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

12 Nicky Hawthorne,

13 Plaintiff,

14 vs.

15 Kellie Madison, Open Road Films,
 16 Glacier Films, The Tank, LLC,

17 Defendants.

CASE NO: 2:15-cv-1015

JUDGE:

DEPT:

**COMPLAINT FOR
 DECLARATORY JUDGMENT OF
 CO-AUTHORSHIP AND FOR AN
 ACCOUNTING OF PROFITS; AND
 FOR UNFAIR COMPETITION
 PURSUANT TO CAL. BUS. & PROF.
 CODE § 17200, ET SEQ.**

21
 22 **COMES NOW**, Plaintiff, Nicky Hawthorne, and complains and alleges as
 23 to Defendants, and each of them, as follows:

24 **JURISDICTION AND VENUE**

25 1. This Court has subject matter jurisdiction because this action arises
 26 under a federal statute; 17 U.S.C. 201(a). This Court has supplemental jurisdiction
 27 over the state law claims involved because those claims are so related to claims in
 28 the action within such original jurisdiction that they form part of the same case or

1 controversy under Article III of the United States Constitution. Venue is proper in
2 the Western Division of the Central District of California because the events giving
3 rise to this action occurred in Los Angeles County, California, and both Nicky
4 Hawthorne and Kellie Madison are residents of Los Angeles County, California.

5 **PARTIES**

6 2. Plaintiff Nicky Hawthorne (aka Nicolle Schuenke) is one of two
7 collaborating writers who co-authored the screenplay entitled The Tank, with the
8 intent that her contributions be combined as inseparable parts of a unitary whole
9 with the contributions of Kellie Madison (aka Kellie Hallihan).

10 3. Defendant Kellie Madison is one of two collaborating writers who co-
11 authored the screenplay entitled The Tank, with the intent at the time of the writing
12 that her contributions be combined as inseparable parts of a unitary whole with the
13 contributions of Nicky Hawthorne.

14 4. Defendant The Tank, LLC, is a real party in interest as either licensee
15 or assignee of Kellie Madison regarding the exploitation of the joint work and is
16 believed to be a corporation created for the purpose of producing the film.

17 5. Defendant Open Road Films, is a real party in interest as either
18 licensee or assignee of Kellie Madison regarding the exploitation of the joint work
19 and is believed to be the entity with whom Kellie Madison has arranged for the
20 distribution of the film.

21 6. Defendant Glacier Films, is a real party in interest as either licensee or
22 assignee of Kellie Madison regarding the exploitation of the joint work and is
23 believed to be the entity to whom the rights to produce the film were sold, licensed
24 or assigned.

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1 **CAUSE OF ACTION FOR DECLARATORY JUDGMENT OF CO-**
2 **AUTHORSHIP OF A JOINT WORK AND UNFAIR COMPETITION.**

3 7. In the month of October 2013, Nicky Hawthorne and Kellie Madison
4 collaborated to write a screenplay that entitled The Tank, completing the script on
5 or about October 31, 2013.

6 8. Nicky Hawthorne was first engaged, via written contract, with Kellie
7 Madison to write a ten-page treatment of the beginning of the screenplay as part of
8 a competitive audition process for the opportunity to collaborate with Kellie
9 Madison on the writing of the remainder of the screenplay.

10 9. Kellie Madison selected Nicky Hawthorne to be her co-author on the
11 remainder of the screenplay, and no written contract governing the writing,
12 authorship rights, or credit rights regarding the screenplay was created or executed
13 although both parties understood themselves to be co-authors even if with unequal
14 obligations and contributions. This understanding is documented in numerous
15 email and text message exchanges between the co-authors and each of their
16 contributions were substantial and independently copyrightable as complete
17 sections of dialogue and stage direction.

18 10. On November 1, 2013, Kellie Madison submitted a copy of the joint
19 work to the United States Copyright Office for copyright registration. The
20 screenplay was assigned copyright number Pau 3-697-438, and the title page of
21 that screenplay reads: "The Tank / Written by / Kellie Madison / AND / Nicky
22 Hawthorne". A copy of the deposit copy filed with the Copyright Office is attached
23 hereto as "Exhibit A".

24 11. At a table read of the same version of the screenplay, and of which
25 there is an audio recording, the work was held out as being a joint work to the
26 participants.

27 12. At some point after the writing of the script was completed, in the
28 process of attempting to sell the script for production and distribution, Kellie

1 Madison decided she wanted sole credit for writing the screenplay and through her
2 manager deceived Nicky Hawthorne into believing that she was not entitled to a
3 writing credit as she had personally written less than a full 50% of the screenplay.

4 13. Kellie Madison then sold the screenplay to Glacier Films, either in the
5 form of an assignment of rights or as a license to exploit the copyrighted work, a
6 distribution deal was entered into with Open Road Films as either an assignee or
7 licensee of Kellie Madison or Glacier Films, and a company was incorporated as
8 “The Tank, LLC” for the production of the film as either an assignee or licensee
9 flowing from Kellie Madison’s grant of an assignment or license. Each and every
10 defendant was aware of Nicky Hawthorne’s involvement in the writing of the
11 script at the time of entering into an agreement with Kellie Madison.

12 14. Nicky Hawthorne continued to work on the The Tank as an Associate
13 Producer and as an Actor, roles for which she entered into separate written
14 contracts that were separately compensated.

15 15. During the filming of The Tank, Kellie Madison and Nicky
16 Hawthorne had a verbal disagreement wherein Kellie Madison affirmatively
17 repudiated any writing contribution of Nicky Hawthorne and asserted that she had
18 not written a single word.

19 16. Nicky Hawthorne discovered subsequent to this conversation that she
20 had been deceived regarding her co-authorship status and sought counsel to
21 reassert her authorship rights prior to the running of the applicable statute of
22 limitations.

23 17. Nicky Hawthorne is informed and believes that the joint work was
24 sold, assigned, licensed or otherwise exploited by Kellie Madison for monetary
25 profits, both at the time of sale and on the back-end, possibly in the form of a share
26 of the post-release profits of the film.

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1 **WHEREFORE**, Plaintiff prays for a judgment, decree and order against
2 defendants, and each of them, as follows:

3 1. That a judgment be entered declaring Nicky Hawthorne a co-author of
4 the joint work screenplay entitled The Tank pursuant to 17 U.S.C. §§ 201(a) and
5 101;

6 2. That a judgment be entered declaring that as the co-author of a joint
7 work Nicky Hawthorne is entitled to a co-equal share of all profits and incomes
8 from the exploitation of that joint work by her co-author Kellie Madison;

9 3. That a judgment be entered declaring that any and all exclusive
10 license or licenses granted by Kellie Madison regarding the exploitation of The
11 Tank, or any transfer of rights exceeding her co-equal share of the rights to The
12 Tank, are null and void absent the express written authorization of Kellie
13 Madison's co-author Nicky Hawthorne;

14 4. That an order for an accounting of profits regarding the exploitation of
15 the joint work entitled The Tank be issued against Kellie Madison, her agents, her
16 assignees and her licensees.

17 5. That pursuant to Cal. Bus. & Prof. Code § 17200 et seq., the Court
18 enjoin any defendant from exploiting the joint work without crediting Nicky
19 Hawthorne as a writer;

20 6. That attorneys fees and costs be awarded pursuant to 17 U.S.C. §505;

21 7. That this Court award such other and further relief as the Court may
22 deem just and proper.

23 DATED: February 11, 2015

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25 By: s/ Drew Helms
26 DREW HELMS
27 Attorneys for Plaintiff Nicky Hawthorne
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