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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WRITERS GUILD OF AMERICA, WEST, INC.; WRITERS GUILD OF AMERICA, EAST, INC.; PATRICIA CARR; ASHLEY GABLE; BARBARA HALL; DERIC A. HUGHES; GEORGE JOHANNESSEN; DEIRDRE MANGAN; DAVID SIMON; and MEREDITH STIEHM, Plaintiffs, v. WME ENTERTAINMENT; CREATIVE ARTISTS AGENCY; UNITED TALENT AGENTS; INTERNATIONAL CREATIVE MANAGEMENT PARTNERS; and DOES 1-10, Defendants.	Case No.: 19SMCV00725 Assigned to Judge Craig D. Karlan Department N **FIRST AMENDED COMPLAINT FOR:** **1. BREACH OF FIDUCIARY DUTY** **2. CONSTRUCTIVE FRAUD (CAL. CIV. CODE §1573)** **3. UNFAIR COMPETITION (CAL. BUS. & PROF. CODE §17200 ET SEQ.)** Complaint Filed: April 17, 2019

Plaintiffs Writers Guild of America, West, Inc. and Writers Guild of America, East, Inc. (collectively "Guilds" or "WGA"), and plaintiffs Patricia ("Patti") Carr, Ashley Gable, Barbara Hall, Deric A. Hughes, George ("Chip") Johannessen, Deirdre Mangan, David Simon, and Meredith Stiehm (collectively "Individual Plaintiffs"), allege as follows:

INTRODUCTION

1. Writers are the creative heart of the television and film businesses. They are responsible for providing the stories, plots, dialogue, and other content of television shows and movies that are enjoyed by audiences around the world and that generate billions of dollars in revenue every year. Without the work and creative content provided by these writers, the television and film industries could not operate.

2. The compensation and benefits paid to writers for their work are determined by a collectively-bargained contract between the Guilds and hundreds of studios and production companies. Because the entertainment industry is a freelance industry, and because writers may negotiate compensation above the minimum levels established by the WGA contract, the vast majority of working writers procure employment through talent agents they have retained to help them find work and negotiate for the best possible compensation. These agents owe a fiduciary duty to their clients, and must provide their clients with conflict-free representation.

3. Historically, the agents whom writers retained were compensated by receiving a portion of any payments made to the writers by production companies for work that the agents helped them procure. By tying the agents' compensation to the writers' compensation, this arrangement aligned the interests of the agents with the interests of their writer clients.

4. Unfortunately, over the last few decades, the four largest talent agencies—defendants WME Entertainment, Creative Artists Agency, United Talent Agents, and International Creative Management Partners (collectively, "Agencies")—largely abandoned this compensation model in favor of "packaging fees."

5. Agency compensation via packaging fees is possible because, after substantial consolidation within the industry, the Agencies now control access to all of the key talent necessary to create a new television show or feature film, including not only writers but also

actors and directors. The Agencies leverage this control to enter into agreements with television and film production companies wherein they negotiate "packaging fees" that are paid directly by the production companies from a program's budget or revenues to the Agencies simply because the Agencies represented the writers, directors, and actors who will be employed by the production companies in producing the show. The packaging fees paid by production companies to the Agencies are unrelated to their own clients' compensation and generate hundreds of millions of dollars in revenue for the Agencies each year.

6. Packaging fees create numerous conflicts of interest between writers and the Agencies serving as their agents. Unlike in a commission-based system, the economic interests of the agents at the Agencies that represent writers and other creative talent are no longer aligned with those of their writer clients. Rather than seeking to maximize how much writers are paid for their work, the Agencies seek to maximize the packaging fee they will be paid for a particular project or program. Because the Agencies' packaging fee is generally tied to a show's revenues and profits, the Agencies have an incentive to *reduce* the amount paid to writers and other talent for their work on a show. Further, the Agencies seek to prevent the writers they represent from working with talent represented by other Agencies in order to avoid having to split the packaging fee with other Agencies—even where the project would benefit by drawing from a larger talent pool. The Agencies also pitch writers' work to the production companies they believe will pay the most lucrative packaging fee, rather than to the companies that will pay the most to their writer clients.

7. Packaging fees have caused tremendous financial harm to the Guilds and their members, including the Individual Plaintiffs. The fees have depressed the compensation paid to writers, as money that would otherwise be paid to the writers is instead paid to the Agencies as part of the packaging fee or left on the table. Because of the conflicts of interest created by packaging, writers have also been required to retain other professionals (such as lawyers and personal managers) to monitor the Agencies, protect the writers' interests, and provide conflict-free services that agents would otherwise provide. Packaging fees have harmed the Guilds by requiring them to devote substantial resources to monitoring the Agencies' packaging fee

practices, attempting to help writers protect their interests, and developing a comprehensive campaign to eliminate the harms and abuses associated with packaging fees.

8. Plaintiffs bring this lawsuit to end the Agencies' harmful and unlawful practice of packaging fees. The Agencies' packaging fees violate the fiduciary duty that agents owe to their writer clients and deprive them of the conflict-free representation to which they are entitled. The Agencies' breaches of their fiduciary duty to their writer clients also constitute constructive fraud under California Civil Code §1573. For these reasons, and because the payments made from production companies to Agencies as part of any package constitute unlawful kickbacks from an employer to a "representative of any of his employees" prohibited by Section 302 of the federal Labor-Management Relations Act, 29 U.S.C. §186(a)(1), packaging is an unlawful or unfair business practice for the purposes of the California Unfair Competition Law, Cal. Bus. & Prof. Code §17200 *et seq.* Packaging fees should therefore be declared unlawful and enjoined, Plaintiffs should be awarded disgorgement of unlawful profits, and the Individual Plaintiffs should be awarded restitution and damages.

PARTIES

9. Plaintiff Writers Guild of America, West, Inc. is, and at all material times was, a labor union representing approximately 10,000 professional writers who write content for television shows, movies, news programs, documentaries, animation, and new media. Writers Guild of America, West serves as the exclusive collective bargaining representative for writers employed by the more than 2000 production companies that are signatory to an industrywide collective bargaining agreement negotiated by the Guilds and the Alliance of Motion Picture and Television Producers, Inc. ("AMPTP"). Writers Guild of America, West is a California nonprofit corporation headquartered in Los Angeles, California. Writers Guild of America, West brings this action for injunctive and declaratory relief under California's law of fiduciary duty in its representative capacity on behalf of all writers it represents, and brings this action under California's Unfair Competition Law on its own behalf.

10. Plaintiff Writers Guild of America, East, Inc. is, and at all material times was, a labor union representing over 4,700 professional writers who write content for television shows,

movies, news programs, documentaries, animation, and new media. Writers Guild of America, East serves as the exclusive collective bargaining representative for writers employed by the more than 2000 production companies that are signatory to an industrywide collective bargaining agreement negotiated by the Guilds and the AMPTP. Writers Guild of America, East is an unincorporated association headquartered in New York, New York. Writers Guild of America, East brings this action for injunctive and declaratory relief under California's law of fiduciary duty in its representative capacity on behalf of all writers it represents, and brings this action under California's Unfair Competition Law on its own behalf.

