

1 Stephen P. Berzon (SBN 46540)
sberzon@altber.com
2 Stacey Leyton (SBN 203827)
sleyton@altber.com
3 P. Casey Pitts (SBN 262463)
cpitts@altber.com
4 Rebecca C. Lee (SBN 305119)
rlee@altber.com
5 ALTSHULER BERZON LLP
177 Post Street, Suite 300
6 San Francisco, California 94108
Telephone: (415) 421-7151
7 Facsimile: (415) 362-8064

8 Anthony R. Segall (SBN 101340)
asegall@rsglabor.com
9 Juhung Harold Lee (SBN 315738)
hlee@rsglabor.com
10 ROTHNER, SEGALL &
GREENSTONE
11 510 South Marengo Avenue
Pasadena, California 91101
12 Telephone: (626) 796-7555
Facsimile: (626) 577-0124

W. Stephen Cannon (*pro hac vice* pending)
scannon@constantinecannon.com
CONSTANTINE CANNON LLP
1001 Pennsylvania Ave, NW, Ste. 1300N
Washington, DC 20004
Telephone: (202) 204-3500
Facsimile: (202) 204-3501

Ethan E. Litwin (*pro hac vice* pending)
elitwin@constantinecannon.com
CONSTANTINE CANNON LLP
335 Madison Avenue, 9th Floor
New York, NY 10017
Telephone: (212) 350-2700
Facsimile: (212) 350-2701

Attorneys for Defendants and Counterclaimants

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

19 UNITED TALENT AGENCY, LLC,
20 Plaintiff and Counterclaim
Defendant,

21 v.

22 WRITERS GUILD OF AMERICA,
23 WEST, INC. and WRITERS GUILD OF
AMERICA, EAST, INC.,

24 Defendants and Counterclaimants,
25 and BARBARA HALL and DEIRDRE
26 MANGAN,
27 Counterclaimants.

Case No. 2:19-cv-05585-AB-AFM

ANSWER AND COUNTERCLAIMS

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INTRODUCTION

1. This case arises out of efforts by two labor unions representing writers in the entertainment industry to protect their members against an unlawful compensation system for talent agents—packaging fees—that gives rise to inherent conflicts of interest between those agents and the writers they represent, and out of the agents’ collusive efforts to maintain that system through agreed upon price structures and group boycotts of those opposed to the system. This system of packaging fees has, over time, significantly depressed writers’ compensation, employment opportunities, and choice of talent for audiovisual entertainment projects, as well as the quality of those projects, while greatly enriching the talent agencies.

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

3. The base compensation and benefits paid to writers for their work are governed by a collectively-bargained contract between Writers Guild of America, West, Inc. (“WGAW”) and Writers Guild of America, East, Inc. (“WGAE”) (collectively “Guilds” or “WGA”) and hundreds of studios and production companies. Because the entertainment industry is a freelance industry, and because writers may negotiate compensation above the minimum levels established by the Guilds’ contract with the studios, the vast majority of working writers have historically procured employment through talent agents they have retained to help them find work and negotiate for the best possible compensation. These agents owe a fiduciary duty to their clients under California law, and must provide their clients

1 with conflict-free representation.

2 4. Talent agencies have represented writers for almost a century. But what
3 began as a service to writers and other artists in their negotiations with the production
4 companies has become an unlawful price-fixing cartel dominated by a few powerful
5 talent agencies that use their control of talent first and foremost to enrich themselves.
6 Historically, the agents whom writers retained were compensated by receiving a
7 portion of any payments made to the writers by production companies for work that
8 the agents helped them procure. By tying the agents' compensation to the writers'
9 compensation, this arrangement aligned the interests of the agents with the interests
10 of their writer-clients, as required by blackletter agency law principles.

11 5. Today, however, the four largest talent agencies—Counterclaim
12 Defendant United Talent Agency (“UTA”), and co-conspirators Creative Artists
13 Agency (“CAA”), International Creative Management Partners (“ICM”), and
14 William Morris Endeavor Entertainment (“WME”) (collectively, “the Agencies” or
15 “the Big Four”)—make money not by maximizing their clients' earnings and
16 charging a commission, but through direct payments from the production companies
17 known as “packaging fees.” Packaging fees are not directly tied to Agencies'
18 clients' compensation but instead come directly from television series and film
19 production budgets and profits.

20 6. The power exerted by the Big Four in Hollywood is enormous and
21 pervasive. Even the Hollywood studios—powerful entities in their own right—
22 agree to pay hundreds of millions of dollars in packaging fees annually to the Big
23 Four for “what amounts to extortion”¹ according to industry insiders, because they
24 are “afraid of not getting pitches and opportunities if they take a hard line against
25

26 ¹ Gavin Polone, *TV's Dirty Secret: Your Agent Gets Money for Nothing*, *The*
27 *Hollywood Reporter* (Mar. 26, 2015),
<https://www.hollywoodreporter.com/news/gavin-polone-tvs-dirty-secret-783941>.

1 [packaging fees].”² The studios, like everyone else in Hollywood, “[are] afraid to
2 challenge the agencies for fear of being blackballed.”³

3 7. Agency compensation via packaging fees is possible because, after
4 substantial consolidation within the industry, the Big Four now control access to the
5 lion’s share of the key talent necessary to create a new television show or feature
6 film, including not only writers but also actors and directors. The Big Four leverage
7 this control to negotiate packaging fees with television and film production
8 companies, which are paid directly by the production companies to the Big Four
9 simply because the Big Four represent the writers, directors, and actors who will be
10 employed by the production companies in producing the show. The packaging fees
11 paid by production companies to the Agencies are unrelated to their own clients’
12 compensation and generate hundreds of millions of dollars in revenue for the
13 Agencies each year.

14 8. Rather than compete with each other over the terms of these packaging
15 arrangements, the Big Four have instead colluded among themselves to set a
16 standard structure for packaging fees, the so-called “3-3-10” model for agency
17 compensation described later herein, as well as on the range of “base license fees”
18 used to calculate the upfront 3% packaging fee. The scope and degree of the
19 Agencies’ collusion was successfully kept secret from the Guild and its members for
20 years.

21 9. Packaging fees have created numerous conflicts of interest between
22 writers and UTA and the other Agencies, wherein UTA and the other Agencies
23 enrich themselves at their writer-clients’ expense, in most cases without those

24 ² David Ng, *Talent agencies are reshaping their roles in Hollywood. Not*
25 *everyone is happy about that*, L.A. Times (Apr. 6, 2018),
26 [https://www.latimes.com/business/hollywood/la-fi-ct-talent-agencies-20180406-](https://www.latimes.com/business/hollywood/la-fi-ct-talent-agencies-20180406-story.html)
27 [story.html](https://www.latimes.com/business/hollywood/la-fi-ct-talent-agencies-20180406-story.html).

28 ³ *Id.*

1 clients' knowledge and in all cases without their valid consent. Unlike in a
2 commission-based system, the economic interests of the agents at UTA that
3 represent writers and other creative talent are no longer aligned with those of their
4 writer-clients. Rather than seeking to maximize how much writers are paid for their
5 work, UTA is incentivized instead to maximize the packaging fee it will be paid for
6 a particular project or program. Further, UTA has the incentive to, and does,
7 prioritize studios' interests over those of its clients in order to protect its continuing
8 ability to negotiate new packaging fees from those studios. Moreover, because
9 UTA's packaging fee is generally tied to a show's profits, UTA has an incentive to
10 *reduce* the amount paid to writers and other talent for their work on a show. Further,
11 UTA seeks to prevent the writers it represents from working with talent represented
12 by other Agencies in order to avoid having to split the packaging fee with other
13 Agencies—even where the project would benefit by drawing from a larger talent
14 pool. UTA also pitches writers' work to the production companies it believes will
15 agree to the most lucrative license fees and profit definition within the agreed-upon
16 range (the remaining negotiable elements of a "3-3-10" package deal), rather than to
17 the companies that will pay the most to its writer-clients. Agencies have not
18 disclosed these conflicts of interest or the terms of their packaging fee arrangements
19 to the writers they represent.

20 10. The Agencies' collusive actions and conflicts of interest have resulted
21 in tremendous financial harm to the Guilds and their members, including Individual
22 Counterclaimants Barbara Hall and Deirdre Mangan. Packaging fees have
23 depressed writers' compensation, as money that would otherwise be paid to writers
24 is instead paid to UTA and other Agencies as part of the packaging fee or is left on
25 the table. Writers have also lost employment opportunities as a result of agency
26 packaging and, where they are hired, have an artificially reduced universe of talent
27 with which to staff their shows. Packaging fees reduce, dollar for dollar, the

1 production budget for a project and, accordingly, can diminish the quality of the
2 finished product. Because of the conflicts of interest created by packaging fees,
3 writers have also been required to retain other professionals (such as lawyers and
4 personal managers) to monitor UTA and the other Agencies, protect the writers’
5 interests, and provide conflict-free services that agents should otherwise provide.

6 11. Because the Guilds are the exclusive representatives of writers under
7 federal labor law, talent agents may represent individual writers to negotiate above-
8 scale employment only pursuant to the Guilds’ delegated authority. Historically, the
9 Guilds have delegated that authority through a franchise agreement. And as a
10 condition of being franchised, agents are subject to regulations promulgated by the
11 Guilds. The Guilds may dictate, among other things, how and how much agents
12 may be paid for their services.

13 12. In April 2018, in part in response to the inherent conflicts of interest
14 created by packaging fees, the Guilds served notice on the agencies of their intent to
15 terminate the Artists’ Managers Basic Agreement (“AMBA”), the franchise
16 agreement negotiated with the Association of Talent Agents (“ATA”) that had
17 historically governed the relationship between writers and their agents. At the same
18 time, the Guilds submitted to the ATA a set of proposals for a new franchise
19 agreement with talent agencies. A critical aspect of these proposals was the Guilds’
20 insistence that franchised agents no longer accept packaging fees from production
21 companies on projects where a writer-client is employed. The Guilds subsequently
22 formalized these proposals, including the bar on packaging fees, in a new Code of
23 Conduct for franchised agents.

24 13. The Agencies collectively responded to the Guilds through the ATA,
25 categorically rejecting the Guilds’ demands and questioning the well-established
26 principle that writers may collectively agree “to use only agents who have been
27 ‘franchised’ by [the Guilds]” and that, “in turn, as a condition of franchising, the

1 [Guilds] may require agents to agree to a code of conduct and restrictions on terms
2 included in agent-[writer] contracts.” *Marathon Entm’t, Inc. v. Blasi*, 42 Cal.4th
3 974, 983 (2008).

4 14. The ATA categorically refused to negotiate any terms that would end
5 packaging fees on projects where a writer-client is employed or any other practices
6 giving rise to similar inherent conflicts of interest. Accordingly, following a June 7,
7 2019 meeting with the ATA, the Guilds revoked their consent to collective
8 negotiations through the ATA, announcing that they would only negotiate with
9 individual agencies going forward. That revocation of consent meant that the ATA
10 and its members, including the Big Four, were no longer covered by federal antitrust
11 law’s “labor exemption,” which immunizes certain labor union conduct and grants
12 a limited derivative exemption to non-labor entities to negotiate with labor unions.

13 15. After the Guilds’ revocation of consent to multiparty negotiations, the
14 Agencies unlawfully and collusively circled their wagons inside the ATA—a trade
15 association comprised entirely of competing sellers of agency services—and
16 publicly threatened to retaliate against any agency that broke ranks and concluded
17 an individual deal with the Guilds. Despite the Guilds’ revocation of the prior
18 limited consent they had granted the Agencies to collectively negotiate a new deal
19 through their trade association, the Big Four and other talent agencies have
20 continued to collusively discuss and plan their negotiations with the Guilds, and to
21 coordinate with respect to their dealings with the Guilds and their individual dealings
22 with the Guilds’ members, through the ATA, in violation of the antitrust laws.

23 16. UTA and the other Agencies have also colluded to issue threats of
24 baseless litigation against lawyers and to blacklist former clients who seek
25 unconflicted representation by agents that have agreed to abide the Guild’s Code of
26 Conduct, harming the Guilds and their members, in violation of the antitrust laws.

