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

18 WILLIAM MORRIS ENDEAVOR
19 ENTERTAINMENT, LLC, *et al.*,
20 Plaintiffs and Counterclaim Defendants,
21

v.

22 WRITERS GUILD OF AMERICA,
23 WEST, INC., *et al.*,
24 Defendants and Counterclaimants,
25 and PATRICIA CARR, *et al.*
26 Counterclaimants.

Case No. 2:19-cv-05465-AB-AFM
**DECLARATION OF JAMES D.
REITZES IN OPPOSITION TO
PRELIMINARY INJUNCTION
MOTIONS**

Hearing Date: Dec. 18, 2020
Hearing Time: 10:00am
Location: Courtroom 7B
Judge: Hon. André Birotte, Jr.

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1 **A. Qualifications and Professional Experience**

2 1. My name is James D. Reitzes. I am a Principal of The Brattle Group,
3 an economic and management consulting firm. I am located in the Washington, DC
4 office.

5 2. I received a Bachelor of Arts in economics and history from Stanford
6 University and a Doctor of Philosophy in economics from the University of
7 Wisconsin-Madison. My areas of specialization within economics are industrial
8 organization, which includes the examination of firm behavior under various market
9 conditions, and international trade. I also have completed field courses in finance.
10 I have been involved in competition and regulatory matters for more than thirty
11 years, including five years at the U.S. Federal Trade Commission and more than
12 twenty-five years in private consulting practice.

13 3. My consulting practice is focused on antitrust and competition matters
14 involving a variety of industries, including matters in the transportation, energy,
15 telecommunications, financial, and entertainment sectors. As part of that practice, I
16 have provided economic analyses and reports on behalf of or before major
17 competition authorities, including the Federal Trade Commission and Department
18 of Justice, the Canadian Competition Bureau, and DG Competition of the European
19 Commission.

20 4. I have authored several articles on firm strategies with respect to
21 pricing, quality, R&D investment, and merger behavior, published in leading
22 economic and legal journals including *International Economic Review*, *Journal of*
23 *International Economics*, *Journal of Law, Economics, and Organization*, *Review of*
24 *Industrial Organization*, *Journal of Regulatory Economics*, and the American Bar
25 Association's *Antitrust Law Journal*. My CV is attached as Appendix A.

26 5. The Brattle Group is charging a rate of \$700 per hour for my work in
27

1 this matter. I have been assisted by my colleagues at The Brattle Group, for whose
2 work The Brattle Group is charging their regular rates. Payment is not contingent on
3 the opinions I express or on the outcome. As this is an ongoing matter, I reserve the
4 right to amend my opinions if presented with new information.

5 **B. Introduction and Assignment**

6 6. At present, William Morris Endeavor LLC (“WME”) and Creative
7 Artists Agency (“CAA”) (together, “the Agencies”) have an interrelated ownership
8 interest in production studios, and the private equity firms that hold controlling
9 equity stakes in these Agencies also may have other investments in studios and other
10 production and distribution entities through related investment vehicles.
11 The Writers Guild of America, West, Inc. (“WGAW”) and Writers Guild of
12 America, East, Inc. (“WGAE”) (collectively, “WGA”) have expressed concerns that
13 such interrelated ownership arrangements could produce adverse incentives for the
14 Agencies that would disadvantage its writer members. My declaration addresses
15 this issue.

16 7. In particular, two key concerns arise from such an ownership
17 relationship. The first concern is that ownership of a studio by a talent agency (or
18 vice versa) would lead the agency to funnel its writer clients toward its affiliated
19 studio to maximize the income of the consolidated entity at the expense of more
20 profitable or otherwise attractive opportunities (from the writer’s perspective) with
21 other studios.

22 8. The second concern is that the studio’s profitability is increased by
23 reducing the costs of its television/movie productions, including specifically the cost
24 of the talent such as writers, actors, and directors. Consequently, an agency that
25 owns a studio, either directly or through a related entity, has a disincentive from
26 seeking to maximize the compensation of the writer clients it represents when
27

1 dealing with that studio.¹

2 9. It is my understanding that private equity funds managed by private
3 equity firms have controlling equity stakes in CAA, by TPG Capital (“TPG”) and in
4 WME, by Silver Lake Partners (“Silver Lake”). I further understand that the
5 Agencies have offered to reduce their direct ownership interests in any studio to no
6 more than 20% in the future, but that this reduction would apply only to the
7 ownership interest in a studio by the legal entity or entities with direct equity interest
8 in the agency. It would not preclude the direct owners or controlling entities of the
9 agency from having additional ownership interests in that studio or other studios
10 through related entities, including other affiliates of the same private equity firm or
11 other partnerships/investment vehicles whose members include the direct owners of
12 the agency.

13 10. I have been asked by counsel for WGA to analyze whether the ability
14 of agency owners to have an additional equity interest in a studio through a related
15 entity creates additional incentives for the agency which are potentially adverse to
16 the financial interests of the writers they represent.

17 **C. Description of Talent Agency Ownership and Overlapping Agency-Studio**
18 **Ownership**

19 11. In recent years, private equity firms have acquired ownership stakes in
20 talent agencies that represent writers, actors, and other talent with respect to

21 _____
22 ¹ In economics, this concept is known as a “principal-agent” problem, where a
23 principal (the writer, in this case) is trying to put a reward structure in place for an
24 “agent” (the talent agent/agency, in this case) that in turn induces the agent to take
25 actions to maximize the reward to the principal, subject to the constraints imposed
26 by the agent’s desire to do what is in their own interest and limited direct
27 information regarding the agent’s actions. See Sanford J. Grossman and Oliver D.
28 Hart, “An Analysis of the Principal-Agent Problem,” *Econometrica* 51:1 (1983),
pp. 7-46.

1 television and movie productions. Since receiving private equity funding, the
2 Agencies (or the private equity funds that own the Agencies) have invested in studios
3 and have sought to grow their interest in show production and distribution.

4 12. Private equity firms are set up as a partnership, where the “general
5 partner” manages the partnership, and “limited partners” provide funds for the
6 investments.² These limited partners are generally institutional investors or wealthy
7 individuals.³ General partners take equity positions in target companies. The group
8 of companies in which a private equity firm has taken a controlling equity stake are
9 typically referred to as that firm’s “portfolio companies.”

10 13. Incentives are aligned for private equity firms to maximize the returns
11 on their investments: earning back the limited partners’ investment and earning a
12 profit generates a return for the general partner (i.e., for the private equity firm).⁴
13 Additionally, private equity structuring frequently allows for no separation between
14 ownership and control: general partners can and do intervene in the portfolio
15 company to directly control business decisions.⁵ In particular, members or
16 employees of the private equity fund can and often do assume executive functions
17 at portfolio companies.

18 14. Private equity ownership in Agencies, and associated ownership of
19 studios or other production activities, creates incentives for those Agencies to take
20 actions to maximize the profits of their investors. Below I explain the relationship

21
22 ² Richard A. Brealey, Stewart C. Myers, and Franklin Allen, *Principles of
Corporate Finance*, (New York, NY: McGraw-Hill Irwin, 2011), p. 832.

23 ³ Richard A. Brealey, Stewart C. Myers, and Franklin Allen, *Principles of
Corporate Finance*, (New York, NY: McGraw-Hill Irwin, 2011), pp. 832-833.

24 ⁴ Richard A. Brealey, Stewart C. Myers, and Franklin Allen, *Principles of
Corporate Finance*, (New York, NY: McGraw-Hill Irwin, 2011), p. 833.

25 ⁵ Richard A. Brealey, Stewart C. Myers, and Franklin Allen, *Principles of
Corporate Finance*, (New York, NY: McGraw-Hill Irwin, 2011), 833.

1 between private equity firms and the Agencies. I also describe how the associated
2 capital influx and relationships with private equity have resulted in increased
3 investments in studios and production efforts.

4 **1. CAA and TPG Capital**

5 15. I understand that in 2010, a TPG Capital fund, TPG VI,⁶ acquired an
6 initial stake in CAA. TPG is a private equity firm with approximately \$85 billion
7 under management.⁷ In 2014, TPG acquired approximately 53 percent of CAA
8 through additional investment.⁸

9 16. CAA and TPG have been active in funding TV and film production.⁹
10 CAA's production involvement stems from its Evolution Media Capital arm, which
11 is a merchant bank.¹⁰ Evolution Media Capital has launched and partnered with
12

13 ⁶ *William Morris Endeavor Entertainment, LLC; Creative Artists Agency, LLC; and United Talent Agency, LLC, v. Writers Guild of America, West, Inc.; and Writers Guild of America East, Inc., and Patricia Carr; Ashley Gable; Barbara Hall; Deric A. Hughes; Deirdre Mangan; David Simon; and Meredith Stiehm*; Memorandum of Points and Authorities in Support of CAA Motion for Preliminary Injunction, Case No. 2:19-cv-05465-AB, November 17, 2020 ("Memo in Support of Preliminary Injunction"), p. 15: 23-28.

