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DAVID T. LOFTUS

**FILED**  
LOS ANGELES SUPERIOR COURT

OCT SEP 18 2007

JOHN A. CLARKE, CLERK

BY

*[Signature]*  
JULIA ROJAS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES - WEST BRANCH**

DAVID T. LOFTUS, an individual,  
Plaintiff,

v.

GARY KARLIN MICHELSON, M.D., an  
individual; THE FOUND ANIMALS  
FOUNDATION; a California corporation; GKM  
CAPITAL, INC., a California corporation; and  
DOES 1 to 10, inclusive,

Defendants.

CASE NO. SC095697

COMPLAINT FOR: LINDA K. LEFKOWITZ

1. BREACH OF CONTRACT;
2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;
3. DEFAMATION - SLANDER PER SE;
4. FRAUD AND DECEIT;
5. INVASION OF PRIVACY; AND
6. UNJUST ENRICHMENT

INITIAL CASE MANAGEMENT REVIEW  
AND CONFERENCE

FEB 04 2008

Plaintiff David T. Loftus herein alleges as follows:

**PARTIES**

1. Plaintiff David T. Loftus ("**Plaintiff**") was and is an individual residing in the County of Kitsap, in the State of Washington. Plaintiff is and has been at all material times hereto co-founder and President of Pet Ark, Inc. ("**Pet Ark**"), which is an innovator of technologies and tools for animal welfare organizations.

2. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, defendant Gary Karlin Michelson ("**Michelson**") was an individual residing in the County of Los Angeles, State of California with his principal place of business located in the County of Los Angeles.

1           3.       Plaintiff is informed and believes and thereupon alleges that at all times herein  
2 mentioned, defendant The Found Animals Foundation ("**Foundation**") was and is a nonprofit  
3 corporation formed and existing pursuant to the laws of the State of California, with its principal  
4 place of business located in the County of Los Angeles.

5           4.       Plaintiff is informed and believes and thereupon alleges that defendant Michelson is  
6 the president and founder of defendant Foundation. Michelson directed and authorized the acts and  
7 omissions of the Foundation that are hereinafter alleged.

8           5.       Plaintiff is informed and believes and thereupon alleges that at all times herein  
9 mentioned, defendant GKM Capital, Inc. ("**GKM**"), was and is a corporation formed and existing  
10 pursuant to the laws of the State of California, with its principal place of business in the County of  
11 Los Angeles.

12          6.       Plaintiff is informed and believes and thereupon alleges that Michelson directed and  
13 authorized the acts and omissions of GKM that are hereinafter alleged.

14          7.       The true names, capacities, and identities of defendants designated herein as DOES 1  
15 through 10 ("**DOE Defendants**") are unknown to Plaintiff, who therefore sues said defendants by  
16 fictitious names. Plaintiff will amend this Complaint to set forth their true names, capacities, and  
17 identities when ascertained. Plaintiff is informed and believe and thereupon alleges that each of the  
18 DOE Defendants proximately and legally caused the injuries and damages suffered by Plaintiff as  
19 alleged herein. (Defendants Michelson, Foundation, KGM, and the DOE Defendants are sometimes  
20 hereinafter collectively referred to as the "**Defendants.**")

21          8.       Plaintiff is informed and believes and thereon alleges that in connection with the acts  
22 and omissions alleged herein, DOE Defendants and some or all of the named defendants entered into  
23 a partnership, employment, conspiracy, joint venture and/or principal/agent relationship to carry out  
24 the acts and omissions herein alleged. At all times material hereto, such DOE Defendants have been  
25 and continue to be employees, agents, co-conspirators, partners, employers, principals and/or joint  
26 venturers, of each of the named defendants, or one or more of them, acting and omitting to act as  
27 alleged herein both on their own behalf and on behalf of their employees, agents, co-conspirators,  
28 partners, employers, principals and/or joint venturers; within the course and scope and pursuant to



1 their employment, agency, conspiracy, joint venture and/or partnership; and with the authorization,  
2 direction, consent, ratification and adoption of their employers, principals, joint venturers, partners,  
3 employees, agents and/or co-conspirators.