27 17. Counterclaimants bring these counterclaims to end UTA’s harmful and
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1 unlawful practice of packaging fees and their joint conduct in attempting to fix and
2 preserve those fees, and to seek compensation for the injuries suffered as a result of
3 these practices. First, as asserted in Counterclaimants’ first through fourth claims
4 for relief, UTA and the other Agencies have engaged in unlawful *per se* price fixing
5 and unlawful *per se* group boycotts in violation of the Sherman Act, 15 U.S.C. §1 *et*
6 *seq.*, and the Cartwright Act, California Business and Professions Code §16700 *et*
7 *seq.* Second, as asserted in Counterclaimants’ fifth claim for relief, UTA’s
8 packaging fees violate the fiduciary duty that agents owe to their writer-clients and
9 deprive them of the conflict-free representation to which they are entitled. Third, as
10 asserted in Counterclaimants’ sixth claim for relief, UTA’s breaches of its fiduciary
11 duty to its writer-clients also constitute constructive fraud under California Civil
12 Code §1573. Fourth, as set forth in Counterclaimants’ seventh claim for relief, for
13 these reasons, and because the payments made from production companies to UTA
14 as part of any package constitute unlawful kickbacks from an employer to a
15 “representative of any of his employees” prohibited by Section 302 of the federal
16 Labor-Management Relations Act, 29 U.S.C. §186(a)(1), packaging fees are an
17 unlawful or unfair business practice for the purposes of the California Unfair
18 Competition Law, Cal. Bus. & Prof. Code §17200 *et seq.* (“UCL”). Fifth, as set
19 forth in Counterclaimants’ eighth through eleventh claims for relief, UTA’s repeated
20 Section 302 violations also constitute an unlawful “pattern of racketeering activity”
21 within the meaning of the Racketeer Influenced and Corrupt Organizations Act, 18
22 U.S.C. §1962 *et seq.* (“RICO”).

23 18. Packaging fees should therefore be declared unlawful and UTA should
24 be enjoined from continuing to seek or receive them, Counterclaimants should be
25 awarded disgorgement of unlawful profits, the costs of suit, and reasonable
26 attorneys’ fees, and Hall and Mangan should further be awarded restitution and
27 damages. UTA should further be enjoined from jointly seeking with the other

1 Agencies to negotiate, or strategizing with the other Agencies regarding their
2 individual negotiations with the Guilds, absent the Guilds' express consent to do so.

3 **ANSWER TO COMPLAINT**

4 Defendants and Counterclaimants Writers Guild of America, West, Inc. and
5 Writers Guild of America, East, Inc. hereby answer Plaintiff and Counterclaim
6 Defendant United Talent Agency, LLC's Complaint as follows:

7 19. The Guilds admit that on or around April 13, 2019, they implemented
8 a "Code of Conduct" for talent agencies that represent writers for work covered by
9 a WGA collective bargaining agreement. The Guilds further admit that WGAW
10 President David Goodman made the quoted statements, but deny UTA's
11 characterization of those statements. The Guilds deny the remaining allegations in
12 Paragraph 1.

13 20. The Guilds deny the allegations in Paragraph 2.

14 21. The Guilds deny the allegations in Paragraph 3.

15 22. The Guilds admit that the Complaint seeks injunctive relief and
16 various forms of monetary relief, but deny that UTA is entitled to any relief. The
17 Guilds deny the remaining allegations in Paragraph 4.

18 23. The Guilds lack knowledge or information sufficient to respond to the
19 allegations in Paragraph 5, and on that basis deny the allegations therein.

20 24. The Guilds admit the allegations in Paragraph 6.

21 25. The Guilds admit the allegations in Paragraph 7.

22 26. The Guilds deny that they "entered into" a collective bargaining
23 agreement with the Alliance of Motion Picture and Television Producers, Inc.
24 ("AMPTP"). The Guilds admit the remaining allegations in Paragraph 8.

25 27. In response to Paragraph 9, the Guilds admit that this Court has
26 subject-matter jurisdiction over the instant action.

27 28. In response to Paragraph 10, Defendants admit that this Court has

1 personal jurisdiction over WGAW for purposes of the instant action.

2 29. The Guilds admit that this Court has personal jurisdiction over WGAE
3 for purposes of the instant action and that WGAE transacts business in this
4 District. The Guilds deny the remaining allegations in Paragraph 11.

5 30. The Guilds deny the allegations in Paragraph 12.

6 31. The Guilds admit that venue is proper in this District. The Guilds
7 deny the remaining allegations in Paragraph 13.

8 32. The Guilds lack knowledge or information sufficient to respond to the
9 allegations in Paragraph 14, and on that basis deny the allegations therein.

10 33. The Guilds lack knowledge or information sufficient to respond to the
11 allegations in Paragraph 15, and on that basis deny the allegations therein.

12 34. The Guilds lack knowledge or information sufficient to respond to the
13 allegations in Paragraph 16, and on that basis deny the allegations therein.

14 35. The Guilds admit that in 1976, they entered into a written agreement
15 known as the AMBA with the ATA, then known as the Artists' Managers Guild.
16 The Guilds further admit that UTA is a member of the ATA and that, until on or
17 about April 7, 2019, the Guilds franchised UTA and other talent agencies to
18 represent its members pursuant to the AMBA, the terms of which speak for
19 themselves. The Guilds deny the remaining allegations in Paragraph 17.

20 36. The Guilds deny that UTA's writer-clients knew of, agreed to, and
21 benefited from packaging, and deny that UTA's writer-clients always give consent
22 "before submitting them for a packaged deal." The Guilds lack knowledge or
23 information sufficient to respond to the remaining allegations in Paragraph 18, and
24 on that basis deny the remaining allegations therein.

25 37. The Guilds admit that the AMBA is no longer in effect but deny that it
26 was terminated on April 12, 2019. The Guilds further admit that they have
27 implemented a Code of Conduct for talent agencies that represent writers for work

1 covered by a WGA collective bargaining agreement, and that the Code of Conduct
2 prohibits signatory talent agencies from engaging in packaging or having “agency
3 affiliated content companies.” The Guilds deny the remaining allegations in
4 Paragraph 19.

5 38. The Guilds admit that certain writers employed to work on a
6 production subject to a “packaging deal” do not pay a 10% commission to their
7 talent agents, and that the talent agency is instead compensated directly by the
8 production company. The Guilds lack knowledge or information sufficient to
9 respond to the remaining allegations in Paragraph 20, and on that basis deny the
10 remaining allegations therein.

11 39. The Guilds admit that a packaging fee generally includes a license fee
12 paid by the studio for a program, a deferred fee, and a percentage of certain profits
13 earned by the program. The Guilds lack knowledge or information sufficient to
14 respond to the allegations in Paragraph 21, and on that basis deny the allegations
15 therein.

16 40. The Guilds lack knowledge or information sufficient to respond to the
17 allegations in Paragraph 22, and on that basis deny the allegations therein.

18 41. The Guilds lack knowledge or information sufficient to respond to the
19 allegations in Paragraph 23, and on that basis deny the allegations therein.

20 42. The Guilds deny that UTA’s receipt or non-receipt of a packaging fee
21 has no impact on the process of negotiating compensation for its writer-clients.
22 The Guilds lack knowledge or information sufficient to respond to the remaining
23 allegations in Paragraph 24, and on that basis deny the remaining allegations
24 therein.

25 43. The Guilds deny that packaging benefits UTA’s writer-clients. The
26 Guilds lack knowledge or information sufficient to respond to the remaining
27 allegations in Paragraph 25, and on that basis deny the remaining allegations
28

1 therein.

2 44. The Guilds deny that packaging benefits UTA's writer-clients. The
3 Guilds lack knowledge or information sufficient to respond to the remaining
4 allegations in Paragraph 26, and on that basis deny the remaining allegations
5 therein.

6 45. The Guilds deny that packaging increases the net compensation for
7 the vast majority of UTA's writer-clients. The Guilds lack knowledge or
8 information sufficient to respond to the remaining allegations in Paragraph 27, and
9 on that basis deny the remaining allegations therein.

10 46. The Guilds admit that they oppose the representation of their members
11 by talent agencies engaged in the practice of being compensated through packaging
12 fees because of the conflicts of interest inherent in the practice. The Guilds lack
13 knowledge or information sufficient to respond to the allegation regarding UTA
14 clients' ability to leave UTA for other talent agencies, and on that basis deny that
15 allegation. The Guilds deny the remaining allegations in Paragraph 28.

16 47. The Guilds admit that the cited provision of the AMBA provided a
17 procedure for resolving certain disputes. The Guilds lack knowledge or
18 information sufficient to respond to the allegation regarding claims previously filed
19 against UTA, and on that basis deny that allegation. The Guilds deny the
20 remaining allegations in Paragraph 29.

21 48. The Guilds deny the allegations in Paragraph 30, including UTA's
22 characterization of the Guilds' views on packaging.

23 49. The Guilds lack knowledge or information sufficient to respond to the
24 allegations in Paragraph 31, and on that basis deny the allegations therein.

25 50. The Guilds lack knowledge or information sufficient to respond to the
26 allegations in Paragraph 32, and on that basis deny the allegations therein.

27 51. The Guilds lack knowledge or information sufficient to respond to the

1 allegations in Paragraph 33, and on that basis deny the allegations therein.

2 52. The Guilds admit that, during the period from September 22, 1976 to
3 April 12, 2019, the AMBA was the “operative agreement” between the WGA and
4 franchised talent agencies. The Guilds affirmatively allege that the text of the
5 AMBA is the best evidence of its contents. The Guilds further admit that they
6 oppose the representation of their members by talent agencies engaged in the
7 practice of affiliated content production because of the conflicts of interest inherent
8 in the practice. The Guilds lack knowledge or information sufficient to respond to
9 the allegations regarding UTA’s affiliation with Media Rights Capital/Civic Center
10 Media, and on that basis deny those allegations. The Guilds deny the remaining
11 allegations in Paragraph 34.

12 53. The Guilds admit that in 2018 they gave notice of intent to terminate
13 the AMBA. The Guilds also admit that they exchanged proposals with the ATA
14 regarding a successor agreement to the AMBA, and that Exhibit C contains one of
15 the ATA’s proposals. The Guilds further admit that they did not accept the ATA’s
16 proposals. The Guilds deny the remaining allegations in Paragraph 35.

17 54. The Guilds admit that Exhibit B to the Complaint is a Code of
18 Conduct implemented by the Guilds on or about April 13, 2019, and that the Code
19 of Conduct contains the quoted provisions. The Guilds affirmatively allege that
20 the text of the Code of Conduct is the best evidence of its contents. The Guilds
21 deny the remaining allegations in Paragraph 36.

22 55. The Guilds admit that Exhibit D to the Complaint is a document
23 prepared and adopted by the WGA and affirmatively allege that the text of the
24 document is the best evidence of its contents. Defendants deny the remaining
25 allegations in Paragraph 37.

26 56. The Guilds admit that Exhibits D and E to the Complaint contain the
27 quoted statements, but deny UTA’s characterization of those statements. The

1 Guilds deny the remaining allegations in Paragraph 38.

2 57. The Guilds admit that Exhibit D to the Complaint contains the quoted
3 statement, but deny UTA’s characterization of that statement. The Guilds deny the
4 remaining allegations in Paragraph 39.

5 58. The Guilds admit that their members are required to comply with
6 certain Working Rules, and that members who fail to comply may be subject to
7 disciplinary action under the Guilds’ constitutions. The Guilds deny the remaining
8 allegations in Paragraph 40.

9 59. The Guilds admit that “over 1,700 of UTA’s writer-clients have
10 terminated [their relationships with] UTA” as a result of UTA’s refusal to sign the
11 Code of Conduct and that approximately 7,000 writers have terminated their agents
12 based on their agencies’ refusal to sign the Code of Conduct. The Guilds deny the
13 remaining allegations in Paragraph 41.

14 60. The Guilds deny the allegations in Paragraph 42.

15 61. The Guilds admit the authenticity of Exhibit F to the Complaint and
16 affirmatively allege that the text of the exhibit is the best evidence of its contents.
17 Defendants further admit that a representative of the AMPTP made the statement
18 quoted on page 14, lines 13 to 14 of the Complaint, but deny the truth of the quoted
19 statement as well as UTA’s characterization of it. The Guilds lack knowledge or
20 information sufficient to respond to the allegation regarding the responsibilities of
21 particular producers and showrunners, and on that basis deny that allegation. The
22 Guilds deny the remaining allegations in Paragraph 43.