11. The Individual Plaintiffs in this action are as follows:

(a) Patti Carr is a television writer who resides in Studio City, California and works in Los Angeles County. She has written for television shows including *Life Unexpected*, *Mixology*, *Private Practice*, *Reba*, and *'Til Death*, and served as showrunner for *90210*. She is a member of Writers Guild of America, West. From January 2018 until April 2019, defendant International Creative Management Partners, LLC served as her talent agency. From approximately 2001 to January 2018, defendant Creative Artists Agency, LLC served as her talent agency. Carr has written or served as showrunner for packaged shows, including *90210*, *Mixology*, *Private Practice*, and *Reba*, and was injured by the payment of packaging fees to Agencies on those packaged shows.

(b) Ashley Gable is a television writer who resides in Los Angeles, California and works in Los Angeles County. She has written for television shows including *Buffy the Vampire Slayer*, *Bull*, *Designated Survivor*, *Magnum PI*, and *The Mentalist*. She is a member of Writers Guild of America, West. From approximately 2006 until April 2019, defendant Creative Artists Agency, LLC served as her talent agency. Prior to 2000, defendant International Creative Management Partners, LLC served as her talent agency. Gable has written for packaged shows, including *Magnum PI* and *Designated Survivor*, and was injured by the payment of packaging fees to Agencies on those packaged shows.

(c) Barbara Hall is a television writer who resides in Santa Monica, California and works in Los Angeles County. Her work as a television writer includes serving as the

showrunner for *Madam Secretary* for each of its five seasons and creating the television shows *Judging Amy* and *Joan of Arcadia*. She is a member of Writers Guild of America, West. From approximately 2012 until April 2019, and before 2000, defendant United Talent Agency, LLC served as her talent agency. From approximately 2000 until approximately 2012, defendant Creative Artists Agency, LLC served as her talent agency. Hall has written, created, or served as showrunner for packaged shows, including *Madam Secretary* and *Judging Amy*, and was injured by the payment of packaging fees to Agencies on those packaged shows.

(d) Deric A. Hughes is a television writer who resides in Sherman Oaks, California and works in Sherman Oaks. He has written for television shows including *Arrow*, *The Flash*, *Beauty and the Beast*, and *Warehouse 13*. He is a member of Writers Guild of America, West. From approximately 2009 until April 2019, defendant Creative Artists Agency, LLC served as his talent agency. Hughes has written for packaged shows, including *Black Samurai* and *Beauty and the Beast*, and was injured by the payment of packaging fees to Agencies on those packaged shows.

(e) Chip Johannessen is a television writer who resides in Pacific Palisades, California, and works in Century City. He has written for television shows including *Homeland*, *24*, *Moonlight*, and *Beverly Hills 90210*, was the showrunner for season five of *Dexter*, and also created the miniseries *Saints and Strangers*. He is a member of Writers Guild of America, West. From approximately June 2006 until April 2019, defendant International Creative Management Partners, LLC served as his talent agency. Johannessen has written for or created packaged shows, including *Homeland* and *Saints and Strangers*, and was injured by the payment of packaging fees to Agencies on those packaged shows.

(f) Deirdre Mangan is a television writer who lives in Los Angeles, California and works in Los Angeles County. She has written television shows including *Midnight Texas*, *The Crossing*, *iZombie*, and *Do No Harm*. She is a member of Writers Guild of America, West. From approximately 2012 until March 2019, defendant United Talent Agency, LLC served as her talent agency. Mangan has written for packaged shows, including *iZombie* and *Do No Harm*, and was injured by the payment of packaging fees to Agencies on those packaged shows.

(g) David Simon is a television writer who works and resides in Baltimore, Maryland. His work as a writer includes creating and running the shows *The Wire* and *The Deuce*, as well as writing *Homicide: Life on the Street* (which was based on an earlier book published by Simon), and writing and producing *The Corner*, *Treme*, *Generation Kill*, and *Show Me A Hero*. He is a member of Writers Guild of America, East. From approximately 1992 until April 2019, defendant Creative Artists Agency, LLC served as his talent agency. Simon has written for a packaged show, *Homicide: Life on the Street*, and was injured by the payment of packaging fees to Agencies on that packaged show.

(h) Meredith Stiehm is a television writer who resides in Santa Monica, California and works in Los Angeles County. Her work as a writer includes writing for *NYPD Blue* and *ER*, creating *Cold Case* and *The Bridge*, and serving as executive producer and writer on *Homeland*. She is a member of Writers Guild of America, West. From approximately 2011 until April 2019, defendant William Morris Endeavor Entertainment, LLC served as her talent agency. Prior to then, defendant Creative Artists Agency, LLC served as her talent agency. Stiehm has written, created, or served as showrunner for packaged shows, including *Homeland*, *Cold Case*, and *The Bridge*, and was injured by the payment of packaging fees to Agencies on those packaged shows.

12. Defendant William Morris Endeavor Entertainment, LLC ("WME") is, and at all material times was, a limited liability company existing under the laws of the State of Delaware, with its principal place of business in Los Angeles County, California.

13. Defendant Creative Artists Agency, LLC ("CAA") is, and at all material times was, a limited liability company existing under the laws of the State of California, with its principal place of business in Los Angeles County, California.

14. Defendant United Talent Agency, LLC ("UTA") is, and at all material times was, a limited liability company existing under the laws of the State of Delaware, with its principal place of business in Los Angeles County, California.

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15. Defendant International Creative Management Partners, LLC ("ICM") is, and at all material times was, a limited liability company existing under the laws of the State of Delaware with its principal place of business in Los Angeles County, California.

16. Each of the defendant Agencies is a talent agency comprised of numerous individual talent agents, who as partners, principals, or employees of the Agency, render services on behalf of the defendant talent agency. In rendering such services, each individual agent acted on behalf of his or her respective Agency, which at all times remained liable for the acts or omissions of the individual agent.

17. The true names and capacities of defendants sued herein as Does 1 through 10 are unknown to plaintiffs, who therefore sue these defendants by fictitious names. Plaintiffs will amend the complaint to allege these Doe defendants' true names and capacities when they are ascertained.

JURISDICTION AND VENUE

18. The Superior Court of the State of California has jurisdiction in this matter because the Agencies regularly conduct business in California. Venue is proper in in the Superior Court for Los Angeles County because each of the defendant Agencies has its principal place of business in Los Angeles County, California. Venue is proper in the West Division of the Superior Court for Los Angeles County because one or more of the defendants and one or more of the plaintiffs resides in the West Division and the causes of action set forth herein arose in the West Division.

FACTUAL ALLEGATIONS

The WGA and the Role of Talent Agents

19. Writers are responsible for producing the literary material that forms the basis for thousands of television episodes and films produced every year (many in California) which generate billions of dollars in annual revenue. The literary material provided by writers includes, among other things, stories, outlines, treatments, screenplays, teleplays, dialogue, scripts, plots, and narrations. This literary material forms the heart of every television show and film; without it, the shows and films could not be made.

20. The Individual Plaintiffs' work as writers is exemplary of the work performed by all writers in the television and film industry. They have written for hit shows including *24*, *Beverly Hills 90210*, *Buffy the Vampire Slayer*, *Designated Survivor*, *Dexter*, *Homeland*, *Homicide: Life on the Street*, *Moonlight*, *The Mentalist*, *Reba*, *Private Practice*, *iZombie*, and *NYPD Blue*. They also ran and/or created shows including *90210*, *Cold Case*, *Hit and Run*, *Joan of Arcadia*, *Madam Secretary*, *Saints and Strangers*, and *The Wire*.

