inc.

6 35. Gibson and his companies were contractually obligated to provide Ben with  
7 participation statements on a prescribed periodic basis. These statements were to show "in as  
8 much detail as is customarily given to participants by the United States major motion picture  
9 studios in equivalent statements, the appropriate calculations" of the contingent compensation  
10 due to Ben. Not only were the participation statements not timely rendered on a consistent basis,  
11 they do not provide the requisite detail, and are nothing but naked skimpy raw recitations of  
12 unsupported numbers totally inconsistent with industry standards. The participation statements  
13 were such that their content and meaning could be discerned only upon the audit.

#### 14 THE AUDIT

15 36. Not sated with perpetrating the fraud already described, defendants engaged in acts to  
16 conceal the fraud. *What defendants could not conceal was the enormously successful box office*  
17 *performance of the picture.* Thus, Ben was compelled, at great expense, to attempt an audit of  
18 the Gibson Empire books. Said audit, begun about March 1, 2006, has been ongoing for almost  
19 two years.

20 37. The audit remains incomplete because of a plethora of impediments designed to  
21 interfere with Ben's discovering the facts of the fraud, and rather, to discourage him and make  
22 him go away. Indeed, Icon Productions, LLC's COO, Christianson, during the course of Ben's  
23 audit of *The Passion*, did remark they hoped that Ben would just go away.

24 38. Ploys used to divert, obscure, and delay the payment of monies to Ben, and being  
25 overt acts in the conspiracy to defraud him and to conceal the fraud, include the refusal to allow  
26 Ben's experienced entertainment auditors to photocopy documents, entailing their spending  
27 expensive professional time making notes and hand inputting information into computers.  
28 Records could not be "found" or were provided piecemeal resulting in partial gathering of

1 information and very long intervals between return trips to Icon as dictated by the conspirators.  
2 Distribution entities within the Gibson Empire unduly delay reporting. Remarkably, defendants  
3 did not collect from Gibson owned distribution affiliates until confronted during the audit  
4 process. Auditing of sub-distributors has been delayed. Data necessary to calculate interest due  
5 to Ben has been arbitrarily refused despite repeated demand. Gibson Empire personnel have  
6 refused to respond concerning discovered improprieties, passing the buck to others, who are  
7 unavailable, or who pass the buck back.

8 39. Notwithstanding the conduct engaged in by the Gibson Empire during the audit, it has  
9 already been conclusively established that the participation statements, exclusive of the false  
10 misrepresentation of Gibson not taking money from the film, were off by a sum in excess of  
11 \$30,000,000. And this, from an occluded audit.

#### 12 THE CONSPIRACY

13 40. As set forth in the preceding and following paragraphs, from the beginning of the  
14 relationship in 2001, Gibson, McEveety, Christianson, and Does 1 - 100 agreed and conspired to  
15 fraudulently deprive Ben of the full fruits of his efforts as the screenwriter of *The Passion* and to  
16 conceal their fraud through a cover-up. These include the described fraudulent acts and the  
17 further overt acts of the issuance of fraudulent cumulative participation statements which  
18 continue through the most recent one issued in December 2007, and cover-up acts perpetrated in  
19 the audit continuing to the present.

#### 20 PARTIES - JURISDICTION

21 41. Plaintiff, Benedict Fitzgerald, is a resident of the Los Angeles County, California.  
22 Tortious acts herein complained of committed against plaintiff occurred in Los Angeles County,  
23 California.

24 42. Plaintiff, Obbabo, Inc., is a California corporation doing business in Los Angeles  
25 County, California. Tortious acts herein complained of committed against plaintiff occurred in  
26 said county and state.

27 43. Defendant, Mel Gibson, at the times herein relevant, was a resident of Los Angeles  
28 County, California. Tortious acts herein complained of committed by said defendant occurred in

1 said county and state.

2 44. Defendant, Vicki Christianson, at all times herein relevant, was a resident of Los  
3 Angeles County, California. Tortious acts herein complained of committed by said defendant  
4 occurred in said county and state.

5 45. Defendant, Icon Productions, LLC., at all times herein relevant was a limited liability  
6 company, with its principal place of business in Los Angeles County, California. Tortious acts  
7 herein complained of by said defendant occurred in said county and state.