23 62. The Guilds admit that they have “entered into agreements with certain
24 talents agencies that will agree to be bound by the Code of Conduct, that permit
25 those agencies to represent WGA members.” The Guilds deny the remaining
26 allegations in Paragraph 44.

27 63. Paragraph 45 states legal conclusions to which no response is

1 required. To the extent a response to any allegations in Paragraph 45 is required,
2 the Guilds deny those allegations.

3 64. The Guilds admit that they have adopted a policy of indemnifying
4 attorneys or managers for any losses attributable to a member's refusal to pay fees
5 or commissions based on an alleged violation of state licensing requirements. The
6 Guilds deny the remaining allegations in Paragraph 46.

7 65. In response to the allegations incorporated by reference in Paragraph
8 47, the Guilds incorporate by reference their responses to those allegations in the
9 preceding paragraphs.

10 66. The Guilds deny the allegations in Paragraph 48.

11 67. The Guilds deny the allegations in Paragraph 49.

12 68. Paragraph 50 states legal conclusions to which no response is
13 required. To the extent a response to any allegations in Paragraph 50 is required,
14 the Guilds deny those allegations.

15 69. The Guilds lack knowledge or information sufficient to respond to the
16 allegations regarding writers' status as "essential components of packages" and
17 talent agencies' status as "the primary providers of packaging," and on that basis
18 deny those allegations. The Guilds deny the remaining allegations in Paragraph
19 51.

20 70. Paragraph 52 states legal conclusions to which no response is
21 required. To the extent a response to any allegations in Paragraph 52 is required,
22 the Guilds deny those allegations.

23 71. The Guilds deny the allegations in Paragraph 53.

24 72. The Guilds deny the allegations in Paragraph 54.

25 73. The Guilds deny the allegations in Paragraph 55.

26 74. In response to the Prayer for Relief, the Guilds deny that UTA is
27 entitled to any of the relief it seeks, or to any relief whatsoever.

AFFIRMATIVE DEFENSES

The Guilds assert the following affirmative defenses:

75. UTA’s Complaint fails to state a claim on which relief may be granted.

76. UTA’s claim for injunctive relief is barred to the extent UTA has available an adequate remedy at law and to the extent injunctive relief otherwise is inequitable.

77. UTA’s claim for damages is barred because such relief would constitute unjust enrichment.

78. UTA’s claims are barred by the statutory and nonstatutory labor exemptions to federal antitrust law.

79. UTA’s claims fail because UTA has not suffered antitrust injury.

80. UTA’s claims are barred because the alleged damages, if any, are speculative and remote.

81. UTA’s claims are barred because the Guilds’ conduct does not amount to a *per se* violation of federal antitrust law or involve an unreasonable restraint of trade.

82. UTA’s claims are barred because the Guilds’ conduct was permitted by law.

83. UTA’s claims are barred, either in whole or in part, by the doctrines of ripeness, mootness, and/or standing.

84. UTA has waived or forfeited its right, if any, to pursue the claims in the Complaint, and/or is estopped from doing so, by reason of its own actions and course of conduct.

85. UTA’s claims are barred by the doctrine of fraud.

86. UTA’s claims are barred by the doctrine of illegality.

87. UTA’s claims are barred by the doctrine of unclean hands.

1 88. UTA’s claims are barred by the doctrine of laches.

2 89. The Guilds’ conduct is not the proximate cause of any injuries or
3 damages allegedly suffered by UTA.

4 90. The remedies sought by UTA are unconstitutional, contrary to public
5 policy, or otherwise not authorized.

6 91. UTA’s claims should be dismissed for uncertainty and vagueness and
7 because their claims are ambiguous and/or unintelligible. UTA’s claims do not
8 describe the events or legal theories with sufficient particularity to permit the
9 Guilds to ascertain which other defenses may exist.

10 92. The Guilds hereby give notice that they intend to rely upon such other
11 and further defenses as may become available or apparent during pre-trial
12 proceedings in this case, and hereby reserve their rights to amend this Answer and
13 assert such defenses.

14 **COUNTERCLAIMS**

15 Defendants and Counterclaimants WGAW and WGAE, and Individual
16 Counterclaimants Barbara Hall (“Hall”) and Deirdre Mangan (“Mangan”), allege as
17 follows:

18 93. The Guilds re-allege and incorporate by reference the allegations set
19 forth in paragraphs 1-92.

20 **COUNTERCLAIM PARTIES**

21 94. Defendant and Counterclaimant WGAW is, and at all material times
22 was, a labor union representing approximately 10,000 professional writers who write
23 content for television shows, movies, news programs, documentaries, animation,
24 and new media. WGAW serves as the exclusive collective bargaining representative
25 for writers employed by the more than 2,000 production companies that are
26 signatory to an industrywide collective bargaining agreement negotiated by the
27 Guilds and the AMPTP. WGAW is a California nonprofit corporation

1 headquartered in Los Angeles, California. WGAW members, including Hall and
2 Mangan, have been represented by UTA. WGAW brings this action for injunctive
3 and declaratory relief under California’s law of fiduciary duty and constructive fraud
4 in its representative capacity on behalf of all writers it represents, and brings this
5 action under the Sherman Act, the Cartwright Act, California’s Unfair Competition
6 Law, and the Racketeer Influenced and Corrupt Organizations Act on its own behalf.

7 95. Defendant and Counterclaimant WGAE is, and at all material times
8 was, a labor union representing over 4,700 professional writers who write content
9 for television shows, movies, news programs, documentaries, animation, and new
10 media. WGAE serves as the exclusive collective bargaining representative for
11 writers employed by the more than 2000 production companies that are signatory to
12 an industrywide collective bargaining agreement negotiated by the Guilds and the
13 AMPTP. WGAE is a nonprofit corporation headquartered in New York, New York.
14 WGAE members have been represented by UTA. WGAE brings this action for
15 injunctive and declaratory relief under California’s law of fiduciary duty and
16 constructive fraud in its representative capacity on behalf of all writers it represents,
17 and brings this action under the Sherman Act, the Cartwright Act, California’s
18 Unfair Competition Law, and the Racketeer Influenced and Corrupt Organizations
19 Act on its own behalf.

20 96. Counterclaimant Barbara Hall is a television writer who resides in
21 Santa Monica, California and works in Los Angeles County. Her work as a
22 television writer includes serving as the showrunner for *Madam Secretary* for each
23 of its five seasons and creating the television shows *Judging Amy* and *Joan of*
24 *Arcadia*. She is a member of WGAW. From approximately 2012 until April 2019,
25 and before 2000, Counterclaim Defendant UTA served as her talent agency. From
26 approximately 2000 until approximately 2012, co-conspirator CAA served as her
27 talent agency. Hall has written, created, or served as showrunner for packaged

1 shows, including *Madam Secretary* and *Judging Amy*, and was injured by the
2 payment of packaging fees to Agencies on those packaged shows. But for the
3 Agencies' insistence on continuing to engage in unlawful packaging fee practices,
4 Hall would currently be represented by her former agents at UTA.

5 97. Counterclaimant Deirdre Mangan is a television writer who lives in Los
6 Angeles, California and works in Los Angeles County. She has written for television
7 shows including *Midnight Texas*, *The Crossing*, *iZombie*, and *Do No Harm*. She is
8 a member of WGAW. From approximately 2012 until March 2019, Counterclaim
9 Defendant UTA served as her talent agency. Mangan has written for packaged
10 shows, including *iZombie* and *Do No Harm*, and was injured by the payment of
11 packaging fees to Agencies on those packaged shows. But for the Agencies'
12 insistence on continuing to engage in unlawful packaging fee practices, Mangan
13 would currently be represented by her former agents at UTA.

14 98. Plaintiff and Counterclaim Defendant UTA is, and at all material times
15 was, a limited liability company existing under the laws of the State of Delaware,
16 with its principal place of business in Los Angeles County, California.

17 99. UTA is a talent agency comprised of numerous individual talent agents,
18 who as partners, principals, or employees of the Agency, render services on behalf
19 of the defendant talent agency. In rendering such services, each individual agent
20 acted on behalf of UTA, which at all times remained liable for the acts or omissions
21 of the individual agent.

22 100. As alleged herein, UTA conspired with the other Agencies and other
23 unknown parties, which may include other ATA member agencies, investors in ATA
24 member agencies, and/or owners, executives or employees of ATA member
25 agencies that participated in, or had knowledge of, the anticompetitive conduct
26 described herein. Counterclaimants will be able to identify these co-conspirators
27 through discovery.

JURISDICTION AND VENUE

1
2 101. This Court has subject matter jurisdiction over the First and Second
3 Claims for Relief pursuant to 28 U.S.C. §§1331 and 1337 and 15 U.S.C. §26; over
4 the Eighth, Ninth, Tenth, and Eleventh Claims for Relief pursuant to 28 U.S.C.
5 §§1331 and 1337 and 18 U.S.C §1964(a) and (c); and over the Twelfth Claim for
6 Relief pursuant to 28 U.S.C. §§1331 and 1337, 15 U.S.C. §26, and 18 U.S.C
7 §1964(a) and (c); and has supplemental jurisdiction over the Third, Fourth, Fifth,
8 Sixth, and Seventh Claims for Relief pursuant to 28 U.S.C. §1367.

9 102. Counterclaim Defendant UTA, a corporation, has its headquarters
10 within this judicial District (in Los Angeles, California), is domiciled in this
11 judicial district, has consented to personal jurisdiction in this judicial district by
12 bringing its Complaint in this judicial district, has minimum contacts with this
13 judicial district, and is otherwise subject to the personal jurisdiction of this judicial
14 district.

15 103. Venue is proper in this judicial district under 28 U.S.C. §1391(b) and
16 (c), because Counterclaim Defendant UTA is subject to this Court’s personal
17 jurisdiction with respect to this action, and because a substantial part of the events
18 giving rise to the counterclaims for relief stated herein occurred in this District.

19 104. Venue is also proper in this judicial district under 18 U.S.C. §1965(a)
20 because the Counterclaim is an action under §1964(c) against Counterclaim
21 Defendant UTA, which resides, is found, has an agent, and transacts its affairs in
22 this judicial district.

23 105. Moreover, UTA has waived any objection that it could otherwise have
24 asserted to venue in this judicial district by bringing its Complaint in this judicial
25 district.

26 106. Finally, venue is proper in this judicial district under the doctrine of
27 pendent venue.

1 107. Counterclaimants agree that this action is properly assigned to the
2 Western Division. Counterclaim Defendant UTA and Counterclaimant WGAW
3 both reside in Los Angeles County.

4 **FACTUAL ALLEGATIONS**

5 **The Guilds and the Role of Talent Agents**

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

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

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

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

27 112. The Guilds' members include showrunners. Showrunners are, at their

1 core, writers. For example, showrunners typically write the pilot script and continue
2 to, along with staff writers, develop story lines, write scripts, and otherwise control
3 the creative development of the series. Showrunners who are not writers are not
4 Guild members.

5 113. Approximately 2,000 television and film production companies are
6 parties to the industrywide agreement known as the MBA, negotiated between the
7 Guilds and the AMPTP. The AMPTP serves as the collective bargaining
8 representative of the major studios and production companies, while the Guilds
9 jointly serve as the exclusive representative for all of the writers employed under the
10 MBA. The MBA establishes minimum terms for the work performed by writers for
11 the MBA-signatory employers, including the minimum compensation that writers
12 must be paid for such work.

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

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

28 115. The film and television production industry now operates almost
entirely on a freelance basis. Writers are generally hired by production companies

1 to work on individual projects for the duration of those projects, rather than working
2 for the company on a long-term basis across multiple different projects. In order to
3 find employment, negotiate for overscale employment terms, obtain career guidance,
4 and protect their professional interests, writers have traditionally retained agents
5 (and the agencies with which those agents were associated) to represent them in their
6 dealings with the production companies. These agents owe fiduciary duties to their
7 writer-clients under California law.

8 116. Talent agencies can represent writers only with the consent of the
9 Guilds, which are the writers' exclusive collective bargaining representatives under
10 the MBA. The Guilds' Working Rule 23 further provides that members may only
11 be represented by agencies that sign an appropriate franchise agreement with the
12 Guilds.

13 117. UTA and the other Agencies (through the individual agents associated
14 with each of them) provide such representation to their clients. In doing so, UTA
15 and the other Agencies exercise authority delegated to them by the Guilds.