21. The Guilds and their predecessor organizations have represented writers in the American film and television industries since the 1930s. The Guilds serve as the exclusive collective bargaining representative for writers in negotiations with film and television producers to protect and promote the rights of screen, television, and new media writers. The Guilds' long-term efforts on writers' behalf have resulted in a wide range of benefits and protection for writers, including minimum compensation, residuals for reuse of a credited writer's work, pension and health benefits, and protection of writers' creative rights.

22. The Guilds also administer the process for determining writing credits for feature films, television, and new media programs.

23. The Guilds sponsor seminars, panel discussions, and special events in order to educate its members about their rights and the steps they can take to protect their own interests. The Guilds also conduct legislative lobbying and public relations campaigns to promote their members' interests.

24. Approximately 2000 television and film production companies are parties to the industrywide agreement knows as the Writers Guild Theatrical and Television Basic Agreement ("MBA"), negotiated between the Guilds and the AMPTP. The AMPTP serves as the collective bargaining representative of the major studios and production companies, while the Guilds jointly serve as the exclusive representative for all of the writers employed under the MBA. The MBA establishes minimum terms for the work performed by writers for the MBA-signatory employers, including the minimum compensation that writers must be paid for such work.

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25. The MBA expressly permits writers to negotiate "overscale" employment terms—that is, compensation and other employment terms that exceed the minimums set forth in the MBA. Although the Guilds are the exclusive collective bargaining representatives for writers employed by MBA-signatory companies, the Guilds have chosen to allow writers to negotiate directly with the companies regarding overscale compensation and other terms of employment. At all times relevant to this action, Article 9 of the MBA has provided:

> The terms of this Basic Agreement are minimum terms; nothing herein contained shall prevent any writer from negotiating and contracting with any Company for better terms for the benefit of such writer than are here provided, excepting only credits for screen authorship, which may be given only pursuant to the terms and in the manner prescribed in Article 8. The Guild only shall have the right to waive any of the provisions of this Basic Agreement on behalf of or with respect to any individual writer.

26. The film and television production industry now operates almost entirely on a freelance basis. Writers are generally hired by production companies to work on individual projects for the duration of those projects, rather than working for the company on a long-term basis across multiple different projects. In order to find employment, negotiate for overscale employment terms, obtain career guidance, and protect their professional interests, writers traditionally retained agents (and the agencies with which those agents were associated) to represent them in their dealings with the production companies. The Agencies (through the individual agents associated with each of them) agree to provide such representation to their clients. In doing so, the Agencies exercise authority delegated to them by the WGA, the writers' exclusive collective bargaining representative.

<u>The Mechanics of Packaging</u>

27. Historically, the agents retained by writers (and other creative professionals) were compensated for representing their clients by being paid a percentage (generally ten percent) of the amount paid to clients for work procured while the agent serves as their representative. This traditional arrangement aligned the economic interests of the writers and their agents, because

any increase in the compensation received by the writers resulted in a corresponding increase in the agents' compensation. The same arrangement persists in film and television industries in other countries, such as Canada, where the system of packaging fees does not exist.

28. Over time, conditions in the television and film industry changed dramatically in a manner that has had significant negative consequences for writers, while drastically increasing the profits of the Agencies and their agents.

29. First, there has been overwhelming consolidation within the market for talent agents. Because of this consolidation, the four defendant Agencies now represent the overwhelming majority of writers, actors, directors, and other creative workers involved in the American television and film industries. By virtue of this consolidation, the Agencies exert oligopoly control over access to almost all key talent in the television and film industries.

30. Second, the Agencies have moved away from the commission-based model of compensation described above. Instead, the Agencies have shifted to a "packaging fee" model whereby the Agencies negotiate and collect payments directly from the production companies that employ their writer-clients and that are tied to the revenues and profits of the "packaged" program, rather than receiving a percentage of their clients' compensation. Approximately 90% of all television series are now subject to such packaging fee arrangements.

31. In television, the packaging fee for a particular project normally consists of three components: an upfront fee of $30,000 to $75,000 per TV episode, an additional $30,000 to $75,000 per episode that is deferred until the show achieves net profits, and a defined percent of the TV series' modified adjusted gross profits for the life of the show.

32. Packaging fees are generally based on a "3-3-10" formula, with the upfront fee defined as 3% of the "license fee" paid by the studio for the program, the deferred fee also defined as 3% of the "license fee" paid by the studio for the program, and the profit participation defined as 10% of the program's modified adjusted gross profits. The "license fee" used to determine that portion of the packaging fee is an amount set by the production company or negotiated between the Agency and the production company as part of the packaging fee agreement.

33. Each of the Agencies uses this formula for packages including writers and other talent it represents. Packaged programs on which the Individual Plaintiffs worked include, but are not limited to, *90210* (CAA); *Beauty and the Beast* (CAA); *The Bridge* (WME); *Cold Case* (CAA); *Designated Survivor* (CAA); *Do No Harm* (UTA); *Homeland* (WME); *Homicide: Life on the Street* (CAA); *iZombie* (UTA); *Judging Amy* (CAA); *Madam Secretary* (UTA and CAA); *Magnum PI* (CAA and ICM); *Private Practice* (CAA); and *Reba* (CAA).

34. Packaging fees generate hundreds of millions of dollars per year in revenue for the Agencies—far more than they would earn from a traditional 10% commission from their clients. The Agencies have used the income generated through packaging to raise private capital, and their business has become so lucrative that some Agencies are now planning to become publicly held corporations.

35. The packaging fees paid to the Agencies often exceed the amount their clients are paid for work on a particular program. On *Cold Case*, for example, CAA was entitled to a packaging fee of $75,000 per episode, an amount that exceeded Meredith Stiehm's per episode pay for at least the first two years of the series.

36. With almost all television series being packaged, the Agencies now earn much of their revenue from representing their own economic interests, rather than from maximizing the earnings of their clients.

Harm Caused by Packaging

37. The packaging fee model of Agency compensation harms writers in multiple respects.

38. Because the first component of any packaging fee is part of a TV episode's budget, payment of that amount diverts financial resources away from the Agencies' clients and the projects on which they are working and to the Agencies themselves. Even where the Agencies are paid a lower end upfront packaging fee of, for example, $25,000 per episode, that represents the cost of hiring approximately one additional high-level writer or two additional lower-level writers for the program. Where a studio or network insists that the budget for a

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program be limited or reduced, showrunners cannot reduce the amount paid to the Agencies as a packaging fee, and must instead cut resources from other portions of the program's budget.