14 ⁷ "Our Story," TPG, 2020, accessed November 24, 2020, <https://www.tpg.com/>.

15 ⁸ Paul Bond, "TPG Capital Has Invested Billions in Media, Is It Paying Off?," *The Hollywood Reporter*, October 11, 2019, accessed November 25, 2020, <https://www.hollywoodreporter.com/news/hollywoods-cash-machine-are-tpg-capitals-investments-paying-1246032>; "Agencies for Sale Private Equity Investment and Soaring Agency Valuations," *Writers Guild of America West*, March 18, 2019, p. 2; Memo in Support of Preliminary Injunction, p. 13:18-21.

16 ⁹ Cynthia Littleton, "Talent Agencies Face Conflicts of Interest as Parent Companies Storm Into Production Arena," *Variety*, February 13, 2018, accessed November 23, 2020, <https://variety.com/2018/tv/features/talent-agents-production-conflicts-of-interest-1202695460/>.

17 ¹⁰ "Evolution Media Capital," *Creative Artists Agency*, accessed November 23, 2020, <https://www.caa.com/evolution-media-capital>.

1 studios such as Library Pictures International, which started in 2019.¹¹ Additionally,
2 CAA has invested in wiip Productions, LLC (“wiip”) which it provided funding to
3 in 2016.¹² CAA used its advising arm, CAA Media Finance, to assist wiip in
4 receiving additional funding from private equity firm Atwater Capital.¹³

5 17. The managerial links between TPG and CAA are clear. For example,
6 former CAA President and Global CEO Steve Hasker was a Senior Advisor to TPG
7 prior to assuming his responsibilities at CAA.¹⁴ He left CAA in 2019 to return to
8 TPG in “a senior advisory role,” but he will “remain on the board of Entertainment
9 Benefits Group, which the agency invested in last year.”¹⁵

10 18. Also, as CAA Co-Chairman Bryan Lourd explained: “We chose TPG
11 over other investors because [Jim] Coulter, David Bonderman, David Trujillo and
12 the other [TPG] partners were more like-minded. They help us when we need help,
13 but otherwise they leave us alone. It’s about the character of the people you work
14

15 ¹¹ Mia Galuppo, “Legendary Invests in CAA’s Library Pictures International,”
16 *The Hollywood Reporter*, December 6, 2019, accessed November 23, 2020,
17 <https://www.hollywoodreporter.com/news/legendary-invests-caas-library-pictures-international-1260285>.

18 ¹² Rebecca Sun and Jonathan Handel, “As Talent Agencies Push to Own
19 Content, Some Creators Cry Foul,” *The Hollywood Reporter*, September 12, 2018
20 accessed November 25, 2020, <https://www.hollywoodreporter.com/features/talent-agencies-push-production-rankles-wga-some-clients-1142009>.

21 ¹³ John Hazelton, “Wiip secures critical growth investment (exclusive),”
22 *Screendaily*, March 26, 2020, accessed November 25, 2020,
23 <https://www.screendaily.com/wiip-secures-critical-growth-investment-exclusive/5148559.article>.

24 ¹⁴ Bio Details Steve Hasker, Thomson Reuters, 2020, accessed November 30,
2020, <https://ir.thomsonreuters.com/board-member-management/steve-hasker>.

25 ¹⁵ Rebecca Sun, “CAA Global CEO Steve Hasker Leaves for TPG Role,” *The
26 Hollywood Reporter*, July 31, 2019, accessed November 30, 2020,
27 <https://www.hollywoodreporter.com/news/caa-global-ceo-steve-hasker-leaves-tpg-role-1228411>.

1 with, and we really like Coulter. We have never seen him make bad decisions for
2 individuals or businesses based on a need to exit or flip, which was a concern with
3 private equity when we went into this. But it's been the opposite—they don't want
4 to leave; they remain interested and engaged.”¹⁶

5 19. Others at CAA acknowledge: “We've had interaction at high levels
6 with TPG from the beginning.”¹⁷ CAA described its reliance on TPG as an
7 “invaluable partner in the ongoing execution of our plan.”¹⁸

8 **2. WME and Silver Lake Partners**

9 20. Silver Lake Partners has had an investment interest in WME since
10 2012.¹⁹ Silver Lake had more than \$43 billion in assets as of May, 2019.²⁰ In 2014,
11 when WME acquired sports and media firm IMG Worldwide Holdings, Inc.
12 (“IMG”),²¹ Silver Lake invested an additional \$500 million in WME.²²

13
14 ¹⁶ Paul Bond, “TPG Capital Has Invested Billions in Media, Is It Paying Off?,”
15 *The Hollywood Reporter*, October 11, 2019, accessed November 25, 2020,
16 [https://www.hollywoodreporter.com/news/hollywoods-cash-machine-are-tpg-
capitals-investments-paying-1246032](https://www.hollywoodreporter.com/news/hollywoods-cash-machine-are-tpg-capitals-investments-paying-1246032).

17 ¹⁷ Cynthia Littleton and Matt Donnelly, “‘It’s Quite a Special Place’: CAA
18 Insiders Talk Industry Drama, TPG’s Influence and Ties That Bind,” *Variety*,
19 November 25, 2020, accessed November 30, 2020,
20 <https://variety.com/2020/biz/news/caa-wga-coronavirus-agents-tpg-1234839222/>.

21 ¹⁸ “TPG Deepens Strategic Partnership with Creative Artists Agency,” CAA
22 and TPG Press Release, October 20, 2014, accessed November 24, 2020,
23 [https://www.businesswire.com/news/home/20141020006374/en/TPG-Deepens-
Strategic-Partnership-with-Creative-Artists-Agency](https://www.businesswire.com/news/home/20141020006374/en/TPG-Deepens-Strategic-Partnership-with-Creative-Artists-Agency).

24 ¹⁹ Endeavor Holdings Inc., Securities Exchange Commission, Form S-1, May
25 23, 2019, p. 7; “Agencies for Sale Private Equity Investment and Soaring Agency
26 Valuations,” Writers Guild of America West, March 18, 2019, p. 3.

27 ²⁰ Endeavor Holdings Inc., Securities Exchange Commission, Form S-1, May
28 23, 2019, p. 13.

²¹ Endeavor Holdings Inc., Securities Exchange Commission, Form S-1, May
23, 2019, p. 7.

²² Matthew Garrahan, “Silver Lake looks to turn WME into gold,” *The*

1 21. WME reorganized under “Endeavor Operating Group.”
2 (“Endeavor/WME”) in 2014²³ and planned to go public after filing initial public
3 offering papers with the SEC in May 2019.²⁴ In September 2019, Endeavor/WME
4 cancelled its IPO and remained private. Silver Lake remains an investor in
5 Endeavor/WME.²⁵

6 22. Endeavor/WME acknowledged in a 2019 IPO filing that, aside from
7 internal leadership, it is also controlled by “certain affiliates of Silver Lake
8 Partners.”²⁶ The IPO filing also acknowledges that “Messrs. Emanuel and Whitesell,
9 Executive Holdco and the Silver Lake Equityholders will collectively have the
10 ability to substantially control our Company, including the ability to control any
11 action requiring the general approval of our stockholders, including the election of
12 our board of directors, the adoption of amendments to our certificate of incorporation
13 and by-laws and the approval of any merger or sale of substantially all of our
14

15 *Financial Times*, November 20, 2014, accessed November 30, 2020,
16 <https://www.ft.com/content/eba1b20a-6f8d-11e4-b50f-00144feabdc0>.

17 ²³ Endeavor Holdings Inc., Securities Exchange Commission, Form S-1, May
18 23, 2019, p. 7. Note that the Form S-1 refers to this as “Endeavor Operating
19 Company,”

20 ²⁴ Endeavor Holdings Inc., Securities Exchange Commission, Form S-1, May
21 23, 2019.