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

5 9. In or around October 2005, Michelson orally represented to Plaintiff that he planned  
6 to form a charitable foundation to promote a “no kill” policy in animal shelters throughout Los  
7 Angeles, and eventually, nationwide. Implementation of a “no kill” policy would prevent the  
8 euthanasia of healthy and otherwise adoptable pets.

9 10. Michelson knew of Plaintiff’s expertise in operating animal welfare organizations and  
10 solicited his advice, counsel, and participation in establishing the Foundation. He asked for Plaintiff’s  
11 guidance regarding recruiting an executive director, starting up the foundation and how to best  
12 accomplish the goal of implementing a “no kill” policy in Los Angeles. Michelson showed Plaintiff  
13 that he had four million dollars (\$4,000,000.00) available as start-up funding for the Foundation.

14 11. Michelson asked Plaintiff to introduce him to prominent animal welfare advocates to  
15 promote the Foundation and recruit an executive director. In exchange for the introductions and  
16 guidance, Michelson promised to reimburse Plaintiff for reasonable expenses incurred in providing  
17 the assistance, including travel expenses. Plaintiff arranged the meetings and he and Michelson met  
18 with prominent animal welfare advocates.

19 12. Michelson told Plaintiff that he had agreed to fund seven (7) spay and neuter clinics  
20 and donate a million dollars to the City of Los Angeles (“City”) as incentive for Ed Boks, a proponent  
21 of the “no kill” policy, to head the Department of Animal Control. Plaintiff advised Michelson that a  
22 million dollars would not be enough money. Other animal welfare advocates agreed, and Michelson  
23 promised to donate ten million dollars (\$10,000,000.00) to implement a “no-kill” policy in Los  
24 Angeles. Michelson promised City officials, including Mayor Antonio Villarigosa and Deputy Mayor  
25 Jimmy Blackman, that if Ed Boks were to be hired as head of the Department of Animal Control, he  
26 would donate ten million dollars to the Department and millions more to animal welfare agencies and  
27 animal rescue groups. Plaintiff worked with Michelson’s investment firm, GKM, to create a budget  
28 for the Foundation.

1           13.     Michelson further expressed interest in acquiring Plaintiff's business, Pet Ark, and its  
2 assets for a sum of \$90,000.00. Pet Ark is an innovator of technologies and tools for animal welfare  
3 organizations and owns valuable assets related thereto, including a pet adoption website, adoption  
4 kiosks, lost animal websites, and micro-chipping services.

5           14.     In or around December 2005, Michelson offered Plaintiff the position of President of  
6 the Foundation at a salary of \$180,000.00 per year. In order to avoid an appearance of a conflict of  
7 interest relating to the sale of Pet Ark, Michelson told Plaintiff that his title would be "consultant"  
8 until Pet Ark was acquired by the Foundation. As a "consultant," Michelson told Plaintiff that  
9 Plaintiff would perform the same duties as he would as President, including organizing, launching and  
10 eventually managing the Foundation, travel on behalf of the Foundation, and lend the Foundation his  
11 name, reputation, and contacts with prestigious animal welfare politicians and industry suppliers.  
12 Michelson promised to fund the Foundation in the amount of fifty million dollars (\$50,000,000.00),  
13 with start-up funding in the amount of ten million dollars (\$10,000,000.00). Michelson promised  
14 Plaintiff unencumbered funds in the Foundation to fulfill the Pet Ark and Foundation vision. These  
15 representations are hereinafter collectively referred to as the "**Representations.**"

