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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 Zachary Suite,

12 Plaintiff,

13 v.

14 Keenan Mosimann and
15 I.C.U. Games, LLC, a California limited
16 liability company,

17 Defendants.

Case No.:

COMPLAINT FOR:

1. FRAUD
2. DURESS
3. BREACH OF CONTRACT
4. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

DEMAND FOR JURY TRIAL

1 Plaintiff Zachary Suite alleges as follows:

2 **INTRODUCTION**

3 1. This is an action for fraud and breach of contract arising out of the
4 knowing and willful actions of Defendant Keenan Mosimann (“Mr. Mosimann”),
5 an individual, and Defendant I.C.U. Games, LLC, a California Limited Liability
6 Company (Mr. Mosimann and I.C.U. Games, LLC, collectively referred to as
7 “Defendants”).

8 2. Zachary Suite and Mr. Mosimann are the co-creators of a game entitled
9 “I.C.U.”.

10 3. To date, Zachary Suite has put over 1,100 hours of designing and
11 programming work into I.C.U.

12 4. Mr. Mosimann fraudulently induced Zachary Suite to enter into a contract
13 entitled the “Contribution Agreement” incorrectly defining Mr. Suite as a “Team
14 Member” instead of a “Team Leader” and assigning Mr. Suite’s intellectual
15 property rights to Mr. Mosimann for zero consideration.

16 5. Mr. Mosimann further induced Zachary Suite to sign the Contribution
17 Agreement under duress by telling him that he was a “Team Leader” despite the
18 Contribution Agreement saying otherwise and that he must immediately sign it
19 without making any changes to it or the future of I.C.U. itself would be
20 jeopardized.

21 6. Thus, the Contribution Agreement must be rescinded due to fraud and/or
22 duress.

23 7. Mr. Mosimann and I.C.U. Games, LLC, additionally breached a contract for
24 Zachary Suite to assign his rights in I.C.U. to Defendant I.C.U. Games, LLC, in
25 exchange for Zachary Suite receiving a co-founding ownership percentage of
26 I.C.U. Games, LLC (the “Founding Members Contract”).

27 8. Zachary Suite has suffered pecuniary damages in an amount to be
28 determined at trial from Defendants’ breach of contract.

1 9. Defendants are now selling and promoting Zachary Suite's I.C.U. game
2 without crediting Zachary Suite as a co-creator or compensating him for his
3 creative efforts or years of hard work. This lack of proper credit to Zachary Suite is
4 causing his career irreparable harm. An injunction must be issued preventing
5 Defendants' further use, sale, promotion, or marketing of the I.C.U. game in any
6 context.

7 10. Defendants are engaged in a continuous, knowing and willful violation of
8 Zachary Suite's rights. Accordingly, Zachary Suite has been forced to bring this
9 action seeking rescission, restitution, compensatory damages, punitive and
10 exemplary damages, and injunctive relief.

11 **THE PARTIES**

12 11. Plaintiff Zachary Suite is an individual residing in the County of Los
13 Angeles, State of California.

14 12. Upon information and belief, Defendant Keenan Mosimann is an individual
15 residing in the County of Los Angeles, State of California, and residing at 13121
16 Addison St., Sherman Oaks, CA 91423.

17 13. Upon information and belief, Defendant I.C.U. Games, LLC, is a California
18 LLC doing business in the County of Los Angeles, State of California and located
19 at 13121 Addison St., Sherman Oaks, CA 91423.

20 14. Upon information and belief, Mr. Mosimann is the principal owner of
21 I.C.U. Games, LLC.

22 15. Upon information and belief, Mr. Mosimann exercises complete ownership,
23 dominion, and control over Defendant I.C.U. Games, LLC and ignores corporate
24 formalities, commingles their assets, and there is and is such a unity of interest and
25 identity between I.C.U. Games, LLC and Mr. Mosimann that it is equitable to hold
26 each of the Defendants responsible for the acts and obligations of each of the other
27 Defendants as the alter ego of each.

1 **JURISDICTION AND VENUE**

2 16. Jurisdiction over the Defendants is proper under California Code of Civil
3 Procedure § 410.10.