22 ²⁵ Crystal Tse, Liana Baker, and Lucas Shaw, “Endeavor Makes Last-Minute
23 Call to Yank IPO as Conditions Sour,” *Bloomberg*, September 26, 2019, accessed
24 November 23, 2020,

25 [https://www.bloomberg.com/news/articles/2019-09-26/hollywood-s-endeavor-
26 group-holdings-pull-405-million-u-s-ipo](https://www.bloomberg.com/news/articles/2019-09-26/hollywood-s-endeavor-group-holdings-pull-405-million-u-s-ipo);

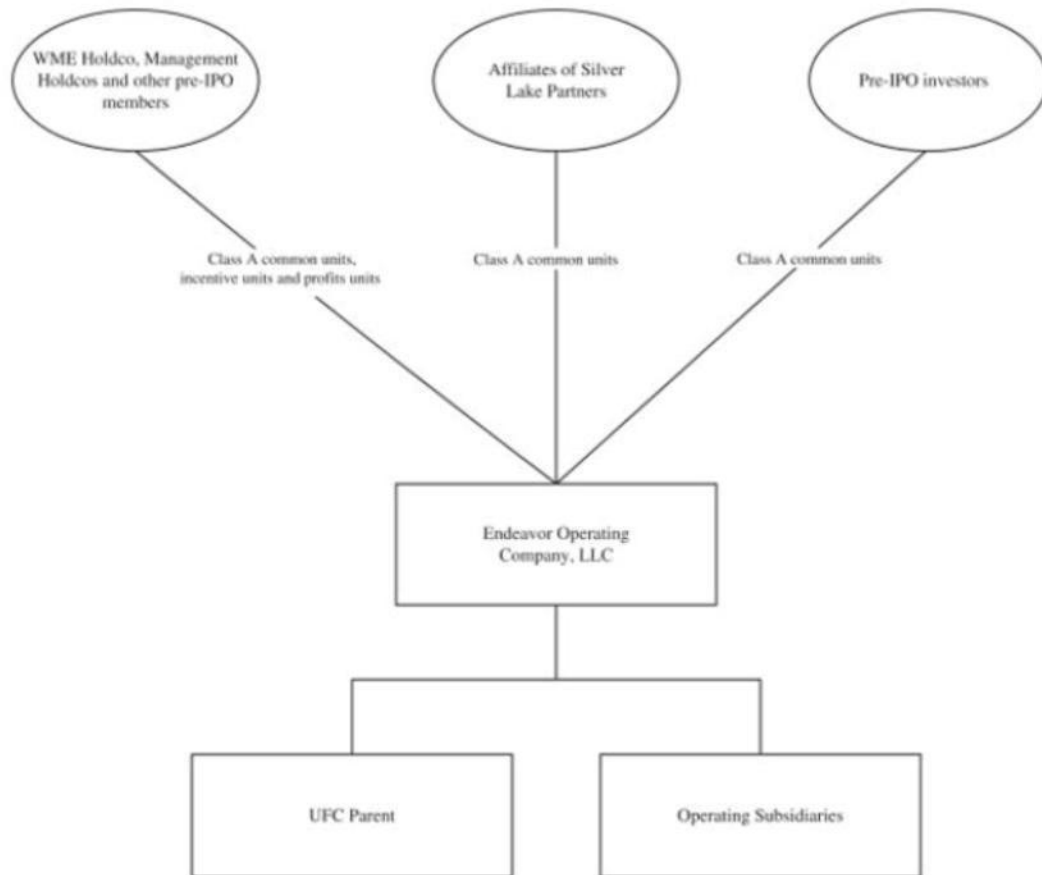
27 Endeavor Group Holdings, Inc., Request for Withdrawal of Registration Statement
28 on Form S-1, Securities and Exchange Commission, October 16, 2019. See also
“Strategies,” Silver Lake Partners, 2020, accessed November 23, 2020,

<https://www.silverlake.com/strategies/partners>.

²⁶ Endeavor Holdings Inc., Securities Exchange Commission, Form S-1, May
23, 2019, p. 7.

1 assets.”²⁷ At the time of its IPO filing, it is my understanding that the ownership and
2 management structure at Endeavor/WME was as described in Figure 1 below.

3 **FIGURE 1: ENDEAVOR/WME’S STRUCTURE PRIOR TO RECALLED**
4 **IPO**²⁸



15
16
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18
19
20 23. I understand that Silver Lake has played an active role in the Agency’s
21 management since its initial investment in WME.²⁹ Egon Durbon, a managing

22 ²⁷ Endeavor Holdings Inc., Securities Exchange Commission, Form S-1, May
23 23, 2019, p. 42.

24 ²⁸ Endeavor Holdings Inc., Securities Exchange Commission, Form S-1, May
25 23, 2019, p. 60.

26 ²⁹ “William Morris Endeavor Entertainment and Silver Lake Announce
27 Strategic Partnership,” Silver Lake; William Morris Endeavor Entertainment Press
28 Release, May 2, 2012, accessed November 24, 2020,

1 partner of Silver Lake, joined WME’s Executive Committee to specifically identify
2 “technology related growth opportunities,” and he was appointed director of WME
3 in May 2012 and Chairman of the Board in May 2014.³⁰ Endeavor/WME’s IPO
4 filing mentions that Mr. Durban was selected as director “because of his strong
5 experience in technology and finance, and his extensive knowledge of...global
6 strategic leadership and management of multiple companies.”³¹ [REDACTED]

7 [REDACTED]
8 [REDACTED].³²

9 24. The Endeavor/WME holding company has different operating
10 subsidiaries. One division of Endeavor/WME is Endeavor Content, which provides
11 a “full range of content development, financing, marketing and sales services” for
12 television, documentaries, feature films and podcasts.³³ Endeavor Content has
13 “financed, packaged or sold more than 100 premium shows and films ... including

14
15 _____
16 <https://www.prnewswire.com/news-releases/william-morris-endeavor-entertainment-and-silver-lake-announce-strategic-partnership-149861875.html>.

17 ³⁰ “William Morris Endeavor Entertainment and Silver Lake Announce
18 Strategic Partnership,” Silver Lake; William Morris Endeavor Entertainment Press
19 Release, May 2, 2012, accessed November 24, 2020,

20 <https://www.prnewswire.com/news-releases/william-morris-endeavor-entertainment-and-silver-lake-announce-strategic-partnership-149861875.html>;

21 Endeavor Holdings Inc., Securities Exchange Commission, Form S-1, May 23,
22 2019, p. 134.

23 ³¹ Endeavor Holdings Inc., Securities Exchange Commission, Form S-1, May
24 23, 2019, p. 134.

25 ³² [REDACTED]
26 [REDACTED]
27 [REDACTED].

28 ³³ “Content Creation,” Endeavor, accessed November 23, 2020,
<http://www.endeavorco.com/expertise/original/>.

1 ‘The Night Manager,’ ‘The Young Pope,’ ‘La La Land,’ and ‘Killing Eve.’”³⁴ IMG,
2 which WME acquired in 2014, is also under the Endeavor/WME umbrella, and
3 produces additional content.³⁵

4 **D. Why Ownership of an Agency and Studio through Interrelated Entities**
5 **Creates Adverse Incentives**

6 25. The discussion above demonstrates not only that there is private equity

7
8 ³⁴ “Content Creation,” Endeavor, accessed November 23, 2020,
<http://www.endeavorco.com/expertise/original/>.

9 ³⁵ “Expertise,” IMG, accessed November 23, 2020, <http://img.com/expertise/>;
10 Cynthia Littleton, “Talent Agencies Face Conflicts of Interest as Parent Companies
11 Storm Into Production Arena,” *Variety*, February 13, 2018, accessed November 23,
12 2020, [https://variety.com/2018/tv/features/talent-agents-production-conflicts-of-](https://variety.com/2018/tv/features/talent-agents-production-conflicts-of-interest-1202695460/)
13 [interest-1202695460/](https://variety.com/2018/tv/features/talent-agents-production-conflicts-of-interest-1202695460/). See also Endeavor Holdings Inc., Securities Exchange
Commission, Form S-1, May 23, 2019, p. 119, which describes Endeavor/WME’s
“Development” business sector:

14 “Our content capabilities range from concept development and
15 financing to production, marketing and sales, on behalf of hundreds of
16 creators, sports federations, events and other brands, as well as our
17 owned assets. We provide a full range of entertainment content
18 development services for creators of premium television properties,
19 documentaries, feature films and podcasts seeking greater ownership
20 and creative freedom as they navigate the increasingly consolidated
21 media landscape. We have financed and/or sold more than 100 shows
22 and films through Endeavor Content, including “The Night Manager,”
23 “La La Land” and “Killing Eve.” Through our state-of-the-art studios,
24 we produce tens of thousands of hours of sports programming annually
25 including live competition and editorial video content for leading sports
26 properties, such as the English Premier League, Wimbledon, the Ryder
27 Cup and Series A, as well as for our owned assets including UFC and
28 PBR. We also produce content for our owned 24/7 sports channels –
Sport 24, the first-ever live sports channel for the airline and cruise
industries, and EDGE sport, a premium action sports channel – and for
a number of other 24/7 sports channels, including the Premier League
Content Service for international broadcasters, which includes live
matches and regular editorial programming.”