16 118. The services that UTA and the other Agencies sell to writers and to the
17 production companies are inextricably interrelated. As described herein, packaging
18 fees are directly deducted from production budgets, thereby reducing writer
19 compensation and employment opportunities. Further, when UTA or one of the
20 other Agencies receives a packaging fee from a production company, the Agency
21 typically foregoes any commissions assessed on its writer-clients included in that
22 package.

23 **Agencies' Packaging Fee Practices**

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

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

6 120. Over time, conditions in the television and film industry changed
7 dramatically in a manner that has had significant negative consequences for writers,
8 while drastically increasing the profits of UTA and the other Agencies and their
9 agents.

10 121. First, there has been overwhelming consolidation within the market for
11 talent agents. Because of this consolidation, UTA and the three other Agencies now
12 represent the overwhelming majority of writers, actors, directors, and other creative
13 workers involved in the American television and film industries. By virtue of this
14 consolidation, the Agencies exert oligopoly control over access to almost all key
15 talent in the television and film industries.

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

24 123. In television, the packaging fee for a particular project normally
25 consists of three components: an upfront fee of \$30,000 to \$75,000 per episode, an
26 additional \$30,000 to \$75,000 per episode that is deferred until the show achieves
27

1 net profits, and a defined percentage of the series' modified adjusted gross profits
2 for the life of the show.

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

10 125. Each of the Agencies uses this same, fixed formula as an agreed starting
11 point in negotiations for packages that include writers and other talent it represents.

12 126. UTA's Company Overview presentation from 2014 concedes that the
13 Agency charges package fees according to the agreed "3-3-10" formula.

14 127. Although the "3-3-10" formula is established and maintained through
15 collusive agreement as described herein, some elements of a packaging arrangement
16 remain negotiable within the context of that agreement, including the definition or
17 amount of the license fee and the definition of modified adjusted gross profits, which
18 information the Agencies routinely share with one another as well.

19 **Agencies' Unlawful Benefits from Packaging**

20 128. Packaging fees generate hundreds of millions of dollars per year in
21 revenue for UTA—far more than UTA would earn from a traditional 10%
22 commission from its clients.

23 129. The packaging fees paid to UTA and the other Agencies often exceed
24 the amount their clients are paid for work on a particular program.

25 130. With almost all television series now being packaged, UTA and the
26 other Agencies now earn much of their revenue from representing their own
27 economic interests, rather than from maximizing the earnings of their clients.

1 131. UTA and the other Agencies do little to justify their enormous
2 packaging fees.

3 132. For example, although the core function of an agency is to “procure”
4 employment opportunities for its clients, writers today more often than not find
5 employment from their own network or through sources other than their agency.
6 Nonetheless, even where writers find employment opportunities without their agent,
7 UTA and the other Agencies routinely demand to be paid their packaging fees.

8 133. Moreover, although the term “packaging” implies that an agency will
9 bring more than one “packageable element” to a project, UTA and the other
10 Agencies often demand to be paid a packaging fee for delivering only a single
11 contributor to a project.

12 134. Despite their legal obligations as agents, the Agencies are, according to
13 one former CAA agent, “big fans of packaging because packaging [is where] you
14 make all of your money So they hated when you sold a writer to somebody that
15 wasn’t a package, even though selling a writer to somebody else might have been
16 better for the client’s career and in the long run makes them more of a commodity.
17 Inside CAA it was always about package über alles—that was literally a phrase.
18 This was [CAA’s] philosophy.”⁴

19 135. Because packaging fees have generated record revenues for the
20 Agencies, private equity has become interested and invested in UTA, CAA, ICM,
21 and WME.

22 136. In 2010, CAA, then the largest agency in Hollywood, announced that
23 TPG Capital (“TPG”), a private equity investor, had acquired a 35% stake in the
24 agency. In 2014, TPG increased its stake by investing another \$225 million into the
25 agency. Today, TPG owns a controlling stake in CAA.

26
27 ⁴ James Andrew Miller, *Powerhouse: The Untold Story of Hollywood’s*
Creative Artists Agency 169 (2016).

1 137. In 2012, WME announced that it had secured a \$250 million investment
2 by private equity investor Silver Lake Partners (“Silver Lake”). In 2013, WME
3 acquired IMG for \$2.4 billion, thereby surpassing CAA as the largest agency.
4 Following its acquisition of IMG, WME announced that it had secured an additional
5 \$500 million investment by Silver Lake. Silver Lake now owns a controlling stake
6 in WME. Since that time, WME has sold minority equity stakes in the agency
7 totaling approximately \$1.8 billion to various institutional investors.

8 138. In 2018, UTA announced that Ivestcorp, a private equity investor, had
9 taken a 40% stake in the agency.

10 139. Private equity investors see little to no value in the traditional manner
11 of agency compensation—i.e., commissions received for the procurement of
12 employment opportunities—because the collusively agreed-upon packaging fee
13 model is far more profitable for the Agencies. Egon Durban of Silver Lake, for
14 example, specifically singled out the attractiveness of packaging fees as key to his
15 firm’s investment in WME: “We benefit from package fees from the shows when
16 they get resold and re-syndicated over and over again.”⁵

17 140. For these reasons, UTA and the other Agencies are “less interested in
18 their clients’ needs,” as one former agent reported.⁶ Industry observers report that
19 “the focus on the bottom line has only intensified, changing ways of doing business
20 that go back decades—and, in some ways, changing the very definition of a talent
21 agency.”⁷ A former ICM agent admitted that “[w]hat we’re seeing is a fundamental

22 ⁵ Matthew Garrahan, *Silver Lake looks to turn WME into gold*, Financial
23 Times (Nov. 21, 2014), available at
24 <https://www.silverlake.com/Images/Uploads/docs/Silverlake20111709432928705.pdf>.

25 ⁶ Gavin Polone, *Why Everyone in Hollywood is Paying More for a Manager*,
26 Vulture (July 11, 2012), <https://www.vulture.com/2012/07/polone-why-everyone-pays-more-for-a-manager.html>.

27 ⁷ Josh Rottenberg, *Wall Street investors to Hollywood talent agencies:*

1 shift in the agency landscape.”⁸ Another ICM agent was more blunt: If a private
 2 equity owner is unwilling to invest in the talent representational side of the business,
 3 the agency has an irreconcilable “conflict as you’re supporting disparate business
 4 and financial goals.”⁹

5 141. TPG and Silver Lake have had multiple opportunities to coordinate
 6 with each other on competitive strategies for their Agencies, because TPG and Silver
 7 Lake have frequently collaborated on investments. For example, in 2006, TPG and
 8 Silver Lake jointly acquired Sabre Holdings for \$5 billion. In 2007, TPG and Silver
 9 Lake jointly acquired Avaya, Inc. for \$8.3 billion. In 2012, between TPG’s
 10 investment in CAA and Silver Lake’s investment in WME, the two private equity
 11 firms collaborated again on the acquisition of Radvision, Ltd. through their jointly
 12 held portfolio company Avaya.

13 142. On May 23, 2019, Endeavor Group Holdings, the parent entity of
 14 WME, filed a Form S-1 with the Securities and Exchange Commission as a first step
 15 in its plan to launch an initial public offering (“IPO”) later this year. The IPO is
 16 intended to allow Silver Lake to cash in at least part of its equity position in WME.

17 143. Private equity interest in UTA, CAA, ICM, and WME comes at a time
 18 when packaging revenues fees have generated record revenues for the Agencies.
 19 Indeed, private equity investors are particularly attracted by the fact that UTA and
 20 the other Agencies have been able to use their packaging revenues to begin their own
 21 in-house content production companies (also known as “affiliate content
 22 production”).

23 **Conflict of Interest and Harms Caused by Packaging Fees**

24 “*Show us the money,*” L.A. Times (July 10, 2015),
 25 [https://www.latimes.com/entertainment/envelope/cotown/la-et-ct-talent-agencies-
 26 private-equity-20150710-story.html](https://www.latimes.com/entertainment/envelope/cotown/la-et-ct-talent-agencies-private-equity-20150710-story.html).

27 ⁸ *Id.*

⁹ *Id.*

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

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

21 149. UTA and the other Agencies also have little incentive to protect the pay
22 their clients have already earned. Because UTA's and the other Agencies' earnings
23 now come from packaging fees and not from commission, UTA and the other
24 Agencies have no incentive to ensure that their clients receive the pay or profit
25 participation to which the clients are entitled under their contracts with the studios
26 and often refuse to meaningfully assist them in negotiations over missing pay.
27 Indeed, in some instances, Agencies have even pressured their clients to forego pay

1 to which the client would otherwise be entitled in order to obtain a greater packaging
2 fee for themselves.

3 150. Because the profits of UTA and the other Agencies are generated from
4 packaging fees rather than from commissions on their clients' earnings, UTA and
5 the other Agencies are incentivized to protect the studios' interests, not their clients'
6 interests, when they purport to represent those clients. In order to protect their
7 continuing ability to negotiate new packaging fees from the studios, UTA and the
8 other Agencies prioritize their relationships with the studios over the interests of
9 their clients in numerous ways. For example, UTA and the other Agencies fail to
10 negotiate aggressively to ensure their clients will receive the highest possible
11 compensation on a particular program, because doing so could antagonize the studio
12 and potentially lead the studio to refuse to pay a packaging fee. By failing to
13 negotiate the highest possible compensation for their clients, UTA and the other
14 Agencies also help ensure that the studios are willing to continue paying packaging
15 fees on top of the other costs of producing each program, and that paying packaging
16 fees does not become cost-prohibitive. For writers who are not yet generating new
17 programs on which UTA and the other Agencies might be able to seek packaging
18 fees, UTA and the other Agencies' interest in preserving the studios' willingness to
19 pay packaging fees substantially outweighs their interest in representing those
20 writers, an imbalance that shapes every aspect of the representation that UTA and
21 the other Agencies provide to such writers.

22 151. UTA, like the other Agencies, recognizes that its interests are no longer
23 aligned with those of the writers it represents, but are instead aligned with the
24 production companies that employ its clients.

25 152. Packaging fees also distort agents' incentives when seeking
26 employment opportunities for their clients.

1 153. In order to avoid splitting a packaging fee with other agencies, UTA,
2 like the other Agencies, pressures its clients to work exclusively on projects where
3 the other key talent is also represented by UTA. UTA exerts this pressure even
4 where the client and the agent know that the project will be best served by involving
5 someone from another agency. Hall has found, for example, that UTA presents her
6 with opportunities to work only on projects involving other talent from UTA. Her
7 ability to obtain work and compensation commensurate with her experience has been
8 severely hampered by UTA's failure to present her with other work opportunities.
9 The same distortion of incentives causes UTA and the other Agencies to pressure
10 other writers in the earlier stages of their careers to work only on projects that have
11 been packaged by that particular agency, again depriving them of the ability to
12 advance their careers on projects outside their agency.

13 154. UTA, like the other Agencies, also is incentivized not to sell packaged
14 programs to the production companies willing to pay the most for the programs, or
15 that will be the best creative partner for the programs. Instead, UTA chooses to sell
16 packaged programs to the companies willing to negotiate the most profitable
17 packaging deal. Indeed, in many instances, UTA and the other Agencies have taken
18 lower offers of compensation for their clients in exchange for a more lucrative
19 package deal.

20 155. In addition, UTA and the other Agencies have routinely refused to close
21 deals until the studio agrees to pay a packaging fee. Indeed, UTA and the Agencies
22 have at times even threatened to scuttle deals that the writers have sourced
23 themselves, without their agent's involvement, in order to obtain a packaging fee for
24 themselves. Even the production companies are unwilling to push back against the
25 Agencies when they demand a packaging fee on deals that they did not close,
26 because of the enormous power the Agencies wield. As former ICM/UTA agent and
27

1 current producer Gavin Polone has explained, UTA and the other Agencies openly
2 seek packaging fees at their clients' expense:

3 I had breakfast with a couple of network executives and pitched them an idea,
4 which they liked. I told them I wanted to work with a specific writer (with
5 whom I did not discuss this idea before meeting with the executives). They
6 didn't know him, so I sent them his writing sample, which they enjoyed. The
7 writer and I then pitched out a complete story. The executives officially
8 bought the show. The writer then told his agents of the sale after it was sold.
9 His agents then negotiated with the studio, which was a sister company of the
network, and got him a deal with which he was happy. Then they asked for a
package fee.