8 46. Defendant, Icon Productions, Inc., at all times herein relevant was a limited liability  
9 company, with its principal place of business in Los Angeles County, California. Tortious acts  
10 herein complained of by said defendant occurred in said county and state.

11 47. Defendant, Marquis Films, Ltd., at all times herein relevant was a business  
12 organization, form unknown, and conducted business in Los Angeles County, California.  
13 Tortious acts herein complained of by said defendant occurred in said county and state.

14 48. Defendant Airborne Productions, Inc., at all times herein relevant was a corporation,  
15 with its principal place of business in Los Angeles County, California. Tortious acts herein  
16 complained of by said defendant occurred in said county and state.

17 49. The true names and capacities, whether individual, corporate, associate or otherwise,  
18 of defendants Does 1 through 100 are unknown to plaintiff who therefore sues such defendants by  
19 such fictitious names and will amend this complaint to show their true names and capacities when  
20 ascertained. Each such defendant participated in some manner in the events or happenings  
21 complained of, or conspired or agreed to do, or is otherwise responsible for the wrongs and  
22 damages complained of.

23 50. At times herein relevant, certain named defendants and their co-defendants were the  
24 agents, servants, employees, co-conspirators, joint venturers, partners, representatives, aiders and  
25 abettors, guarantors, indemnitors, and/or sureties one of the other and were acting herein within the  
26 scope of their authority within such relationships, and with the permission, consent and knowledge  
27 of their co-defendants, or ratified such action.

28

FIRST CAUSE OF ACTION FOR FRAUD  
AGAINST ALL DEFENDANTS

1  
2  
3 51. The allegations of paragraphs 1 through 100 are incorporated herein by reference.

4 52. During or about the Spring of 2001, Gibson, McEveety, Christianson, and Does 1  
5 through 100 entered into an agreement and conspiracy to defraud Ben, screenwriter of *The*  
6 *Passion* for Gibson, of the full fruits of his efforts as its screenwriter and then to cover it up. The  
7 representations made by any of the foregoing individuals are the representations of all.

8 53. During the Spring of 2001, Bandy, then an executive and managing agent of Icon  
9 Productions, LLC, and also acting as a conduit for Gibson, orally represented to Ben that Gibson  
10 wanted to produce and direct an independent film concerning *The Passion* of Jesus Christ and  
11 that it was a small four to seven million dollar film. Bandy solicited Ben to act as the writer of  
12 the screenplay for *The Passion*.

13 54. During the Spring of 2001, Gibson orally represented to Ben that he wanted to  
14 produce and direct a small film concerning *The Passion* of Jesus Christ and that it would be a  
15 small four to seven million dollar film. Gibson solicited Ben to act as the writer of the  
16 screenplay for *The Passion*. As part of the solicitation, Gibson also represented to Ben that he  
17 was very rich, wanted to give something back to his faith, and would not be paid for or take any  
18 money from the film. Gibson also represented that if *The Passion* was made and distributed,  
19 whatever money might be made would be distributed among the people who worked on the  
20 picture, exclusive of himself.

21 55. During the Spring of 2001, Ben's agent, Irving Schwartz (Schwartz), discussed Ben's  
22 Writing Services Agreement (Agreement) with Bandy, Paul Green (Green), and James  
23 Meenaghan (Meenaghan), an attorney for Gibson and Marquis Films, Ltd. It was Meenaghan  
24 who negotiated Ben's Agreement in Los Angeles on behalf of Marquis Films, Ltd. while in fact  
25 acting as a conduit for Gibson. Each of said persons represented to Schwartz, Ben's agent that  
26 *The Passion* was a small four to seven million dollar film and that Gibson would not be taking  
27 any money from the film. Each of the persons made his/her representations at different times  
28 during the Spring of 2001. Meenaghan also represented that they could not meet Ben's price in

1 that the budget allowed only for a small writer's fee.

2 56. As of about May 1, 2001, Marquis Films, Ltd., through its producer, acting as a  
3 conduit for Gibson, represented to Ben in the written Agreement that another of Gibson's  
4 companies would distribute *The Passion* (Distributor). The agreement further provided that the  
5 Distributor would report the contingent compensation due to Ben, and Distributor would render  
6 to Ben "periodic statements showing in as much detail as is customarily given to participants by  
7 the United State major motion picture studios in equivalent statements, the appropriate  
8 calculations" of the contingent compensation due together with the payment required thereby.

