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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WILLIAM MORRIS ENDEAVOR ENTERTAINMENT, LLC, *et al.*,

Plaintiffs and Counterclaim Defendants,

v.

WRITERS GUILD OF AMERICA, WEST, INC., *et al.*,

Defendants and Counterclaimants,

and PATRICIA CARR, *et al.*

Counterclaimants.

Case No. 2:19-cv-05465-AB-AFM

DECLARATION OF DAVID J. YOUNG IN OPPOSITION TO PRELIMINARY INJUNCTION MOTIONS

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

I, David J. Young, declare as follows:

1. I make this declaration from my personal knowledge and could testify competently to its contents.

2. I am the Executive Director of Defendant and Counterclaimant Writers Guild of America, West, Inc. ("WGAW"). I have held the position of Executive Director of WGAW since August 2006.

3. As Executive Director, I am the chief executive of WGAW, a labor organization representing writers in the motion picture, television and digital media industries. I report to the WGAW's elected Board of Directors and serve as the chief negotiator of the industrywide collective bargaining agreement known as the Writers Guild of America Theatrical and Television Basic Agreement ("MBA"), which WGAW negotiates jointly with its sister union, Writers Guild of America, East ("WGAE"; jointly, the "Guilds" or "WGA").

4. I have also served as the chief negotiator in the ongoing negotiations for a new franchise agreement between the Guilds and the talent agencies that are authorized to represent the Guilds' members regarding some aspects of their employment under the MBA. As Executive Director, I manage a staff of approximately 170 employees and report directly to the elected leadership of the WGAW, consisting of three officers (president, vice president and secretary-treasurer) and 16 members of the Board of Directors.

5. Since their formation in 1955, the Guilds have had a franchise agreement with the talent agencies that represent WGA members. Indeed, the predecessor organizations that formed to become the Guilds also had franchise agreements, dating back to the 1940s. The Guilds have long had concerns about the conflicts of interest posed by talent agencies' collection of packaging fees directly from their clients' employers. In 1975, the Guilds attempted to eliminate packaging and entered into a franchise agreement with a group of 13 talent

agencies that prohibited the practice. Those agencies then sued the two largest agencies at the time—William Morris Agency (WME's predecessor) and ICM—as well as the predecessor to the Association of Talent Agents ("ATA"), the official trade organization of talent agencies, to enforce their agreement with the Guilds. After William Morris counterclaimed on antitrust grounds and unsuccessfully sought a preliminary injunction, the parties agreed to settle their dispute and entered into an agreement regarding talent agencies' representation of WGA writers. Although that agreement—the Artists' Manager Basic Agreement of 1976 ("AMBA")—did not prohibit agencies from collecting packaging fees, so long as they adhered to certain conditions, the agreement also expressly recognized that the Guilds reserved their objections to the collection of packaging fees by talent agencies.

6. My own focus on the issue of talent agency representation dates back to mid-2014, when a group of writer members and WGAW executives began to discuss the need to renegotiate the AMBA. At that time, we were concerned with data showing that overscale compensation of WGA members was on the decline, despite the fact the company revenues and profits were increasing significantly. Since most members used talent agents to negotiate their overscale compensation, we began to examine the issue of whether talent agencies were adequately representing the interests of writers and whether the franchise agreement between the WGA and the talent agencies needed to be updated.

7. As we began to look at the Guilds' relationship with the talent agencies, we found that the AMBA, which had not been updated since it was agreed to in 1976, was obsolete in many respects. Our principal concerns about the Guilds' relationship with the talent agencies fell into three categories: (a) the increasing reliance of some agencies on "packaging fees" as a source of income, supplanting the traditional model of being compensated for representation by

charging a 10% commission on clients' compensation; (2) the decision of some agencies to own or invest in affiliated production and distribution companies; and (3) the failure of the agencies to share employment data with the WGA necessary to allow the Guilds adequately to represent their members and enforce the MBA. These three areas of concern became the core objectives of the WGA agency campaign. The first two, packaging fees and "affiliated" production, also raised serious legal concerns about conflicts of interest, as it appeared that certain talent agencies were pursuing their own financial interests in a manner inconsistent with their fiduciary duties.

8. After this initial review by WGAW executives and member leadership, the Guilds continued to gather information from their members regarding the representation they received from talent agencies, including regarding their experiences with packaging fees and affiliated production. The Guilds later compiled and made public some of their members' responses as part of their agency campaign. Attached as Exhibit A is true and correct copy of these published responses.

9. Another account of the conflicts resulting from agency affiliation with production companies not appearing in Exhibit A involved an individual then represented by another major agency. The individual told her agent about a book she wished to develop. Her agent agreed to pursue it. About a year later, not having heard anything in the interim, the individual was contacted by a studio executive developing a project based upon the same book. She learned that the book had been brought to the studio by the agency's affiliated production company, and that the individual's agent had apparently passed the book to the production affiliate without attaching her, the talent whose interests the agent purportedly represented. Unsurprisingly, the individual fired her agent.

10. Although the Guilds started to study possible renegotiation of the

AMBA in 2015, the campaign did not fully ramp up until 2018. The reason for this was two-fold. First, by early 2016 the Guilds were gearing up for the renegotiation of the MBA, which was set to expire on May 1, 2017, and it would not have been practical for the Guilds to attempt to renegotiate both the AMBA and the MBA at the same time. Second, the agency campaign required substantial lead time because, under the terms of the AMBA, if the Guilds wanted to renegotiate the agreement they first had to serve a one-year notice of termination on the ATA.

11. Negotiations for a new MBA concluded in early May 2017. The experience of the 2017 MBA negotiations reinforced the belief of WGA leadership that the Guilds needed to change their relationship with the talent agencies. While the Guild had been successful in negotiating increases in MBA minimum compensation, we were continuing to hear from writers that their actual income was declining because of reductions in their overscale compensation and other factors such as shorter seasons for television shows and longer work periods, all of which were traditionally within the purview of talent agents to negotiate. Because of these ongoing concerns, the governing bodies of the two Guilds—WGAW's Board of Directors and WGAE's Council—authorized me to send written notice of termination of the AMBA. Attached as Exhibit B is a true and correct copy of the notice I sent to the ATA's Executive Director Karen Stuart on April 6, 2018.

12. Because the AMBA was an agreement between the ATA and both Guilds, the task of negotiating a new franchise agreement was delegated to an "agency negotiating committee" consisting of members from both WGAW and WGAE. The committee was first appointed in late 2018 and has continued to meet, on an as-needed basis, since that time. While the composition of the committee has changed in minor respects over the course of the campaign, as presently constituted it consists of 18 members, including three co-chairs. The

three officers of both WGAW and WGAE also participate on the committee in an *ex officio* capacity. In the early phases of the campaign, the committee regularly met in person. Since March 2020, due to the COVID-19 pandemic, all of the meetings have been by video conference. As delegated by the WGAW Board of Directors and WGAE Council, the negotiating committee has authority to conduct negotiations with the talent agencies, initially through the agencies' bargaining representative, the ATA, and later directly with individual agencies. Although I am the chief negotiator, I need to confer with and secure approval from the committee before making strategic negotiating decisions. The logistics of convening such a large body, with members on two coasts, has sometimes complicated the WGA's ability to react and respond to proposals by the agencies.

13. In addition to reporting to the agency negotiating committee, over the course of the agency campaign I have also participated in outreach directly to groups of WGAW members. At present, WGAW has approximately 11,000 active members, who are bound by internal union rules, including Working Rule 23, which provides that members may only be represented for MBA-covered writing work by agents who are bound by a current franchise agreement.

14. At the beginning of the agency campaign, many members were unhappy with their agents and were aware that overscale compensation was on the decline or had stagnated, but did not necessarily know why. At that point, the AMBA had not been renegotiated in over 40 years and many members were not even aware that it existed. Throughout 2018 the Guild sent a number of communications seeking to hear from and educate members about the problem of agency conflicts of interest stemming from packaging fees and affiliated production. In early 2019, with the termination of the AMBA fast approaching, the level of in-person member outreach intensified. In January through March 2019, WGAW conducted more than 17 member outreach meetings, including five

general membership meetings open to all WGAW members (and to WGAE members who happened to be in Los Angeles at the time). In all, more than 3,000 WGAW members attended these meetings in January through March, 2019. (More broadly, from 2017 through the end of 2019, the WGA held a total of 56 outreach meetings with members, which a total of 6,000 WGAW members attended.) I attended all of the meetings, usually accompanied by the WGAW officers and multiple members of the agency negotiating committee. The purpose of these meetings was to educate WGAW members about the reason for the agency campaign and the objectives that informed the Guilds' bargaining proposals to the agencies. The most extensively discussed issues related to the need to eliminate the talent agencies' conflicts of interest by (1) prohibiting their compensation for representation of writers by receipt of packaging fees paid by the production studios, instead of receiving commission on their clients' earnings, and (2) limiting their ability to invest in production and distribution companies that employ writers.

15. At one of the member outreach meetings, I recall that WGAW's president, David Goodman, described the agency campaign as a "power grab" on behalf of the Guilds. The context of the quote was an attempt to explain to members why the Guilds were attempting to use the collective power of members to curb conflicts of interest on the part of talent agencies. The full quote, which came from a prepared text that I participated in writing, and which was preceded by five pages discussing the agency conflicts of interest as well as one and a half pages discussing how to address such conflicts, reads as follows:

> I want to conclude by talking about how we are going to make this happen. I've asked myself many times, why the hell are we doing this? My wife asks me this too. I've asked myself is the Guild making a power grab? And I think that the answer is yes, we are making a power grab. A necessary, proper and fair power grab. As the agencies have taken our collective power and used it to maximize their power and income, we have to take our power back and make

sure it is used to maximize our incomes.

Attached as Exhibit C is a true and correct copy of the prepared text of this speech.

16. Starting before the expiration of the AMBA, the Guilds attempted to negotiate a new franchise agreement through discussions with the ATA. Negotiators from the WGA and the ATA met in person on a total of 13 occasions during the period between February 5, 2019 and June 7, 2019. I attended each of the negotiating sessions and served as chief negotiator for the Guilds. While the Guilds and the ATA exchanged a number of written proposals and had across-the-table discussions on numerous issues, by early June the parties were not close to reaching any agreement, and the dispute away from the negotiating table had escalated. The AMBA had expired on April 6, 2019, and the largest agencies had refused to sign the Code of Conduct that the Guilds, following a 95% vote in favor in a member referendum, adopted to take the AMBA's place. As a result, a majority of the Guilds' members—more than 7,000 in all—terminated their representation agreements with their newly non-franchised agencies with respect to the procurement and negotiations of writing employment.