4 17. Venue is proper before this court pursuant to 28 U.S.C. § 1391(b), which
5 grants jurisdiction in a judicial district in which a substantial part of the events or
6 omissions giving rise to the claim occurred, or a substantial part of the property
7 that is the subject of the action is situated. The contracts that are the subject of this
8 lawsuit were entered into in this District at the University of Southern California,
9 Los Angeles, CA 90089.

10 18. This Court has personal jurisdiction over Defendants in that, among other
11 things, Defendants reside in and do business in this District (including Los
12 Angeles), Zachary Suite resides in and is suffering harm in this District, and the
13 Defendants breached contracts and committed tortious acts in this District at the
14 University of Southern California, Los Angeles, CA 90089.

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

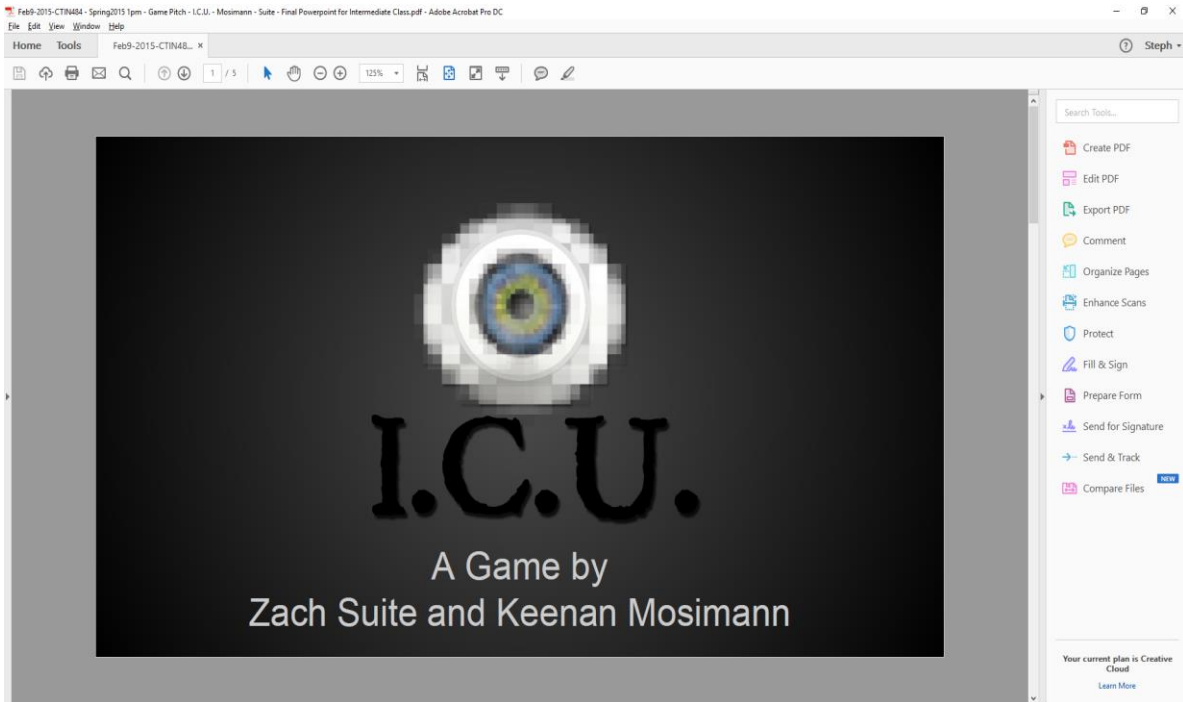
2 **A. Zachary Suite and Mr. Mosimann’s Co-Created the I.C.U. Game**

3 19. Zachary Suite and Mr. Mosimann lived together as roommates in the Fall of
4 2014 through the Spring of 2015 as students at the University of Southern
5 California (“USC”).

6 20. In 2014, Zachary Suite and Mr. Mosimann developed an idea for a horror
7 video game together.

8 21. They named the game I.C.U. and pitched it to their game development class
9 at USC.

10 22. Slide number one of the PowerPoint presentation that Zachary Suite and Mr.
11 Mosimann used for their first ever presentation for the idea of the game, states:
12 “I.C.U. A Game by Zach Suite and Keenan Mosimann”. Zachary Suite received
13 top billing. A screencapture of that slide is shown below.



1 23. Later, in February 2015, Zachary Suite and Mr. Mosimann decided to pitch
2 the game for entrance to a capstone class called Advanced Game Projects
3 (“AGP”), which was very difficult to win entry to.