9 57. About or after June 28, 2004, and continuing periodically thereafter about or after  
10 September 29, 2004, December 30, 2004, March 31, 2005, June 30, 2005, September 29, 2005,  
11 January 13, 2006, May 2, 2006, August 11, 2006, October 3, 2006, February 2, 2007, June 29,  
12 2007 and through December 2007, Christianson prepared fraudulent written cumulative  
13 participation statements and caused Icon Productions, LLC to transmit them to Ben. As  
14 discovered during the audit, multi-dollar gross participations were conferred upon Gibson and  
15 Icon Productions, LLC, which had the effect to significantly diminish the amount of Ben's  
16 percentage participation. These facts were concealed from Ben, contrary to express  
17 representations that Gibson and related entities would not be taking any money from the film.  
18 Gibson, directly and through his owned companies, also took other deductions not permitted by  
19 the Agreement, double dipped deductions, and underreported revenues thereby drastically  
20 reducing Ben's contingent compensation. Such false participation statements were further overt  
21 acts in the course of the conspiracy against Ben.

22 58. The representations were false at the time they were made and the individuals  
23 making them, or transmitting them through another, knew they were false when made.

24 59. The representations were made by the persons making them or transmitting them  
25 through another with the intent to deceive and to induce Ben's reliance in acting as the writer of  
26 the screenplay of *The Passion*. He did so act and accepted a salary substantially less than what  
27 he would have taken had he known the true budget for the film.

28 60. Ben reasonably relied to his detriment on the representations of Bandy (as a conduit

1 for Gibson), Green, and Meenaghan (as a conduit for Gibson), transmitted through Schwartz,  
2 Ben's agent, as follows.

- 3 a. Ben knew and trusted Bandy, with whom he had a prior working relationship.
- 4 b. Ben believed that Gibson was sincere and would not subvert his professed  
5 religious beliefs and faith for money.
- 6 c. Green was acting on behalf of Gibson, whom Ben trusted and Green was  
7 associated with Bandy and Gibson, whom Ben trusted.
- 8 d. Meenaghan was an attorney for Gibson and Marquis Films, Ltd., a Gibson  
9 company, and he consistently reiterated what other trusted persons had  
10 communicated.
- 11 e. Christianson was associated with Gibson, whom Ben trusted.

12 61. All such acts constituted overt acts in furtherance of the conspiracy to defraud  
13 which included a cover-up of the conspiracy.

14 62. The facts were that: whether *The Passion* turned out to have a Gibson "reported"  
15 budget of \$50,000,000, or more, or the \$25,000,000 to \$30,000,000 budget as reported by  
16 multiple other sources, in either event, a higher writing fee would have been generated for Ben.  
17 Gibson, directly or through his owned companies, did in fact take hundreds of millions of dollars  
18 from *The Passion* and falsely deducted hundreds of millions of dollars in calculating Ben's  
19 contingent compensation. Notwithstanding the representations, Gibson, directly and indirectly  
20 took hundreds of millions of dollars that he said would go to other people who worked on the  
21 picture.

22 63. It turned out that the rendered statements were naked skimpy summaries  
23 inconsistent with industry standards and the provided figures were false by tens of millions of  
24 dollars to Ben's detriment. The statements were further false in that they included overcharges  
25 and duplicate charges by deducting fees and costs under different labels for the same or no work.  
26 Nor did the statements provide sufficient information so as to enable Ben to discern that major  
27 manipulation had occurred. This was not perceptible until after the audit commenced on or about  
28 March 1, 2006.

1 64. As a direct legal result, Ben has been damaged in a sum to be proved to the court,  
 2 in the millions of dollars.  
 3 65. Because of defendants' fraud, Ben is entitled to exemplary damages in a sum to be  
 4 proved to the court.

5 SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT  
 6 WRITER'S AGREEMENT AGAINST DEFENDANTS  
 7 ICON PRODUCTIONS, LLC, MARQUIS FILMS, LTD AND DOES 1-100

8 66. The allegations of paragraphs 1 through 50 are fully incorporated herein by  
 9 reference.