17. In addition, on April 17, 2019, the Guilds and several of their members filed a lawsuit in Los Angeles Superior Court against the four biggest agencies—William Morris Endeavor ("WME"), Creative Artists Agency ("CAA"), United Talent Agency ("UTA"), and ICM Partners ("ICM")—for violations of state laws arising from the agencies' collection of packaging fees. WME, CAA, and UTA then sued the Guilds in federal court for antitrust and secondary boycott violations. The Guilds and various individual writers in turn dismissed their state court action and refiled their state law claims as counterclaims in federal court, adding federal and state antitrust and federal RICO claims as well.

18. Because of the lack of progress in the negotiations with the ATA, on June 19, 2019, the WGA announced that it would no longer consent to negotiate on a multi-agency basis. From that point forward, the WGA conducted all negotiations for new franchise agreements with individual agencies, not through the ATA. Although the Guilds' decision to withdraw from ATA has sometimes been called a "divide and conquer" strategy, that is an oversimplification. It was my belief, based on my participation in the ATA negotiations and conversations I was having with agency executives, that the multi-agency approach was constraining certain agencies from making progress towards reaching an agreement. The agencies represented by the ATA were not all alike. Some agencies were deeply invested in collecting packaging fees, while others were not. Only a few agencies had interests in affiliated production and distribution companies, and only two of those, WME and CAA, had majority ownership interests in a production company that employed writers. Given this diversity of interests among the agencies, it was my belief, and the negotiating committee ultimately agreed, that negotiations with individual agencies might prove more fruitful in making progress towards an agreement—an assessment that turned out to be correct.

19. The Guild conducted individual negotiations with the following agencies and reached agreement on the dates indicated below:

a. Verve Talent and Literary Agency LLC (May 16, 2019);

b. Culture Creative Entertainment (July 5, 2019);

c. Kaplan Stahler Agency (July 22, 2019);

d. Buchwald (July 25, 2019);

e. The Alpern Group (November 1, 2019);

f. A3 Artists Agency f/k/a Abrams Artists Agency (November 13, 2019);

g. Rothman Brecher Erich Livingston, LLC (November 18, 2019);

h. The Gersh Agency, Inc. (January 17, 2020);

i. Agency for the Performing Arts, LLC (January 21, 2020);

j. Innovative Artists Talent and Literary Agency, Inc. (January 24, 2020);

k. Paradigm Talent Agency, LLC (March 23, 2020);

l. United Talent Agency, LLC (July 15, 2020); and

m. International Creative Management Partners LLC (August 5, 2020).

20. In each of the franchise agreements the WGA negotiated, there is a provision explicitly defining the agency bound by the franchise agreement to include its "individual agents, employees, partners, principals, and shareholders." There is a further provision clarifying that the franchised agency is vicariously liable for the actions of such individuals and entities. The purpose of this provision is to ensure that writers are afforded the full protection of the regulations set forth in the franchise agreement, that agencies cannot evade the franchise agreement's regulations through changes in corporate structure, and that the ultimate owners of the franchised agency agree to behave as proper fiduciaries.

21. In the negotiations with individual agencies, one of the most consequential and frequently negotiated points was the "sunset" date for the elimination of the agency's rights to enter into packaging fee agreements, which the Guilds agreed to delay in several successive agreements, ultimately agreeing to June 30, 2022 in the UTA agreement. The Guilds agreed to these sunset periods at the negotiation request of the signatory agencies, because otherwise those agencies would be at a significant competitive disadvantage vis-à-vis agencies like WME and CAA that continue to collect packaging fees. The Guilds also agreed not to invalidate packaging fee agreements already in existence. Not only did unwinding

such agreements seem impracticable, since the agreements were with third party studios and production companies, but doing so would likely have led agencies to demand retroactive commission payments from Guild members. Moreover, unwinding such agreements would have done little to remedy the harm already caused by the conflict of interest that existed at the time the agency negotiated its packaging fee agreement and the compensation of the writer the agency was representing.

22. The other hot button issue in some of the individual agency negotiations was the limitation of ownership interests in an "Affiliate Production Entity," which began in the Code of Conduct as a flat prohibition of any ownership interest, but was eventually modified by the time of the UTA agreement to permit up to a 20% non-controlling ownership interest. This issue was the reason why the most complex and time consuming of the individual agency negotiations was with UTA, the third largest agency behind WME and CAA.

23. The Guilds' negotiations with UTA started with an in-person meeting on August 23, 2019 and continued intermittently for almost 11 months. The parties started exchanging written proposals in early April 2020, and reached agreement on a new franchise agreement on July 7, 2020. The most contentious and politically sensitive aspect of the UTA agreement was the decision to modify Section 3.B.1. of the agreement to allow a talent agency to hold up to a 20% non-controlling interest in an Affiliate Production Entity. From the beginning of the campaign, many WGA members had expressed the view that any ownership interest by a talent agency in a company that employs writers is so fundamentally a violation of the agent's fiduciary duty that it should be prohibited outright. Other members argued that a non-controlling minority interest was reasonable as long as it was disclosed to the client and subject to the other fiduciary protections contained in the franchise agreement. The agency negotiating committee debated

these positions at length in ultimately deciding to agree to the UTA franchise agreement, the terms of which were extended to the other franchised agencies by virtue of the most favored nations clause. As part of the overall settlement with UTA, the parties also agreed to settle their respective federal court claims, and those of the individual writer counterclaimants, which were dismissed by mutual stipulation and order of this Court on July 21, 2020.

24. On August 5, 2020, the Guilds entered into a franchise agreement with ICM, the fourth largest of the "Big 4" Hollywood agencies. The agreement signed by ICM was substantively the same as the UTA agreement.

25. The signing of ICM left the two biggest agencies, WME and CAA, as the only remaining agencies not signed to a WGA franchise agreement. WME and CAA are not only the two biggest, they are different from all of the other agencies in two important respects. First, both agencies own, or are commonly owned with, an affiliated production company. WME is wholly owned by a holding company that also wholly owns a production company, Endeavor Content. CAA owns a majority interest in a production company called wiip. Second, the biggest shareholders in both WME and CAA were private equity investors, Silver Lake Partners in the case of WME, and TPG Partners in the case of CAA.

26. After ICM signed the franchise agreement, Rick Rosen, one of WME's partners, contacted me and broached the idea of entering into negotiations with the Guilds for a new franchise agreement. The overture was nonspecific. He did not make any concrete proposals, nor indicate whether WME was willing to address the significant conflicts of interest inherent in its business structure (e.g., the common ownership of WME and Endeavor Content by the same parent company).

27. Representatives of the Guilds and WME met by videoconference on August 18 and September 1, 2020. I did not attend either meeting, though the

WGAW representatives who did participate, including the WGAW president (David Goodman), two of the three negotiating committee chairs (Chris Keyser and Meredith Stiehm), and senior WGAW executives, had full authority to act on behalf of the Guilds. WME did not present written proposals in either meeting, nor did it propose specific modifications of the language of the UTA/ICM franchise agreement that was in its possession.

28. In the first of the two meetings, the WME representatives articulated at least six demands for significant modifications to the UTA/ICM Agreement. First, WME indicated that it was not agreeable to limiting its ownership in production affiliates to 20%, but Endeavor instead was willing to reduce its ownership stake in its wholly-owned production entity, Endeavor Content, to a minority stake—presumably 49%. Second, WME further expressed the necessity of having a "sunset provision" on Section 3.B.1.—by this, WME meant a period of time (which it did not define) it could continue to own more than 20% of a production affiliate *after* becoming franchised by the WGA. Third, WME stated it required an agreement on "grandfathering," which refers to exempting WME's ownership interests in projects that pre-date WME's becoming signatory to the franchise agreement. Fourth, WME demanded that the UTA/ICM franchise agreement be modified to exempt all of its investors from regulation under the Franchise Agreement, a radical departure from the UTA/ICM franchise agreement—and every other franchise agreement the WGA negotiated to date—which explicitly binds the franchised agencies' shareholders to the regulations set forth in the franchise agreement. Fifth, WME proposed significant changes to various provisions of the franchise agreement requiring franchised agencies to share certain information or documents with the WGA concerning writers. For example, WME proposed providing itemized statements of writer compensation and agency commission to the Guild on an *annual* instead of quarterly basis, and

writer deal memos and contracts on an *annual* basis instead of within 15 business days. And sixth, WME demanded an additional year on the packaging sunset, such that it would expire in June of 2023.

29. At the second meeting, on September 1, the WGA explained that WME's proposals were not acceptable, that it was holding to the UTA/ICM deal, and that "[w]e've gone about as far as we can go." WME did not modify any of its proposals at the September 1 meeting.

30. After the UTA and ICM agreements were signed, there was concern on the negotiating committee and among the membership at large that the two remaining agencies (WME and CAA) would each come to the Guild demanding additional concessions. The concern focused on the two provisions of the franchise agreement where the Guilds had made concessions, incrementally, throughout the period of individual negotiations: the "sunset" date for packaging, which in the UTA agreement had been delayed until June 30, 2022, and the limit on investments in affiliated production companies, which under the UTA agreement was now 20%. To address concerns that the key protections of the franchise agreement were being eroded, the negotiating committee, with the support of the WGAW Board and WGAE Council, elected to make a clear public statement that it was unwilling to make additional concessions in these areas. On September 1, 2020, the Guilds published a public letter to their members stating clearly that they had moved far enough:

> We're not going to keep pushing back the sunset period on packaging. We're not going to allow more than 20% ownership of a production studio.

Braun Dec., Ex. 5.

31. On September 8, Rick Rosen left me a phone message asking if we

could speak by phone. I responded by text that I would call him on the morning of September 9th, which I did. It was a short conversation, less than two minutes, but cordial. Rosen said that WME was willing to move toward the UTA/ICM deal, including an eventual acceptance of the 20% limitation on production ownership, but wanted concessions on "grandfathering" of existing projects and a "sunset" period to June 2022 during which time WME could possess a greater-than-20% ownership interest in a production affiliate. I requested that Rosen provide WME's proposed modifications to the UTA/ICM franchise agreement to me in contract language and that the WGA would review the proposal.

32. On September 10, Courtney Braun, Senior Vice President and Deputy General Counsel for Endeavor (the parent company of WME), sent me an email stating:

> As discussed with Rick [Rosen], below is our proposed language for Section 3.B.1. of the Franchise Agreement . . . .
>
> > No Agent shall have more than a 20% non-controlling ownership or other financial interest in, or shall be owned by or affiliated with any entity or individual that has more than a 20% non-controlling ownership or other financial interest in, any entity or individual engaged in the production or distribution of Motion Pictures ("Affiliate Production Entity"). WGA agrees that for purposes of this Agreement, Agent's ownership by or affiliation with investors that own less than 20% of Agent's parent company shall not result in any violation of this Agreement. Agent shall not have any creative, financial, or operational controls over any Affiliate Production Entity. With regard to any Affiliate Production Entity, upon reasonable written request by the Guild, Agent will provide written

> documentation to verify both the identity of the Affiliate Production Entity and the ownership percentage or other financial interest subject to this provision, provided that Agent may redact all confidential and/or proprietary information contained in any such documentation disclosed under this Subsection. Notwithstanding the foregoing, nothing shall preclude Agent's continued affiliation with Endeavor Content as it relates to projects completed or commenced prior to June 30, 2022 and all subsequent extensions, modifications or renewals of commitments or agreements for such projects.