4 24. Mr. Suite and Mr. Mosimann won the entrance competition with I.C.U. and
5 were granted admittance to AGP.

6 25. With admittance to the class, they also won access to a team of over a dozen
7 other students who would help Mr. Suite and Mr. Mosimann bring their game from
8 a prototype to commercial fruition.

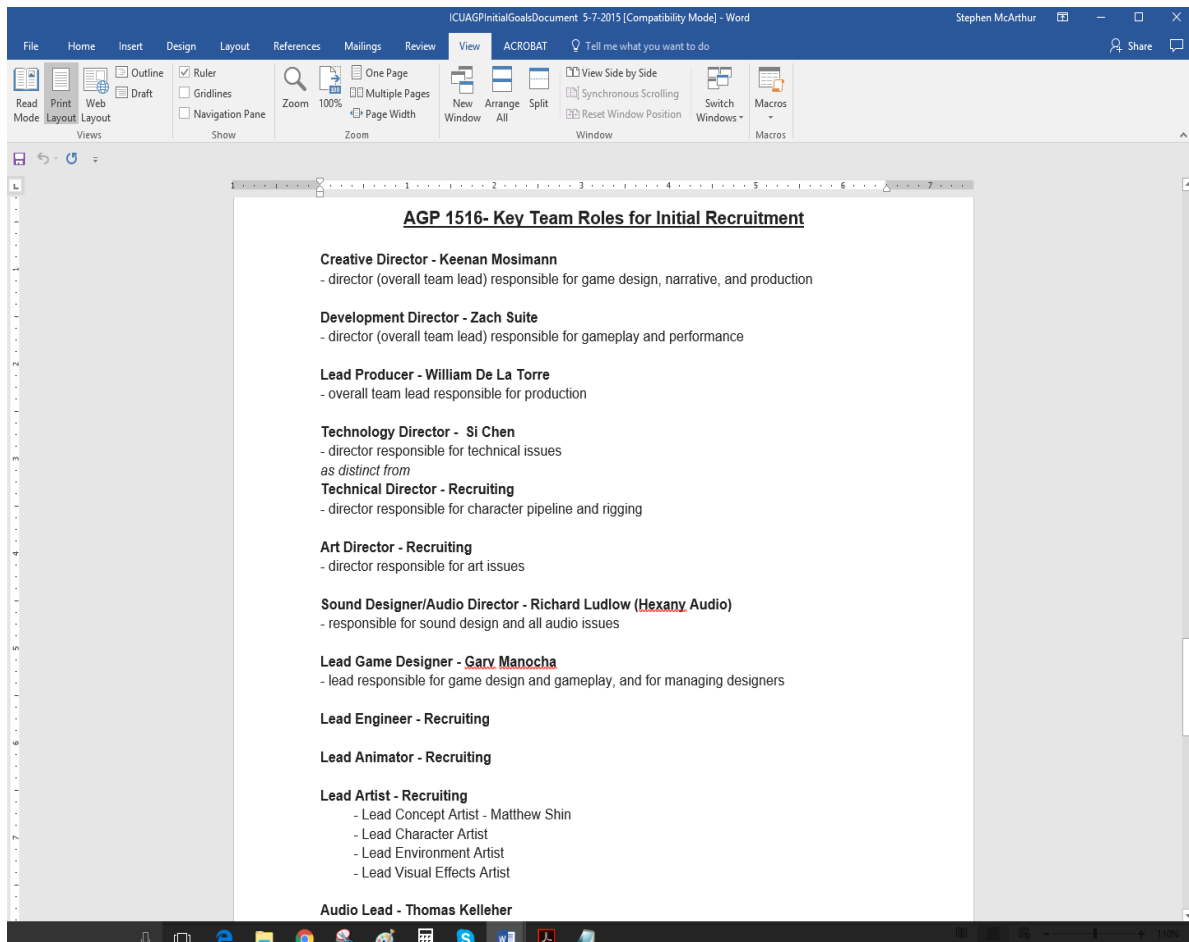
9
10 **B. Mr. Suite and Mr. Mosimann’s Changing Titles**

11 26. Zachary Suite and Mr. Mosimann agreed that Mr. Suite would assume the
12 role of designing and creating code and assets for I.C.U. Zachary Suite contributed,
13 among other things, art, creation of game mechanics, design documents, and
14 ninety-five percent (95%) of the base code for I.C.U.