1 ownership in CAA by TPG Capital and WME by Silver Lake, but also that the
2 Agencies—and/or their respective private equity firm parents—have direct
3 investments in entities that are producing audiovisual entertainment content. TPG
4 and Silver Lake can assume and have assumed active oversight roles related to the
5 management of both Agencies and their affiliated production companies. This
6 ownership structure of Agencies and production companies through the same or
7 related entities raises potential adverse incentive issues for the Agencies in terms of
8 their representation of writers.

9 26. To illustrate, consider the following example regarding why even a
10 20% ownership interest in a studio by an agency, if it is also coupled with an
11 ownership interest in the studio by a related entity—i.e., if the agency and its related
12 entities are allowed to acquire interests in excess of 20% in the studio—can produce
13 incentives for the agency that are adverse to the interest of writers represented by the
14 agency.³⁶

15 27. Suppose that a private equity firm has one affiliate (or investment fund)
16 that owns 100% of a talent agency and 20% of a studio. Another affiliate (or
17 investment fund) of the private equity firm owns the remaining 80% of the studio.
18 Management of the agency, which is determined in part by the private equity firm,
19 will have incentive to maximize the combined profits of the agency and the affiliated
20 studio.

21 28. Those combined profits are increased if the agency can take actions to
22 increase the number of shows (e.g., television series and movies) produced by the
23 affiliated studio and lower the production costs faced by the studio. Such actions

24 ³⁶ This is a clear application of the principal-agent problem. See Sanford J.
25 Grossman and Oliver D. Hart, “An Analysis of the Principal-Agent Problem,”
26 *Econometrica* 51:1 (1983), pp. 7-46. I understand that TPG, for example, has a
27 separate fund, TPG Growth, that has a 20% or less interest in motion picture studio
STX Entertainment. Memo in Support of Preliminary Injunction, footnote 4.

1 potentially would include steering agency talent toward the affiliated studio at the
2 expense of more profitable or otherwise attractive opportunities (from the talent’s
3 perspective) with other studios, which would allow the affiliated studio to produce
4 more television series/movies and compete less aggressively for talent.

5 29. Further, when the agency is dealing with the affiliated studio, there is a
6 direct financial incentive to depress compensation to writers and other talent, which
7 lowers the studio’s costs and increases its profits. Even with a 10% commission
8 paid to the agency, each \$1 decrease in compensation paid for talent needed for the
9 production raises the combined profits of the agency and the studio by \$0.90 (i.e., a
10 \$1 increase in studio profits less \$0.10 decrease in agency commissions). If the
11 agency is compensated through packaging fees rather than commissions, the agency
12 could directly benefit (along with studio) from the reduction in compensation when
13 the packaging fee arrangement includes a payout to the agency based on the
14 profitability of the production.

15 30. Consequently, the prospect of affiliated ownership does not alleviate
16 the incentive problems raised by the integration of an agency and a studio. Akin to
17 the analysis of vertical integration in the industrial organization literature and in
18 antitrust matters, there is the prospect of partial or full foreclosure, where the
19 “upstream” supplier (here, the agency representing the writer) favors a related
20 “downstream” firm (here, the affiliated studio) in a manner that disadvantages other
21 downstream purchasers.³⁷

22 31. In this case, with the agency acting as an intermediary between the
23

24 ³⁷ See, for example, Jeffrey Church and Roger Ware, *Industrial Organization:*
25 *A Strategic Approach*, (Boston, Massachusetts: Irwin McGraw Hill, 2000), pp.
26 631-633 for an example of how a vertical merger (vertical integration) can lead to
27 vertical foreclosure. See also Don E. Waldman and Elizabeth J. Jensen, *Industrial*
28 *Organization: Theory and Practice*, (Boston, Massachusetts: Pearson Addison
Wesley, 2007, 3rd Ed.), Chapter 16.

1 writer and the studio, integration of an agency and studio may limit the writers
2 represented by the agency from realizing downstream opportunities with other
3 studios. There is a preference for the agency to have its talent used for a television
4 series/movie produced through the affiliated studio instead of a television
5 series/movie produced through an unrelated studio. In the former case, the agency
6 and the affiliated studio both potentially profit (providing a double benefit to the
7 private equity firm), while only the agency profits in the latter case.

8 32. It may be argued that the affiliate owning the agency has a fiduciary
9 duty to maximize the profits of the agency for its investors, while another affiliate
10 that has a majority stake in the studio has a fiduciary duty to maximize the profits of
11 the studio. When there are common investors, however, from an economic
12 perspective this is tantamount to taking actions to maximize the combined profits of
13 the agency and the studio, which creates the incentives previously described.

14 33. When the affiliates have significant overlapping investors, but some
15 non-overlapping investors, the incentive to maximize joint profits still remains, since
16 the increased profits could be shared across both the studio and the agency through
17 appropriate contracting arrangements so that each entity benefits. In general, the
18 incentives for the agency to take actions to maximize joint profits become stronger
19 as the agency owners' equity stake in the studio increases, whether that equity stake
20 is through a related investment fund or the same investment fund.

21 34. Even if the adverse incentives described above are diluted to the extent
22 that different investment vehicles controlled by the same private equity firm had
23 non-overlapping investor composition, determining whether or not the adverse
24 incentives were in place would require costly and imperfect monitoring. To mitigate
25 adverse incentives, an observer would need the ability to monitor changes in the
26 investor composition of the funds of the private equity firm and in the governance
27

1 structure and the management team relevant to the associated agency and studio
2 owned by the private equity firm.

3 35. It also would require an ability for the observer to monitor the
4 acquisition activity of the private equity firm, so that it would be able to identify and
5 mitigate the effects of future acquisitions that create or exacerbate the incentives for
6 an affiliated agency to act adversely to writer interests (in terms of compensation
7 and access to work opportunities with unaffiliated studios).

8 36. It may be possible to construct a corporate governance or management
9 structure that would alleviate the adverse incentive issues described above. Since
10 these adverse incentives are faced by the agency (as opposed to the studio) in
11 representing the writers, the restrictions imposed would have to bind the agency,
12 affecting the agency's behavior in a manner that mitigates these incentives.

13 37. In the case of CAA and its ownership interest in wiip, placing wiip into
14 a blind trust does not apparently solve the adverse incentive issues because, as noted
15 above, it is the agency's adverse incentives that potentially need to be mitigated, and
16 CAA is not blind to its ownership interest in wiip. That is, as long as the agency's
17 ownership interest in wiip is maintained, it is unclear how placing wiip into a blind
18 trust would prevent CAA from acting on any economic incentive to funnel its writer
19 clients to wiip (or any other affiliated production or distribution assets) rather than
20 to other production opportunities, or to restrain writer compensation, if doing so
21 would be advantageous to wiip's profits or its ultimate sale price. A blind trust can
22 only be used to eliminate adverse incentives if its beneficiary is unaware of the assets
23 within the trust, which is not the case with respect to CAA's trust.

24 38. More generally, whether certain governance or management
25 restrictions involving the agency itself are effective in mitigating adverse incentives
26 would require specific information about the nature of these arrangements, which
27

1 would need updating as changes occur, thereby requiring additional and continuous
2 monitoring. Moreover, to the extent that there were overlapping investors in private
3 equity funds that owned an agency and a significant portion of a studio, it may be
4 difficult to construct a management structure in which managers would be unaware
5 of the overlapping ownership and therefore not desire to take actions to maximize
6 the combined profits of both businesses and potentially act on the incentives adverse
7 to writer interests in the manner described above.³⁸

8 39. I also recognize that the Agencies have a fiduciary duty to act in the
9 best interest of the writers. The concern that I am addressing here, however, is the
10 adverse incentives that potentially result from cross-ownership between an agency
11 and a studio (or other production and distribution entity). Cross-ownership creates
12 incentives for the agency to steer the talent it represents toward an affiliated studio,
13 which may be adverse to writer interests when that steering limits more profitable or
14 otherwise attractive opportunities with other studios or other production entities.
15 Also, there is a direct financial incentive for an agency to depress compensation to
16 writers and other talent when dealing with an affiliated studio, which is also adverse
17 to writer interests. Even though Agencies have a fiduciary duty to their clients, that
18 does not guarantee they will always act in accordance with that duty, particularly if
19 it is difficult to detect when the Agency is acting on adverse incentives.³⁹

20 40. To the extent that a writer (or union representative or other observer) is
21 unable to observe if an agent is acting on these adverse incentives, then restricting

22 ³⁸ In fact, private equity firms often publicize their holdings. For example,
23 TPG and Silver Lake both list their portfolio companies on their websites. “Select
24 Investments,” TPG, accessed November 28, 2020, <https://www.tpg.com/portfolio>;
25 “Portfolio: All Portfolio Investments, Silver Lake Partners, accessed November 28,
2020, <https://www.silverlake.com/portfolio/index/CurrentInvestments/>.