16           15.     Pursuant to the Representations, Plaintiff accepted Michelson's offer and in or about  
17 December 2005, an oral agreement was entered into by and between Plaintiff, on the one hand and  
18 Michelson, the Foundation and GKM on the other, in the County of Los Angeles, State of California,  
19 (the "**Agreement**") pursuant to which, among other things, Plaintiff promised to act as a consultant for  
20 the Foundation, perform the same duties as he would as a President, including organizing, launching  
21 and eventually managing the Foundation. Plaintiff promised to travel on behalf of the Foundation,  
22 lend the Foundation his name, reputation, and contacts with prestigious animal welfare politicians and  
23 industry suppliers. to use his expertise and reputation within the animal welfare community to  
24 establish and operate the Foundation, help distribute Michelson's donations, allow the Foundation to  
25 acquire Pet Ark, and use the assets of Pet Ark and operate Pet Ark so as to benefit the Defendants and  
26 particularly the Foundation. Defendant Michelson, on his behalf and on behalf of the Foundation and  
27 defendant GKM, promised to pay Plaintiff the sum of \$180,000.00 per year in bi-monthly  
28 installments of \$7,500.00 each, and to reimburse Plaintiff for reasonable business expenses incurred

1 in the performance of Plaintiff's obligations. Prior to the Agreement, Plaintiff had planned on closing  
2 down Pet Ark's kiosks. In reliance upon the Agreement and the Representations, Plaintiff did not  
3 close down the kiosks, but instead maintained them for the benefit of the Foundation. At or about the  
4 same time that Plaintiff entered into the Agreement, Defendant Michelson caused the articles of  
5 incorporation of the Foundation to be filed with the California Secretary of State.

6 16. In or around early 2006, Michelson asked Plaintiff to form an advisory board for the  
7 Foundation. Using his connections, Plaintiff persuaded prominent leaders of the animal welfare  
8 community to serve on the advisory board.

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17 18. As a "consultant" to the Foundation, Plaintiff spent most of his time and resources  
18 trying to fulfill Michelson's promises to the City and the animal welfare community. Plaintiff's job  
19 was difficult because Michelson refused to fulfill his promises. As an example, in or about December  
20 2005, Michelson promised the Amanda Foundation a grant of \$55,000.00 to cover debt incurred from  
21 operating a mobile spay and neuter clinic the previous year. Within a week, Plaintiff asked Michelson  
22 for the funds. Michelson stated that he did not remember the promise, and agreed to pay only  
23 \$30,000.00. Similarly, notwithstanding his earlier representations, Michelson refused to pay more  
24 than \$50,000.00 of the \$10,000,000.00 that he promised to the City.

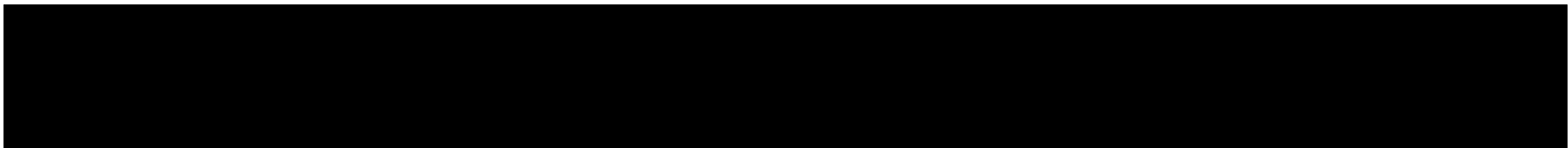
25 19. In or around May 2006, upon information and belief, Plaintiff alleges that Michelson's  
26 attorneys approved of the acquisition of Pet Ark, and that Michelson was in a position to acquire Pet  
27 Ark's assets, and assume Pet Ark's debts and obligations. Despite the Agreement and the  
28 Representations, Michelson failed to consummate the purchase of Pet Ark's assets at that time, or at



1 anytime thereafter, but used those assets and Defendants, and each of them, continue to use those  
2 assets without paying for them in any sum or at all.

3 20. In or about early summer of 2006, Plaintiff confronted Michelson about his failure and  
4 the Foundation's failure to acquire the assets of Pet Ark for the sum of \$90,000.00, his failure to  
5 follow through with funding the projects Michelson had promised to fund. Michelson claimed not to  
6 remember any of his previous promises or obligations.