15 27. Mr. Mosimann assumed the duty of creating production documents, writing
16 the narrative for the game and implementing the code and assets that Zachary Suite
17 provided to him.

18 28. Numerous documents ranging from the original pitches for I.C.U. to team
19 structure documents from years later list Zachary Suite as a “Co-Founder”,
20 “Development Director”, “Team Leader”, and “Lead Designer” of I.C.U.

21 29. For example, a screenshot from an internal team document below from May
22 2015 lists a large team that was recruited to help Mr. Suite and Mr. Mosimann with
23 development of I.C.U. The document clearly shows Zachary Suite listed with Mr.
24 Mosimann at the top of the document as “Development Director” and “overall
25 team lead” who was “responsible for gameplay and performance”.
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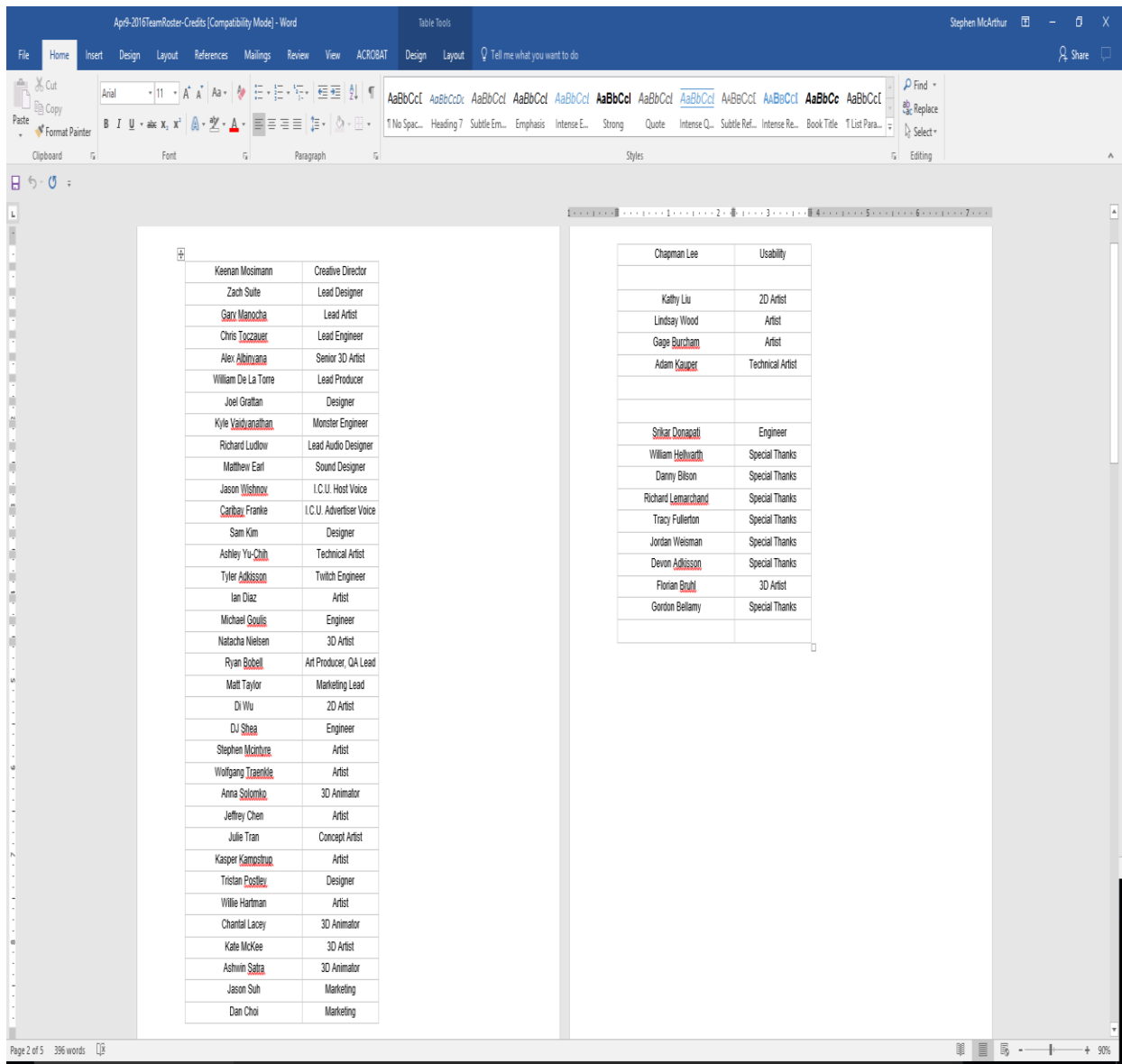


30. Later, Mr. Mosimann requested that Zachary Suite be listed as “Lead Designer” instead since “Development Director” was a confusing title.