[Underlining in original.]

33. Braun's proposal contained at least three significant modifications of Section 3.B.1. of the UTA/ICM franchise agreement. First, it exempted a class of its shareholders from regulation under the franchise agreement—i.e., those shareholders that own less than 20% of WME's parent company. Second, WME proposed that the 20% cap on ownership of a production affiliation would not take effect until June 30, 2022, thus permitting WME's parent company to wholly own Endeavor Content for nearly two years after becoming franchised by the WGA. Third, WME insisted on a "grandfathering" provision that would allow it to maintain a greater than 20% ownership interest in Endeavor Content indefinitely with respect to "projects . . . completed or commenced prior to June 30, 2022." And finally, Braun's email—which merely contained contract language for Section 3.B.1.—also failed to address whether WME had dropped the various other demands it had raised at the August 18 meeting—for example, changes to the information-sharing provisions of the UTA/ICM franchise agreement and a further extension of the sunset period for packaging.

34. Upon receipt of Braun's email, I requested from WME a full redline of the UTA/ICM franchise agreement so that I could determine the full extent of the modifications it was proposing. In response, Braun clarified that WME also was insisting on "working out an IT solution for the notification obligations in 3C3, 3D1-4, and 3F3" of the UTA/ICM franchise agreement, which are references to several of the information sharing provisions of the franchise agreement. Braun did not provide a full redline reflecting WME's proposals, as I requested.

35. Once the Guild announced that it was unwilling to make further concessions regarding the terms of the franchise agreement in the public statement described in Paragraph 28, *supra*, and Rick Rosen advised me that WME was prepared, in principle, to sign the UTA/ICM agreement, it became clear to me that the remaining negotiations would probably focus not on the terms of the franchise agreement, but on how WME and CAA would bring themselves in compliance with the agreement. In both cases this would require the agencies to divest their existing interests in affiliated production companies, at least to the extent that those interests exceeded 20%. Every other agency we had franchised was in compliance with the franchise agreement as of the date the agency became franchised. In approaching this stage of the negotiations, we believed that it was important to understand the complex corporate structure of each agency and to verify, for example, that none of their private equity shareholders held investments that violated the 20% limitation. These were not issues that we had been required to negotiate with any other talent agencies, none of which had such complex corporate structures or were required to restructure their business in order to comply with the franchise agreement. Because these were new issues for the Guilds, in late September we retained Chuck Samuelson of Hughes Hubbard & Reed in New York, a mergers and acquisition specialist, to advise us on these issues, and I communicated the same to Rosen and Braun.

36. On or about September 14, I requested that Rosen explain how WME could come into compliance with the terms of the UTA/ICM franchise agreement. In response, on September 16, Braun offered to arrange a call with Endeavor's CFO Jason Lublin. The next day, I informed Braun that the WGA was putting together a list of concerns and questions about WME's plan to come into compliance with the terms of the UTA/ICM franchise agreement. Several days later, I offered that two WGA executive staff could speak with Lublin. Braun responded that Lublin was no longer available to meet with the WGA. Instead, Braun essentially reiterated WME's September 10 proposal and stated:

> In terms of meeting the requirements of 3B1, we essentially see three options: (1) sell down EC [Endeavor Content] to bring ourselves into compliance with the 20% ownership cap; (2) create a new entity for new projects, in which Endeavor will not own more than 20%; and/or (3) cap Endeavor's investments in new projects at 20%.

37. On September 30, 2020, after consulting with our mergers and acquisitions counsel Chuck Samuelson, the Guilds sent WME and CAA identical requests for information relevant to corporate structure and governance. Braun Dec. Ex. 7. On October 9, 2020, Ms. Braun provided a small amount of information in response to the Guilds' information request, including a one-page ownership chart and a short description of WME's governance structure. The information confirmed that WME was not in compliance with the terms of the franchise agreement due to its common ownership with Endeavor Content, but left many questions unanswered about what restructuring would have to take place in order to bring it into compliance. Most significant, the response provided no information about the holdings of Silver Lake Partners, the private equity investor that owns 48% of WME's corporate parent.

38. Because WME only partially complied with the Guilds' information

request, I sent a second letter to Ms. Braun on October 16 identifying the information that we were still waiting for and outlining the Guild's positions on the modifications to the UTA/ICM franchise agreement proposed by WME. The letter is attached as Exhibit 7 to the Braun Declaration. On October 20, Ms. Braun requested that I provide her "proposed contract language, rather than just bullet points"—a reference to my October 16 letter. I responded the next day asking her for clarification what she was requesting from the WGA, and stated that the WGA needed the information requested from WME in order to begin preparing proposed contract language. I did not receive a response from Ms. Braun or any other WME representative. To date, WME has not provided the Guild with any information responsive to the requests outlined in the October 16 letter.

39. Negotiations with CAA followed a somewhat different path. On June 16, 2020, I had a videoconference with Bryan Lourd, one of the principals of CAA. The call was cordial, but nothing substantive was discussed and Mr. Lourd made no specific commitments or proposals about how negotiations might proceed. I spoke again to Mr. Lourd on July 17, about ten days after the Guild announced its agreement with UTA. Once again, the conversation was cordial but non-specific. At the end of the call, Mr. Lourd asked for a copy of the UTA agreement, which I had sent to him later that day. A true and correct copy of Sean Graham's transmittal email, and Mr. Lourd's return email acknowledging its receipt, is attached as Exhibit D. I had hoped that sending Mr. Lourd the executed agreement with UTA, a major competitor of CAA, might elicit a substantive response from CAA. Mr. Lourd's statement in paragraph 7 of his declaration that I refused to discuss the UTA agreement with him as a "framework to reach agreement" is untrue and belied by the fact that I sent him the agreement right after our call.

40. In fact, CAA made no response to the UTA agreement for almost two months, until after September 1 when, as described in paragraph 39 above, the

Guilds issued a public statement that they would not negotiate any further changes to the franchise agreement, but CAA and WME were welcome to sign it as is.

41. The next thing we heard from CAA was an ultimatum. On September 14, 2020, the Guilds received a letter from CAA's litigation counsel, Richard Kendall, purporting to agree "to be franchised under the same franchise agreement that the WGA has offered to the other talent agencies" but subject to one crucial modification. Mr. Kendall's letter, which is attached as Exhibit B to the Olson Declaration, proposed to add a clause to Section 3.B.1 of the agreement providing that the 20% limit on ownership of affiliated production companies would only apply "[f]ollowing sale of existing interests to occur as soon as commercially practicable . . ." The letter gave the Guilds four business days to countersign the franchise agreement as so modified.

42. I viewed Mr. Kendall's letter, which was released to the press at the same time it was send to the Guilds, as a stunt. It was an attempt to jam the Guilds with a proposal about an extremely consequential term—the timing of CAA's divestiture of its prohibited interest in an affiliated production company. I viewed it as bad faith for CAA to present the proposal as an ultimatum without any prior discussion by the parties of the issue. Just as important, I viewed the proposed modification itself as completely unworkable. "Commercially practicable" is an indeterminate term. I knew that once CAA was franchised and had its writers back, there would be no effective way to require CAA to divest. And pending divestment, if it ever happened, CAA would be allowed to operate with the most egregious conflict of interest: majority ownership of a production entity that employs writers, including writers that CAA would represent. I knew that such a proposal would be wholly unacceptable to the WGA negotiating committee.

43. The next day, September 15, I had my first conversation with Ronald Olson, the attorney designated by CAA to negotiate over the franchise agreement.

In that conversation, I spoke candidly about my frustration with the Kendall letter and about the fact that CAA had waited for a year and a half to engage with the Guilds in a meaningful or constructive way. At no point did I express personal animosity towards Mr. Lourd or other CAA executives, or suggest that personal animosity would affect my efforts to reach an agreement with CAA. As a professional negotiator, I would never allow my personal emotions to guide my actions or influence my judgment about how best to achieve the policy objectives set by the Guilds' elected leadership.

44. I have continued to be in contact with Mr. Olson and his partner, Anjan Choudhury, since our first call on September 15. For the reasons discussed in paragraph __, we followed up on CAA's announcement and my conversation with Olson by requesting information from CAA related to its ownership and corporate governance. The Guilds received some information from CAA on October 8, from which we confirmed that a private equity investment fund, under management of TPG Partners, owns a 66% stake in CAA.

45. On November 11, 2020, I received a letter from Mr. Olson, which is attached to Exhibit K of his declaration. The stated purpose of the letter was to inform the Guild about the steps CAA had taken "to bring itself into compliance with the terms of the existing Franchise Agreement." In that connection, the letter advised the Guilds that CAA had placed its ownership interest in wiip, the affiliated production company, in a blind trust, with instructions to sell its interest in excess of 20%. Enclosed with the letter was a 13 page Blind Trust Agreement, which Mr. Olson indicated would be signed the next day. Next, the letter acknowledged that the 20% limitation on ownership in the franchise agreement would be binding on CAA shareholders, but maintained that the shareholder bound by this limitation was a single specific TPG investment fund, identified as TPG Partners VI, L.P., not other related funds under management by TPG Partners.

Neither the blind trust nor CAA's position on private equity shareholders was ever discussed with the Guilds prior to delivery of the November 11 letter, nor were the Guilds given an opportunity to negotiate any of the terms of the Blind Trust Agreement. The letter was, once again, accompanied by an ultimatum, giving the Guilds just five days (including a weekend)—until November 16—to agree to all points before CAA "w[ould] have no choice but to ask the Court to address the Guilds' conduct."

46. I told Ron Olson on November 18th that the Guilds would review the proposal contained in his November 11 letter.

47. The Guilds have carefully considered the contents of the November 11 letter and blind trust agreement, and have consulted with mergers and acquisition counsel about them. While we believe they are a step forward toward resolving the divestiture question, we have concerns about the specific terms of the trust agreement. For example, there is no time limit on the trustee's disposition of the trust asset; pending disposition of the asset, CAA will continue to be aware of its ownership interest in wiip and will continue to operate under a conflict of interest, including because it will retain the right to receive proceeds from its ownership interest in wiip (and because the ultimate value of wiip, and so the amount CAA will receive when it sells its interest, will depend on wiip's success). The trust agreement also imposes no limitation on who may purchase the trust asset; the trustee would appear to be free to sell it to another TPG fund or to another talent agency. Nor did the Guild have any input into the selection of the trustee, who is himself a lawyer and a member of a law firm that directly represents WGA members.