10 I told the network I would not go along with them getting a fee because they
11 had nothing to do with the show. The writer also told his agents that it didn't
12 make sense for them to receive a package fee. His agent told him she would
13 not close the deal—despite his direction to do so—without the agency getting
14 its fee. He then asked his lawyer to close the deal and the lawyer also refused,
15 probably not wanting to take on the agents. I called the network and told the
16 executives just to say it was “take it or leave it” and they'd have to close
17 because the client wanted it closed. One of the executives told me that I'd
18 have to work it out with the agency myself He said the network/studio
19 would rather pay the fee, which could total millions of dollars in success,
20 instead of jeopardizing its relationship with a major agency. In the end, the
21 agency got its fee.¹⁰

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

28 157. The consequences of packaging, as practiced by all four of the
Agencies, have been profound for television writers. Despite growing demand for

¹⁰ Polone, *TV's Dirty Secret*, *supra* note 1.

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

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

16 159. While the economics of film packaging differ in some respects from
17 packaging agreements in television, the conflict of interest is the same. UTA and
18 the other Agencies leverage their access to high-profile clients for the Agencies' own
19 benefit, and negotiate compensation for themselves, undisclosed to their clients and
20 unrelated to what their clients earn.

21 160. Feature film packaging fees have a direct detrimental effect on writers.
22 As the feature film business has contracted, increasing pressure on screenwriters,
23 UTA and the other Agencies have not advocated against declining screenwriter pay
24 or unpaid work because the Agencies make most of their money on packaging fees
25 paid by production companies for television and film projects, and have little
26 incentive to fight for clients from whom they simply receive a commission. As in
27

1 television, the effect of the Agencies' collusive packaging fee practices has been to
2 exert downward pressure on writer compensation.

3 161. As in television, feature film front-end and deferred packaging fees are
4 considered overhead and thus charged as production expenses, while back-end
5 packaging fees are an off-the-top expense, meaning that everyone else's profit is
6 reduced proportionally by the agency's payment. As in television, this leads to
7 writers not only being paid less in wages but also reducing their share of the profits.

8 162. Because packaging fees are based in part on gross profit, the payment
9 of the film's packaging fee may, depending on the profit definition, have the effect
10 of reducing the profit participation of the UTA's own clients, including writers. And
11 because a portion of the packaging fee comes out of a film's budget, payment of the
12 fee diverts financial resources away from the clients of UTA and the other Agencies
13 and the projects on which they are working and to the Agencies themselves. This
14 not only harms writers by reducing their compensation and denying them additional
15 employment opportunities, but also by placing such a major drain on the production
16 budget on an ongoing basis, harms the quality of the production.

17 163. Film packaging fees also distort agents' incentives when seeking
18 employment opportunities for their clients. In order to avoid splitting a packaging
19 fee with another agency, UTA and the other Agencies often pressure their clients to
20 work exclusively on projects where the other key talent is also represented by the
21 client's Agency. UTA and the other Agencies exert this pressure even where the
22 client and the agent know that the project will be best served by involving someone
23 from another Agency. For the same reasons, UTA and the other Agencies also
24 pressure staff writers to work only on films that have been packaged by that
25 particular Agency, depriving them of the opportunity to work on other projects.
26 Accordingly, choice of talent for any project is artificially limited by UTA's and the
27 other Agencies' packaging fee practices.

1 164. UTA and the other Agencies also choose not to sell packaged programs
2 to the production companies willing to pay the most for the film, or that will be the
3 best creative partner for the film. Instead, UTA and the other Agencies choose to
4 sell packaged films to the companies willing to pay the largest packaging fee.

5 165. UTA and the other Agencies use popular writers as leverage to secure
6 film packaging fees, even where doing so does not serve the economic or creative
7 interests of those writers.

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

19 167. Polone, a former agent, opines that the Agencies' packaging fee
20 practices also artificially reduce employment opportunities for talent, artificially
21 reduce the quality of audiovisual entertainment, and reduce output: "I have never
22 watched anything I've produced where I didn't think, 'That scene would have been
23 better if we had more money for ...' a better song, more background actors, better
24 VFX, our first choice of location, an above-scale actor for a small part or many other
25 things that often cost less than \$30,000. Budgets are finite, and if you add a \$30,000
26 cost that doesn't connect to anything that goes onscreen, you necessarily lose
27 something else that would have. So that package fee, which saves the writer his

1 commission on an unprofitable show, might be the exact reason his show was
2 canceled in the first place and never made it to profit; and that is a pretty unequitable
3 exchange.”¹¹

4 168. Because of UTA’s and the other Agencies’ breaches of their fiduciary
5 duties, writers, including Hall and Mangan, have been forced to retain and pay other
6 professionals, including lawyers and talent managers, to protect their interests,
7 frequently paying as much as 15% or 20% in additional commissions to these other
8 professionals to secure the services that talent agencies alone once provided.
9 Because writers’ agents no longer represent their clients vigorously and without
10 conflicts, writers, including Hall and Mangan, rely upon their talent managers to
11 identify employment opportunities and upon their lawyers to negotiate the terms of
12 their contracts with production companies. These are services that the agents
13 themselves should be providing to the writers they represent. That writers must pay
14 others for these services further reduces their take-home pay.

15 169. Barbara Hall’s situation is typical in this respect. Although she was
16 represented by UTA until April 2019, to protect her interests, she also had to retain
17 a business manager, talent manager, and lawyer, who collectively receive a total of
18 20% of her income. The end result of these additional payments Hall must make is
19 that the per episode payment to UTA for *Madam Secretary* is approximately equal
20 to Hall’s post-commission payment per episode for her work as showrunner on that
21 program. A second agency, CAA, also receives a separate per episode packaging
22 fee for *Madam Secretary*.

23 170. Packaging also denies writers employment opportunities. UTA and the
24 other Agencies are resistant to placing their clients with programs or films that are
25 already connected to talent from other Agencies, because doing so will reduce or
26

27 ¹¹ *Id.*

1 eliminate any packaging fee they might be paid for the clients' work. Many potential
2 projects have been delayed or killed solely because of a dispute between UTA and a
3 production company over the packaging fee. Programs are sold to the production
4 companies willing to pay the most lucrative packaging fee, rather than those willing
5 to provide UTA's and the other Agencies' writer-clients with the greatest
6 compensation or those that will serve as the best creative partners for the programs.
7 Likewise, because UTA and the other Agencies do not view the potential
8 commissions they would obtain from writers in earlier stages of their careers on
9 outside projects to be sufficiently valuable to be worth pursuing, UTA and the other
10 Agencies deny even staff writers the opportunity to work on outside projects, so that
11 those earlier stage writers will be available to work for less compensation and at a
12 lower level on a project packaged by their Agency.

13 171. UTA, like the other Agencies, routinely fails to disclose the conflicts of
14 interest inherent in packaging. The packaging agreement, including the profit
15 definition, is negotiated directly between UTA and the production company, with no
16 notice or disclosure of the agreement's terms, or often even of the agreement's
17 existence, to the writer-clients. Indeed, virtually no writer has ever seen a packaging
18 agreement. Hall and Mangan have never been provided with the specific details of
19 the packaging agreements applicable to the UTA-packaged programs on which they
20 worked while represented by UTA, nor were they informed by UTA of the existence
21 of the conflict of interest.

22 172. UTA, like the other Agencies, has never obtained its writer-clients'
23 valid, informed consent to UTA's flagrant conflicts of interest. Such a valid,
24 informed consent could only be given if UTA disclosed not only the existence of the
25 conflict of interest but also all of the specific details of any packaging agreement
26 between UTA and the production company. UTA, like the other Agencies, however,
27 not only routinely fails, as a matter of policy, to disclose either the existence of the

1 conflict or the material terms of the packaging agreements to its writer-clients, but
2 in many instances actually goes further still and deliberately conceals the existence
3 of the conflict of interest by falsely informing their writer-clients that packaging
4 *benefits* the client because the client will not pay commission, when in fact UTA's
5 packaging fees far exceed the 10% commission UTA is forgoing and when UTA's
6 packaging fees actively suppress the client's earnings.

7 173. In fact, UTA and the other Agencies in many instances do not even
8 disclose the existence of a packaging fee agreement, depriving their clients of
9 necessary information, in violation of UTA's and the other Agencies' fiduciary
10 duties.

11 174. The Guilds' members, including Hall and Mangan, have been harmed
12 by UTA's and the other Agencies' misleading conduct and their routine failure to
13 disclose not only the existence of the conflict of interest represented by packaging
14 fees but also the specific details of any packaging agreement, which the writers are
15 entitled to know as the principal in the agency relationship. The Guilds' members,
16 including Hall and Mangan, justifiably expect their agents to represent their
17 interests, in accordance with California agency law principles. The Guilds'
18 members, including Hall and Mangan, have justifiably relied, to their detriment, on
19 UTA's and the other Agencies' misleading concealment of the existence of their
20 conflicts of interest and their misrepresentations that packaging benefits the writer
21 client, when in fact packaging harms UTA's and the other Agencies' clients and
22 enriches UTA and the other Agencies at the writers' expense. For example, Hall's
23 former agent at UTA—Peter Benedict—never disclosed to Hall that he was
24 operating under a conflict of interest in representing Hall on packaged shows, nor
25 did he disclose the existence of the packages nor the details of the packaging
26 agreements to Hall. Likewise, Mangan's former agent at UTA—Dan Erlij—never
27 disclosed to Mangan that he was operating under a conflict of interest in representing

1 Mangan on packaged shows, nor did he disclose the existence of the packages nor
2 the details of the packaging agreements to Mangan.

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

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

22 177. Because of packaging fees, writers face a less competitive market for
23 their services, with UTA and the other Agencies generally attempting to place
24 writers only with projects tied to other clients of the Agency, rather than with all
25 available projects, and failing to negotiate the best possible compensation for their
26 clients. UTA's and the other Agencies' collusive packaging fee practices also harm
27 their writer-clients' ability to sell their services because UTA and the other Agencies

1 refuse to negotiate employment for their writer-clients unless the Agencies get a
2 packaging fee. UTA and the other Agencies have canceled meetings, held up
3 negotiations, and otherwise stymied their own clients' ability to sell their services
4 over packaging fees.

5 178. As *The Hollywood Reporter* recently reported: "Several international
6 sales agents speaking to *THR* on condition of anonymity report cases of talent agents
7 killing projects if they don't land with their in-house production company or
8 threatening to pull a client off a film unless they 'get a piece of the action' on the
9 domestic sale. 'It's a very serious issue—that of the agencies packaging, producing
10 and selling content all under one roof,' notes a veteran sales agent. 'It's further
11 restricting the talent available and making it harder to get films made.'"¹²

12 179. Likewise, UTA and the other Agencies use their control over key talent
13 to pressure writers whose agents are not affiliated with the Agencies to fire those
14 agents and retain UTA or one of the other three Agencies in order to have access to
15 employment on the Agency's packages.

16 180. UTA's and the other Agencies' packaging fee practices, individually
17 and collusively, reduce the choice of talent available to work on projects, thus
18 directly impairing a writer's ability to propose scripts in a competitive market, and
19 impairing competition for the budgets for television and film productions. This has
20 a negative direct and proximate effect on writer compensation and reduces writing
21 opportunities for writers.

22 181. The quality of audiovisual entertainment also suffers as a result of the
23 Agencies' packaging fee practices. For example, budgetary constraints caused by
24

25 ¹² Tatiana Siegel, *Cannes: Will the Writers Guild Fight Impact Dealmaking*
26 *at the Festival?* *The Hollywood Reporter* (May 9, 2019),
27 [https://www.hollywoodreporter.com/news/will-writers-guild-fight-impact-](https://www.hollywoodreporter.com/news/will-writers-guild-fight-impact-dealmaking-at-cannes-festival-1208193)
28 [dealmaking-at-cannes-festival-1208193](https://www.hollywoodreporter.com/news/will-writers-guild-fight-impact-dealmaking-at-cannes-festival-1208193).

1 the payment of packaging fees force productions to shoot in less than ideal locations
2 and under questionable conditions, cut special effects, reduce the number of shooting
3 days, and/or hire a smaller crew or fewer writers. In addition to artificially reducing
4 the choice of talent available for a given production, these creative compromises,
5 caused by the charging of packaging fees, directly diminish the quality of the
6 finished product. This also adversely affects the careers of those involved with those
7 projects, including the writers.