31. Zachary Suite, now labeled a “Lead Designer”, continued his same role as the co-creator of I.C.U.

32. Zachary Suite provided well over a thousand hours of design and programming work into creating I.C.U.

33. Below is a screenshot from an internal I.C.U. team document dated April 2016 that lists 40 members of the I.C.U. team. Again, Mr. Suite and Mr. Mosimann are listed at the very top, with Mr. Suite’s title listed as “Lead Designer” and Mr. Mosimann as “Creative Director”.



C. Defendants' Duress and Fraudulent Inducement of Mr. Suite to Sign the Contribution Agreement

34. Mr. Mosimann wanted to be seen as the sole creator of I.C.U. so that he could use the game to launch his YouTube persona "Criken" into game development. Zachary Suite's role as a co-creator of I.C.U. stood in the way of Mr. Mosimann's ambitions.

1 35. In furtherance of those goals, Mr. Mosimann developed a plan to
2 fraudulently induce Zachary Suite under duress to sign a contract surrendering all
3 of his rights in the game to Mr. Mosimann.

4 36. On March 28, 2016, Mr. Mosimann created a California Limited Liability
5 Company named I.C.U. Games, LLC.

6 37. On April 24, 2016, Mr. Mosimann, acting personally and on behalf of
7 Defendant I.C.U. Games, LLC, presented a Contribution Agreement (the
8 “Contribution Agreement”) to the I.C.U. team that divided the entire team into
9 “Team Leaders” and “Team Members”.

10 38. According to the Contribution Agreement’s work for hire clause everyone
11 listed as a “Team Members” would purportedly assign all of their rights in I.C.U.
12 to the “Team Leaders”.

13 39. Even though Zachary Suite was clearly a co-creator and Team Leader,
14 Defendants purposefully printed the contract such that there was room for only one
15 Team Leader to sign the Contribution Agreement.

16 40. When Mr. Mosimann presented the Contribution Agreement to Mr. Suite,
17 the sole Team Leader position was already signed by Mr. Mosimann himself,
18 leaving no room on the Contribution Agreement for Mr. Suite to identify himself
19 as a Team Leader.

20 41. Zachary Suite initially refused to sign the Contribution Agreement since it
21 did not reflect his proper status as a Team Leader and co-creator.

22 42. However, Mr. Mosimann informed Zachary Suite that he had no choice but
23 to immediately sign the Contribution Agreement with no changes since any delay
24 would create a conflict with the USC law clinic that had helped Mr. Mosimann
25 draft the contract.

26 43. Mr. Mosimann further claimed that he was worried about upcoming
27 “business deals” for I.C.U. and that any delay in signing the document would
28 threaten those deals.

1 44. Mr. Mosimann begged Zachary Suite to sign the Contribution Agreement
2 under his false representations.

3 45. Mr. Mosimann insisted that any delay created by Zachary Suite correcting
4 the Contribution Agreement to identify himself as a Team Leader would jeopardize
5 their game, would reflect poorly upon his career and his connections with the
6 professors, and could cause I.C.U. itself to fail.

7 46. Mr. Mosimann demanded to Mr. Suite that there was no choice but to
8 immediately sign the Contribution Agreement.

9 47. Those false misrepresentations by Mr. Mosimann put Zachary Suite under
10 duress.

11 48. Mr. Mosimann insisted that Zachary Suite was waiving none of his rights
12 since he was obviously not a “Team Member”, but was a co-creator and a Team
13 Leader, would always be credited as such, and that the only reason Mr. Suite was
14 signing as a “Team Member” is since there was only space on the document for
15 one Team Leader to sign.

16 49. When Mr. Mosimann made those misrepresentations to Zachary Suite, Mr.
17 Mosimann knew that they were false and made in order to induce Mr. Suite to sign
18 the Contribution Agreement.