48. The Guilds also have concerns over CAA's proposal to limit the franchise agreement's application to a specific TPG investment fund. Under this interpretation, the fund, identified in the letter as TPG Partners VI, L.P., could

simply transfer ownership in wiip to another TPG fund and achieve compliance with the franchise agreement. Such a narrow reading of the scope of the franchise agreement appears inconsistent with CAA's fiduciary obligation to avoid even the appearance of a conflict of interest.

49. The Guilds' negotiating committee met on December 2 to consider the CAA proposal and is preparing its response.

50. Both CAA and WME argue in their court papers that the Guilds are acting unlawfully by turning a blind eye to the conflicts of interests engaged in by talent managers. In fact, the Guilds have never had a franchise agreement with managers, whose traditional role was to advise clients concerning career development and financial issues. This is consistent with the position of the state of California, which does not license managers or define their functions, though there have been unsuccessful legislative efforts, most recently in 2001, to bring managers within the coverage of the Talent Agency Act. The Guilds are not blind to the potential for managers to engage in conduct that amounts to a conflict of interest with their clients. In general, however, it has been the Guilds' assessment that management companies have not engaged in pervasive and widespread practices that conflict with the interests of their writer clients, such as the receipt of packaging fees or ownership interests in production companies. Nonetheless, on multiple occasions I have told groups of Guild members that the WGAW will not hesitate to protect writers if it perceives abuses by managers or any other writer representatives.

51. Both WME and CAA argue that they will suffer irreparable harm if an injunction is not granted, mostly through the loss of prominent clients and the departure of agents who specialize in the representation of writers. This is a dilemma of their own making. Both agencies have known about the Guilds' concerns over conflicts of interest, and specifically the conflicts caused by

packaging and affiliated production, since the Guilds served their notice of termination of the AMBA in April 2018. The Guilds gave them extensive explanations of these concerns during the negotiations with the ATA in early 2019. The agencies then sat back and watched while the Guilds negotiated agreements with the dozen agencies listed in paragraph 18, making incremental concessions on packaging (agreeing to a sunset date) and affiliate production (allowing up to 20% ownership), but keeping the core of the regulations intact. Throughout this period, WME and CAA publicly told members that they could make do without writer clients and would continue to package on the basis of other elements, such as directors, actors or intellectual property. Having now announced that they are willing to sign the franchise agreement on the same terms as other agencies, WME and CAA find themselves in the position of not being able to comply with those terms because they have taken no steps (in the case of WME) or incomplete steps (in the case of CAA) to restructure their businesses so as to comply with those terms.

52. In essence, WME and CAA are asking the court to weigh in on one side of a labor dispute. The Guilds' leverage to regulate the talent agencies depends on the exercise of collective power: the vote of 95% of the membership to approve a Code of Conduct, followed by the willingness of 7000 writers to fire their agents in support of their demand for unconflicted representation. The issuance of an order enjoining the boycott that mass action would effectively disarm one side in the dispute. Once the writers are allowed to return to their unfranchised agencies, the solidarity necessary for collective action will be broken and it will be impossible to undo the harm if that Court later determines the merits in favor of the Guilds. In the meantime, WME and CAA will no longer be under any pressure to enter into the franchise agreements they now say they are ready to sign. They will be free to continue their operations, conflicted and unregulated in

any respect (e.g., limits on commissions; arbitration of client disputes), with an unfair competitive advantage over the agencies that have already signed, which may themselves consider relinquishing their WGA franchises.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: December 4, 2020

David J. Young

Exhibit A

WRITERS GUILD OF AMERICA WEST

WGA-Agency Campaign

Writers Share Their Experiences With Agency Packaging and Producing

The duty of agents is to *represent writers and act in their best interest*. Unfortunately, because of the conflicts of interest allowed in the current agreement between WGA and the Association of Talent Agencies, agencies are often doing anything but that. Writers have been sharing their experiences with conflicted representation, showing how it harms us both creatively and economically. **Please share your experiences with us. Email Agency Agreement.**

The statements below have been submitted confidentially to the Guild by members and published with their permission.

"The assertion that packaging fees will only return money that should go on screen to the studios' pockets directly contradicts my experience. I sold a series to a network after spending a considerable amount of my own time and money to build up the I.P. in another medium. During production discussions, I was told explicitly by the studio's production executives that the difference between shooting in Los Angeles versus a less desirable tax haven state—or another country—was the money taken from the above-the-line budget by the agency package. After some difficult conversations, the agency agreed to cut their package in half (albeit for the first season only) as a concession to the truth that my work in another medium was the reason the property sold in the first place. It was never suggested during these discussions that the money would just go back to the studio: the money was immediately returned to the show's budget, and we were able to make the decision of where to shoot based on what was best for the show, as opposed to financial exigency."

"I co-created a show and sold it, and my agency negotiated itself a packaging fee of over $70,000 an episode plus 10% of the backend on the series—the single biggest backend stake. They set up a couple of meetings, fielded two offers, and my lawyer helped my agent negotiate the deal. The show was sold with no producers, no actors, no elements attached; they packaged nothing. As far as I could see, the total amount of work for them was somewhere between ten and 20 hours, and that might even be a generous guess. The work of conception, pitch, execution and delivery of the first season represents two years of full-time work for me personally. And my agency will make more than me on this project."

"I am repped at one of the Big Four agencies, and I have a TV project with an Academy Award-nominated director that my agency does not rep. My agent advised me to get rid of the director claiming he didn't matter in TV. When I would not get rid of the director, my agent refused to return any calls regarding the project, even when there was an offer from a studio. Eventually the director called me to figure out what was going on and I had to put him in touch with my attorney to move the deal forward. If I didn't have a personal relationship with the director the deal would have died and I would not have known why. It's not worth any agent's time to work on deals where there is no package."

“Here’s how I learned the difference between packaging and a packaging fee: I sold a project to a studio with myself (the writer), a director, and a producer all repped by the same agency, so it was both fully packaged and had a packaging fee attached. The studio didn’t wind up making the project, so when the rights came back to me a few years later, I sold it to a different studio, but this time with just me attached. This deal took a very long time to close. After it finally did, I talked to the exec at the studio about the delay, and she told me that the packaging fee had held things up. My agency wouldn’t close the deal without the fee despite not doing any actual packaging, delaying not only my payment but our opportunity to take the project to market. I was furious, but also powerless to do anything about it—I hadn’t even known what was going on while my agency was negotiating for itself.”

“I put an entire show together, but I didn't want my agency to get the package. In the end, they held the deal hostage and I had to cave to get the project through. Every network I showed the project to made a bid on my show. I wanted it to go to one network, but my agent thought they'd get a bigger package if they went with another network, so they sold the package to them. My agent told me that there was a bigger penalty with the network they preferred, but I found out later that wasn’t true. Then, a network executive told me that my agency was holding the project hostage with the packaging fee. My agency was not representing my best interest—they were representing theirs.”

“I like working on a TV writing staff, but agents are not interested in representing writers who want to do that. They’re only interested in writers who develop new projects because that’s how they get a package fee. I went looking for an agent and met with some low level agents at one of the big agencies. They seemed very excited until I said I wanted to work as staff on a show rather than develop. They said, ‘If you’re not into developing, then we’re not interested. It's not worth it to us.”

"Before I became a working writer, I worked in the packaging department of a major agency. I saw firsthand how packaging influenced the way agents steered their clients’ careers. Problematic situations would come up, like when the agency wanted to move from a partial package to a full package; agents would push writers into packages to maximize the agency’s revenue, regardless of whether it was in the clients' best interests or even what they wanted."

"As part of an overall deal, I consulted with a writing team who were represented by a different agency on a pilot they were developing. I made clear to the studio that I didn't want my name on the show, nor any fees taken off the screen, nor any backend participation as the other writers did all the work and my contributions were minimal. The show ended up getting picked up and was a hit out of the gate. Midway through the first season, my lawyer called and asked me if I knew that my agency had taken backend on the show for themselves. I was surprised and confused. It turns out that my agency had negotiated themselves a half-package on the show based on my involvement, but never told me about it. They represent me and knew I didn't want to take backend from the writing team, but had no problem taking it for themselves. End result: My agency, which doesn't represent the writer/creators, owns more of the show than I do."

"A network challenged the formula for a package fee that an agency was insisting upon. The network wanted to lower it to the level charged by another agency – not do away with it. During a yearlong stalemate the agency withheld series pitches to that network from all their clients. No agency client pitched a series to that network that year. Not because the network said they wouldn't take the pitches; not because the network wasn't offering enough compensation to the writers. Solely because the agency put its compensation ahead of its clients' job opportunities, no writers from that agency sold a series to that network. Series that would have sold didn't. And the clients never knew why."

A showrunner for a long-running packaged series reports that for many seasons the long-time writing staff of the series has received 3% increases each season, nothing more. The agency has not negotiated any increase to any writer's overscale in years. The package fee in the budget is among the highest in the industry.

"My agency was in the middle of negotiating an overall deal for me with a studio I'd worked with before. While looking around for projects for the overall deal, I found a book I loved, and learned that my agency was representing the rights. My agency enthusiastically set up a call for me to speak with the author of the book. The author and I had a great conversation. Twenty minutes after that call, my agency called to tell me that the author loved my take and would love for me to adapt the book into a series. Everything seemed great, until the studio was about to put in an offer to option the book, and my agency suddenly told me that there was other interest in the project. As it turned out, that interest was from a producer that had a deal with my agency's production arm. Even though the studio I was working with put in a slightly higher final offer, and the other producer didn't have a writer involved, the producer working with my agency wound up winning the bidding war. At one point, my agency suggested that I didn't have to do that overall deal they'd been negotiating for me—the implication being that I could work with their preferred producer if I backed out of the overall deal. So I didn't do that show. How does a producer end up with the rights when another studio makes a higher offer that has an experienced writer-showrunner attached? By being the agency-affiliated producer."

How it was and could be again: "In 2005, I got my first staff job on WGA-covered show. I was repped by a great agent at a boutique agency. I didn't know a single person over at this long-running hit show, but my agent sold me the right way and got me in for a meeting with the showrunner. When I got the offer, I was thrilled and told my agent to close the deal. Then a week passed, and I didn't hear from him. I was getting worried. Was he screwing this up? I called him to find out what was going on, and he said: 'Eh, I'm trying to get you a little more money.' I started on the show as a staff writer making above scale with a two episode guarantee and a guaranteed bump every year in my three year contract."