39. Likewise, because the third component of the packaging fee is based on defined gross profits, the payment of the packaging fee to an Agency has the effect of reducing the profit participation of the Agency's own clients, including writers, as the writers' share of the profit points is correspondingly reduced. Worse, the Agencies in many instances negotiate more favorable profit definitions for themselves than for their own writer clients. Many of the Individual Plaintiffs are entitled or would have been entitled but for the Agencies' malfeasance to profit participation for their prior work on packaged shows including, but not limited to, *90210*; *Cold Case*; *Homicide: Life on the Street*; *Saints and Strangers*; and *Judging Amy*. As a result of the fact that packaging fees are frequently paid to the Agencies before the profits that determine writer's profit are calculated, because of the Agencies' higher priority profit definitions, the ongoing amount paid to those Individual Plaintiffs is substantially reduced. Indeed, even though CAA has not performed any work in connection with *Cold Case* since the show was originally purchased by CBS approximately two decades ago, CAA is presently being paid almost exactly the same amount for that successful show that Meredith Stiehm is paid in in profit participation for having created the show and served as showrunner for seven years. Likewise, although David Simon has never received any profit distributions for *Homicide: Life on the Street* because his agency, CAA, negotiated a profit definition for Simon that was based on net rather than gross profits, on information and belief, CAA to this day continues to receive profit from that show because it secretly negotiated a far more favorable profit definition for itself, without Simon's knowledge or consent. Indeed, Simon had strenuously objected to CAA's negotiation of an unfavorable net profit definition for Simon, and had sought to improve his profit definition in further negotiations; however, when Simon's attorney sought to amend his original net profit definition, Simon learned that CAA had represented to the production company that Simon had already agreed to that profit definition and that the production company and NBC had already invested substantial sums in preproduction. CAA further represented to Simon that if he did not agree to the original, unfavorable net profit definition, he would not only

lose the option payments and other monies that were due him under the contract, but would also be liable to the production company and NBC for the preproduction costs. It was not until many years later that Simon learned not only that CAA had simultaneously represented the director and the head of the production company in the negotiations, but also that all other profit participants in *Homicide*, including CAA and the director, had profit definitions based on gross rather than net profits.

40. Because the Agencies' compensation in a packaging arrangement is tied to the budget for and profits generated by a particular program, rather than to the amount paid to their clients working on that program, the Agencies' financial incentive to protect and increase their clients' pay is eliminated. Agencies receive packaging fees whether their client's pay increases or decreases, and even if their client no longer works on a particular program. Indeed, Agencies actually have a *disincentive* to advocate for greater pay for their clients, because the Agencies' share of profits would be at risk of being reduced.

41. For Deirdre Mangan's work on *iZombie*, for example, UTA refused to negotiate a title and compensation commensurate with Mangan's experience, insisting that "studio policy" precluded her from receiving a better title or salary. Mangan subsequently learned that "studio policy" did not in fact preclude other writers from receiving title bumps or salary increases when their agents chose to negotiate them. On information and belief, UTA refused to negotiate a title and compensation commensurate with Mangan's experience in order to protect its own profit participation. Mangan's experience with packaging is typical of writers in the early and mid-stages of their careers. Indeed, Agencies routinely refuse to negotiate greater salaries for staff writers, instead taking the first offer made by the studio in order to protect the Agencies' packaging fee.

42. The Agencies also have little incentive to protect the pay their clients have already earned. For example, when Chip Johannessen's script for *Saints and Strangers* was produced by National Geographic, his Agency ICM pressured him to accept a reduced profit participation and to forgo a series sales bonus that he had been entitled to under his original contract, informing Johannessen that there was not sufficient money in the budget for the show

to be made unless Johannessen agreed, which he reluctantly did. Johannessen only learned several months later that ICM had extracted a substantial packaging fee with a more favorable profit definition for itself from *Saints and Strangers*, thus deliberately enriching itself at Johannessen's expense.

43. The Agencies themselves recognize that their interests are no longer aligned with those of the writers they represent, but are instead aligned with the production companies that employ their clients. The head of WME has stated publicly, for example, that his most important client is now a head executive at Warner Brothers.

44. Packaging fees also distort agents' incentives when seeking employment opportunities for their clients.

45. In order to avoid splitting a packaging fee with other agencies, the Agencies pressure their clients to work exclusively on projects where the other key talent is also represented by the client's Agency. The Agencies exert this pressure even where the client and the agent know that the project will be best served by involving someone from another Agency. Many of the Individual Plaintiffs have found that their Agency presents them with opportunities to work only on projects involving other talent from the same Agency. Their ability to obtain work and compensation commensurate with their experience has been severely hampered by the Agencies' failure to present them with other work opportunities.

46. The Agencies also choose not to sell packaged programs to the production companies willing to pay the most for the programs, or that will be the best creative partner for the programs. Instead, the Agencies choose to sell packaged programs to the companies willing to pay the largest packaging fee.

47. Agencies use popular writers as leverage to secure packaging fees, even where doing so does not serve the economic or creative interests of those writers. Indeed, Agencies have at times actively suppressed the wages of their own clients to secure packaging fees, in one case offering to secure a writer's work for a studio for $14,000 an episode, instead of the $20,000 he had previously earned.

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48. The consequences of packaging for television writers have been profound. Despite growing demand for television series, driven in part by the entry of companies like Netflix, Amazon, Apple, and Facebook into the production and distribution business, and despite the unprecedented profitability of the entertainment industry as a whole, overscale compensation for writers has been stagnant over the last fifteen years. When inflation is accounted for, writers are now being paid *less* than they were more than a decade ago. This is true even for top-level writers, show creators, and showrunners.

49. While the practice of packaging has its historical roots in television, the Agencies now also extract packaging fees on feature film projects, particularly on independent productions not financed or produced by a major studio. On packaged feature projects, the Agencies are paid a fee from a film's budget or financing, in addition to taking a 10% commission from their clients. Agencies also use their leverage to steer film projects to their own clients or affiliated companies to function as financiers or distributors of the finished film.

50. While the economics of film packaging differs in some respects from packaging agreements in television, the conflict of interest is the same. The Agencies leverage their access to high-profile clients for their own benefit, and negotiate compensation for themselves, undisclosed to their clients and unrelated to what their clients earn.

51. Feature film packaging fees have a direct detrimental effect on writers. As the feature film business has contracted, increasing pressure on screenwriters, the Agencies have not advocated against declining screenwriter pay or unpaid work because the Agencies make most of their money on packaging fees paid by production companies for television and film projects, and have little incentive to fight for clients from whom they are simply paid a commission. As in television, the effect of these conflicts has been to exert downward pressure on writer compensation.

52. In addition, because packaging fees are based in part on gross profit, the payment of the film's packaging fee may, depending on the profit definition, have the effect of reducing the profit participation of the Agency's own clients, including writers. And because a portion of the packaging fee comes out of a film's budget, payment of the fee diverts financial resources

away from the Agencies' clients and the projects on which they are working and to the Agencies themselves.

53. Film packaging fees also distort agents' incentives when seeking employment opportunities for their clients. In order to avoid splitting a packaging fee with other agencies, the Agencies pressure their clients to work exclusively on projects where the other key talent is also represented by the client's Agency. The Agencies exert this pressure even where the client and the agent know that the project will be best served by involving someone from another Agency.

54. The Agencies also choose not to sell packaged programs to the production companies willing to pay the most for the film, or that will be the best creative partner for the film. Instead, the Agencies choose to sell packaged films to the companies willing to pay the largest packaging fee.

55. Agencies use popular writers as leverage to secure film packaging fees, even where doing so does not serve the economic or creative interests of those writers.

56. Packaging fees have deprived writers of conflict-free and loyal representation in their negotiations with production companies. By depriving writers of conflict-free and loyal representation, packaging fees reduce the compensation paid to writers for their work on particular programs. Agencies receiving a packaging fee do not negotiate on their clients' behalf with the same vigor they would if they were being paid a portion of their clients' compensation, and their financial interest in the program creates an incentive for them to hold down or reduce the amount paid to their clients. The Guilds' members, including the Individual Plaintiffs, have seen their writing wages stagnate or decrease over the last decade, particularly on shows packaged by their Agencies, despite the substantial expansion of the television market in recent years.