19 50. Zachary Suite signed the Contribution Agreement relying on Mr.
20 Mosimann’s fraudulent statements and under duress.

21 51. The Contribution Agreement is invalid due to duress and fraud, cannot be
22 enforced against Zachary Suite, and must be rescinded.

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24 **D. Defendants’ Breach of the Founding Members Contract to Assign I.C.U.**
25 **Games, LLC to Zachary Suite**


26 52. Before Zachary Suite signed the Contribution Agreement, he also entered
27 into an oral contract with Mr. Mosimann (acting personally and on behalf of
28

1 Defendant I.C.U. Games, LLC) regarding the ownership of I.C.U. Games, LLC
2 (the “Founding Members Contract”).

3 53. Mr. Mosimann and Zachary Suite agreed that in consideration for Mr. Suite
4 signing the Contribution Agreement, Mr. Mosimann would assign all of the
5 intellectual property in the I.C.U. game to Mr. Mosimann’s company, I.C.U.
6 Games, LLC. Then, Mr. Mosimann would transfer ownership of the I.C.U. Game
7 LLC company to Mr. Zachary Suite as a “co-founding member” and that he would
8 always be credited as a co-founder of the company and the game.

9 54. Other members of the team witnessed this oral agreement, including
10 Christopher Toczauer.

11 55. Mr. Mosimann even memorialized his part of his contractual obligations in
12 a written email copied in full below.

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14 
15 **From** Keenan Mosimann <[REDACTED]@usc.edu>★
16 **Subject** **ICU Contribution Agreement Leads** 4/24/16, 1:53 PM
17 **To** [REDACTED]@usc.edu★
18 **Cc** Garv Manocha ★, Me <[REDACTED]@gmail.com>★, William De La Torre ★

19 Hi all,

20 Writing this email to express the intention that I, Keenan Mosimann, will
21 transfer the IP of I.C.U. once owned to the company I.C.U. Games LLC where
22 we will work in good faith to assign percentages to co-founding members in
23 line with their contributions to the game and future of the company.

24 I'm writing this to make my intentions clear.
25 Keenan Mosimann
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1 56. In fact, the only consideration given to Zachary Suite for signing the
2 Contribution Agreement were the guarantees made in the Founding
3 Members Contract.

4 57. The month after the Contribution Agreement and Founding
5 Member's Contract were signed was the May 2016 USC Games Demo Day
6 showcase. Zachary Suite demoed the game on-stage with Mr. Mosimann.
7 The credits page of the USC event lists Zachary Suite as the Lead Designer
8 for I.C.U., and not as a mere "Team Member".

9 58. Below is a screencapture of the credits page from Mr. Mosinann and
10 Mr. Suite's May 2016 presentation of I.C.U. at USC.



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24 59. For the next few months, Defendants continued to informed Zachary
25 Suite that Mr. Suite would properly be credited as a co-creator and properly
26 assigned his percentage as a co-founder of I.C.U. Games, LLC, but each
27 time made excuses for why it could not be done immediately.

1 60. Throughout the Summer of 2016, Zachary Suite would meet with Mr.
2 Mosimann about every other Sunday, during which time they would discuss game
3 mechanics, design elements, and strategy for a successful Kickstarter campaign
4 for I.C.U.

5 61. Zachary was coding and adding core functionality to I.C.U. as recently
6 as July 26, 2016.

7 62. As one example, a mechanic that the I.C.U. team called the “flashlight”
8 mechanic is a core and unique concept to I.C.U. that is integral to its marketing
9 and success. The mechanic was designed and implemented by Zachary Suite.

10 63. As of the date of the Kickstarter launch in September 2016, Zachary Suite
11 was listed in team documents as the “Lead Designer” of I.C.U. In fact, Mr. Suite
12 has never been listed as a “Team Member” in any document except for the
13 Contribution Agreement. That is because Mr. Suite is clearly not a “Team
14 Member” and is instead a co-creator and Team Leader.

15
16 **E. Defendants Officially Cut Out Mr. Suite from I.C.U.**

17 64. On September 27, 2016, Zachary Suite was stunned when he saw that
18 Defendants launched I.C.U. for pre-sales on Kickstarter with no credit or mention
19 of Mr. Suite. (see [https://www.kickstarter.com/projects/criken/icu-the-interactive-](https://www.kickstarter.com/projects/criken/icu-the-interactive-horror-game-show)
20 [horror-game-show](https://www.kickstarter.com/projects/criken/icu-the-interactive-horror-game-show), last visited, 10/25/2016).