10 67. Effective as of May 1, 2001, Marquis Films, Ltd. at Gibson's direction, entered into  
 11 a written agreement with Ben Fitzgerald and his loan out company Obbabo, Inc., through Ben, its  
 12 president, whereby Ben was to perform writing services for the motion picture, *The Passion*. The  
 13 Agreement was executed by Ben for himself and for his loan out company, but the signature on  
 14 behalf of Marquis Films, Ltd is undecipherable. Although Marquis Films, Ltd. was styled as the  
 15 producer, Icon Productions, LLC in fact produced the film, albeit absent the contractually  
 16 required assignment from Marquis Films, Ltd. Regardless, defendants conducted themselves as  
 17 if such assignment had been made.

18 68. The Agreement provided in material part that Obbabo, for Ben's writing serv  
 19 would receive contingent compensation of 5% of Defined Proceeds of the picture, as set for  
 20 the Agreement.

21 69. The Agreement further provided in material part that Obbabo, for Ben's  
 22 services, was to be provided with participation statements on a quarterly periodic basis  
 23 years and semi-annually thereafter. These statements were to show "in as much c  
 24 customarily given to participants by the United State major motion picture studios in  
 25 statements, the appropriate calculations" of the contingent compensation due to Be  
 26 were the participation statements not timely rendered on a consistent basis, they c  
 27 the requisite detail, and are nothing but naked skimpy raw recitations of unsup  
 28 totally inconsistent with industry standards.

1 70. Obbabo and Ben have done all things required of them under the Agreement.

2 71. Defendants, including Marquis Films, Ltd. and its common principal, Icon  
3 Productions, LLC, have failed and refused to meet their obligations to fully pay the contingent  
4 compensation due and have breached the Agreement.

5 72. As a direct legal result, Obbabo and Ben have been damaged in a sum to be proved.

6 THIRD CAUSE OF ACTION FOR BREACH OF CONTRACT - WRITER'S GUILD OF  
7 AMERICA AGREEMENT (TO PAY RESIDUALS AND HEALTH, PENSION, AND  
8 WELFARE BENEFITS) AGAINST DEFENDANTS ICON PRODUCTIONS, LLC AND  
9 MARQUIS PRODUCTIONS, INC. AND DOES 1-100

10 73. The allegations of paragraphs 1 through 50 are fully incorporated herein by  
11 reference.

12 74. At all times relevant herein, Ben was a member in good standing in the Writer's  
13 Guild of America (Guild). He was the screenwriter of *The Passion*. Icon Productions, LLC  
14 acted as the producer of the motion picture based on Ben's script of *The Passion*.

15 75. At all times herein relevant, the Guild and Icon Productions, LLC were signatories  
16 to a collective bargaining agreement covering Guild members, as third party beneficiaries,  
17 including Ben, that covered terms of employment including entitlement to residuals.

18 76. Residuals are compensation paid for the *reuse* of a credited writer's work, including  
19 exhibition on television and exploitation in other markets such as home video.

20 77. Icon Productions, Inc. and Marquis Films, Ltd. were common principals and, in  
21 effect Ben's employers, in that they had common ownership, common management, common  
22 control, and interrelated operations, with a common business purpose. The obligations of  
23 Marquis Films, Ltd. were also the obligations of Icon Productions, LLC.

24 78. Pursuant to the collective bargaining agreement Ben is to receive residuals on home  
25 video arising from theatrical projects (motion pictures produced for exhibition in theaters) after  
26 February 28, 1985 in the amount of 1.5% of the first million dollars of Defendant's reportable  
27 gross (or "Producer's Gross") and 1.8% thereafter. The said sums are due within sixty days of  
28 the end of the quarter in which gross receipts or licensing fees are received by defendant.

1 Discovery of the entitled residuals did not occur until the audit that was initiated about March 1,  
2 2006.

3 79. Ben is further entitled to 1.2% of distributor's gross receipts for world wide reuse  
4 of the motion picture's exhibition on pay and free television.

5 80. Ben is further entitled to 1.2% of distributor's gross receipts for world wide reuse  
6 of the motion picture's exhibition on basic cable.