57. Because of the Agencies' breaches of their fiduciary duties, writers—including each of the Individual Plaintiffs—have been forced to retain and pay other professionals, including lawyers and talent managers, to protect their interests, frequently paying as much as 15% or 20% in additional commissions to these other professionals to secure the services that talent agencies alone once provided. Because writers' agents no longer represent their clients

vigorously and without conflicts, writers, including the Individual Plaintiffs, rely upon their talent managers to identify employment opportunities and upon their lawyers to negotiate the terms of their contracts with production companies. These are services that the agents themselves should be providing to the writers they represent. That writers must pay others for these services further reduces their take-home pay.

58. Barbara Hall's situation is typical in this respect. Although she was represented by UTA until April 2019, to protect her interests, she also had to retain a business manager, talent manager, and lawyer, who collectively receive a total of 20% of her income. The end result of these additional payments Hall must make is that the per episode payment to UTA for *Madam Secretary* is approximately equal to Hall's post-commission payment per episode for her work as showrunner on that program. A second agency, CAA, also receives a separate per episode packaging fee for *Madam Secretary*.

59. Packaging also denies writers employment opportunities. The Agencies are resistant to placing their clients with programs or films that are already connected to talent from other Agencies, because doing so will reduce or eliminate any packaging fee they might be paid for the clients' work. Many potential projects have been delayed or killed solely because of a dispute between an Agency and a production company over the packaging fee. Programs are sold to the production companies willing to pay the largest packaging fee, rather than those willing to provide the Agencies' writer clients with the greatest compensation or those that will serve as the best creative partners for the programs.

60. The Agencies routinely fail to disclose the conflicts of interest inherent in packaging. The packaging agreement, including the profit definition, is negotiated directly between the Agency and production company, with no notice or disclosure to the writer-clients. Indeed, virtually no writer has ever seen a packaging agreement. The Individual Plaintiffs were never provided with the specific details of the packaging agreements applicable to the packaged programs on which they worked.

61. Agencies have never obtained their writer-clients' valid, informed consent to the Agencies' flagrant conflicts of interest. Such a valid, informed consent would require the

disclosure not just of the existence of the conflict but also of all of the specific details of any packaging agreement between the Agency and the production company. The Agencies, however, not only fail to disclose the material terms of the packaging agreements to their writer-clients, but in many instances deliberately conceal the existence of the conflict of interest by informing their writer-clients that packaging benefits the client because they will not pay commission, when in fact the Agencies' packaging fees exceed the 10% commission the Agencies are forgoing.

62. In fact, the Agencies sometimes do not even disclose the fact that packaging has occurred. For example, David Simon was not informed that the show *Homicide: Life on the Street*, which was based on a book Simon had previously published, had been packaged by his Agency, CAA. Indeed, CAA purported to represent Simon both as the seller of his intellectual property and as a writer on the show, while simultaneously representing the purchaser of Simon's IP, thus deliberately suppressing Simon's compensation and profit participation.

63. Packaging also causes substantial harm to the Guilds. In order to protect their members' interests, the Guilds have devoted substantial resources to monitoring packaging (to the extent possible given the Agencies' failure to provide the Guilds or their writer-clients with clear information about the terms of their packaging arrangements); to educating members about packaging, the risks and harms created by agents' conflicted representation, and the steps they can take to protect themselves; to engaging in political advocacy and public outreach to increase awareness of the harms resulting from packaging; and to preparing a comprehensive campaign to end packaging's harms and abuses. The Guilds have also incurred additional expenses in enforcing writers' contractual rights because the Agencies, conflicted by their packaging practices, are reluctant or unwilling to defend writers' interests in the face of contract violations. Finally, packaging has reduced the Guilds' revenue from member dues, because dues are dependent in part upon writers' compensation. Each of the Agencies has engaged in packaging that has caused each of these forms of harm to the Guilds.

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64. Packaging fees have harmed the market for writers' work by draining money from television and film production budgets, and by diverting to the Agencies funds that could otherwise be used to finance production and the employment of writers.

65. Because of packaging fees, writers face a less competitive market for their services, with the Agencies generally attempting to place writers only with projects tied to other clients of the Agency, rather than with all available projects, and failing to negotiate the best possible compensation for their clients.

66. Likewise, the Agencies use their oligopoly control over key talent to pressure writers whose agents are not affiliated with the Agencies to fire those agents and retain a defendant Agency in order to have access to employment on the Agency's packages.

67. Finally, packaging fees have harmed the overall market for television and film production by establishing a fixed set of financial terms production companies must pay for each "package" an Agency provides, and by preventing production companies from retaining the best writers and other talent for each project, regardless of agency affiliation.

FIRST CAUSE OF ACTION

Breach of Fiduciary Duty

(brought by the Individual Plaintiffs on their own behalf, and by the Guilds on behalf of their members, against all Defendants)

68. Plaintiffs re-allege and incorporate by reference the allegations set forth in the foregoing paragraphs.

69. Under California law, an agent owes a fiduciary duty to his or her principal, which includes the duty of loyalty and the duty to avoid conflicts of interest.

70. At all times relevant to the Complaint, the Agencies owed fiduciary duties to the Individual Plaintiffs, and each of them, and to all members of the Guilds represented by the Agencies.

71. ICM willfully breached its fiduciary duty to Patti Carr, Chip Johannessen, and other members of the Guilds represented by ICM by placing its own interests above that of its clients Carr, Johannessen, and other members of the Guilds, and by increasing its own profits at

the expense of Carr, Johannessen, and other members of the Guilds, which constituted a breach of the duty of loyalty. ICM further willfully breached its fiduciary duty to Carr, Johannessen, and other members of the Guilds by proceeding with the representation under numerous conflicts of interest without obtaining valid, informed consent to those conflicts of interest from Carr, Johannessen, or other members of the Guilds.

72. CAA willfully breached its fiduciary duty to Patti Carr, Ashley Gable, Barbara Hall, Deric A. Hughes, David Simon, Meredith Stiehm, and other members of the Guilds represented by CAA by placing its own interests above that of its clients Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds, and by increasing its own profits at the expense of Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds, which constituted a breach of the duty of loyalty. CAA further willfully breached its fiduciary duty to Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds by proceeding with the representation under numerous conflicts of interest without obtaining valid, informed consent to those conflicts of interest from Carr, Gable, Hall, Hughes, Simon, Stiehm, or other members of the Guilds.

73. UTA willfully breached its fiduciary duty to Barbara Hall, Deirdre Mangan, and other members of the Guilds represented by UTA by placing its own interests above that of its clients Hall, Mangan, and other members of the Guilds, and by increasing its own profits at the expense of Hall, Mangan, and other members of the Guilds, which constituted a breach of the duty of loyalty. UTA further willfully breached its fiduciary duty to Hall, Mangan, and other members of the Guilds by proceeding with the representation under numerous conflicts of interest without obtaining valid, informed consent to those conflicts of interest from Hall, Mangan, or other members of the Guilds.

74. WME willfully breached its fiduciary duty to Meredith Stiehm and other members of the Guilds represented by WME by placing its own interests above that of its clients Stiehm and other members of the Guilds, and by increasing its own profits at the expense of Stiehm and other members of the Guilds, which constituted a breach of the duty of loyalty. WME further willfully breached its fiduciary duty to Stiehm and other members of the Guilds by

proceeding with the representation under numerous conflicts of interest without obtaining valid, informed consent to those conflicts of interest from Stiehm, or other members of the Guilds.

75. As a result of ICM's willful breaches of its fiduciary duty to Carr and Johannessen, they suffered significant damages, including but not limited to lost wages, lost employment opportunities, and other economic losses.