7 21. Thereafter, in or about the mid summer of 2006, Plaintiff expressed to Michelson that  
8 as a result of his breach of the Agreement, Plaintiff's discovery that the Misrepresentations were false,  
9 and the harm to Plaintiff's reputation caused by Michelson's misconduct, Plaintiff would no longer be  
10 involved with Michelson in any capacity. In response, Michelson threatened to "ruin" Plaintiff if he  
11 would not continue to work for him.

12 22. Thereafter, Michelson uttered, published, disseminated and circulated untrue  
13 information about Plaintiff to the animal welfare community, and published and distributed private  
14 information Michelson had been provided in confidence and which Michelson obtained from  
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17 23. In or about the fall of 2006, Michelson intentionally induced two Pet Ark vendors to  
18 discontinue doing business with Pet Ark by falsely stating to those vendors that (1) Plaintiff had  
19 embezzled money from the Foundation, and (2) that Plaintiff would go to prison for that  
20 embezzlement.

21 24. In or around late summer of 2006, Michelson lodged a complaint against Plaintiff with  
22 the Los Angeles Police Department, falsely alleging, among other things, that Plaintiff had embezzled  
23 money from the Foundation. Plaintiff was forced to hire a criminal attorney and incurred legal fees in  
24 connection therewith. No criminal indictment or criminal complaint was ever filed against Plaintiff.

25 25. Plaintiff has received no compensation for the work he performed for Michelson, or  
26 the Foundation, or the for Pet Ark's assets that have been and now are now being used for the benefit  
27 of the Foundation. Said assets include a software system and microchip program.

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1 **FIRST CAUSE OF ACTION - BREACH OF CONTRACT**

2 (Against All Defendants)

3 26. Plaintiff incorporates herein by reference paragraphs 1 through 25, inclusive, as  
4 though fully set forth hereat.

5 27. Plaintiff has performed all conditions, covenants, and promises required under the  
6 Agreement except those conditions, covenants, and promises which have been prevented or otherwise  
7 excused from performing by the conduct of Defendants, and each of them.

8 28. Defendants, and each of them, breached the terms of the Agreement beginning in  
9 January 2006 and thereafter by, among other things, failing to pay Plaintiff the compensation owed to  
10 Plaintiff according to the Agreement, including salary and business expense reimbursement, and by  
11 failing to consummate the purchase of the assets of Pet Ark.

12 29. As a direct and proximate result of said breach of the Agreement, Plaintiff has been  
13 damaged in a sum not less than \$250,000.00, together such further sums as may be shown according  
14 to proof, together with pre judgment interest on the amount awarded in such sum as may be shown  
15 according to proof.

16 **SECOND CAUSE OF ACTION - BREACH OF IMPLIED**

17 **COVENANT OF GOOD FAITH & FAIR DEALING**

18 (Against All Defendants)

19 30. Plaintiff incorporates herein by reference paragraphs 1 through 25, inclusive, as though  
20 fully set forth hereat.

21 31. Implied in the Agreement and in every agreement is a covenant of good faith and fair  
22 dealing that prevents Defendants, and each of them, from doing anything to deprive Plaintiff of the  
23 benefits of the Agreement or to otherwise act or omit to act in a manner designed to prevent Plaintiff  
24 from realizing the benefits of his bargain.

25 32. Plaintiff performed each, every and all of the obligations imposed upon him by the  
26 Agreement, except for such obligations that he was prevented or excused from performing by  
27 Defendants' acts or omissions.

28 33. Defendants breached the implied covenant of good faith and fair dealing implied in the

1 Agreement by, among othe things, preventing Plaintiff from accomplishing the goals of the  
2 Foundation, by exploiting Plaintiff's expertise and contacts without compensation, by soiling  
3 Plaintiff's reputation and by stealing the assets of Pet Ark.

4 34. As a direct and proximate result of said breach, Plaintiff has been damaged in the  
5 minimum sum of Five Hundred Thousand Dollars (\$500,000.00) and such further sums as may be  
6 shown according to proof, together with pre judgment interest on the amount awarded in such sum as  
7 may be shown according to proof.