7 81. Also pursuant to the collective bargaining agreement, Ben is to receive health,  
8 pension, and welfare benefits that the producer signatory is obligated to make.

9 82. Ben has performed all of his contractual obligations.

10 83. Defendants have breached the agreement by failing and refusing to pay any sums to  
11 Plaintiff as and for residuals and benefits which sum is not less than \$400,000 and is believed to  
12 exceed \$5,000,000.

13 84. As a direct legal result, Ben has been damaged in a sum in excess of \$5,000,000.

14 FOURTH CAUSE OF ACTION FOR BREACH OF THE COVENANT  
15 OF GOOD FAITH - WRITER'S AGREEMENT AGAINST DEFENDANTS  
16 ICON PRODUCTIONS, LLC, MARQUIS FILMS, LTD, AND DOES 1-100

17 85. The allegations of paragraphs 1 through 50 and 67 through 71 are fully incorporated  
18 herein by reference.

19 86. The covenant of good faith and fair dealing inheres in every agreement that no party  
20 may do anything that will have the effect of destroying or injuring the right of another party to  
21 receive the fruits of the contract.

22 87. By such acts concerning the incomplete payment of contingent compensation and  
23 interfering with the audit, Marquis Films, Ltd. and Icon Productions, LLC, have breached the  
24 implied covenant of good faith and fair dealing inherent in every agreement.

25 88. As a direct legal cause, Obbabo and Ben have been damaged in a sum to be proved.

26 FIFTH CAUSE OF ACTION FOR BREACH OF THE COVENANT OF GOOD  
27 FAITH - WRITER'S GUILD OF AMERICA AGREEMENT (TO PAY RESIDUALS AND  
28 HEALTH, PENSION, AND WELFARE BENEFITS) AGAINST DEFENDANTS ICON

1                    PRODUCTIONS, LLC, MARQUIS FILMS, LTD. AND DOES 1-100

2            89. The allegations of paragraphs 1 through 50 and 74 through 83 are fully incorporated  
3 herein by reference.

4            90. Icon Productions, Inc. and Marquis Films, Ltd. were common principals and, in  
5 effect Ben's employers, in that they had common ownership, common management, common  
6 control, and interrelated operations, with a common business purpose. The obligations of  
7 Marquis Films, Ltd. were also the obligations of Icon Productions, LLC.

8            91. The covenant of good faith and fair dealing inheres in every agreement that no party  
9 may do anything that will have the effect of destroying or injuring the right of another party to  
10 receive the fruits of the contract.

11           92. By such acts concerning the incomplete payment of contingent compensation and  
12 interfering with the audit, Marquis Films, Ltd. and Icon Productions, LLC, have breached the  
13 implied covenant of good faith and fair dealing inherent in every agreement.

14           93. As a direct legal cause, Obbabo and Ben have been damaged in a sum to be proved.

15                    SIXTH CAUSE OF ACTION FOR UNLAWFUL, UNFAIR, AND  
16                    FRAUDULENT BUSINESS PRACTICES AGAINST ALL DEFENDANTS

17           94. The allegations of paragraphs 1 through 93 are fully incorporated herein by  
18 reference.

19           95. Defendants accordingly engaged in unlawful, unfair and fraudulent business practices  
20 prohibited by Business and Professions Code §17200.

21           96. There is a direct legal causal connection between defendants' acts and their having  
22 unjustly profited and having enriched themselves at plaintiffs' expense. Defendants are obligated to  
23 and should disgorge and restore to plaintiffs, the value of the script according to the true budget of  
24 *The Passion* and a full 5% of Defined Proceeds of the film exclusive of all gross participations,  
25 supervision fees, director and producer fees, double billed, and overcharged items, overhead  
26 concerning advertising, unreported revenues held by or paid to or for Gibson and his companies,  
27 separately unpaid residual compensation, and other identified improprieties together with other  
28 improprieties as may be discovered.

1 97. Because the acts were made with the intent to injure plaintiffs and were despicable  
2 conduct carried out with conscious disregard of his rights, and further despicable conduct that  
3 subjected plaintiffs to cruel and unjust hardship in conscious disregard of his rights, they  
4 constitute malice and oppression and plaintiffs are entitled to exemplary or punitive damages as  
5 proved.