How it is now: "A friend who used to work at one of the Big Four told me the following story. As part of their training, the junior agents were given an in-house course on contract negotiation. They were given a hypothetical deal for a hypothetical client and told to go through a mock negotiation while senior agents watched and gave notes. One of the junior agents was assigned to negotiate a staff writer's deal on a packaged show. When this junior agent started to present his proposed terms for the deal, one of the senior agents cut in and said: 'Let me just stop you right there. This is a staff writer on one of our shows. You don't negotiate these. You take what they offer, say thank you, and move on.' "

“My current show is not packaged. One of the producers on the show is represented by an agency who assumed they would split the packaging fee. When this other agency found out they wouldn’t be getting a package fee, the agent called to scream at me. He said, ‘We don’t make our money off the 10%.’ He went on to assure me that they ‘earn’ their share of the package, citing the fact that he had gotten his client (not a writer) to accept a fee substantially below his quote. The agent was bragging about harming their own client. That’s what the incentives created by packaging and conflicts of interest do to writers.”

“I’ve run shows in Canada and the US. In Canada, there is no packaging—at all. The relationships between showrunners and agents are entirely different there. In Canada, agents are much more aggressive. They have to fight for every penny. They’re so great at advocating, calling every day to check in. The difference between agents there and agents here has been stunning—I thought they’d be better here because there’s such a big market. I have been shocked to see writers’ quotes and how long it takes to rise through the ranks. Writers are the ones pushing, with no help from agents. It does work up there—it works better for writers when there are no packages.”

“As a showrunner, I have had my agent come to me and say, basically, ‘Since we’re packaging this, we can help you out with some of our clients. This writer has a $20,000 quote, but I think I could get them for $14,000.’ And then the agency would turn around and sell it to that writer by telling them they’re saving money not paying commission, or that the writer will get a title bump in the second year. But it’s because the agency is taking out their packaging fee that there isn’t more room in the budget!”

"When I am staffing a show, 40-50% of the staff comes from my agency. But since the agency already has a package on the show they're not negotiating hard for those writers. I see it every day, every time. As a matter of fact, I feel like the agents are servicing me as the more important client, willing to settle for less for other clients because they know I have to answer to the studio for my writers' budget. So without a strong push from the agency on behalf of their client, the showrunner can end up as the only one attempting to reward a writer on their staff, while at the same time being brow-beaten by the studio or told they could lose an additional slot for another writer."

"Last year, my writing partner and I worked with an actor to develop a series for him to star in. The actor was with another agency. We developed this pitch for him over the course of four months. And then his agent found out and went ballistic, urging his client to abandon us and all the work we'd done to team up instead with various other writers, all of whom were represented by his own agency. When our agent checked in, the actor's agent was explicit about his motivation: He didn't want to split the package. Over the next weeks, the actor's agent did everything he could to stall the pitch and convince his client to drop us for somebody 'in house.' Happily, our long history with the actor finally won the day; were it not for that prior relationship, it was quite clear that the whole project and all of our work would have been tossed out to service a package."

"Packaging limits us creatively. In setting up a show, I have access to 25% of the talent in town. When I was meeting with my agency, I mentioned a producer who I really wanted to bring onto a project, but who was represented by another agency. I was told by my agent, 'I don't really trust him, I don't know if it's a great idea to work with him.' But when the producer just happened to switch agencies and joined mine, all of a sudden my agent thought it was a great idea. Because of the switch they were on board, and helped make the deal happen. Packaging fees drive decisions, not what's best for the client or the show."

"I've made my career in indie film. A few years ago I had a once in a lifetime spec sale that my agency jeopardized because they were refusing to negotiate unless the financier agreed to a packaging fee for the agency. They hold us for ransom. Paradoxically, their own argument that they champion independent film collapses on itself because packaging fees take real money out of the budget. That money could go to shooting days or special effects. Packaging fees make it hard to make these films."

"An agency convinced me to become a client because they wanted access to a feature project idea I had developed. Once the project was under their roof, the agency took control. They pushed me to turn down experienced producers that would have been able to get me paid for the development work, instead insisting that I work with a novice producer that they had a relationship with, without telling me why they were pushing that producer."

"I had a film project that my agency packaged, and the project had been optioned by a buyer that wasn't represented by my agency, but worked almost exclusively with them. When the time came to extend the option period, the buyer wanted twice as much time for half the money. My agent said to take the offer, that there wasn't any other interest in the project, which I knew wasn't true because I'd gotten interest from multiple other parties. I had my lawyer do the negotiation, and was able to get a much better deal. It was clear that the agency was servicing the buyer, rather than trying to get me the best deal."

"My agency did nothing to help me get my project going. They didn't even set the meeting at the company I sold my show to. I had no idea it was packaged until I saw the line item in my budget and I was totally taken aback. I had been struggling to figure out how I could hire more writers and compensate them fairly and the agency packaging fee could have paid for three more writers. My budget was stretched so thin that I could only hire a skeleton crew and shoot in a warehouse with questionable conditions. It was so bad that I cut my own fees to put money on the screen and better take care of my crew. And as I was doing this, I found out from the studio that my agency had been calling to improve their own compensation. While I was working more for less, the agency wanted a bigger packaging fee."

"My writing partner and I were brought on to rewrite a pre-existing script, and ended up getting 'co-created by' credit when the series got picked up. When we were well into the writers' room and prep, we found out from a writer (also represented by our agency) that the show was packaged. I had no idea that my agency was taking a packaging fee – as they were still taking commission out of my checks. When I asked my agency about it, they claimed 'Oh, we return the commission once production ends' or something to that effect, but I have no idea what would have happened if I hadn't inquired about it. I thought it was strange that no one bothered to inform their clients that they were taking a packaging fee in the first place."

"My agency has a full package on a show I created. They did nothing to package the show and never asked me or informed me they were taking a package. Per the deal they make a percentage paid out of the budget which comes out to about $50k/ episode. They also have 10 points of backend -- something they never mentioned to me while negotiating to give away my points to other producers and cast. If I were to ever leave my show (or get fired) I would make $5k/ episode for creating the show but my agents would continue to make $50k/ episode for as long as the series runs. That's right: If I leave my show for any reason my agents continue to make their full fee in perpetuity. A deal I do NOT have. I find this to be incredibly unethical and grossly unfair. And I'm pretty sure every writer whose agent took a package on their show has the exact same deal."

"Three years ago I was staffed as a Story Editor on a network show packaged by my Big 4 agency. I had secured the interview and job all on my own without my agent's help. When the studio's first offer came in at minimum, my agent told me to take it. My manager was furious and called my agent to tell him that it

was a first offer and only a starting point for negotiations. After that my agent negotiated a very modest bump. That was when I realized that staffing on a show packaged by your own agency doesn't save you 10%; it costs you everything you should be getting in a hard fought negotiation. Just one simple bump in a promotion timetable can far outweigh what you save on commissions. And when you compare what those negotiated bumps add up to compounded over time, there is no comparison."

"Call this a Tale of Two Writers: On my first show, I started with another writer and we rose up the ranks together as staff writers for two seasons, finally making it to the Story Editor level for season 3, but the show was cancelled. My friend got a job on another show the next staffing season through a ton of their own hard work, but the show was packaged by their agency. The job offer was to go back to staff writer level for yet ANOTHER season, and my friend's agent let them take that deal. Meanwhile, I struggled to find work for two staffing seasons, but when I finally did, it was on a show my agency did not package. My agent argued that my experience level merited a double bump—and I got it. I'm now at the same level as my friend, even though they worked two whole seasons that I did not. It just goes to show: I'm better off at my smaller agency that doesn't package, because my agent's interest is directly tied to mine."

"I was on my way to a meeting with a network executive to pitch a show – a 'mere formality,' the exec said, as he was a friend who had told me over dinner a few weeks earlier to 'just come in and tell it to my people and we'll have you writing in a week.' During my drive, I get a call from my agent who says, 'Turn around. I canceled the meeting.'
'Why?' I ask.
'They won't make a packaging deal with us."

"My agent tried to talk me out of taking a job as a writer on a show that is now on lists of all-time greatest TV shows, because it wasn't packaged by them."

"Back in the mid-90s I was a client at a Big Four agency. They rushed me into a packaged show at Warner Bros., knowing that I was going to get an offer from Disney to do a much better, but non-packaged show, within a day. But when I got the offer from Disney, my agent told me, "It's too late, you've committed." And they wouldn't help me get out of the package. It hurt me severely, both emotionally and professionally. Not worth the savings of the 10% at all."

"A few years ago, at the start of staffing season, I presented my agent with a long list of shows I would consider staffing or running, ranked according to preference. I expressly requested he not put me up for a specific show (a guaranteed resume-killer) except as a last resort. Days later my agent brought the

"exciting news" that this least-preferred show wanted me as a showrunner. Not a single other show had been put forward as an option. Why? The show in question—packaged by my agency—was on the bubble and in need of a network-approved showrunner to get a pickup. To save their package fee (which included a substantial back end) my agency ignored my wishes—and my long-term career interests—and slotted me where it would benefit them."

"My agency packaged a feature that I wrote entirely on spec. When it came time to go out to buyers, I was excited to go out to multiple buyers at once, as we had a very strong package and there was sure to be a bidding war. But instead, my agency — without asking my permission or even informing me beforehand — sent my script to exactly ONE buyer, which it had a close relationship with, and negotiated its own packaging deal before anything. Then when it came time to do my deal, I was stuck… the project had already been announced, so it was either take what I could get or blow up the movie. My agents took *my* leverage and turned it into *their* leverage."

"I had a half-hour comedy go out to cast, and a major A-list actor, repped by another agency, wanted to sign on. I was excited to sit down with him, but the meeting was repeatedly delayed. My manager asked the actor's agent what was going on. The agent said, "Not gonna lie to you, we're doing everything we can to kill his interest in the project. We'd rather he do something in-house. No reason we should split packaging fees if we don't have to." And it worked—the agent got his actor client to back away from the project."

"I created an idea for a series and partnered with a production company to successfully sell it to a network. The production company's agency pushed aggressively for a packaging fee despite the fact that the agency didn't represent me, the writer/creator. My lawyer tried to get them to back off the fee during negotiations, but it didn't work. The agency then threatened to kill the project unless the network installed a showrunner that the agency represented. In the end, the network decided to walk away from the deal because they didn't want to get in the middle of an agency package fight. I—the writer and creator whose idea it was that got sold in the first place—was ultimately wounded because agents who did not represent me were fighting over packaging."

"After a month of shopping for an overall deal, meeting with half a dozen companies, my partner and I signed a contract with a studio that our agent told us had made the highest offer. That weekend the head of a competing studio—one where we actually had a series on the air—called to ask how negotiations were going. When we told him we had already signed our next overall deal, he was furious! He offered a significantly better deal on the spot, then asked, "Is this about the package?" It was the first time we'd ever heard the term. His studio had refused to pay a package on our overall deal, so the agent had sold us into a multi-year deal to the second-highest bidder. The agent left the country for a month to avoid us.