### 8 **THIRD CAUSE OF ACTION - SLANDER**

9 (Against All Defendants)

10 35. Plaintiff incorporates herein by reference paragraphs 1 through 25, inclusive, as though  
11 fully set forth hereat.

12 36. Between roughly in the late summer of 2006 through and including December 2006,  
13 Michelson uttered, published, disseminated and circulated to third parties the following remarks and  
14 words: "Dave Loftus embezzled Two Hundred Thousand Dollars (\$200,000.00) from my Foundation  
15 and is going to prison for that crime" (the "*Slandorous Statements*"). Plaintiff is not a public figure.

16 37. The Slandorous Statements were slanderous *per se* because they injure Plaintiff in his  
17 profession of advocating for animal welfare by imputing to him dishonesty and criminal behavior in  
18 his professional dealings with the Foundation, and because the slanderous statements charge Plaintiff  
19 with having committed the crime of embezzlement, a felony in the State of California.

20 38. The Slandorous Statements were and are false and were known to be false by  
21 Defendants when the Slandorous Statements were spoken. The true facts were and are that Plaintiff  
22 has never embezzled money.

23 39. As a proximate result of the Slandorous Statements, Plaintiff has suffered damage to  
24 his reputation, shame, ridicule, mortification, embarrassment, and hurt feelings, all to his general  
25 damage in such sums as may be shown according to proof.

26 40. As a further direct and proximate result of the Slandorous Statements, Plaintiff has  
27 suffered special damages for loss of income and shall continue to suffer loss of income in the future in  
28 the sum of not less than \$500,000.00, together with such further sums that may be shown according to



1 proof.

2 41. The Slanderous Statements were uttered by Michelson intentionally to cause severe  
3 injury and harm to Plaintiff's reputation, to put Plaintiff's animal welfare career in jeopardy and to  
4 prevent Plaintiff from earning an income. Therefore, Plaintiff seeks an award of punitive damages  
5 in a sum sufficient to punish and make an example of Michelson, the Foundation and GKM, and each  
6 of them.

7 **FOURTH CAUSE OF ACTION - FRAUD AND DECEIT**

8 (Against All Defendants)

9 42. Plaintiff incorporates herein by reference paragraphs 1 through 25, inclusive, as though  
10 fully set forth hereat.

11 43. At the time Michelson made the Representations, Michelson never intended: (1) to pay  
12 Plaintiff any salary whatsoever or to reimburse Plaintiff for reasonable business expenses incurred by  
13 Plaintiff in performing his duties as a consultant for the Foundation: (2) to acquire the assets of Pet  
14 Ark for the sum of \$90,000.00 or any other sum; (3) to fund the Foundation in the amount of  
15 \$50,000,000.00, or provide start-up funding in the amount of \$10,000,000.00. Michelson's true  
16 intentions were to use and exploit Plaintiff's reputation, expertise and contacts without compensating  
17 Plaintiff in any way in order to become known as an animal welfare advocate and philanthropist  
18 through the publicity generated by Plaintiff because of his belief that the Representations were true  
19 and Plaintiff's reiteration of those Representations to his contacts in the animal welfare community.

20 45. At the time the Representations were made by Michelson, Michelson intended to  
21 induce and did induce Plaintiff to rely upon the Representations. Plaintiff did in fact rely upon the  
22 Representations to his detriment. In justifiable reliance on the Representations, Plaintiff entered into  
23 the Agreement, contributed his time and expertise to the Foundation, operated Pet Ark and its assets  
24 for the benefit of the Foundation, introduced Michelson and the Foundation to third parties, and made  
25 promises to these third parties based on the Representations.

26 46. Had Plaintiff been apprised of Michelson's true and secret intentions, Plaintiff would  
27 not have entered into the Agreement, nor contributed his time and money pursuant thereto, or  
28 otherwise have assisted the Defendants, and each of them. Plaintiff could not, in the exercise of

1 reasonable diligence, have discovered the true facts or Michelson's secret intentions prior to the mid  
2 summer of 2006.