21 65. On the Kickstarter page, Defendants name at least eight (8) people that are
22 involved in the development of I.C.U.

23 66. Despite Zachary Suite being a co-creator of the game, a Team Leader, and
24 the Lead Designer, Mr. Suite is not credited.

25 67. Zachary Suite’s burgeoning career as a video game designer is irreparably
26 harmed by not receiving proper credit as a co-creator and Lead Designer of his
27 first successful video game project.

28

1 68. After Mr. Suite discovered Defendants’ betrayal and breach of contract, he
2 immediately contacted Mr. Mosimann and requested that he honor the Founding
3 Members Contract, assign a percentage of I.C.U. Games, LLC to Mr. Suite, and
4 properly credit Mr. Suite on the Kickstarter page and elsewhere.

5 69. Defendants refused and thumbed their noses at their contractual
6 obligations.

7 70. Left with no other recourse, Zachary Suite has brought this action.

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1 **FIRST CAUSE OF ACTION**

2 **(For Fraud)**

3 71. Zachary Suite refers to and re-alleges each and every allegation 1 through
4 70, all inclusive, as if set forth herein.

5 72. Zachary Suite was induced to sign the Contribution Agreement by Mr.
6 Mosimann’s numerous misrepresentations that Mr. Mosimann knew to be false.
7 Mr. Mosimann’s false misrepresentations included that the Contribution
8 Agreement would not be enforced, that Mr. Suite was a Team Leader despite the
9 Contribution Agreement listing him as a Team Member, that Mr. Suite would be
10 assigned a percentage of I.C.U. Games, LLC, that there was no time or
11 opportunity to correct the signature pages to list Mr. Suite as a Team Leader, and
12 that Mr. Suite had no choice but to immediately sign the Contribution Agreement
13 or risk irreparably harming the I.C.U. game.

14 73. Mr. Mosimann’s representations were willfully false and made to with the
15 intent to deceive, defraud, and induce Mr. Suite into sacrificing his intellectual
16 property for no consideration so that Mr. Mosimann could hold himself out as the
17 sole creator of I.C.U., and to encourage work product and free sweat equity from
18 Zachary Suite.

19 74. Zachary Suite reasonably relied on the representations and, *inter alia*,
20 continued in his capacity as Lead Designer for the game believing the statements
21 of Mr. Mosimann to be authentic.

22 75. The Contribution Agreement must be rescinded.

23 76. As a direct and proximate result of the foregoing, Zachary Suite has
24 incurred damages in an amount to be determined at trial.

25 77. Zachary Suite is informed and believes, and upon that basis alleges, that in
26 committing the foregoing wrongful acts, Mr. Mosimann acted intentionally, with
27 malice and in conscious disregard of Zachary Suite’s rights and Zachary Suite’s
28 resulting damages. As a result, Zachary Suite is entitled to the award of punitive

1 and exemplary damages against Mr. Mosimann, in an amount to be determined at
2 trial.

3 4 **SECOND CAUSE OF ACTION**

5 **(For Duress)**

6 78. Zachary Suite refers to and re-alleges each and every allegation 1 through
7 70, all inclusive, as if set forth herein.

8 79. Even though Zachary Suite was a Team Leader, Mr. Mosimann
9 purposefully printed the Contribution Agreement such that there was no option for
10 Mr. Suite to sign as a Team Leader.

11 80. Zachary Suite initially refused to sign the Contribution Agreement until it
12 reflected his proper status as a Team Leader.

13 81. However, Mr. Mosimann coerced Zachary Suite into believing that he had
14 no choice but to immediately sign the Contribution Agreement with no changes
15 since any delay would create a conflict with the USC law clinic that had helped
16 Mr. Mosimann draft the contract.

17 82. Mr. Mosimann further claimed that he was on the verge of a “business
18 deal” for I.C.U. and that any delay in signing the document would threaten the
19 deal.