76. As a result of CAA's willful breaches of its fiduciary duty to Carr, Gable, Hall, Hughes, Simon, and Stiehm, they suffered significant damages, including but not limited to lost wages, lost employment opportunities, and other economic losses.

77. As a result of UTA's willful breaches of its fiduciary duty to Hall and Mangan, they suffered significant damages, including but not limited to lost wages, lost employment opportunities, and other economic losses.

78. As a result of WME's willful breaches of its fiduciary duty to Stiehm, she suffered significant damages, including but not limited to lost wages, lost employment opportunities, and other economic losses.

79. As a result of the Agencies' willful breaches of their fiduciary duties to the Guilds' members, the Guilds' members suffered significant harm, including but not limited to lost wages, lost employment opportunities, and other economic losses.

80. Plaintiffs are informed and believe that Defendant Agencies, and each of them, committed the aforementioned acts maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs, from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiffs' rights. The Individual Plaintiffs are therefore entitled to recover punitive damages from Defendants in an amount according to proof.

SECOND CAUSE OF ACTION

Constructive Fraud, Cal. Civ. Code §1573

(brought by the Individual Plaintiffs on their own behalf, and by the Guilds on behalf of their members, against all Defendants)

81. Plaintiffs re-allege and incorporate by reference the allegations set forth in the foregoing paragraphs.

82. Under California law, "[c]onstructive fraud consists … [i]n any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him." Cal. Civ. Code §1573. Pursuant to Civil Code §1573, an agent's breach of his or her fiduciary duty to a principal thus constitutes constructive fraud. Specifically, the failure of a fiduciary to disclose a material fact to his principal that might affect the fiduciary's motives or the principal's decision constitutes constructive fraud, regardless of whether the fiduciary acted with fraudulent intent.

83. ICM committed constructive fraud by breaching its fiduciary duty to Patti Carr, Chip Johannessen, and other members of the Guilds represented by ICM by placing its own interests above that of its clients Carr, Johannessen, and other members of the Guilds, and by increasing its own profits at the expense of Carr, Johannessen, and other members of the Guilds, which constituted a breach of the duty of loyalty. ICM further committed constructive fraud by breaching its fiduciary duty to Carr, Johannessen, and other members of the Guilds by proceeding with the representation under numerous conflicts of interest without disclosing the material facts concerning those conflicts of interest to Carr, Johannessen, or other members of the Guilds. On information and belief, ICM committed constructive fraud by failing to disclose to Carr, Johannessen, and other members of the Guilds material facts known to ICM, which material facts might affect ICM's motives or, if disclosed to Carr, Johannessen, and other members of the Guilds, would have affected Carr's, Johannessen's, and other members of the Guilds' decisions, including but not limited to the following:

(a) Concealing the fact that packaging fees are paid directly by the production companies from the program's budget or revenues to ICM;

(b) Concealing the fact that ICM sought to prevent Carr, Johannessen, and other members of the Guilds represented by ICM from working with talent represented by other Agencies in order to avoid having to split packaging fees with other Agencies;

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(c) Concealing the fact that ICM intentionally failed to maximize how much each of Carr, Johannessen, and other members of the Guilds represented by ICM were or are paid for their work in order to maximize packaging fees for itself;

(d) Concealing the fact that ICM intentionally failed to pitch its clients Carr's, Johannessen's, and other members of the Guilds' work to production companies that would pay the writers the most, and instead, pitched Carr's, Johannessen's, and other members of the Guilds' work to those production companies that ICM believed would pay the largest packaging fee;

(e) Concealing the fact that ICM often makes more in packaging fees than Carr, Johannessen, and other members of the Guilds represented by ICM are paid for their work on a particular program;

(f) Concealing the fact that packaging fees are frequently paid to ICM before the profits that determine how Carr's, Johannessen's, and other members of the Guilds' profits are calculated, which therefore reduces the overall amount of money paid to Carr, Johannessen, and other members of the Guilds represented by ICM for their work on a particular show;

(g) Concealing the fact that ICM's compensation in a packaging fee arrangement is often tied to the budget of a particular production or program rather than the amount paid to Carr, Johannessen, and other members of the Guilds represented by ICM, and therefore, ICM is incentivized to reduce the amount paid to Carr, Johannessen, and other members of the Guilds represented by ICM in order to increase the amount of the budget available to compensate ICM;

(h) Concealing the fact that ICM uses popular writers, including Carr, Johannessen, and other members of the Guilds represented by ICM, as leverage to secure packaging fees even where doing so does not serve the economic and/or creative interests of their writer clients Carr, Johannessen, and other members of the Guilds;

(i) Concealing the fact that ICM has, in some instances, intentionally and actively suppressed the wages of their own writer clients Carr, Johannessen, and other members of the Guilds represented by ICM in order to secure more lucrative "packaging fees" for itself; and

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(j) Concealing the fact that ICM's interests in negotiating packaging fees for itself are not aligned with its clients Carr, Johannessen, and other members of the Guilds, and in fact, are at direct odds with ICM's clients.

84. CAA committed constructive fraud by breaching its fiduciary duty to Patti Carr, Ashley Gable, Barbara Hall, Deric A. Hughes, David Simon, Meredith Stiehm, and other members of the Guilds represented by CAA by placing its own interests above that of its clients Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds, and by increasing its own profits at the expense of Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds, which constituted a breach of the duty of loyalty. CAA further committed constructive fraud by breaching its fiduciary duty to Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds by proceeding with the representation under numerous conflicts of interest without disclosing the material facts concerning those conflicts of interest to Carr, Gable, Hall, Hughes, Simon, Stiehm, or other members of the Guilds. On information and belief, CAA committed constructive fraud by failing to disclose to Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds material facts known to CAA, which material facts might affect CAA's motives or, if disclosed to Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds, would have affected Carr's, Gable's, Hall's, Hughes', Simon's, Stiehm's, and other members of the Guilds' decisions, including but not limited to the following:

(a) Concealing the fact that packaging fees are paid directly by the production companies from the program's budget or revenues to CAA;

(b) Concealing the fact that CAA sought to prevent Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds represented by CAA from working with talent represented by other Agencies in order to avoid having to split packaging fees with other Agencies;

(c) Concealing the fact that CAA intentionally failed to maximize how much each of Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds represented by CAA were or are paid for their work in order to maximize packaging fees for itself;

(d) Concealing the fact that CAA intentionally failed to pitch its clients Carr's, Gable's, Hall's, Hughes', Simon's, Stiehm's, and other members of the Guilds' work to production companies that would pay the writers the most, and instead, pitched Carr's, Gable's, Hall's, Hughes', Simon's, Stiehm's, and other members of the Guilds' work to those production companies that CAA believed would pay the largest packaging fee;

(e) Concealing the fact that CAA often makes more in packaging fees than Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds represented by CAA are paid for their work on a particular program;

(f) Concealing the fact that packaging fees are frequently paid to CAA before the profits that determine how Carr's, Gable's, Hall's, Hughes', Simon's, Stiehm's, and other members of the Guilds' profits are calculated, which therefore reduces the overall amount of money paid to Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds represented by CAA for their work on a particular show;

(g) Concealing the fact that CAA's compensation in a packaging fee arrangement is often tied to the budget of a particular production or program rather than the amount paid to Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds represented by CAA, and therefore, CAA is incentivized to reduce the amount paid to Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds represented by CAA in order to increase the amount of the budget available to compensate CAA;

(h) Concealing the fact that CAA uses popular writers, including Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds represented by CAA, as leverage to secure packaging fees even where doing so does not serve the economic and/or creative interests of their writer clients Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds;

(i) Concealing the fact that CAA has, in some instances, intentionally and actively suppressed the wages of their own writer clients Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds represented by CAA in order to secure more lucrative "packaging fees" for itself; and

(j) Concealing the fact that CAA's interests in negotiating packaging fees for itself are not aligned with its clients Carr, Gable, Hall, Hughes, Simon, Stiehm, and other members of the Guilds, and in fact, are at direct odds with CAA's clients.