We changed agencies. The new and old agencies now split the package on the series we created out in the overall deal."

"A TV packaging story: I secured for myself, 100% independent of agents, a blind TV deal with a major studio. Upon getting the first round of deal terms sent to me, I noticed that one of 'our' conditions was that it was packaged by my agency. Now keep in mind that not only did I secure this deal using my relationships, but there was also no agreed upon project yet, let alone a script. There were no talent attachments, nothing additive by way of agency and this deal term was never discussed with me. This provision that my agency was demanding held up the deal and, ultimately, required back and forth negotiations between the studio (for which my personal relationship was at stake) and my agency.

A film packaging story: I wrote a film on spec, sold it, attached a producer through a personal relationship, hired a director, and found financing along with my producer. The producer and I spent four or five years putting this project together from the ground up. Then, just before green light, my agency and the agency of an actor on the project started fighting over the package fee. They wound up splitting it. When it's time to make the film and there's pressure on the budget, my producing fee and that of the other producers takes a haircut… but nobody's touching the agencies' cut of the budget, nor their cut of the eventual sale of the film. On top of this, I and every other piece of talent is still commissioned. They made more than I did, and yet their job was done before we got near 'action' on day 1 of photography."

"Right out of film school, a studio made an offer on a show I pitched to them. Selling the show was a huge deal for me and the studio was excited to work together, but wouldn't give my agency a packaging fee. My agent told me the studio's refusal to pay the packaging fee reflected badly on their faith in me and in the project. I didn't know any better at the time, and would have been powerless to fight him even if I did, so we turned down their offer and went back out to pitch other buyers. My agency put an already-sold project from a brand new writer at risk for no reason other than their own bottom line."

"A friend of mine who works at one of the big agencies told me this story. A partner at the agency said, when discussing an offer for one of their clients on a packaged show, "That offer is paltry. He'll never take it…wait, is it one of ours? Let's try to close, we've already got our money."

"I am a writer with an overall deal. My agency has a full package on a show I created (and did no packaging.) They make between $750k and $1.1mm a year depending on number of episodes produced. My producing fee when added up with scripts written for the show is less than my overall guarantee. This is almost always the case, unless a writer "earns out" of their deal. My agents have insisted on commissioning the difference in addition to their huge packaging fee. Meaning any money I get in my overall deal that is more than my episodic producing fees, they also commission. This includes a bonus I got for producing my show. When I argued this point, they told me that's how everyone does it and "we're

not breaking precedent for you." Seems unfair since they already receive a million dollars a year off the package."

"I'm a showrunner and my series is packaged by one of the big agencies. The original creators are no longer on the series; their agency packaged the show. There is not one writer, director or actor on my show who is repped by that agency. When we were staffing this season and hiring directors, the packaging agency did NOT submit ONE client. Not one. My showrunner partner had to reach out to the agency and ask them if they wanted to submit writers. It took them weeks to get back to us and by then we had staffed the show. And even after that they never submitted a director. They take money out of our budget so they don't need to get their writers jobs. They already make their money on the packaging fee. There is no incentive for them to staff. It's infuriating."

"I wrote a sought-after pilot on spec and had every network circling. I had attached a big actor through my original agency but left them for another "big" agency. After making a great deal for the show at a great cable network, my new TV agent called and said that the network was thrilled about the show but they didn't want the original star. "The great news," he said, "was that they love one of our clients for the part." I asked him to confirm that he had pitched one of his clients for the lead on my show without asking me first. "Of course," he said, "we want the package." I fired him on the spot. The next day my film agent called and said the agency was firing me as a client because I was not loyal to them. When I asked him where their loyalty was to me, he hung up."

"My agency, one of the Big Four, completely blew up a show over their packaging fee. I had sold a pitch to a broadcast network, which loved it, and once the pilot was shot they bought 22 episodes before we even had the final cut. At that point, the agency started negotiating for their packaging fee, and got in a huge fight with the studio over the agency's fee—they wanted their upfront cut, which came out of the budget, payable before the shows were even shot. The studio agreed to the packaging terms, and then turned to the network for an increase in the license fee to compensate for the packaging fee. The network balked, whereupon the studio said they wouldn't deliver the show for the original license fee. The agency threatened to sue the studio for their negotiated packaging fee (whether the series was ever produced or not). A shouting match between the top-rung network and studio execs over the license fee ensued, whereupon the network cancelled the 22-episode commitment just 13 hours before the crew call on the first day of shooting. Not only did I lose the income from the series over a fight that had nothing to do with me, the cast, the scripts, or the show itself, but all of this back-channel manipulation-negotiation took place entirely without my knowledge. Immediately thereafter, the studio threatened to sue me for the token producer fees they'd advanced me. Under pressure from my agent, I was forced to write the studio a personal check in order to "keep the peace.""

"I'm a low-level writer. My agent, from a Big Four agency, said he couldn't get me staffed anywhere so I should work on development, presumably so there would be something for the agency to package. But when I started developing a project with a producer at a competing Big Four agency, my agent wouldn't fight for the project. We worked for months on developing a pitch, and finally got an offer contingent on finding an experienced showrunner to pair me up with. My agent submitted a single showrunner. When the producers and I decided to go with a showrunner repped by the producer's agency, the producer's agency started to push me out so they wouldn't have to split the package. Knowing that my own agency wasn't getting a full packaging fee on the project, my agent didn't push back at all—there was no real incentive in it for him. So the other agency got their full packaging fee, and I lost my project."

"In 2001, I first made Co-EP on a series, and my agent got me a great pay bump for the following season. Since that time I've worked steadily—but for roughly the same episodic fee. That makes almost 20 years of pay stagnation, at least some of which I have to attribute to the issues we're confronting. As evidence: In the past ten years I've been a Co-EP on three shows (including one which ran for eight seasons), but my episodic rate has stayed at or BELOW what my agent (the same one for all these deals) got me in that first deal back in 2001-2002. That show, where I first made Co-EP, wasn't packaged by my agency—but these last three were.

So what I see is a business that's grown while my checks have stayed the same (and, as orders get shorter, arrive less frequently). Meanwhile, I've been compelled to take on a manager to do the job my agent used to—so now I'm paying double commission on anything my agency doesn't package. That the Guild has taken up this fight tells me I'm not just alone here, I'm part of the majority. If mid and low-level writers work steadily (as I did and do), then they deserve to see their incomes rise alongside those of the studios and the agencies, not stay the same. "

Back to WGA-Agency Campaign

Exhibit B

WRITERS GUILD OF AMERICA, WEST

DAVID J. YOUNG
EXECUTIVE DIRECTOR
PH 323.782.4689 FAX 323.782.4801

BY HAND DELIVERY & ELECTRONIC MAIL

April 6, 2018

Karen Stuart, Executive Director
Association of Talent Agents
9255 Sunset Blvd., Suite 930
Los Angeles, California 90069

Re: Artists' Manager Basic Agreement of 1976
Notice of Election to Terminate

Dear Karen:

On behalf of Writers Guild of America, West, Inc. and its affiliate, Writers Guild of America, East, Inc. (collectively, "Guild"), this letter will serve as the Guild's notice of election to terminate the Artists' Manager Basic Agreement of 1976 ("AMBA"). Pursuant to paragraph 1(a) of the AMBA, termination shall be effective one year from the date of service of this notice.

In accordance with paragraph 1(a), I am enclosing the Guild's proposals for a new basic agreement. We look forward to a productive resolution.

Sincerely,

By: _____
David J. Young, WGAW Executive Director

Enclosure

cc: Lowell Peterson, WGAE Executive Director

Writers Guild of America, West, Inc. and Writers Guild of America, East, Inc. (collectively, "Guild") make the following proposals for a new basic agreement to replace the Artists' Managers Basic Agreement of 1976 ("AMBA").[1] The proposals address the relationship between talent agents, both individually and through talent agencies ("Agency"), and any writer ("Client") represented by the Guild in the fields of work covered by the Writers Guild of America Theatrical and Television Basic Agreement ("MBA"), as periodically renegotiated. The works written by writers under the MBA are referred to in these proposals collectively as "motion pictures."

The Guild reserves the right to make additional or different proposals as negotiations progress. The proposals are not in contract language, and do not comprehensively reflect the need to retain, modify or delete provisions of the existing AMBA.

The Guild proposes as follows:

1. CONFLICT OF INTEREST

    a. No Agency shall have an ownership or other financial interest in, or shall be owned by or affiliated with, any entity or individual engaged in the production or distribution of motion pictures.

    b. No Agency shall have an ownership or other financial interest in, or shall be owned by or affiliated with, any business venture that would create an actual or apparent conflict of interest with Agency's representation of a Client.

    c. No Agency shall derive any revenue or other benefit from a Client's involvement in or employment on a motion picture project, other than a percentage commission based on the Client's compensation.

    d. No Agency shall accept any money or thing of value from the employer of a Client.

    e. Agency shall disclose to Client any fact or relationship creating an actual or apparent conflict of interest.

2. AGENCY-CLIENT RELATIONSHIP

    a. Agency shall at all times act as a fiduciary of Client, and shall comply with all fiduciary duties imposed by statute or common law.

    b. Agency's representation of a Client shall not be influenced by its representation of any other client.

[1] The proposals are intended to address the entirety of the AMBA, including 1976 Rider W, the Rules Governing Arbitration and all appended exhibits. As part of these negotiations, the Guild proposes to discuss a reorganization of these documents, which we refer to collectively herein as the "AMBA."

c. Agency shall promptly disclose to Client all inquiries, offers and expressions of interest regarding employment or sale or option of literary material, and shall keep Client apprised of the status of all negotiations.

d. Agency shall maintain confidentiality with respect to Client's employment and financial affairs.

e. Agency shall not submit Client for employment where the employer or producer has not yet secured underlying rights necessary for the assignment.

f. Agency shall be responsive and professional in communicating with Client.

3. AGENCY COMPENSATION

a. Agency's commission shall be limited to 10% of Client's gross compensation, including Client's profit participation.

b. Agency's commission shall not reduce Client's compensation below MBA scale compensation.

c. Agency shall not circumvent limits on commissions by charging fees for other services.

d. Agency shall provide quarterly to Client and to the Guild an itemized statement showing in standardized electronic format (i) all compensation received by or on behalf of Client; and (ii) all commissions and other revenue received by Agency related to its representation of Client. Client and Guild shall have the right to audit such statements.

4. NOTIFICATION TO GUILD

a. Agency shall provide the Guild with a copy of the agreement or essential deal terms of any engagement or other transaction involving a Client no later than 10 days after the earlier of (i) the existence of a binding contractual commitment; or (ii) the commencement of Client's writing services.

b. Agency shall provide the Guild with immediate notice of Client's commencement of services or delivery of literary material, or other material fact triggering compensation, and a copy of any invoice or other documentation relating to the payment obligation.

c. Agency shall provide the Guild with copies of all representation agreements with Client.