26 ³⁹ My understanding is that WGA and a number of individual former clients of
27 WME and CAA are currently pursuing claims against both WME and CAA for
breaches of fiduciary duty.

1 cross-ownership would be beneficial in limiting this behavior. Moreover, as the
2 Agencies and studios become more interrelated, or the relationship becomes more
3 complex and potentially less transparent, it becomes more costly and challenging for
4 writers (or union representatives or other observers) to identify when agents face
5 adverse incentives and to mitigate them.

6 **E. Antitrust Authorities, Legal Case Law, and the Economics Literature**
7 **Support the Notion that Interrelated Ownership May Create Adverse**
8 **Incentives**

9 **1. The U.S. Department of Justice and Federal Trade Commission**
10 **Acknowledge That Interrelated Ownership Arrangements Can Alter**
11 **Competitive Behavior**

12 41. The U.S. Department of Justice (“DOJ”) and Federal Trade
13 Commission (“FTC”) have recognized that interrelated ownership of competitors
14 between and among commonly managed private equity funds can create adverse
15 incentives. The FTC recently issued a Notice of Proposed Rulemaking related to
16 premerger notification reporting and waiting period requirements that addresses
17 acquisitions when the target of a private equity acquisition competes with another
18 firm owned by another fund managed by the same private equity firm.⁴⁰ The
19 premerger notification requirements apply to all mergers that meet certain size
20 thresholds, including those involving firms that compete in the same product market
21 and those that involve firms with vertical relationships, such as an acquiring firm
22 that supplies a key product input that the target firm uses in its business.

23 42. I understand that the proposed rule would require private equity firms
24 to disclose holdings across all of the private equity firm’s funds, not just the fund (or

25 ⁴⁰ Federal Register, Volume 85, No. 231, Proposed Rules, “Federal Trade
26 Commission 16 CFR Parts 801, 802, and 803 Premerger Notification; Reporting
27 and Waiting Period Guidelines,” December 1, 2020, pp. 77053-77093.

1 funds) making the acquisition.⁴¹ In sum, the new rule requires a private equity firm
2 to disclose the identity and economic activity of all its portfolio companies,
3 regardless of which of the firm’s funds is making the relevant acquisition. My
4 understanding is that the proposed rule’s purpose is to gather more complete
5 information related to the potential competitive effects of the acquisition, expressly
6 recognizing that a partial or complete acquisition through an entity owned by one
7 fund may substantially reduce competition if a commonly managed sister fund owns
8 a competing entity.⁴²

9 43. In addition, the DOJ and FTC Horizontal Merger Guidelines
10 (“Guidelines”) acknowledge the need to review partial acquisitions for
11 anticompetitive effects.⁴³ The Guidelines note that when a partial acquisition results
12 in “effective control of the target firm, or involves substantially all of the relevant
13 assets of the target firm, [the DOJ and FTC] analyze the transaction much as they do
14 a merger.”⁴⁴ The DOJ and FTC also acknowledge that partial acquisitions that do
15 not lead to effective control by the acquirer may still “present significant competitive
16

17 ⁴¹ Federal Register, Volume 85, No. 231, Proposed Rules, “Federal Trade
18 Commission 16 CFR Parts 801, 802, and 803 Premerger Notification; Reporting
and Waiting Period Guidelines,” December 1, 2020, pp. 77055-77058.

19 ⁴² Federal Register, Volume 85, No. 231, Proposed Rules, “Federal Trade
20 Commission 16 CFR Parts 801, 802, and 803 Premerger Notification; Reporting
and Waiting Period Guidelines,” December 1, 2020, pp. 77055-77058; See also
21 Horizontal Merger Guidelines, U.S. Department of Justice and Federal Trade
22 Commission, August 19, 2010, p. 34 (“[A] partial acquisition can lessen
23 competition by reducing the incentive of the acquiring firm to compete ... [and] by
24 giving the acquiring firm access to non-public, competitively sensitive information
from the target firm...can lead to adverse unilateral or coordinated effects.”)

25 ⁴³ Horizontal Merger Guidelines, U.S. Department of Justice and Federal
Trade Commission, August 19, 2010, p. 33.

26 ⁴⁴ Horizontal Merger Guidelines, U.S. Department of Justice and Federal
Trade Commission, August 19, 2010, p. 33.

1 concerns ... a partial acquisition can lessen competition by giving the acquiring firm
2 the ability to influence the competitive conduct of the target firm.”⁴⁵

3 44. The Guidelines further state that, “A voting interest in the target firm
4 or specific governance rights, such as the right to appoint members to the board of
5 directors, can permit such influence. Such influence can lessen competition because
6 the acquiring firm can use its influence to induce the target firm to compete less
7 aggressively or to coordinate its conduct with that of the acquiring firm.”⁴⁶

8 45. The FTC’s concerns about competition among portfolio companies
9 controlled by different private equity funds managed by the same private equity firm
10 are similar to WGA’s concerns here. The investments in Agencies and studios
11 undertaken by TPG and Silver Lake through single or multiple related investment
12 vehicles, and the attributes of these investments, such as associated voting interests
13 and governance rights, can create adverse economic incentives and the ability to
14 better coordinate the conduct of CAA or WME and any affiliated production
15 company in a manner that benefits the private equity firm, the Agency, and the studio
16 at the expense of writers.

17 **2. The Academic Literature in Economics/Finance Also Provides Support**
18 **That Interrelated Ownership Arrangements Can Alter Competitive**
19 **Behavior**

20 46. I understand that the Agencies have taken the position that the question
21 of whether their private equity parents may invest in a production studio is not
22 relevant to WGA’s interests if those investments are made by a sister fund to the
23 fund that controls the Agency in question. Recent academic studies have
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25 ⁴⁵ Horizontal Merger Guidelines, U.S. Department of Justice and Federal
26 Trade Commission, August 19, 2010, p. 33.

27 ⁴⁶ Horizontal Merger Guidelines, U.S. Department of Justice and Federal
28 Trade Commission, August 19, 2010, pp. 33-34.

1 demonstrated that common ownership by the same group of institutional investors
2 across multiple competitors in an industry can lead to a diminution of competition
3 within that industry.

4 47. These studies specifically address the potential for common ownership
5 among institutional investors to affect a company's incentive to compete and
6 maximize its own profits at the expense of its competitors, in favor of its managers
7 taking actions to maximize the combined profits of the group of companies subject
8 to common ownership.⁴⁷ As described in these studies, the mechanism by which
9 this operates is straightforward: Each company owned by the same group of
10 institutional investors implicitly understands that its largest shareholders also own
11 shares of its competitors. Thus, any profits that the company can earn for its
12 shareholders by lowering its price or making investments to improve product quality
13 will be at least partially offset by losses that those shareholders experience through
14 shareholder ownership of the firm's competitors. This incentive to compete less
15 aggressively with sister companies when subject to common ownership can be aided
16 through management compensation packages that are structured to reward increased
17 returns across the common holdings of the investor group.⁴⁸

18 ⁴⁷ See, for example, Steven C. Salop and Daniel P. O'Brien, "Competitive
19 Effects of Partial Ownership: Financial Interest and Corporate Control," *Antitrust*
20 *Law Journal* 67 (2000). For more recent examples, see José Azar, Martin
21 Schmalz, and Isabel Tecu, "Anticompetitive Effects of Common Ownership," *The*
22 *Journal of Finance* 73(4) (August 2018), pp. 1513-1565 (Working Paper, March
23 2017, <https://media.iese.edu/research/pdfs/WP-1169-E.pdf>); Daniel P. O'Brien and
24 Keith Waehrer, "The Competitive Effects of Common Ownership: We Know Less
25 Than We Think," *Antitrust Law Journal* 81(3) (2017), pp. 729-776 (Working
26 Paper, February 2017,
27 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2922677); Oz Shy and Rune
28 Stenbacka, "Common Ownership, Institutional Investors, and Welfare," *Journal of*
Economics & Management Strategy 29 (Fall 2020), pp. 706-723.

