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14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR THE COUNTY OF LOS ANGELES  
17

18 WRITERS GUILD OF AMERICA, WEST, INC.;  
WRITERS GUILD OF AMERICA, EAST, INC.;  
19 PATRICIA CARR; ASHLEY GABLE;  
BARBARA HALL; DERIC A. HUGHES;  
20 GEORGE JOHANNESSEN; DEIRDRE  
MANGAN; DAVID SIMON; and MEREDITH  
21 STIEHM,

22 Plaintiffs,

23 v.

24 WME ENTERTAINMENT; CREATIVE ARTISTS  
AGENCY; UNITED TALENT AGENTS;  
25 INTERNATIONAL CREATIVE MANAGEMENT  
PARTNERS; and DOES 1-10,  
26

27 Defendants.  
28

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

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

### 5 INTRODUCTION

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

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

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

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

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

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

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

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

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

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

### 15 **PARTIES**

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

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

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

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

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

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

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

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

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

15 (e) Chip Johannessen is a television writer who resides in Pacific Palisades,  
16 California, and works in Century City. He has written for television shows including *Homeland*,  
17 *24*, *Moonlight*, and *Beverly Hills 90210*, was the showrunner for season five of *Dexter*, and also  
18 created the miniseries *Saints and Strangers*. He is a member of Writers Guild of America, West.  
19 From approximately June 2006 until April 2019, defendant International Creative Management  
20 Partners, LLC served as his talent agency. Johannessen has written for or created packaged  
21 shows, including *Homeland* and *Saints and Strangers*, and was injured by the payment of  
22 packaging fees to Agencies on those packaged shows.

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

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

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

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

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

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

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

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

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

13   **JURISDICTION AND VENUE**

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

21   **FACTUAL ALLEGATIONS**

22   **The WGA and the Role of Talent Agents**

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



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

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

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

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

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

27     ///

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

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

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

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

18 31. In television, the packaging fee for a particular project normally consists of three  
19 components: an upfront fee of \$30,000 to \$75,000 per TV episode, an additional \$30,000 to  
20 \$75,000 per episode that is deferred until the show achieves net profits, and a defined percent of  
21 the TV series' modified adjusted gross profits for the life of the show.

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

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

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

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

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

19                                   **Harm Caused by Packaging**

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

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

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

3 39. Likewise, because the third component of the packaging fee is based on defined  
4 gross profits, the payment of the packaging fee to an Agency has the effect of reducing the profit  
5 participation of the Agency's own clients, including writers, as the writers' share of the profit  
6 points is correspondingly reduced. Worse, the Agencies in many instances negotiate more  
7 favorable profit definitions for themselves than for their own writer clients. Many of the  
8 Individual Plaintiffs are entitled or would have been entitled but for the Agencies' malfeasance  
9 to profit participation for their prior work on packaged shows including, but not limited to,  
10 *90210*; *Cold Case*; *Homicide: Life on the Street*; *Saints and Strangers*; and *Judging Amy*. As a  
11 result of the fact that packaging fees are frequently paid to the Agencies before the profits that  
12 determine writer's profit are calculated, because of the Agencies' higher priority profit  
13 definitions, the ongoing amount paid to those Individual Plaintiffs is substantially reduced.  
14 Indeed, even though CAA has not performed any work in connection with *Cold Case* since the  
15 show was originally purchased by CBS approximately two decades ago, CAA is presently being  
16 paid almost exactly the same amount for that successful show that Meredith Stiehm is paid in in  
17 profit participation for having created the show and served as showrunner for seven years.  
18 Likewise, although David Simon has never received any profit distributions for *Homicide: Life*  
19 *on the Street* because his agency, CAA, negotiated a profit definition for Simon that was based  
20 on net rather than gross profits, on information and belief, CAA to this day continues to receive  
21 profit from that show because it secretly negotiated a far more favorable profit definition for  
22 itself, without Simon's knowledge or consent. Indeed, Simon had strenuously objected to  
23 CAA's negotiation of an unfavorable net profit definition for Simon, and had sought to improve  
24 his profit definition in further negotiations; however, when Simon's attorney sought to amend his  
25 original net profit definition, Simon learned that CAA had represented to the production  
26 company that Simon had already agreed to that profit definition and that the production company  
27 and NBC had already invested substantial sums in preproduction. CAA further represented to  
28 Simon that if he did not agree to the original, unfavorable net profit definition, he would not only

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

24 57. Because of the Agencies' breaches of their fiduciary duties, writers—including  
25 each of the Individual Plaintiffs—have been forced to retain and pay other professionals,  
26 including lawyers and talent managers, to protect their interests, frequently paying as much as  
27 15% or 20% in additional commissions to these other professionals to secure the services that  
28 talent agencies alone once provided. Because writers' agents no longer represent their clients

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **SECOND CAUSE OF ACTION**

24 **Constructive Fraud, Cal. Civ. Code §1573**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 91. As a result of the Agencies’ commissions of constructive fraud under Civil Code  
26 §1573, the Guilds’ members suffered significant harm, including but not limited to lost wages,  
27 lost employment opportunities, and other economic losses.

28 ///



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

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

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

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

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

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



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

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

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiffs respectfully request that the Court:

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

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

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

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

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

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

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

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

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

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

7  
8 DATED: May 20, 2019

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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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**(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.

**(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