5. ENFORCEMENT OF MBA AND CLIENTS' INDIVIDUAL WRITING AGREEMENTS

    a. Agency shall not encourage Client to violate any provision of the MBA.

    b. Agency shall zealously advocate for Client's best interests in all aspects of the employment relationship, including but not limited to the following:

        i. Advocating against Client's performance of uncompensated or speculative writing services;

        ii. Advocating in favor of multiple steps in theatrical deals; and

        iii. Protecting Client from abusive hiring practices such as sweepstakes pitching.

    c. Agency shall be aware of and monitor the contractual deadline for the payment of all compensation to the Client, and shall immediately notify the Guild in the event a payment is late.

    d. Agency shall cooperate fully with the Guild in any investigation or contract enforcement action undertaken on behalf of a Client.

    e. Agency shall not encourage Client to violate any Guild rule.

6. NON-DISCRIMINATION AND DIVERSITY

    a. Agency shall comply with all state and federal anti-discrimination laws in its selection and representation of Clients.

    b. Agency shall not, without prior disclosure to Client, procure any employment where there is a reasonable basis to believe that the Client will be subjected to a hostile work environment or other forms of workplace harassment.

    c. Agency shall take steps to ensure the referral of qualified diverse writers for any open writing assignment.

    d. Agency shall consult with their Clients regarding diversity as a factor in their procurement of employment.

    e. Agency shall provide the Guild with an annual report summarizing Agency's diversity efforts and reflecting, through anonymized data, the employment history of writers represented by the Agency, broken down by membership in statutorily-protected classes.

7. ENFORCEMENT OF AMBA

Streamline arbitration process in the AMBA to provide for enforcement of its provisions through expedited arbitration through a sole neutral arbitrator. Enhance penalties for breach of AMBA, including loss of franchise for serious violations. Revise list of approved arbitrators.

8. TERM OF AMBA

Term of the new AMBA shall be three years, provided that it shall thereafter renew for one-year periods unless either party gives written notice of termination at least 60 days before the expiration date then in effect.

Exhibit C

Updated Member Outreach Meeting Presentation re: Agencies

February 9, 2019

Thank you for being here.

What I am going to talk about today are writer concerns about how agents represent us and what we think should be done about it. Many of you have voiced frustrations about what agencies are, or really aren't doing to address declining compensation and conditions for writers during an era of unprecedented prosperity for our employers.

Since 2015 we have convened member meetings specifically to talk about agency representation and the Guild's agency agreement, the AMBA. More than 1500 members attended those meetings. Our discussions focused on revising this outdated, 1976 agency agreement. There was deep member support for establishing NEW rules which would prohibit conflicts of interest and make agencies our true partners in enforcing the MBA and our individual deals.

Therefore, in April of last year the Writers Guild West and East sent the required twelve month notice of contract termination to the Association of Talent Agents, which means the current agreement will expire in about 60 days, on April 6th.

This past year Guild leadership and staff have worked hard on refining our plan, and it is crucial that you understand what we propose to do during the **next few months** and how it will impact all of us.

The simplest way I can begin is by saying something fundamental is wrong in the agency business, writers are being hurt, and it is the *right and the responsibility* of the WGA to fix what has gone wrong. I repeat, it is the Guild's responsibility to writers to ensure that every one of us will be properly represented by the agencies.

I don't take lightly the recommendations I make to you today. They amount to the Guild fully asserting its legal authority as a union to oversee how agencies represent writers. The biggest agencies, the so-called big 4, ICM, UTA, WME and CAA, will not be happy about that. And there may well be a struggle required and hardship for some of us. But I believe that we must accept those risks in order to fix the problems.

But it will be up to you, the members, to decide if you agree, as we plan to hold a membership vote around March 25th on what I propose today.

[WHAT'S THE PROBLEM?]

What has gone wrong is that agency income should be directly tied to writer income – the agent should make more only when his client the writer makes more -- but that's not what's happening anymore. Instead agencies make their real money from packaging,

and now producing, which are conflicts of interests that hurt writers. So our simple goal has two parts -- to bring the agencies' interests back in line with those of writers and to require that agencies behave as our partners in getting writers paid on time and preventing unpaid work. Currently they're not.

Let's take a look at how the business is doing economically, how the agencies are doing, and how writers are doing. I'll give you a hint: two of the three are doing great, and the third one is us.

Even with changes in the industry, the entertainment business is experiencing its most profitable period in its history. Every aspect of the business is highly profitable.

This success is a mostly a function of two great growth factors. One is the monetization of the Internet. The second is huge growth in the international market. We expect the major studios along with Netflix, which is on its way to becoming a major, to have made around $54 billion in operating profits in 2018, and that's not counting Amazon or the big players coming into the industry like Apple and Facebook.

How are the big agencies doing? Well, their books are closed to us and the rest of the world. But it is not hard to make a reasonable assessment. CAA and WME are so cash- rich and profitable that they have gotten $3 billion in investment from venture capital to expand their businesses. They are now majority owned by private equity companies that demand profit maximization, not higher salaries for writers. UTA also now has a large venture capital investor.

The companies and the agencies are crushing it; how about writers? We've just completed a member survey on overscale income- the money we earn that's above MBA minimums. Overscale is the one thing we delegate to the agencies to get for writers.

This 2018 member survey shows modest increases in overscale TV compensation compared with 2016. However, these increases barely match inflation, and they leave writers still well below the levels of income reported in 2013. And experienced TV writers know that the erosion of overscale pay did not begin in 2013, but well before that.

And screenwriters? Screenwriters reported that about 20% are being paid Guild scale; remember, scale is what the Guild gets you in the MBA. Only 38% reported improving their quote. 44% reported being paid less than their quote or their quote staying the same. And screenwriters face an epidemic of demands for free work. Free work is a problem that the Guild can best tackle in partnership with the agencies, but they refuse to help us.

There are more writers at WGA scale, more writers whose quotes have atrophied or dropped, more writers trying to make their year on a short order episodic series, and more screenwriters required to do outrageous amounts of free work than ever before. The agencies are not succeeding in defending writer overscale pay. And (this won't come as a surprise to many of you) when asked in the survey who helped you get your most recent job, 75% of writers said it wasn't their agent.

If this is how writers overall are doing during an unprecedented expansion of the entertainment business, how will we be doing when the next recession comes around the corner or Peak TV finally reverses a bit? We need to fix the situation now.

Now I'll explain the two major agency conflicts of interest and why they hurt writers.

The first is packaging. In television, packaging is when an agency demands to be paid directly by the studio rather than commissioning talent at 10%. The big 4 agencies – WME, CAA, UTA and ICM - now use their monopoly control of top writing talent to insist on packaging virtually every scripted show on television and streaming.

That's because packaging is *immensely* profitable…. FOR THEM . For representing the show creator (and sometimes other elements) the agency is paid through a formula referred to as "3%-3%-10%." The first 3% is from the network license fee and is paid out of the series budget. This 3% is $30,000 to $100,000 per episode and is often more than the agency would get from 10% of the earnings of its clients. This money is taken directly out of the budget of the show, money that could be used to hire more writers and pay writers more money. Agencies argue that they should get packaging fees because they are taking a risk on the show. But this 3% out of the budget upfront means they are not taking a risk. With more than 300 scripted series packaged each season, this first 3% is more than $150 million that flows to the agencies every year.

The second 3% is also from the license fee and is deferred until net profits, if any.

But here's the kicker. The agency then gets 10% of the show's profits for the life of the show, even though its work is normally finished before the pilot is shot. This agency backend amounts to hundreds of millions of dollars per year for the big four agencies, far more than they would earn from 10% commission, and often far more than the show's creator earns. A successful show, not just on a network, may bring tens of millions of dollars over its life to the agency in profit participation.

But packaging is not a contentious negotiation where the agencies' piece depends on how well they do for the show's creator: it is a price fixed by the big 4 agencies at 3-3-10. And agents and agencies have been known to block deals from going through until their package fee is in place. These ransom fees remove the single greatest incentive

for agents to fight on behalf of all writers: mutual and immediate shared economic self-interest.

The big agencies' interest is not with writers, it is with studio profits. This plays out in different ways for showrunners and their staffs, but both are bad. For showrunners, they are the only ones the big 4 care about representing and therefore showrunners have some leverage to defend their deals, but their agency is in competition with them for I.P. and profit participation. For every other TV writer, packaging means there is zero connection between what your agency negotiates for you and what the agency makes. The agency has no financial incentive to get TV writers more money. None.

You may not know this, but packaging affects features too. About half of WGA films are independent features with difficult budgets and a hard road to distribution. The agencies have expanded their packaging model to these independent films. Agencies take a 5% packaging fee out of the budget, they may also demand to handle domestic or foreign sales and take a fee for that. Independent producers report some agencies even charge them a monthly retainer for access to their clients.

The WGA recently had conversations with 8 independent- mostly film- producers to ask if agency packaging hurts or helps the business, and whether the Writers Guild would damage their business if we banned this conflicted practice. The producers' overwhelming answer was that agency packaging and producing hurt their business and they'd love to see us stop it.

I don't want to overstate the financial impact of screen packaging. It is so hidden, even from our own members, there is no easy way for the Guild to assess it. Sometimes writers themselves don't know if their film has been packaged. But here's something fun: unlike in TV, in features agencies take packaging and other fees AND still charge their screenwriter clients a 10% commission.

What are the big agencies doing with the money they get from the packaging windfall? That brings us to the second big conflict of interest: producing. They are moving to become our employers by becoming producers and owning content. CAA's production arm WIIP, WME's Endeavor Content, and the new UTA production arm are the next big threat to writers from agency conflict of interest. If you want to add a "why now" to this discussion, consider this:

The big agencies are using their packaging and venture capital money to become competitors of the studios by owning content. As producers, they will be both our employer and our representative as writers, the clearest conflict imaginable. This is a complete bastardization of what it means to be an agency and represent writers.

A few writers will get a great deal from Endeavor Content or CAA's WIIP. But most writers will get screwed, and our powerful agency will now be our powerful boss. Would you want Peter Roth to negotiate your deal at Warner Brothers? Let's be clear. If your agent is your employer, you don't have an agent.

The last time a powerful talent agency decided it wanted to become a producer was MCA in the 1960s. The Justice Department stepped in and forced Universal to spin off its agency business, because it was an anti-trust violation. But now, we're not going to wait for the current Justice Department to step in.

Let me address just a few of the arguments that agencies have made to us about their conflicts. The agencies have floated a compromise wherein their packaging deals will be transparent and that they will never make more than the showrunner on the back end participation. Here's the problem with stopping at transparency. First, it takes the position that as long as it's out in the open, it's OK that an agency that negotiates the pilot deal for its client makes the same backend as a Guild member who wrote the pilot and produced 60 or 100 episodes. That's absurd.