⁴⁸ Miguel Antón, Florian Ederer, Mireia Giné, and Martin Schmalz, "Common

1 48. Researchers have used this framework to evaluate whether common
2 ownership results in higher airfares⁴⁹ and higher hospital prices,⁵⁰ lower deposit
3 interest rates paid by banks,⁵¹ and lower innovation.⁵² Although the early academic
4 literature was not conclusive (as I observed in 2017),⁵³ more recent scholarship has
5 provided additional supporting empirical evidence that common ownership may
6 create anticompetitive effects in certain industries (including airlines, banking, and
7 healthcare) and that joint shareholding may cause changes in managerial
8 compensation which rewards behavior that increases joint profits.⁵⁴ These concerns

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10 Ownership, Competition, and Top Management Incentives,” ECGI Finance
11 Working Paper No. 511/2017 (February 2018),
12 https://ecgi.global/sites/default/files/working_papers/documents/finalantonederergrineschmalz.pdf.

13 ⁴⁹ José Azar, Martin Schmalz, and Isabel Tecu, “Anticompetitive Effects of
14 Common Ownership,” *The Journal of Finance* 73(4) (August 2018), 1513-1565.

15 ⁵⁰ Mengde Liu, “Players Behind the Scenes: Common Ownership in the
16 Hospital Industry,” Working Paper (October 2019),
17 <https://liberalarts.tulane.edu/sites/liberalarts.tulane.edu/files/sites/default/files/Liu%20JMP.pdf>.

18 ⁵¹ José Azar, Sahil Raina, and Martin C. Schmalz, “Ultimate Ownership and
19 Bank Competition,” Working Paper (May 4, 2019),
20 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2710252.

21 ⁵² Miguel Antón, Florian Ederer, Mireia Giné, and Martin Schmalz, “Common
22 Ownership, Competition, and Top Management Incentives,” ECGI Finance
23 Working Paper No. 511/2017 (February 2018),
24 https://ecgi.global/sites/default/files/working_papers/documents/finalantonederergrineschmalz.pdf.

25 ⁵³ Elaine Buckberg, Steven Herscovici, Branko Jovanovic, and James Reitzes,
26 “Proposal to Remedy Horizontal Shareholding is Flawed,” *Law360*, July 17, 2017.

27 ⁵⁴ José Azar, Martin Schmalz, and Isabel Tecu, “Anticompetitive Effects of
28 Common Ownership,” *The Journal of Finance* 73(4) (August 2018), 1513-1565;
José Azar, Sahil Raina, and Martin C. Schmalz, “Ultimate Ownership and Bank
Competition,” Working Paper (May 4, 2019),
<https://media.iese.edu/research/pdfs/WP-1169-E.pdf>; Mengde Liu, “Players
Behind the Scenes: Common Ownership in the Hospital Industry,” Working Paper

1 tend to be amplified as the size of the overlapping ownership stake increases, and as
2 the number of owners become smaller in number.

3 49. The concerns identified by these researchers have parallels to WGA’s
4 concerns here. While these researchers determined that competition was affected by
5 multiple institutional investors owning significant minority stakes in multiple
6 competitors, here WGA has expressed concerns that a single private equity firm’s
7 investments through a single or multiple funds (with overlapping investors) in an
8 agency and more than 20% of a production studio would create economic incentives
9 for the Agency and studio to collaborate in ways that benefit their common private
10 equity owners at the expense of writers.

11 **3. Recent Litigation Involving Studios and Distribution Networks Indicates**
12 **that Related Party Transactions Can Create Adverse Incentives That**
13 **Harm Talent Such as Writers**

14 50. Recent litigation also indicates that related-party transactions between
15 studios and television distribution networks may also lead to reduced payments to
16 creative talent. For example, actors and producers of the television show “Bones”
17 won a \$50 million arbitration award after claiming that the show’s distributor, 21st
18 Century Fox, charged the related Fox network a below-market rate to shift profits

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20 (October 2019)
21 <https://liberalarts.tulane.edu/sites/liberalarts.tulane.edu/files/sites/default/files/Liu%20JMP.pdf>. Miguel Antón, Florian Ederer, Mireia Giné, and Martin Schmalz,
22 “Common Ownership, Competition, and Top Management Incentives,” ECGI
23 Finance Working Paper No. 511/2017 (February 2018),
24 https://ecgi.global/sites/default/files/working_papers/documents/finalantonederergineschmalz.pdf. See also, Einer Elhauge, “How Horizontal Shareholding Harms
25 Our Economy—and Why Antitrust Law Can Fix It,” (Working Paper 2019),
26 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3293822 for a detailed
27 discussion of the evidence and critiques of these studies.

1 away from the studio in order to reduce payments to the plaintiffs.⁵⁵ Similar claims
2 have been made about programs such as “The Walking Dead”⁵⁶ and “Who Wants to
3 Be a Millionaire.”⁵⁷

4 **F. Conclusion**

5 51. As described above, even with certain protections in place,
6 ownership/control of a studio or other production entity by an agency, or by the
7 investment fund (or related investment funds) of the private equity firm that owns
8 the agency, creates adverse incentives for the agency that can potentially harm WGA
9 members.

10 52. Monitoring the behavior of the Agencies, or the private equity firms
11 that have equity stakes in the Agencies, to offset those adverse incentives would be
12 imperfect and costly to the writers and their union representatives. This can be
13 mitigated by limiting studio ownership by an agency (or the private equity fund that
14 owns the agency) to less than 20% of the studio, with no other related ownership
15 interests in the studio (or other studios).

16 I declare under penalty of perjury under the laws of the United States that
17 the forgoing is true and correct.

18 Executed this 4th day of December 2020 at Washington, DC.

19 _____
20 ⁵⁵ Eriq Gardner, “Fox Settles ‘Bones’ Suit, Ending Profits Case That Stunned
21 Hollywood,” *The Hollywood Reporter*, September 11, 2019, accessed November
22 23, 2020, [https://www.hollywoodreporter.com/thr-esq/fox-settles-bones-suit-
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23 ⁵⁶ These claims were ultimately thrown out. Joe Flint, “AMC Scores Big Win
24 in ‘The Walking Dead’ Suit Over Profits,” *The Wall Street Journal*, July 23, 2020,
25 accessed November 23, 2020, [https://www.wsj.com/articles/amc-scores-big-win-
in-the-walking-dead-suit-over-profits-11595486682](https://www.wsj.com/articles/amc-scores-big-win-in-the-walking-dead-suit-over-profits-11595486682).

26 ⁵⁷ Ted Johnson, “Disney loses appeal on ‘Millionaire’ lawsuit,” *Variety*,
27 December 3, 2012, accessed November 23, 2020,
28 [https://variety.com/2012/tv/news/disney-loses-appeal-on-millionaire-lawsuit-
1118063050/](https://variety.com/2012/tv/news/disney-loses-appeal-on-millionaire-lawsuit-1118063050/).

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James D. Reitzes, Ph.D.

Appendix A: Curriculum Vitae of James D. Reitzes

James David Reitzes
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Dr. James D. Reitzes received his B.A. in economics and history from Stanford University, and his Ph.D. in economics from the University of Wisconsin. Dr. Reitzes specializes primarily in providing economic analyses and expert testimony pursuant to antitrust litigation (including price-fixing, attempted monopolization, and merger matters) and regulatory proceedings in the energy, transportation, and telecommunications sectors.

Dr. Reitzes has provided expert analysis and testimony in energy competition and regulatory matters before the Federal Energy Regulatory Commission, state public utility commissions, and federal antitrust authorities. In the transportation sector, he has offered expert analysis and testimony in proceedings involving the U.S. Department of Transportation, U.S. Department of Justice, Canadian Competition Bureau, the European Commission, the European Court of First Instance, and national antitrust authorities. In the telecommunications sector, he has provided economic analysis of wireless competition and testified before the Canadian Radio-television and Telecommunications Commission, as well as provided analysis of wireless and cable television competition in merger proceedings involving the U.S. Department of Justice and Federal Communications Commission. Dr. Reitzes has provided economic consulting services to clients in the United States, Canada, the European Union, South America, and South Africa.

Dr. Reitzes has previously served in the Divisions of Antitrust and Economic Policy Analysis at the Federal Trade Commission. Dr. Reitzes was involved in merger investigations and other inquiries into alleged anticompetitive conduct. He provided comments and testimony on behalf of the FTC regarding competitive issues in the ocean shipping and banking sectors. At the FTC, Dr. Reitzes' research provided analytical foundations for the "unilateral effects" theory of merger behavior.

Dr. Reitzes joined The Brattle Group in 1998 as a Principal, and has been providing economic consulting services for over twenty years. Most recently, Dr. Reitzes has been involved in estimating the impact of alleged price fixing in transportation, automotive, and other sectors; analyzing the competitive impact of mergers, alliances, and other forms of horizontal and vertical consolidation (particularly in the consumer goods, energy, and transportation sectors); and assessing the competitive impact of specified vertical restraints in two-sided markets.