6 SEVENTH CAUSE OF ACTION FOR UNJUST ENRICHMENT

7 AGAINST ALL DEFENDANTS

8 98. The allegations of paragraphs 1 through 93 are fully incorporated herein by  
9 reference.

10 99. As a result of such actions, defendants have been unjustly enriched at plaintiffs'  
11 expense, and plaintiffs are entitled to the disgorgement of the value of 5% of 100% of Defined  
12 Proceeds of the film exclusive of all gross participations, supervision fees, director and producer  
13 fees, double billed and overcharged items, overhead concerning advertising, and unreported  
14 revenues held by or paid to or for Gibson and his companies.

15 EIGHTH CAUSE OF ACTION FOR COMMON COUNT

16 AGAINST ALL DEFENDANTS

17 100. The allegations of paragraphs 41 through 50 are fully incorporated herein by  
18 reference.

19 101. Defendants are indebted to plaintiffs for the value of providing services to and for the  
20 benefit of defendants in the production of *The Passion* for which they have not been compensated.

21 102. Defendants are accordingly indebted to plaintiffs in a sum to be proved to the court,  
22 plus interest.

23 NINTH CAUSE OF ACTION FOR ALTER EGO AGAINST ALL DEFENDANTS

24 103. The allegations of paragraphs 1 through 101 are fully incorporated herein by  
25 reference.

26 104. Despite Marquis Films, Ltd. being identified as the production company for *The*  
27 *Passion*, another Gibson owned company, Icon Productions, LLC was contracted to act as  
28 producer of the film by Icon Distribution, Inc. Although Marquis Films, Ltd. had the right to

1 assign the production rights, it was discovered that no such assignment was made to Icon  
2 Distribution, Inc., Icon Productions, LLC or any other person or entity.

3 105. The veil between Gibson and his owned and/or controlled companies should be  
4 pierced, the entity should be disregarded, and Gibson should be held liable for the debts and  
5 obligations of such companies for the following reasons: the companies were used as  
6 instrumentalities in a conspiracy of fraud to deprive plaintiffs of their full compensation in their  
7 dealings with Gibson and his companies, and further to cover-up such fraud and to increase the  
8 expense of discovering such fraud; the organization of each such company was not complete;  
9 each such company was under the domination and control of Gibson, there was no distinctness  
10 between him and his companies, and Gibson and his companies had a unity of interest; the  
11 companies failed to follow legal formalities such as providing an assignment of the rights to the  
12 screenplay of *The Passion* from Marquis Films, Ltd. to the producing company, Icon  
13 Productions, LLC.

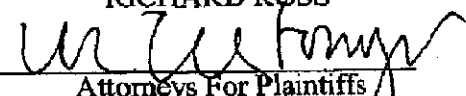
14 106. It would sanction a fraud and promote injustice to uphold the entities and to allow  
15 their owner, Gibson, to escape personal liability for their debts.

16 107. Plaintiffs are therefore entitled to orders disregarding the company entities and  
17 declaring Gibson personally liable for their debts.

18 WHEREFORE, Plaintiffs pray for special, general and exemplary damages, career  
19 enhancement damages, the imposition of a constructive trust, restitution, disgorgement, orders  
20 disregarding the defendant company entities and judging and declaring defendant Gibson  
21 responsible for their debts, interest pursuant to Civil Code § 3291 and as otherwise available, costs  
22 of suit, and such other relief as the Court deems proper.

23 Plaintiffs' claims are based on California law and plaintiffs do not herein pursue any rights  
24 available to them under federal law.

25 Dated: February 11, 2008

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W.L. ZELTONOGA  
RICHARD ROSS  
  
Attorneys For Plaintiffs  
Benedict Fitzgerald and  
Obbabo, Inc.

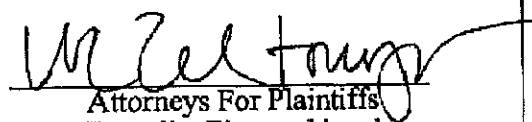
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DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury.

Dated: February 11, 2008

W.L. ZELTONOGA  
RICHARD ROSS



Attorneys For Plaintiffs  
Benedict Fitzgerald and  
Obbabo, Inc.