And what will transparency do for TV writers who are not showrunners? The agencies' money will still come from the studio profits, not from getting writers more money. We would be leaving in place a system that has completely severed the connection between the interests of the agencies and any TV writer who is not called showrunner.

And transparency does nothing for features writers other than confirm their agency is double dipping and probably making more than they are from the film.

Another argument the agencies have used is that writers should love packaging in TV because they don't have to pay their 10% commission. That is a fair point- a lot of writers are used to not paying that 10% commission. But there are huge long term consequences from packaging that are hidden and that dwarf the 10%. Writers' quotes in TV and features have been under pressure for years. Our own 2016 survey showed experienced TV writers had a 23% drop in income in the past few years alone. So if our agents aren't taking commission, but they're also not fighting for our raises, or even defending our quotes, are we really coming out ahead? We are not.

Here's another big hidden cost: at this point 52 percent of feature writers and 33 percent of TV writers are paying what I'll call the 25% tax. They have an agency, a manager and a 5% lawyer. If we look closely, it is clear that younger, lower paid writers are most likely to pay the 25% tax. When asked in our surveys why they also pay a manager and/or an attorney, writers overwhelmingly explained that it is because agencies no longer do the full job of representing them and because they need someone to keep their agency honest. These writers are paying an extra 15 percent because agencies aren't doing their jobs.

Ari Emanuel thinks this is how things *should* be. Last October he was asked at MIPCOM about conflicted agency practices and said, “The world has changed,” and noted that there are plenty of lawyers and managers who serve as a check on any potential agency conflicts. So he’s comfortable with it.

And on the subject of MBA enforcement, if the agencies will simply give us the information we are demanding, including all writer contracts and invoices for payment, the Guild may not solve the problems of writers being paid late and continually being asked to work for free, but we will do our damndest. We will contact *every* writer on *every* feature deal and offer to help them get paid on time and avoid free work. We are not big brother and we won’t pressure you, but we will have an impact that will help writers. I’m sure of it.

So to sum up why we must change how we allow the agencies to represent us: the big four agencies have developed a monopoly that takes the collective power of writers and uses it to enrich the agencies themselves. This has resulted in long term stagnation of writer income and real downward pressure on writers’ quotes.

We cannot allow these conflicted and illegal practices to continue. Agencies have to be fully on the side of writers, and our proposals ensure that they will be.

[WHAT’S THE PLAN?]

Now let’s talk about the plan of action that the Guild recommends. We will meet with the ATA, the association of the big agencies, between now and expiration on April 6th. The first meeting was February 5th. We will explain our proposals and try to make a deal, and we will consider their responses.

If we are unable to reach agreement on the terms of a new franchise agreement, there is another course of action open to the Guild. In our dealings with the agencies, the Guild has the legal right to act *unilaterally*—to establish a set of rules—we call it a Code of Conduct—that the agencies have to follow if they want to represent our members. The idea of a code of conduct is not revolutionary. Indeed, it is the dominant method of agency regulation in all of professional sports.

All of the major sports unions have similar Codes of Conduct- basketball, baseball, hockey and football. At CAA, which has the biggest sports agency business, all the sports agents must be signed to the Codes of Conduct. We’re not reinventing the wheel here.

How would our Code of Conduct work? If the WGA membership agrees, then agencies that want to represent WGA members must agree to the new Code, effective April of

this year. In fact, that's what we will be asking writers to vote on, namely: should the WGA implement a Code of Conduct that bans agency conflict of interest?

What is in the Code we may be asking you to vote to approve? There are details, but it can be summed up in two basic points:

1. One. All agencies and agents are required to behave as proper fiduciaries at all times. A fiduciary is a person, quote, "to whom power is entrusted to act in the benefit of the client, whose interests are always to be put first." The most fundamental obligation of a fiduciary is to avoid conflicts of interest. Since both packaging and producing are conflicts of interest for agencies, these and any other conflicted practices would be banned as of April 2019. The agencies would return to a 10% model.

2. Two. The Guild is responsible for defending both the MBA and the individual deal specifics of all writers. In order to facilitate this, the Code requires that the agencies provide the Guild with all deal memos, all invoices for payment, and open access to the agencies books. Writers and the Guild will have the right to regularly audit all of this information to ensure proper oversight.

Why am I suggesting that we will probably need to vote on implementing a Code of Conduct rather than being able to get a negotiated settlement? Fundamentally, it's about the nature of the changes we seek. The only way for the Guild to ensure that agents properly represent our members is to eliminate conflicts of interest. The big agencies have given us every indication they will not accept our proposals in those areas, although of course we will try to reach an agreement before our current agreement expires on April 6.

But there are negotiations where there is no middle ground, where there are basic principles that are not subject to compromise. Your representative -- lawyer, union or agency -- is either conflicted or they are not. If the Guild continues to allow agencies to make their living in ways that can harm writers, writers will be harmed. That's why conflicts of interest are illegal; it's why your lawyer can be disbarred over such conflicts; it's why if Guild officials did as the agencies do and took anything of value from the studios, the officials would be liable under the RICO racketeering statute! Yet the agencies demand hundreds of millions from the companies annually for representing us, and so far they have gotten away with it.

We have of course already been called unreasonable by the agencies, and this will continue. Be prepared. As writers we are often filled with self-doubt and a desire to be seen as fair, reasonable and willing to compromise. It's one reason I love us. But it is crucial for us to understand: there is no meaningful compromise where conflict of

interest is concerned. It's a binary choice. Either agencies put our interests first and make their money from our success or, like now, they will continue in the business of maximizing their own success while writers suffer. We hold the cards here- let's not allow our own sense of fairness to **be wielded against us in this agency campaign.**

Let me address one more issue. Some writers have asked why the Guild doesn't simply litigate the agency practices that are illegal, and file lawsuits to seek to vindicate our rights. The answer is that WE WILL, so don't be surprised if the agencies complain. But we cannot rely solely on litigation to solve our problems as if it is a magic bullet. It almost never is. We could be stuck waiting for years or get a bad decision. We have something much more powerful than litigation to change agency behavior: our power as a unified guild.

[IN CONCLUSION]

I want to conclude by talking about how we are going to make this happen. I've asked myself many times, why the hell am I doing this? My wife asks me this too. I've asked myself is the Guild making a power grab? And I think that the answer is yes, we are making a power grab. A necessary, proper and fair power grab. As the agencies have taken our collective power and used it to maximize their power and income, we have to take our power back and make sure it is used to maximize *our* incomes.

Make no mistake: fairness is an issue here, but the fundamental reason that the leadership is recommending these changes is MONEY. If writer pay were steadily rising as agencies continue to package, we wouldn't be sitting here. If writer pay were rising as agencies move into production and become our employers as well as our representatives, we wouldn't be here. But as writers we share a common knowledge that writers overall are not doing better. We're doing worse.

I therefore need to tell you what we'll have to do if we implement the Code- and what the difficulties and risks and doubts and fears are that we'll have to confront.

If we implement a Code of Conduct, it will be because the membership voted to do so. And you should vote knowing that although you will not have to walk off your job, you *may well* have to walk away from your agency, and maybe even from your individual agent.

A membership vote to implement a Code is a vote for all of us to walk away-together- from any agency that will not sign it. That is most likely to be the big 4- ICM, WME, CAA, and UTA- but it will include any agency, including any of the other 196 smaller agencies, which will not sign our Code and abide by it.

This is a different kind of campaign than our usual MBA negotiations and it will play on our own emotions in a very different way. There is no question that many agents are honest, hard-working, and try to be good trustees of their clients' best interests. I would actually go further, it's my sincere belief that the majority of the agents at the big four think they are doing a good job for their clients. This is the only system that they've known, and if their client is working, and their agency is doing well, they'd have no reason to question it.

Many of us have not only professional, but personal relationships with our representatives. And even if you don't have a good relationship with your agent, they represent potential access to employment, even if it is only imagined.

> But this campaign is not about the competence or moral character of *any* individual agent;. The problems are *systemic*; they need a systemic solution or the harm to writers will grow worse.

We think there are many agencies and good, honest agents who will ultimately welcome what the Guild and writers are doing. We've talked to people at smaller agencies who do. So we expect to sign up many of the smaller agencies. Regarding the big 4, we will seek your help to organize key agents to make the move to independence so they can keep working with you if their agency won't sign our Code of Conduct.

So I am saying that our collective power here is the power of divide and conquer. The agencies and agents all compete for talent, and when we make clear that we are leaving those who will not change, the change will come.

It's simple yet difficult: if we stick together we will make this happen. Writers have the power here. But we're so accustomed to dealing with the agencies and their power by ourselves, as individuals, that we lose sight of that. Here, though, we'll be acting together as a union, not alone. We've proven we can take on the companies, we surely can take on the agencies. We have to summon the courage and leadership that are so difficult but that we've often shown.

We also have to be prepared to help each other in every way possible to deal with the dislocation of looking for work during a period where some of us will need new sources of information in order to connect with other writers and jobs. Showrunners in particular, but also prominent screenwriters and captains will be asked to lead, to help other writers.

More is asked from those who have more power, much to gain, and a great ability to help us all succeed. High-profile writers will be asked at a certain point to publically state support for this campaign and their willingness to walk away from their agency as necessary.

Finally, as I hope I've made clear, this is not just about one genre of writers, or only the top earners, or only the middle class- it's about the whole guild.

We as writers must make a decision about whether we prefer the current flawed system or one that has the proper incentives. There are no guarantees in union struggles. But think ahead- what will happen if we do nothing? We need the agencies to DO THEIR JOB. If they prefer to be studios, they can get out of the agency business.

We've all taken risks to get into this business and to stay in it. That doesn't make taking another one easy, but, that's what I am asking to you do. As writers we are at the very heart of what the agencies do and we have the collective strength and numbers to do something we all need. We can't let our desire to look reasonable, even when the other side isn't, even when we're being taken advantage of, keep us from seeing that if this becomes a fight, we have all the power. We can demand the deal we deserve and the agents will still make plenty of money. I know we can win this. But, as everything we do in this union, it's up to the union, it's up to you.

Thank you for listening and we'll now be happy to have a dialogue about your comments or questions.

Exhibit D

From: Sean Graham <SGraham@wga.org>
Date: Friday, July 17, 2020 at 5:39 PM
To: Bryan Lourd <blourd@caa.com>
Cc: David Young <dyoung@wga.org>, Ellen Stutzman <EStutzman@wga.org>
Subject: WGA Franchise Agreement

External Sender

Hi Bryan,

Attached for your review is a copy of the Franchise Agreement.

Thanks,

Sean

Sean D. Graham
Director | Agency Department
Writers Guild of America, West, Inc.
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sgraham@wga.org

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