Dr. Reitzes has authored several articles on firm strategies with respect to pricing, quality, R&D investment, and merger behavior, published in leading economic and legal journals. He also is an author of a book that assesses the domestic impact of U.S. international trade policies with respect to steel, apparel, textiles, and petroleum.

INDUSTRY EXPERTISE

Dr. Reitzes possesses specialized experience in a variety of industries, particularly electricity, aviation, telecommunications, ocean shipping, natural gas, and steel. *Aviation* experience includes the economic analysis of expanded antitrust immunity for airline alliances in proceedings before the Department of Transportation (including empirical assessments of the impact of alliances on air fares and passenger volumes); an empirical assessment of the potential competitive impact of an expanded airline joint venture for the Canadian Competition Bureau; empirical assessments of alleged collusion in the air cargo industry; a study assessing the economic impact of forming an open aviation area between the United States and the European Union; a study assessing the effectiveness of Dutch international aviation policy; and a study assessing proposed rule changes involving computer reservation systems (CRSs) and their effect on competition in the CRS, airline, and travel agency industries. *Ocean shipping* expertise involves expert testimony regarding the extent of market power exercised by combinations of liner carriers through various types of coordinated activity; expert analysis related to mergers in the ocean shipping industry; assessments of competition between terminal operators and between geographically proximate ports; and analyses of the pricing of standard and special container handling services. *Telecommunications* experience includes the competitive analysis of mergers and acquisitions involving providers of wireless communications, programming content, and cable television distribution; a competitive assessment of roaming agreements involving wireless carriers (and an analysis of regulatory proposals related to these agreements); and an assessment of the competitive impact of different spectrum allocation policies involving wireless communication. *Electricity* experience includes analyzing the competitive impact of mergers and acquisitions, assessing default service procurement strategies, examining consumer switching behavior in retail power markets, simulating future wholesale energy prices, formulating protocols for monitoring electric power markets, assessing market reorganization plans, and assessing the benefits provided by regional transmission organizations in proceedings involving state public utility commissions, the Federal Energy Regulatory Commission, and the antitrust agencies. *Natural gas* experience involves analyzing the competitive effects of mergers involving electric and natural gas assets from both a horizontal and vertical perspective; assessing the price impacts and efficiency benefits of various forms of integration involving natural gas pipelines; and formulating optimal tariff schemes to permit cost recovery and maximize use of natural gas distribution resources. *Steel* industry expertise involves competitive analyses of mergers involving steel producers and assessments of

the economic impact of foreign imports on U.S. domestic producers in proceedings before the U.S. International Trade Commission.

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“International Perspectives on Electricity Market Monitoring and Market Power Mitigation,” with Jose A. Garcia, *Review of Network Economics*, Vol. 6, No. 3 (September 2007): 397-424.

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“Competition for Exclusive Customers: Comparing Equilibrium and Welfare under One-Part and Two-Part Pricing,” with Glenn A. Woroch, *Canadian Journal of Economics*, Vol. 41, No. 3 (August 2008): 1046-1086.

“Competitive Effects of Exchanges or Sales of Airport Landing Slots,” with Brendan McVeigh, Nicholas Powers, and Samuel Moy, *Review of Industrial Organization*, Vol. 46, No. 2 (March 2015): 95-125.

Books

The Regional Welfare Effects of U.S. Import Restraints on Apparel, Petroleum, Steel and Textiles, with Randi Boorstein, Michael Metzger, and Morris Morkre, Avebury Press, 1996.

Completed Studies

“Case Studies of the Price Effects of Horizontal Mergers,” *Staff Report of the Federal Trade Commission*, April 1992, with coauthors.

“The Effectiveness of Collusion under Antitrust Immunity - The Case of Liner Shipping Conferences,” *Staff Report of the Federal Trade Commission*, December 1995, with coauthor.

“The Effectiveness of Dutch Airport Transport Policy,” study prepared for the Dutch Ministry of Transport, December 2002, with coauthors.

“The Economic Impact of an EU-US Open Aviation Area,” study prepared for the European Commission - Directorate-General for Energy and Transport, December 2002, with coauthors.

“Study to Assess the Potential Impact of Proposed Amendments to Council Regulation 2299/89 with regard to Computerised Reservation Systems,” study prepared for the European Commission - Directorate-General for Energy and Transport, October 2003, with coauthors.

TESTIMONY/EXPERT REPORTS

Testimony before the Advisory Commission on Conferences in Ocean Shipping, 1991, relating to an econometric analysis of the determinants of ocean freight rates, and the conclusions of that study with respect to the existence of market power in ocean shipping.

Expert Submission - Appendix J, Volume 1, Prehearing Brief on Behalf of Petitioner, Certain Flat Rolled Carbon Steel Products, June 21, 1993, U.S. International Trade Commission Investigation Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353 (final); 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (final). Analysis included a critique of methods used to evaluate domestic injury in trade cases. Also authored part of submission for post-hearing brief.

Expert Report submitted to the European Court of First Instance on Behalf of the European Commission relating to the Petition of the Transatlantic Agreement to Annul the Commission's Decision of October 19, 1994, including a rebuttal of the expert economic analysis offered by the members of the Transatlantic Agreement in support of their collective restrictions on capacity utilization and their coordinated activity in setting certain types of freight rates.

Testimony in the Matter of Henry H. Godfrey v. Benjamin F. Hofheimer, III, *et. al.*, 1995, on behalf of defendant relating to the appropriate calculation of damages in a breach-of-contract dispute.

Expert Report submitted to the Environmental Protection Agency, 2000, on behalf of a trade group of aluminum smelters assessing the economic costs of revised land-disposal restriction standards for spent aluminum potliners (K088), 2000.

Two Expert Reports submitted to the U.S. District Court for the District of Maryland, 2001, in the matter of Charles River Associates Inc. v. Hale Trans, Inc., assessing the quality and cost effectiveness of economic expertise provided in a predatory-pricing matter.

Expert Report (and Deposition) submitted to the U.S. District Court for the District of Columbia in the Matter of DAG Enterprises Inc. v. Exxon Mobil Corporation, 2003, regarding the suitability of a prospective purchaser as an acquirer of Mobil assets under the antitrust standards used by the Federal Trade Commission.

Expert Report submitted to the Federal Energy Regulatory Commission (Docket No. EC05-43-000) 2005 on behalf of Midwest Generation, regarding the competitive impact of the proposed merger

of Exelon Corporation and Public Service Enterprise Group and the mitigation measures offered by the parties.

Expert Reports submitted to the U.S. Department of Transportation (Docket No. OST-2004-19214), 2005, on behalf of American Airlines, regarding the competitive impact of the proposed application for antitrust immunity of an airline alliance consisting of Delta, Northwest, KLM, Air France, Alitalia, and Czech Airlines.

Expert Report and Testimony before the Public Utility Commission of Texas (Docket No. 31056), 2005, on behalf of the Cities served by AEP Texas Central Company, the Texas Industrial Energy Consumers, and the Alliance for Valley Healthcare, regarding the competitiveness of an auction held to sell an ownership share in a nuclear power plant and the commercial reasonableness of the actions taken by the seller.

Expert Reports submitted to the U.S. Department of Transportation (Docket No. OST-2005-22922), 2006, on behalf of American Airlines, regarding the competitive impact of the proposed Star Alliance expansion to include LOT and Swiss airlines and expand antitrust immunity between Air Canada and United Airlines.

Expert Report and Testimony before the Public Service Commission of Maryland, (Case No. 9117, Phase 1), 2007 on behalf of Potomac Electric Power Company and Delmarva Power & Light Company, regarding the risks and costs associated with a portfolio-based procurement of electric power supplies, as opposed to relying on a full-requirements auction-based procurement method.

Expert Report submitted to the Pennsylvania Public Utility Commission (Docket No. P-0072305), 2008, on behalf of Pennsylvania Power Company, regarding the risks and costs associated with alternative procurement methods for obtaining electric power supplies to serve default service customers.

Expert Report and Testimony before the Public Utility Commission of Ohio (Case No. 08-936-EL-SSO), 2008, on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, regarding the rationale for using an auction process to procure full-requirements electric power supplies for standard-service-offer customers, as well as a description of the responsibilities undertaken by myself and The Brattle Group as manager of that procurement.

Expert Report submitted to the Pennsylvania Public Utility Commission (Docket Nos. P-2009-2093053 and P-2009-2093054), 2009, on behalf of Metropolitan Edison Company and Pennsylvania Electric Company, describing the design of an RFP process for procuring solar photovoltaic alternative energy credits and the management of that process by myself and The Brattle Group, as well as an analysis of the desirability of meeting default service obligations through the auction-based procurement of full-requirements power supplies.