85. UTA committed constructive fraud by breaching its fiduciary duty to Barbara Hall, Deirdre Mangan, and other members of the Guilds represented by UTA by placing its own interests above that of its clients Hall, Mangan, and other members of the Guilds, and by increasing its own profits at the expense of Hall, Mangan, and other members of the Guilds, which constituted a breach of the duty of loyalty. UTA further committed constructive fraud by breaching its fiduciary duty to Hall, Mangan, and other members of the Guilds by proceeding with the representation under numerous conflicts of interest without disclosing the material facts concerning those conflicts of interest to Hall, Mangan, or other members of the Guilds. On information and belief, UTA committed constructive fraud by failing to disclose to Hall, Mangan, and other members of the Guilds material facts known to UTA, which material facts might affect UTA's motives or, if disclosed to Hall, Mangan, and other members of the Guilds, would have affected Hall's, Mangan's, and other members of the Guilds' decisions, including but not limited to the following:

(a) Concealing the fact that packaging fees are paid directly by the production companies from the program's budget or revenues to UTA;

(b) Concealing the fact that UTA sought to prevent Hall, Mangan, and other members of the Guilds represented by UTA from working with talent represented by other Agencies in order to avoid having to split packaging fees with other Agencies;

(c) Concealing the fact that UTA intentionally failed to maximize how much each of Hall, Mangan, and other members of the Guilds represented by UTA were or are paid for their work in order to maximize packaging fees for itself;

(d) Concealing the fact that UTA intentionally failed to pitch its clients Hall's, Mangan's, and other members of the Guilds' work to production companies that would pay the writers the most, and instead, pitched Hall's, Mangan's, and other members of the Guilds' work to those production companies that UTA believed would pay the largest packaging fee;

(e) Concealing the fact that UTA often makes more in packaging fees than Hall, Mangan, and other members of the Guilds represented by UTA are paid for their work on a particular program;

(f) Concealing the fact that packaging fees are frequently paid to UTA before the profits that determine how Hall, Mangan, and other members of the Guilds' profits are calculated, which therefore reduces the overall amount of money paid to Hall, Mangan, and other members of the Guilds represented by UTA for their work on a particular show;

(g) Concealing the fact that UTA's compensation in a packaging fee arrangement is often tied to the budget of a particular production or program rather than the amount paid to Hall, Mangan, and other members of the Guilds represented by UTA, and therefore, UTA is incentivized to reduce the amount paid to Hall, Mangan, and other members of the Guilds represented by UTA in order to increase the amount of the budget available to compensate UTA;

(h) Concealing the fact that UTA uses popular writers, including Hall, Mangan, and other members of the Guilds represented by UTA, as leverage to secure packaging fees even where doing so does not serve the economic and/or creative interests of their writer clients Hall, Mangan, and other members of the Guilds;

(i) Concealing the fact that UTA has, in some instances, intentionally and actively suppressed the wages of their own writer clients Hall, Mangan, and other members of the Guilds represented by UTA in order to secure more lucrative "packaging fees" for itself; and

(j) Concealing the fact that UTA's interests in negotiating packaging fees for itself are not aligned with its clients Hall, Mangan, and other members of the Guilds, and in fact, are at direct odds with UTA's clients.

86. WME committed constructive fraud by breaching its fiduciary duty to Meredith Stiehm and other members of the Guilds represented by WME by placing its own interests above that of its clients Stiehm and other members of the Guilds, and by increasing its own profits at the expense of Stiehm and other members of the Guilds, which constituted a breach of the duty of loyalty. WME committed constructive fraud by breaching its fiduciary duty to Stiehm and other members of the Guilds by proceeding with the representation under numerous conflicts of

interest without disclosing the material facts concerning those conflicts of interest to Stiehm, or other members of the Guilds. On information and belief, WME committed constructive fraud by failing to disclose to Stiehm and other members of the Guilds material facts known to WME, which material facts might affect WME's motives or, if disclosed to Stiehm and other members of the Guilds, would have affected Stiehm and other members of the Guilds' decisions, including but not limited to the following:

(a) Concealing the fact that packaging fees are paid directly by the production companies from the program's budget or revenues to WME;

(b) Concealing the fact that WME sought to prevent Stiehm and other members of the Guilds represented by WME from working with talent represented by other Agencies in order to avoid having to split packaging fees with other Agencies;

(c) Concealing the fact that WME intentionally failed to maximize how much Stiehm and other members of the Guilds represented by WME were or are paid for their work in order to maximize packaging fees for itself;

(d) Concealing the fact that WME intentionally failed to pitch its clients Stiehm's and other members of the Guilds' work to production companies that would pay the writers the most, and instead, pitched Stiehm's and other members of the Guilds' work to those production companies that WME believed would pay the largest packaging fee;

(e) Concealing the fact that WME often makes more in packaging fees than Stiehm and other members of the Guilds represented by WME are paid for their work on a particular program;

(f) Concealing the fact that packaging fees are frequently paid to WME before the profits that determine how Stiehm and other members of the Guilds' profits are calculated, which therefore reduces the overall amount of money paid to Stiehm and other members of the Guilds represented by WME for their work on a particular show;

(g) Concealing the fact that WME's compensation in a packaging fee arrangement is often tied to the budget of a particular production or program rather than the amount paid to Stiehm and other members of the Guilds represented by WME, and therefore, WME is

incentivized to reduce the amount paid to Stiehm and other members of the Guilds represented by WME in order to increase the amount of the budget available to compensate WME;

(h) Concealing the fact that WME uses popular writers, including Stiehm and other members of the Guilds represented by WME, as leverage to secure packaging fees even where doing so does not serve the economic and/or creative interests of their writer clients Stiehm and other members of the Guilds;

(i) Concealing the fact that WME has, in some instances, intentionally and actively suppressed the wages of their own writer clients Stiehm and other members of the Guilds represented by WME in order to secure more lucrative "packaging fees" for itself; and

(j) Concealing the fact that WME's interests in negotiating packaging fees for itself are not aligned with its clients Stiehm and other members of the Guilds, and in fact, are at direct odds with WME's clients.

87. As a result of ICM's commissions of constructive fraud under Civil Code §1573, Carr and Johannessen suffered significant damages, including but not limited to lost wages, lost employment opportunities, and other economic losses.

88. As a result of CAA's commissions of constructive fraud under Civil Code §1573, Carr, Gable, Hall, Hughes, Simon, and Stiehm suffered significant damages, including but not limited to lost wages, lost employment opportunities, and other economic losses.

89. As a result of UTA's commissions of constructive fraud under Civil Code §1573, Hall and Mangan suffered significant damages, including but not limited to lost wages, lost employment opportunities, and other economic losses.

90. As a result of WME's commissions of constructive fraud under Civil Code §1573, Stiehm suffered significant damages, including but not limited to lost wages, lost employment opportunities, and other economic losses.