8 182. UTA's and the other Agencies' ongoing intimidation of lawyers, their
9 former clients, and those smaller talent agencies that have signed or are considering
10 signing the Guilds' 2019 Code of Conduct for talent agents (*see infra* paragraphs
11 226-242) continues this pattern of harm.

12 183. But for UTA's and the other Agencies' illegal agreements regarding
13 packaging, the Guilds and the Guilds' members would not have been so harmed.

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

19 **Agency Coordination and the ATA**

20 185. The ATA is a trade association headquartered in Los Angeles County,
21 California and comprised of approximately 120 talent agencies across the United
22 States. Those agencies are competing sellers of agency services. When the ATA
23 speaks, it does so on behalf of its members. As stated on the ATA's website: "ATA's
24 collective voice provides strong and effective advocacy for its members in matters
25 relating to the talent-agency business."¹³

26 _____
27 ¹³ ATA, *About ATA*,
28 https://www.agentassociation.com/index.php?src=gendocs&ref=about_ata&category=42

1 186. Prior to the events of April 2019, as described later herein, the ATA
2 member agencies represented the vast majority of the Guilds’ members working
3 today.

4 187. Neither the ATA nor its member agencies enjoy any protections under
5 the antitrust laws other than a derivative labor exemption that may apply under some
6 circumstances based on the ATA’s contractual relationship with the Guilds.

7 188. Historically, the Agencies competed over the starting point for
8 negotiations on packaging fees. For example, CAA once slashed packaging fees by
9 40%. Michael Ovitz, CAA’s founder, observed: “it increased the volume of our
10 business so we would end up making far more than if we had charged the higher
11 rate.”¹⁴ Yet no Agency has challenged the prevailing “3-3-10” formula in decades,
12 because the Big Four have agreed to fix that formula as the default price of agents’
13 services.

14 189. The “base license fee” (the basis for the first 3%) is an artifact of a prior
15 age, a fiction in today’s fragmented television distribution landscape. Accordingly,
16 the Big Four have agreed to a standard range of “base license fees” upon which to
17 calculate the initial 3% fee, taking into account both the number of episodes and the
18 distribution medium (e.g., network television vs. streaming on Netflix).

19 190. The ATA, writing on behalf of its members, has conceded that
20 “package fees have remained fairly constant in broadcast TV for the past two
21 decades.”¹⁵

22
23
24 _____
ry=Main.

25 ¹⁴ Miller, *supra* note 4, at 48.

26 ¹⁵ ATA, *Negotiating a New Artists’ Manager Basic Agreement, Frequently*
27 *Asked Questions* 6 (Feb. 26, 2019),
https://www.agentassociation.com/clientuploads/ATA.General_FAQ.2.26.19.pdf.

1 191. A former agent conceded in *The Hollywood Reporter* that there is “near
2 uniform price-fixing of package fees on TV shows.”¹⁶

3 192. As the ATA, writing on behalf of its members, has admitted, agencies
4 “frequently” jointly package television series.¹⁷

5 193. When sharing a package, the Agencies exchange competitively
6 sensitive information about their packaging fee practices, including but not limited
7 to adherence to the standard “3-3-10” formula, the amount of the base license fee,
8 and the definition of modified adjusted gross profits (the basis for the last 10%).

9 194. Joint packaging occurs on a sufficiently frequent basis to allow UTA
10 and the other Agencies to reach collusive agreements on their packaging fee
11 practices and to monitor compliance with such practices.

12 195. UTA and the other Agencies also share competitively sensitive
13 information, including through the ATA.

14 196. For example, on March 17, 2019, the ATA published a study that
15 purports to analyze the economic impact of eliminating front-end packaging fees
16 (the “March 17 Report”).

17 197. Although the ATA claims that the data used to prepare the March 17
18 Report was made anonymous to protect the disclosure of competitively sensitive
19 information, UTA published its own internal analysis of its data three days later.

20 198. Competitively sensitive information was also exchanged within the
21 ATA’s “Negotiation Committee,” which includes employees of all four Agencies.
22
23

24 ¹⁶ Gavin Polone, *Here’s the Long-Shot Way Hollywood Writers Can Win the*
25 *War on Agents*, *The Hollywood Reporter* (Mar. 26, 2019),
26 [https://www.hollywoodreporter.com/news/gavin-polone-heres-how-hollywood-](https://www.hollywoodreporter.com/news/gavin-polone-heres-how-hollywood-writers-can-win-war-agents-1197093)
27 [writers-can-win-war-agents-1197093](https://www.hollywoodreporter.com/news/gavin-polone-heres-how-hollywood-writers-can-win-war-agents-1197093).

28 ¹⁷ ATA, *supra* note 14, at 6.

1 199. The Agencies are able to coordinate their actions in part because,
2 despite the large number of talent agencies, the agency industry has been described
3 best as “a shrinking oligopoly.”¹⁸

4 200. There were previously five large talent agencies: William Morris,
5 Endeavor, CAA, ICM, and UTA. In 2009, the “Big Five” became the “Big Four”
6 following William Morris’ merger with Endeavor. And until April 2019, three ATA
7 member agencies—UTA, CAA, and WME—represented writers in projects that
8 accounted for approximately 70% of the Guilds’ members’ earnings.

9 201. UTA and the other Agencies enforce compliance with their collusive
10 agreements on packaging practices by “blacklisting” any entity or individual who
11 deviates from, or otherwise seeks to frustrate, those agreements.

12 202. The fear of being blacklisted by the Agencies is pervasive in
13 Hollywood. For example, *The Los Angeles Times* reported on the difficulty of
14 getting industry participants to speak publicly about their concerns regarding
15 packaging:

16 The combined power of Endeavor and CAA is enormous — together, they
17 represent the bulk of Hollywood’s A-list celebrities and the majority of all
18 packaged TV series. As a result, most people in Hollywood are unwilling to
19 speak about the issue publicly. ...

20 “There are a lot of disgruntled people. But it’s whispered about. Everyone
21 on the talent side is afraid to challenge the agencies for fear of being
22 blackballed,” said Neville Johnson, a Los Angeles attorney who has
23 represented prominent Hollywood writers and actors in profit disputes.

24 The fear is pervasive. “The studios are afraid of not getting pitches and
25 opportunities if they take a hard line against this,” Johnson added.¹⁹

26 ¹⁸ Violaine Roussel, *Representing Talent: Hollywood Agents and the Making*
27 *of Movies* 49 (2017).

28 ¹⁹ Ng, *supra* note 2.

1 approximately 500 scripted series in production today; analysts do not believe that
2 the industry has peaked.

3 213. UTA and the other Agencies have profited massively by extracting
4 packaging fees during this period. For example, in its recently filed S-1, WME
5 boasted that it has delivered “consistent growth and strong financial performance.”
6 Since 2015, WME has grown revenue at a rate of 27.1%, generating robust margins
7 of over 15%.

8 214. Yet while writers lie at the creative heart of the industry, they have been
9 left behind. Their wages have been stagnant over the last two decades, leading to
10 significant declines when adjusted for inflation.

11 **Writer-Producer Median Episodic Fee**

12 Title	13 1995-2000 (Adjusted for 14 Inflation)	15 2017-18
16 Co-Producer	\$16,400	\$14,000
17 Producer	\$19,500	\$16,000
18 Supervising 19 Producer	\$25,750	\$17,500
20 Co-Executive 21 Producer	\$35,100	\$23,250
22 Executive Producer	\$54,600	\$32,000

23 215. On April 6, 2018, pursuant to the terms of the 1976 AMBA, the Guilds
24 provided the ATA with a Notice of Election to Terminate the agreement.
25 Contemporaneously, the Guilds published a detailed set of proposals for a new
26 agreement to replace the AMBA, which would, among other things, bar talent
27 agencies from accepting packaging fees.

1 216. The Guilds’ proposals for a new franchise agreement were modeled in
2 some respects on codes of conduct that are the dominant method of agency
3 regulation in professional sports and have been upheld in the face of antitrust
4 challenge in federal court.

5 217. UTA and the other three Agencies each were and are members of the
6 ATA’s “Negotiation Committee.” The Negotiation Committee (sometimes referred
7 to as the “Strategy Committee”) met weekly, and continues to meet, to discuss and
8 agree on common stances to take with respect to the Guilds, the Guilds’ members,
9 and the Guilds’ internal processes, including but not limited to an agreement not to
10 accede to the Guilds’ demand to ban packaging fees.

11 218. On February 21, 2019, the Guilds wrote to all members of the ATA,
12 including UTA and the other three Agencies, enclosing a copy of a written “Code of
13 Conduct” for the representation of the Guilds’ members. In that letter, the Guilds
14 stated that they intended to implement the Code of Conduct on April 7, 2019. The
15 Guilds further stated that the WGA would “continue[] to have discussion with
16 agencies regarding the Code of Conduct” and that “[a]ny modifications in the Code
17 of Conduct that the [WGA] makes as a result of those discussions will be applied on
18 an equal basis to all agencies.”

19 219. During that time, the Guilds and the ATA also continued to meet and
20 negotiate for a new agreement to replace the 1976 AMBA.

21 220. Among other things, the Code of Conduct made clear the Guilds’
22 continued intention to prohibit packaging fees: “No Agency shall derive any
23 revenue or other benefit from a Client’s involvement in or employment on a motion
24 picture project, other than a percentage commission based on the Client’s
25 compensation.”

1 221. In March 2019, the Guilds’ members voted overwhelmingly—95.3%
2 to 4.7%—to authorize the Guilds to implement the Code of Conduct, if and when it
3 becomes advisable to do so, upon expiration of the 1976 AMBA on April 6, 2019.

4 222. On April 13, 2019, the Guilds formally implemented the Code of
5 Conduct and, pursuant to Working Rule 23, instructed its members to terminate any
6 agent that had not agreed to its terms. Subsequently, the vast majority of the Guilds’
7 members terminated their relationship with their agents.

8 223. Through the ATA, UTA and the other Agencies summarily rejected the
9 Code of Conduct. The ATA stated that the Code of Conduct was “unacceptable to
10 all agencies,” and announced that it was “firmly opposed to the WGA’s Code.”²⁰

11 224. The Code of Conduct realigns agents’ incentives with their writer-
12 clients and eliminates the conflicts of interest inherent in the Agencies’ receipt of
13 packaging fees. Agencies signed to the Code may only represent writers on a
14 commission basis and may not receive packaging fees.

15 225. Immediately upon implementation, several smaller talent agencies
16 agreed to the Code of Conduct.

17 226. On or about May 16, 2019, Verve, the largest non-ATA member
18 agency, agreed to the Code of Conduct (as a new franchise agreement). In response,
19 UTA and the other Agencies, through the ATA, promised to retaliate against Verve
20 and its clients through an illegal group boycott, and promised similar retaliation
21 against any other agency that broke ranks and dealt with the Guilds individually.
22 ATA executive director Karen Stuart further urged ATA members to “remain strong
23 and united” in their opposition to the Code of Conduct.²¹

24
25 ²⁰ David Robb, *ATA Says WGA’s Code Of Conduct Is “Unacceptable To All*
26 *Agencies”*; *No Talks Scheduled Before Deadline*, deadline.com (Apr. 5, 2019),
[https://deadline.com/2019/04/ata-says-wga-agency-code-unacceptable-to-all-](https://deadline.com/2019/04/ata-says-wga-agency-code-unacceptable-to-all-agencies-no-talks-set-1202589594/)
[agencies-no-talks-set-1202589594/](https://deadline.com/2019/04/ata-says-wga-agency-code-unacceptable-to-all-agencies-no-talks-set-1202589594/).

27 ²¹ David Robb, *Abrams Artists Agency Chair Adam Bold Says He Won’t*

1 231. Recognizing that further negotiations with the ATA were futile, given
2 the ATA's complete opposition to the Code of Conduct, the Guilds formally
3 withdrew their consent to collective negotiation through the ATA. The Guilds'
4 withdrawal of consent was communicated to the ATA, as well as posted on the
5 Guilds' websites, on June 19, 2019, and widely reported in the media.

6 232. Despite the Guilds' clear withdrawal of their consent to collective
7 negotiations, UTA and the other Agencies continued to meet, discuss and coordinate
8 their negotiation strategy through the ATA with the Guilds, including but not limited
9 to an agreement not to negotiate on the Guilds' Code of Conduct and not to sign a
10 new franchise agreement with the Guilds. Through its Negotiation Committee, UTA
11 and the other Agencies continued to meet, disclose competitively sensitive
12 information regarding their packaging fee practices, and agree on the terms by which
13 agency services would be priced to writers.