3 47. At the time Michelson acted and omitted to act as set forth in the preceding paragraphs  
4 of this Complaint, he did so with the intent to defraud and injure Plaintiff and to deny Plaintiff the  
5 property, benefits and rights to which he is and was entitled pursuant to the Agreement and with the  
6 further intentions to convert Plaintiff's time and Pet Ark assets to his own use and benefit.

7 48. As a direct and proximate result of Defendants' fraud and deceit, Plaintiff has suffered  
8 damages in the sum of \$1,000,000.00, together with such further sums as may be proven at the time  
9 of trial. As a further direct and proximate result of Defendants' fraud and deceit, Plaintiff has  
10 suffered mental and emotional pain and anguish, distress, harm to his reputation, and discomfort, all  
11 to his general damage in a sum as may be shown according to proof.

12 49. In making the Representations, concealing the true facts, taking the actions and  
13 omitting to act as described above, Defendants, and each of them, have been guilty of oppression,  
14 fraud, and malice, and Plaintiff is entitled to exemplary and punitive damages against Michelson and  
15 the remaining Defendants to deter such conduct in the future, and to punish and make an example of  
16 them in such sum that may be determined at the time of trial.

17 **FIFTH CAUSE OF ACTION - INVASION OF PRIVACY**

18 (Against All Defendants)

19 50. Plaintiff incorporates herein by reference paragraphs 1 through 25, inclusive, and 36 as  
20 though fully set forth hereat.

21 51. Michelson took the actions described in Paragraphs 22, 23, 24, and 36 and publicized  
22 and disseminated both accurate and false information about Plaintiff that any reasonable person would  
23 find highly offensive and Michelson took those action for the very purpose of invading Plaintiff's  
24 privacy so that Plaintiff would be subjected to ridicule and isolation. Michelson did not have either  
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28 52. As a direct and proximate result of Defendants' invasion of Plaintiff's privacy.

1 Plaintiff has suffered damages in the sum of \$1,000,000.00, together with such further sums as may  
2 be proven according to proof at the time of trial. As a further direct and proximate result of the  
3 invasion of Plaintiff's privacy, Plaintiff has suffered mental and emotional pain and anguish, distress,  
4 harm to his reputation, and discomfort, all to his general damage in a sum as may be shown according  
5 to proof.

6 53. Defendants' conduct was malicious and despicable and was carried on with a willful  
7 and conscious disregard of Plaintiff's rights and with no sense of decency. Defendants are guilty of  
8 oppression, fraud, or malice and Plaintiff is entitled to punitive damages for the sake of example and  
9 by way of punishing each of the Defendants in such amount as may be ascertained at time of trial.

10 **SIXTH CAUSE OF ACTION – QUANTUM MERUIT**

11 (Against All Defendants)

12 54. Plaintiff incorporates herein by reference paragraphs 1 through 8, inclusive, as though  
13 fully set forth hereat.

14 55. Within the last two (2) years, in the County of Los Angeles, State of California, and  
15 elsewhere, Plaintiff performed personal services for Defendants, and each of them, at their special  
16 instance and request, and for which Defendants, and each of them, promised to pay the reasonable  
17 value thereof. The amount of One Hundred Eighty Thousand Dollars (\$180,000.00) is, and at all  
18 material times has been, the reasonable value of the services performed and costs and expenses  
19 advanced by Harwin to and on behalf of Defendants, at their request and direction, for which Plaintiff  
20 has not been compensated.

21 56. Plaintiff has made a demand upon Defendants, and each of them, for payment of this  
22 amount.

23 57. Defendants have failed and refused, and continue to fail and refuse, to pay this amount,  
24 or any part thereof, and there is now due, owing and unpaid by Plaintiff by Defendants the sum of  
25 One Hundred Eighty Thousand Dollars (\$180,000.00).

26 **WHEREFORE**, Plaintiff prays for Judgment against Defendants, and each of them, as  
27 follows:

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