91. As a result of the Agencies' commissions of constructive fraud under Civil Code §1573, the Guilds' members suffered significant harm, including but not limited to lost wages, lost employment opportunities, and other economic losses.

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92. Plaintiffs are informed and believe that Defendant Agencies, and each of them, committed the aforementioned violations of Civil Code §1573 maliciously and oppressively, with the wrongful intention of injuring Plaintiffs, from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiffs' rights. The Individual Plaintiffs are therefore entitled to recover punitive damages from Defendants in an amount according to proof.

THIRD CAUSE OF ACTION

Unfair Competition, Cal. Bus. & Prof. Code §17200 *et seq.*

(brought by the Individual Plaintiffs on their own behalf, and by the Guilds on their own behalf, against all Defendants)

93. Plaintiffs re-allege and incorporate by reference the allegations set forth in the foregoing paragraphs.

94. California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200 *et seq.* ("UCL"), prohibits "unlawful, unfair or fraudulent business act[s]."

95. The Agencies' packaging practice violates the UCL in four respects.

96. First, packaging fees are an "unlawful" or "unfair" practice because they constitute a breach of the Agencies' fiduciary duty to their clients.

97. Second, packaging fees are an "unlawful" or "unfair" practice because they constitute constructive fraud under Civil Code §1573.

98. Third, packaging fees are an "unfair" practice because they deprive writers of loyal, conflict-free representation; divert compensation away from the writers and other creative talent that are responsible for creating valuable television and film properties; and undermine the market for writers' creative endeavors.

99. Fourth, packaging fees are an "unlawful" or "unfair" practice because they violate Section 302 of the federal Labor-Management Relations Act ("LMRA"), 29 U.S.C. §186, the so-called "anti-kickback" provision of the Taft-Hartley Act.

100. Subsection (a) of LMRA Section 302 makes it unlawful for "any employer or association of employers … or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value … to *any representative of any*

of his employees who are employed in an industry affecting commerce." 29 U.S.C. §186(a) (emphasis added). The same section makes it unlawful for "any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other things of value prohibited by subsection (a)." *Id.* §186(b).

101. The television and film industries are industries that affect commerce. Indeed, those industries generate hundreds of millions of dollars of national and international revenue each year.

102. The production companies that produce the television shows and films on which the Individual Plaintiffs and other WGA-member writers work are employers for the purposes of LMRA Section 302.

103. The Agencies are representatives of the production companies' employees for the purposes of LMRA Section 302. Indeed, the very reason Agencies are retained by writers is to represent those writers in procuring employment opportunities and negotiating wages in excess of the minimums established by the MBA. The Agencies exercise authority delegated to them by the WGA (which otherwise has the exclusive right to negotiate on behalf of the represented employees) when representing their writer clients in negotiations with the production companies.

104. The key feature of any packaging fee agreement is the payment of a negotiated fee by the employer production company to the employee representative Agency. Such payments are expressly prohibited by and unlawful under LMRA Section 302, and therefore constitute an unlawful business practice for the purposes of California's UCL.

105. The Individual Plaintiffs and the Guilds have lost money or property as a result of the Agencies' packaging fee practices. As noted above, the Individual Plaintiffs have been required to spend money to retain other professionals to provides services their agents should have been providing; have seen their compensation reduced by virtue of packaging fees; and have been denied employment opportunities because of the misalignment of incentives that results from the Agencies' packaging fee practices, as alleged in more detail above. The Guilds have been required to expend their own resources monitoring the Agencies' packaging fees, educating members about the Agencies' packaging fee abuses, preparing a comprehensive

campaign to address those abuses and end packaging fees, and enforcing their members' contractual rights after the Agencies failed to do so. The Guilds have also lost dues revenue due to packaging fees. Each of the Agencies has engaged in packaging that has caused each of these forms of harm to the Guilds.

106. As a result of the Agencies' unlawful and unfair business practices, Plaintiffs are entitled to injunctive relief, and disgorgement of agency profits, and the Individual Plaintiffs are entitled to restitution. Cal. Bus. & Prof. Code §17203.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Declare that packaging fees constitute a breach of the Agencies' fiduciary duty to their writer clients;

2. Declare that packaging fees constitute constructive fraud under Civil Code §1573;

3. Declare that packaging fees constitute an unfair and/or unlawful practice under California's UCL because they either breach the Agencies' fiduciary duty to their writer clients; constitute constructive fraud under Civil Code §1573; violate LMRA Section 302; deprive writers of loyal, conflict-free representation, divert compensation away from the writers and other creative talent that are responsible for creating valuable television and film properties, or undermine the market for writers' creative endeavors; or all of the above;

4. Enjoin each defendant Agency from entering into new packaging fee agreements in which one or more writer clients of the Agency works as a writer, or from receiving any monetary payments or other things of value from any production company that employs any writer client of the Agency;

5. Order the Agencies, and each of them, to provide an accounting of all moneys received by the Agencies in connection with projects or programs for which Individual Plaintiffs or other WGA members were employed as writers;

6. Require the Agencies to pay restitution to Individual Plaintiffs in an amount equal to the funds that would have been paid to Individual Plaintiffs in the absence of the Agencies' unlawful and unfair packaging fees;

7. Require the Agencies to disgorge all profits generated from unlawful and unfair packaging fees;

8. Award Individual Plaintiffs compensatory and punitive damages based on Defendants' breach of fiduciary duty;

9. Award Plaintiffs their costs and attorneys' fees; and

10. Award such further and additional relief as is just and proper.

DATED: May 20, 2019

Stephen P. Berzon
Stacey Leyton
P. Casey Pitts
Rebecca Lee
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Attorneys for Plaintiffs

PROOF OF SERVICE

Writers Guild of America, West, Inc., et al. v. WME Entertainment, et al.,
Los Angeles Sup. Ct. Case No. 19SMCV00725

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 510 South Marengo Avenue, Pasadena, California 91101.

On May 20, 2019, I served the foregoing document described as **FIRST AMENDED COMPLAINT FOR: 1. BREACH OF FIDUCIARY DUTY; 2. CONSTRUCTIVE FRAUD (CAL. CIV. CODE §1573); 3. UNFAIR COMPETITION (CAL. BUS. & PROF. CODE §17200 ET SEQ.)** on the interested parties in this action in the manner described below:

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Courtney Braun, Head of Legal Affairs Endeavor 9601 Wilshire Blvd., 5th Floor Beverly Hills, CA 90210 E-mail: cbraun@endeavorco.com	Attorney for Defendant WME Entertainment
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Courtney Bran, Senior Vice President
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Creative Artists Agency
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Los Angeles, CA 90067

International Creative Management Partners
Attention: Jennie Vega - Registered Agent
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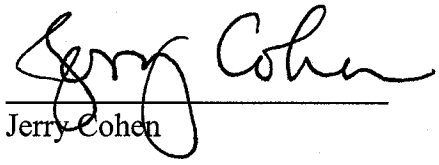
[X] **(By Mail)**
I placed a true copy thereof enclosed in a sealed envelope addressed as listed above. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice I place all envelopes to be mailed in a location in my office specifically designated for mail. The mail then would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

* On May 20, 2019, I sent a courtesy copy by e-mail to the e-mail addresses listed above from my e-mail address, vcohen@rsglabor.com.

[X] **(State Court)**
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 20, 2019.



Jerry Cohen