14 233. For example, on June 25, 2019, WGAW Executive Director David
15 Young wrote to each member of the ATA's Negotiation Committee, stating that the
16 Guilds would no longer consent to collective negotiations and offering to meet
17 individually to negotiate the agency's consent to the Guilds' Code of Conduct.
18 However, at the behest of UTA and the other Agencies and the ATA, each of the
19 recipient agencies rejected the Guilds' offer, uniformly demanding instead that the
20 Guilds reverse the withdrawal of their consent to collective negotiations. These
21 rejections were coordinated by the ATA.

22 234. First, Stephen Kravit of The Gersh Agency responded that "under no
23 circumstances will The Gersh Agency meet with you separate from the ATA."

24 235. Karen Stuart of the ATA then forwarded Kravit's email to the other
25 members of the ATA Negotiation Committee. Each of the other agencies then
26 parroted back the same refusal to deal with the Guilds in short order. For example:
27
28

1 (a) Richard B. Levy of ICM: “we will not [negotiate] individually.”
2 Instead, he insisted that any proposal from the Guilds must be to “the
3 entire ATA negotiating committee.”

4 (b) Jay Sures of UTA: “Since you have an official WGA proposal, I think
5 it is best for you to send it to your counterpart at the ATA.”

6 (c) Rick Rosen of WME: “WME believes the path to resolution is through
7 the ATA.... We again invite you to send your proposals to the ATA for
8 consideration by our entire negotiating committee.”

9 236. Despite the fact that talent agencies other than the Big Four derive
10 relatively little revenue from packaging fees, the vast majority of those other
11 agencies have refused to sign the Code of Conduct as a result of UTA’s and the other
12 Agencies’ coordination and threats of retaliation.

13 237. In light of the Agencies’ continued illegal efforts to coordinate both in
14 their individual negotiation strategies with the Guilds and on their continued receipt
15 of packaging fees, on June 28, 2019 the Guilds wrote to UTA and the other Agencies
16 and other members of the ATA, demanding that they cease and desist from such
17 illegal conduct.

18 238. Following receipt of the June 28, 2019 cease and desist letters, UTA
19 and the other Agencies have continued to meet and to coordinate their negotiation
20 strategy with the Guilds through the ATA through August 1, 2019, if not beyond.

21 **Agency Threats to Lawyers**

22 239. On March 20, 2019, in light of the Agencies’ collective refusal to deal
23 with the Guilds, the WGAW, acting within its authority as the exclusive
24 representative of its writer-members, authorized lawyers, pursuant to the various
25 state bar acts of their respective jurisdictions and pursuant to relevant ethics rules,
26 to, among other things, “negotiate overscale terms and conditions of employment
27

1 for individual Writers in connection with MBA-covered employment and MBA-
2 covered options and purchases of literary material.”

3 240. Employment contracts are, like most contracts, a mix of business (e.g.,
4 compensation and benefits) and legal terms (e.g., termination, restrictive covenants,
5 remedies for breach, dispute resolution provisions) and, accordingly, the negotiation
6 of such contracts falls squarely within the practice of law as authorized by the State
7 Bar Act. Moreover, attorneys—and not agents—are responsible for assuring that
8 the language of a final employment agreement fully, accurately, and clearly sets
9 forth essential terms of the arrangement, whether they are “business” or “legal”
10 terms.

11 241. Immediately after March 20th, however, UTA and the other Agencies
12 began threatening lawyers with legal action should they seek to represent writers in
13 negotiating employment contracts with studios. This pattern of intimidation
14 culminated in a letter sent by the ATA’s counsel to the Guilds on April 12, 2019 that
15 immediately appeared in the media, ensuring that its contents would be publicly
16 disclosed. Indeed, the April 12 letter was posted in its entirety on the *deadline.com*
17 website within minutes of being sent to the Guilds.

18 242. In the April 12 letter, the ATA asserted that California’s Talent Agency
19 Act, Cal. Labor Code §1700 *et seq.*, would be violated if talent managers or attorneys
20 procured employment or negotiated the terms of that employment for Guild
21 members, and threatened to sue any lawyer who undertook such activities.

22 **FIRST CLAIM FOR RELIEF**

23 ***Per Se* Price Fixing in Violation of the Sherman Act, 15 U.S.C. §1**
24 **(brought by Barbara Hall and Deirdre Mangan on their own behalf, and by**
25 **the Guilds on their own behalf and on behalf of their members, against UTA)**

26 243. Counterclaimants re-allege and incorporate by reference the allegations
27 set forth paragraphs 1-242.

1 256. Counterclaimants the Guilds and their members, including Hall and
 2 Mangan, have suffered and will continue to suffer injury as a direct result of UTA
 3 and its co-conspirators' illegal conspiracy by way of lower compensation and
 4 valuable lost opportunities for their creative television writing services.

5 257. The alleged contract, combination or conspiracy is a per se violation of
 6 the federal antitrust laws.

7 258. Pursuant to Section 16 of the Clayton Act, 15 U.S.C. §26,
 8 Counterclaimants Hall and Mangan, on their own behalf, and Counterclaimants the
 9 Guilds, on their own behalf of and on behalf of their members, are entitled to the
 10 issuance of an injunction against UTA, preventing and restraining the violations
 11 alleged herein.

12 259. Counterclaimants are also entitled to treble damages, as well as their
 13 attorney's fees and costs. 15 U.S.C. §§15(a), 26.

14 **SECOND CLAIM FOR RELIEF**

15 ***Per Se Group Boycott in Violation of the Sherman Act, 15 U.S.C. §1***
 16 **(brought by Barbara Hall and Deirdre Mangan on their own behalf, and by**
 17 **the Guilds on their own behalf and on behalf of their members, against UTA)**

18 260. Counterclaimants re-allege and incorporate by reference the allegations
 19 set forth in paragraphs 1-259.

20 261. UTA and the other Agencies and their unnamed co-conspirators entered
 21 into and engaged in a contract, combination, or conspiracy in unreasonable restraint
 22 of trade in violation of Section 1 of the Sherman Act (15 U.S.C. §1) by artificially
 23 reducing or eliminating competition in the United States. UTA and the other
 24 Agencies and their unnamed co-conspirators are engaged in, and their conduct
 25 substantially affects, interstate commerce. The production of audiovisual
 26 entertainment and scripted entertainment for television and video distribution is in,
 27 or affects, interstate commerce and the packaging of talent therefore is in, or affects,

1 such commerce. The procurement of literary talent for such productions is in or
2 affects such commerce.

3 262. Independent economic actors—including UTA and each of the other
4 Agencies CAA, ICM, and WME—may not collude on the prices they would accept
5 for their services or otherwise engage in concerted anticompetitive action in the
6 marketplace. *See, e.g., FTC v. Super. Ct. Trial Lawyers Ass’n*, 493 U.S. 411, 422
7 (1990). Specifically, collective bargaining by non-labor organizations over the price
8 of a service is per se illegal under section 1 of the Sherman Act. *See, e.g., Nat’l*
9 *Soc’y of Prof’l Engs. v. United States*, 435 U.S. 679, 692–93 (1978). Likewise, non-
10 labor organizations may not agree to engage in horizontal group boycotts of
11 suppliers, customers, or others. *See, e.g., Fashion Originators’ Guild of Am., Inc. v.*
12 *FTC*, 312 U.S. 457 (1941).

13 263. For the purpose of formulating and effectuating their contract,
14 combination, or conspiracy, UTA and the other Agencies and their co-conspirators
15 did those things they contracted, combined, or conspired to do, including by:

- 16 (a) Collectively discussing and agreeing on common stances to take with
17 the Guilds after the Guilds had revoked their consent to collective
18 negotiation with the agencies;
- 19 (b) Collectively taking common stances with the Guilds after the Guilds
20 had revoked their consent to collective negotiation with the agencies;
- 21 (c) Collectively refusing to negotiate with the Guilds on an individual
22 rather than collective basis.
- 23 (d) Collectively threatening lawyers with baseless litigation and other
24 retaliatory actions if they represented their former clients in negotiating
25 employment contracts with studios;
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1 (e) Agreeing to blacklist any agency that agreed to the Guilds' Code of
2 Conduct, thereby harming the Guilds' members who are represented by
3 those agencies.

4 264. These contracts, combinations, agreements, or conspiracies
5 substantially affected, and continue to affect, interstate commerce.

6 265. Counterclaim Defendant UTA and the other Agencies CAA, ICM, and
7 WME are direct horizontal competitors. The ATA is a trade association comprised
8 of competing sellers of agency services, including Counterclaim Defendant UTA
9 and the other Agencies CAA, ICM, and WME.

10 266. No exemptions apply to the anticompetitive conduct alleged herein.

11 267. The conduct of UTA and the other Agencies and their co-conspirators
12 was a substantial factor in causing harm to Counterclaimants the Guilds and their
13 members, including Hall and Mangan.

14 268. As a direct and proximate result of the Agencies' collusion, the Guilds
15 have been, and continue to be, deprived of competition among individual agencies
16 regarding negotiation of new franchise agreements. Moreover, as a direct and
17 proximate result of the Agencies' collusive scheme not to deal individually with the
18 Guilds and to continue to discuss and agree to common negotiating positions, the
19 Guilds' members have had, and will continue to have, an artificially reduced choice
20 of agents and agencies to represent them.

21 269. As a direct and proximate result of the Agencies' collusion, the Guilds'
22 members have had, and will continue to have, an artificially reduced choice of legal
23 counsel to represent them in connection with the negotiation of employment
24 contracts.

25 270. As a direct and proximate result of the Agencies' collusion, the Guilds'
26 members have had, and will continue to have, an artificially reduced choice of
27 employment opportunities.

1 271. These contracts, combinations, agreements, or conspiracies have
2 caused substantial anticompetitive effects.

3 272. Counterclaimants the Guilds and their members, including Hall and
4 Mangan, have suffered antitrust injury due to UTA's illegal conspiracy.

5 273. Pursuant to Section 16 of the Clayton Act, 15 U.S.C. §26,
6 Counterclaimants Hall and Mangan, on their own behalf, and Counterclaimants the
7 Guilds, on their own behalf of and on behalf of their members, are entitled to the
8 issuance of an injunction against UTA, preventing and restraining the violations
9 alleged herein.

10 274. Counterclaimants are also entitled to treble damages, as well as their
11 attorney's fees and costs. 15 U.S.C. §§15(a), 26.

12 **THIRD CLAIM FOR RELIEF**

13 ***Per Se Price-Fixing in Violation of the Cartwright Act,***

14 ***Cal. Bus. & Prof. Code §16700 et seq.***

15 **(brought by Barbara Hall and Deirdre Mangan on their own behalf, and by**
16 **the Guilds on their own behalf and on behalf of their members, against UTA)**

17 275. Counterclaimants re-allege and incorporate by reference the allegations
18 set forth in paragraphs 1-274.

19 276. UTA and the other Agencies and their unnamed co-conspirators entered
20 into and engaged in a contract, combination, trust, or conspiracy in unreasonable
21 restraint of trade in violation of the Cartwright Act, California Business and
22 Professions Code §16700 *et seq.*, by artificially reducing or eliminating competition
23 in California and the United States.

24 277. UTA's and the other Agencies' contract, combination, trust or
25 conspiracy was entered into, carried out, effectuated and perfected mainly within the
26 State of California, and UTA's conduct within California injured Counterclaimants
27

1 the Guilds' members, including Hall and Mangan, within California and throughout
2 the United States.

3 278. Well before 2015 and continuing through to the present, the exact
4 starting date being unknown to Counterclaimants and exclusively within the
5 knowledge of UTA and its unnamed conspirators, UTA and the other Agencies and
6 their co-conspirators entered into a continuing contract, combination trust, or
7 conspiracy to unreasonably restrain trade in violation of the Cartwright Act. UTA
8 has acted in violation of §16700 to fix, raise, stabilize and maintain the prices of
9 agency services and to control access to writers' services.

10 279. These violations of the Cartwright Act, without limitation, constitute a
11 continuing unlawful trust and concert of action among UTA and the other Agencies
12 and their co-conspirators, the substantial terms of which were to fix, raise, maintain,
13 and stabilize the prices of agency services and to control access to writers' services.
14 The sale of agency services to studios and writers are inextricably intertwined.