Various Expert Reports submitted between 2008 and 2010 to the U.S. Department of Transportation (Docket No. OST-2008-0252) and the European Commission describing the competitive impact of the proposal by the oneworld alliance to receive antitrust immunity, including various assessments of the effects on non-stop and connecting passengers that relied on econometric analysis of airline fare data and other empirical methods.

Reports submitted to the Pennsylvania Public Utility Commission, 2010, 2011, 2012, and 2013 as the Independent Procurement Manager for the procurement of Solar Photovoltaic Alternative Energy Credits by Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company including a description of the RFP process, a benchmarking of procurement prices against both current short-term prices and expected long-term prices for solar credits (based on a proprietary financial model), and the conformity of the procurement to the standards of least-cost procurement provided under Pennsylvania law.

Expert Reports (and Depositions) submitted to the U.S. District Court for the Middle District of Tennessee, 2012, in the matter of Watson Carpet & Floor Covering Inc. v. Mohawk Industries Inc., regarding the competitive effects of a carpet manufacturer's alleged refusal to sell its products to a carpet dealer serving production homebuilders in Nashville and surrounding counties.

Expert Reports and Testimony before the Pennsylvania Public Utility Commission (Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670), 2011 and 2012, on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company, analyzing the Companies' procurement strategies for supplying default service customers, describing the design of an RFP process for procuring solar photovoltaic alternative energy credits (and the management of that process by myself and The Brattle Group), proposing an auction process for outsourcing the provision of generation service for time-of-use customers, describing an "opt-in" auction process to promote the switching of default service customers to competitive retail supply, and describing a customer referral program that is also designed to promote retail competition.

Expert Reports before the arbitration tribunal in DP World Callao S.R.L. et al. v. The Republic of Peru, 2012 and 2014, analyzing the competitive impact of a concession contract awarded for a second container terminal at the Port of Callao, including its impact on the pricing of standard and special terminal handling services, container volumes at each terminal concession, and the relationship between prices and costs.

Expert Reports before the Pennsylvania Public Utility Commission (Docket Nos. P-2013-2391368, P-2013-2391372, P-2013-2391375, P-2013-2391378), 2013 and 2014, on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company, analyzing the Companies' procurement strategies for supplying default service customers.

Expert Report and Testimony before the Canadian Radio-television and Telecommunications Commission (CRTC Docket No. 2014-76-1), 2014, on behalf of the Canadian Competition Bureau analyzing market power in the wireless market, including an analysis of industry profitability, an assessment of the impact on prices, market shares, profits, consumer surplus, and market penetration arising from the entry of an additional nationwide carrier, and an analysis of the cost impact for incumbent carriers arising from proposed changes in spectrum availability that would facilitate additional entry.

Expert Reports before the Pennsylvania Public Utility Commission (Docket Nos. P-2015-2511333, P-2015-2511351, P-2015-2511355, and P-2015-2511356), 2015, on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company, analyzing the Companies' procurement strategies for supplying default service customers and the competitiveness of the proposed procurement process, and estimating the pricing and volumetric risk premium associated with past procurements.

Expert Report and Testimony before the North Carolina Utilities Commission (Docket. Nos. E-2 Sub 1095, E-7 Sub 1100, and G-9 Sub 682), 2016, on behalf of Duke Energy, relating to an analysis of potential market power issues and the potential for competitive harm associated with the acquisition by Duke Energy of Piedmont Natural Gas, as it applies to the combination of electric and retail gas activities and the transport and delivery of natural gas.

Expert Report submitted to the Federal Court of Australia (New South Wales), 2019, in the matter of Alister Dalton and others v. Volkswagen AG and others, providing an econometric analysis that assessed the impact of the "diesel emissions issue" on the resale prices of affected VW vehicles.

Expert Report submitted to Court of Amsterdam (Case No. C/13/486440 / HA ZA 11-944; C/13/561169 / HA ZA 14-283) related to the estimation of the volume of commerce affected by an alleged cartel agreement among major international airlines pertaining to fuel surcharges.

PROFESSIONAL ACTIVITIES

Consultant to the World Bank on the formation of regional trading blocs, the European Community (DG IV) on competition and transportation issues, and the Canadian Competition Bureau on competition issues.

Advisory Board Member of the Center for Research in Regulated Industries

Member of the Atlantic Energy Group

Referee for the following journals: *American Economic Review*, *Canadian Journal of Economics*, *Contemporary Policy Issues*, *European Economic Review*, *International Economic Review*, *International Journal of the Economics of Business*, *Journal of Economics*, *Journal of Economics and Business*, *Journal of Economic Integration*, *Journal of Industrial Economics*, *Journal of*

International Economics, Journal of Regulatory Economics, Oxford Economic Papers, and Review of International Economics.

Appendix B: Documents Relied Upon

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Case Documents

- Courtney Braun Declaration, *William Morris Endeavor Entertainment, LLC and Creative Artists Agency, LLC, v. Writers Guild of America, West, Inc., and Writers Guild of America, East, Inc., and Patricia Carr, et al.*, November 18, 2020.
- *William Morris Endeavor Entertainment, LLC; Creative Artists Agency, LLC; and United Talent Agency, LLC, v. Writers Guild of America, West, Inc.; and Writers Guild of America East, Inc., and Patricia Carr; Ashley Gable; Barbara Hall; Deric A. Hughes; Deirdre Mangan; David Simon; and Meredith Stiehm*; Memorandum of Points and Authorities in Support of CAA Motion for Preliminary Injunction, Case No. 2:19-cv-05465-AB, November 17, 2020.

Academic Articles

- Daniel P. O'Brien and Keith Waehrer, "The Competitive Effects of Common Ownership: We Know Less Than We Think," *Antitrust Law Journal* 81(3) (2017), pp. 729-776 (Working Paper, February 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2922677).
- Edward B. Rock and Daniel L. Rubinfeld, "Common Ownership and Coordinated Effects," *Antitrust Law Journal* 83 (2020).
- Einer Elhauge, "How Horizontal Shareholding Harms Our Economy—and Why Antitrust Law Can Fix It," (Working Paper 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3293822.
- José Azar, Martin Schmalz, and Isabel Tecu, "Anticompetitive Effects of Common Ownership," *The Journal of Finance* 73(4) (August 2018), 1513-1565 (Working Paper, March 2017, <https://media.iese.edu/research/pdfs/WP-1169-E.pdf>).
- José Azar, Sahil Raina, and Martin C. Schmalz, "Ultimate Ownership and Bank Competition," Working Paper (May 4, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2710252.
- Mengde Liu, "Players Behind the Scenes: Common Ownership in the Hospital Industry," Working Paper (October 2019), <https://liberalarts.tulane.edu/sites/liberalarts.tulane.edu/files/sites/default/files/Liu%20JMP.pdf>.
- Miguel Antón, Florian Ederer, Mireia Giné, and Martin Schmalz, "Common Ownership, Competition, and Top Management Incentives," ECGI Finance Working Paper No. 511/2017 (February 2018), https://ecgi.global/sites/default/files/working_papers/documents/finalantonederergineschmalz.pdf.
- Oz Shy and Rune Stenbacka, "Common Ownership, Institutional Investors, and Welfare," *Journal of Economics & Management Strategy* 29 (Fall 2020), pp. 706-723.
- Sanford J. Grossman and Oliver D. Hart, "An Analysis of the Principal-Agent Problem," *Econometrica* 51:1 (1983).
- Steven C. Salop and Daniel P. O'Brien, "Competitive Effects of Partial Ownership: Financial Interest and Corporate Control," *Antitrust Law Journal* 67 (2000).

Textbooks

- Don E. Waldman and Elizabeth J. Jensen, *Industrial Organization: Theory and Practice*, (Boston, Massachusetts: Pearson Addison Wesley, 2007, 3rd Ed.).
- Jeffrey Church and Roger Ware, *Industrial Organization: A Strategic Approach*, (Boston, Massachusetts: Irwin McGraw Hill, 2000).
- Richard A. Brealey, Stewart C. Myers, and Franklin Allen, *Principles of Corporate Finance*, (New York, NY: McGraw-Hill Irwin, 2011).

Public Material

- “Agencies for Sale Private Equity Investment and Soaring Agency Valuations,” Writers Guild of America West, March 18, 2019.
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 - "William Morris Endeavor Entertainment and Silver Lake Announce Strategic Partnership," Silver Lake; William Morris Endeavor Entertainment Press Release, May 2, 2012, accessed November 24, 2020, <https://www.prnewswire.com/news-releases/william-morris-endeavor-entertainment-and-silver-lake-announce-strategic-partnership-149861875.html>.
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