20 83. Mr. Mosimann insisted that any delay created by Zachary Suite correcting
21 the document to identify himself as a Team Leader would jeopardize their game,
22 would reflect poorly upon his career and his connections with the professors, and
23 could cause I.C.U. itself to fail. Mr. Mosimann demanded that Mr. Suite that there
24 was no choice but to immediately sign the Contribution Agreement and Mr.
25 Mosimann intentionally put Mr. Suite under duress.

26 84. Those intentional and willful misrepresentations by Mr. Mosimann
27 intentionally put Zachary Suite under duress.

28 85. The Contribution Agreement must be rescinded.

1 86. As a direct and proximate result of the foregoing, Zachary Suite has
2 incurred damages in an amount to be determined at trial.

3 87. Zachary Suite is informed and believes, and upon that basis alleges, that in
4 committing the foregoing wrongful acts, Mr. Mosimann acted intentionally, with
5 malice and in conscious disregard of Zachary Suite's rights and Zachary Suite's
6 resulting damages. As a result, Zachary Suite is entitled to the award of punitive
7 and exemplary damages against Mr. Mosimann, in an amount to be determined at
8 trial.

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10 **THIRD CAUSE OF ACTION**

11 **(For Breach of Contract)**

12 88. Zachary Suite refers to and re-alleges each and every allegation 1 through
13 70, all inclusive, above as if set forth herein.

14 89. Defendants entered into a contract called the Founding Members Contract
15 with Mr. Suite to assign Mr. Suite a good faith percentage of the I.C.U. Games,
16 LLC, company based on Mr. Suite's role as a co-creator of I.C.U. and to credit him
17 as co-creator and Lead Designer of I.C.U.

18 90. Defendants have breached their obligations to Zachary Suite by failing to
19 accurately calculate and assign a percentage ownership of I.C.U. Games, LLC, as
20 well as actively diminishing Zachary Suite's co-creator's rights and credit as Lead
21 Designer of the I.C.U. game.

22 91. Defendants' breach goes to the heart of the contract and, accordingly,
23 Zachary Suite is entitled to rescind the contract, to recover all of his intellectual
24 property from Defendants, for Mr. Suite's damages directly and proximately
25 caused by Defendants, including interest. Alternatively, Zachary Suite is entitled to
26 all damages directly and proximately caused by Defendants' breach of the contract.

27 92. Zachary Suite has fully performed or tendered all performances required
28 under the Founding Members Contract.

1 93. Zachary Suite is also entitled to recover damages resulting from Defendants
2 failure to acknowledge and credit Mr. Suite's significant contribution to I.C.U.

3 **FOURTH CAUSE OF ACTION**

4 **(Breach of Covenant Of Good Faith And Fair Dealing)**

5 94. Zachary Suite refers to and re-alleges each and every allegation 1 through
6 70, all inclusive, above as if set forth herein.

7 95. Every contract imposes upon each part a duty of good faith and fair dealing
8 in its performance and its enforcement. This implied covenant of good faith and
9 fair dealing requires that no party will do anything that will have the effect of
10 impairing, destroying, or injuring the rights of the other party to receive the
11 benefits of their agreement. The covenant implies that in all contracts each party
12 will do things reasonably contemplated by the terms of the contract to accomplish
13 its purpose. This covenant protects the benefits of the contract that the parties
14 reasonably contemplated when they entered into the agreement.

15 96. Zachary Suite and Defendants entered into the Founding Members Contract
16 which imposed upon Zachary Suite and Defendants a covenant of good faith and
17 fair dealing in this matter.

18 97. Defendants have breached the implied covenant of good faith and fair
19 dealing by acting to deprive Zachary Suite of the ownership, rights, credit, and
20 financial benefits derived from the Founding Members Contract when Defendants
21 refused to assign Mr. Suite a percentage of I.C.U. Games, LLC and credit him as a
22 co-creator and lead designer of the game.

23 98. Zachary Suite did all of the things that the Founding Members Contract
24 required Mr. Suite to do.


25 99. All conditions required for Defendants' performance under the
26 contract have occurred.

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- 9. For Zachary Suite's attorneys' fees;
- 10. For any other relief as the Court deems proper.


Dated: October 28, 2016

By: 
Stephen Charles McArthur
The McArthur Law Firm, PC
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff Zachary Suite hereby demands a trial by jury of all issues so triable.

Dated: October 28, 2016

By: 
Stephen Charles McArthur
The McArthur Law Firm, PC
Attorneys for Plaintiff

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