15 280. As a result of UTA and the other Agencies and their co-conspirators'
16 unlawful conduct, prices for agency services were raised, fixed, maintained and
17 stabilized in the State of California and the ability of writers to sell their services has
18 been suppressed.

19 281. For the purpose of formulating and effectuating their contract,
20 combination, or conspiracy, UTA and the other Agencies and their co-conspirators
21 did those things they contracted, combined, or conspired to do, including:

- 22 (a) exchanging information on the structure and amount of packaging fees;
- 23 (b) agreeing to the structure of packaging fees and to negotiate with studios
24 from a common "3-3-10" starting point;
- 25 (c) negotiating with studios from a common "3-3-10" starting point;
- 26 (d) agreeing to a standard range for the base license fee applicable to the
27 upfront 3% package fee;

- 1 (e) utilizing the standard range for the base license fee applicable to upfront
2 3% package fees charged to studios; and
3 (f) selling agency services in California and throughout the United States
4 at non-competitive prices.

5 282. Counterclaim Defendant UTA and the three other Agencies CAA,
6 ICM, and WME are direct horizontal competitors. The ATA is a trade association
7 comprised of competing sellers of agency services, including Counterclaim
8 Defendant UTA and the other three Agencies CAA, ICM, and WME.

9 283. No exemptions apply to the anticompetitive conduct alleged herein.

10 284. The conduct of UTA and the other Agencies and their co-conspirators
11 was a direct, proximate and substantial factor in causing harm to Counterclaimants.

12 285. These contracts, combinations, agreements, or conspiracies have
13 caused substantial anticompetitive effects.

14 286. Counterclaimants have suffered antitrust injury due to the illegal
15 conspiracy.

16 287. As a result of the UTA's unlawful conduct, Counterclaimants the
17 Guilds have been injured in their business and property in that they have received
18 less in dues payments than they otherwise would have received in the absence of
19 UTA's unlawful conduct.

20 288. As a direct and proximate result of the UTA's unlawful conduct,
21 Counterclaimants the Guilds' members, including Hall and Mangan, have suffered
22 and will continue to suffer injury as a direct result of the UTA's and the other
23 Agencies' and their co-conspirators' illegal conspiracy by way of lower
24 compensation and valuable lost opportunities for their creative television writing
25 services.

26 289. The alleged contract, combination or conspiracy is a *per se* violation of
27 the Cartwright Act.

1 422 (1990). They also may not agree to engage in horizontal group boycotts of
2 suppliers, customers, or others. *See, e.g., Fashion Originators' Guild of Am., Inc. v.*
3 *FTC*, 312 U.S. 457 (1941). Specifically, collective bargaining by non-labor
4 organizations over the price of a service, and collective refusals to deal with
5 particular suppliers, customers, or others, are per se illegal under California law.
6 *See, e.g., Oakland-Alameda County Builders' Exch. v. F. P. Lathrop Constr. Co.*, 4
7 Cal.3d 354, 365 (1971).

8 296. For the purpose of formulating and effectuating their contract,
9 combination, or conspiracy, UTA and the other Agencies and their co-conspirators
10 did those things they contracted, combined, or conspired to do, including by:

- 11 (a) Collectively discussing and agreeing on common stances to take with
12 the Guilds after the Guilds had revoked their consent to collective
13 negotiation with the agencies;
- 14 (b) Collectively taking common stances with the Guilds after the Guilds
15 had revoked their consent to collective negotiation with the agencies;
- 16 (c) Collectively refusing to engage in individual rather than collective
17 negotiations with the Guilds.
- 18 (d) Collectively threatening lawyers with baseless litigation and other
19 retaliatory actions if they represented their former clients in negotiating
20 employment contracts with studios;
- 21 (e) Agreeing to blacklist any agency that agreed to the Guilds' Code of
22 Conduct, thereby harming the Guilds' members who are represented by
23 those agencies.

24 297. These contracts, combinations, agreements, or conspiracies
25 substantially affected, and continue to affect, commerce within California and
26 throughout the United States.

1 306. Counterclaimants the Guilds, on their own behalf and on behalf of their
2 members, and Counterclaimants Hall and Mangan are entitled to an injunction
3 against UTA, preventing and restraining the violations alleged herein, and an award
4 of attorney's fees and costs. Cal. Bus & Prof. Code §16750(a).

5 307. Counterclaimants are also entitled to treble damages and an award of
6 attorney's fees and costs. Cal. Bus & Prof. Code §16750(a).

7 **FIFTH CLAIM FOR RELIEF**

8 **Breach of Fiduciary Duty**

9 **(brought by Barbara Hall and Deirdre Mangan on their own own behalf, and**
10 **by the Guilds on behalf of their members, against Counterclaim Defendant**
11 **UTA)**

12 308. Counterclaimants re-allege and incorporate by reference the allegations
13 set forth in paragraphs 1-307.

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

17 310. At all times relevant to the Complaint, UTA owed fiduciary duties to
18 Hall and Mangan, and to all members of the Guilds represented by UTA.

19 311. UTA willfully breached its fiduciary duty to Barbara Hall, Deirdre
20 Mangan, and other members of the Guilds represented by UTA by placing its own
21 interests, including but not limited to its interests in packaging fees, above those of
22 its clients Hall, Mangan, and other members of the Guilds, and by increasing its own
23 profits, including but not limited to profits generated by packaging fees, at the
24 expense of Hall, Mangan, and other members of the Guilds, which also constituted
25 a breach of the duty of loyalty.

26 312. Instances in which UTA put its own interests above those of clients to
27 whom it owed a fiduciary duty and a duty of loyalty included, but are not limited to,

1 UTA's entrance into packaging fee agreements pursuant to which UTA's packaging
2 fee increased with a corresponding reduction in the payment received by its clients
3 and decreased with a corresponding increase in the payment received by its clients;
4 UTA's entrance into packaging fee agreements pursuant to which UTA's packaging
5 fee necessarily decreased the funding available for its clients to use in producing the
6 programs for which UTA received a packaging fee; UTA's pursuit of negotiating
7 strategies and entrance into agreements designed to maximize its packaging fee at
8 the expense of its clients' economic and creative interests; UTA's negotiation of
9 more favorable profit definitions for itself than for its clients; UTA's refusal to
10 approve its clients' agreements with studios to work on particular projects absent a
11 packaging fee agreement that benefitted UTA at its clients' expense; UTA's steering
12 of its clients to projects in which it could claim a packaging fee, depriving them of
13 employment opportunities and greater compensation; and UTA's failure to pursue
14 the highest possible compensation for its clients, or to pursue compensation already
15 owed to its clients, where doing so would compromise UTA's own interest in future
16 packaging fees.

17 313. UTA further willfully breached its fiduciary duty to Hall, Mangan, and
18 other members of the Guilds by proceeding with the representation under numerous
19 conflicts of interest without obtaining valid, informed consent to those conflicts of
20 interest from Hall, Mangan or from other members of the Guilds. In particular, UTA
21 failed to disclose the material terms of its packaging fee agreements with particular
22 studios regarding particular programs—including all economic terms of those
23 agreements—before representing its writer clients in connection with those
24 programs, and has deliberately concealed from its clients either the existence of the
25 packaging fee agreement, the terms of the agreement, and/or the conflict of interest
26 created by the agreement.

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

16 (a) Concealing the existence of and/or the terms of UTA's packaging fee
17 agreements and the fact that packaging fees are an inherent conflict of interest;

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

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

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

26 (e) Concealing the fact that UTA intentionally failed to pitch its clients
27 Hall's and other members of the Guilds' work to production companies that would

1 pay the writers the most, and instead, pitched Hall’s and other members of the
2 Guilds’ work to those production companies that UTA believed would pay the
3 largest packaging fee;

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

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

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

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

22 (j) Concealing the fact that UTA has, in some instances, intentionally and
23 actively suppressed the wages of their own writer-clients Hall, Mangan, and other
24 members of the Guilds represented by UTA in order to secure more lucrative
25 “packaging fees” for itself; and

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

4 320. The Guilds’ members, including Hall and Mangan, justifiably expect
5 their agents to loyally represent their interests, in accordance with California agency
6 law principles. The Guilds’ members represented by UTA, including Hall and
7 Mangan, have justifiably relied, to their detriment, on UTA’s misleading
8 concealment of the above facts.

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

12 322. As a result of UTA’s commissions of constructive fraud under Civil
13 Code §1573, the Guilds’ members suffered significant harm, including but not
14 limited to lost wages, lost employment opportunities, and other economic losses.

15 323. Counterclaimants are informed and believe that UTA committed the
16 aforementioned violations of Civil Code §1573 maliciously and oppressively, with
17 the wrongful intention of injuring Counterclaimants, from an improper and evil
18 motive amounting to malice, and in conscious disregard of Counterclaimants’ rights.
19 Hall and Mangan are therefore entitled to recover punitive damages from UTA in an
20 amount according to proof.

21 **SEVENTH CLAIM FOR RELIEF**

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

23 **(brought by Barbara Hall and Deirdre Mangan on their own behalf, and by**
24 **the Guilds on their own behalf, against UTA)**

25 324. Counterclaimants re-allege and incorporate by reference the allegations
26 set forth in paragraphs 1-323.

1 325. California’s Unfair Competition Law, Cal. Bus. & Prof. Code §17200
2 *et seq.* (“UCL”), prohibits “unlawful, unfair or fraudulent business act[s].”

3 326. The Agencies’ packaging practice violates the UCL in four respects.

4 327. First, packaging fees are an “unlawful” or “unfair” practice because
5 they constitute a breach of the Agencies’ fiduciary duty to their clients.

6 328. Second, packaging fees are an “unlawful” or “unfair” practice because
7 they constitute constructive fraud under Civil Code §1573.

8 329. Third, packaging fees are an “unfair” practice because they deprive
9 writers of loyal, conflict-free representation; divert compensation away from the
10 writers and other creative talent that are responsible for creating valuable television
11 and film properties; and undermine the market for writers’ creative endeavors.

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

16 331. Subsection (a) of LMRA Section 302 makes it unlawful for “any
17 employer or association of employers ... or who acts in the interest of an employer
18 to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of
19 value ... to *any representative of any of his employees* who are employed in an
20 industry affecting commerce.” 29 U.S.C. §186(a) (emphasis added). The same
21 section makes it unlawful for “any person to request, demand, receive, or accept, or
22 agree to receive or accept, any payment, loan, or delivery of any money or other
23 things of value prohibited by subsection (a).” *Id.* §186(b).

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

1 333. The production companies that produce the television shows and films
2 on which Hall, Mangan, and other Guild-member writers work are employers for the
3 purposes of LMRA Section 302.

4 334. UTA is a representative of the production companies' employees for
5 the purposes of LMRA Section 302. Indeed, the very reason UTA is retained by
6 writers is to represent those writers in procuring employment opportunities and
7 negotiating wages in excess of the minimums established by the MBA. Any agent
8 representing a writer in negotiations with a production company is exercising
9 authority delegated to the agent by the Guilds under the MBA (which otherwise have
10 the exclusive right pursuant to the MBA to negotiate on behalf of the represented
11 employees).

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

17 336. Hall, Mangan, and the Guilds have lost money or property as a result
18 of UTA's packaging fee practices. As noted above, Hall and Mangan have been
19 required to spend money to retain other professionals to provide services their agents
20 should have been providing; have seen their compensation reduced by virtue of
21 packaging fees; and have been denied employment opportunities because of the
22 misalignment of incentives that results from UTA's packaging fee practices, as
23 alleged in greater detail above. The Guilds have been required to expend their own
24 resources monitoring UTA's packaging fees, educating members about UTA's
25 packaging fee abuses, preparing a comprehensive campaign to address those abuses
26 and end packaging fees, and enforcing their members' contractual rights after UTA
27 failed to do so. The Guilds have also lost dues revenue due to packaging fees.

1 337. As a result of UTA’s unlawful and unfair business practices,
2 Counterclaimants are entitled to injunctive relief and disgorgement of agency
3 profits, and Hall and Mangan are entitled to restitution. Cal. Bus. & Prof. Code
4 §17203.

5 **EIGHTH CLAIM FOR RELIEF**

6 **Investment of Racketeering Income, 18 U.S.C. §1962(a)**
7 **(brought by Barbara Hall and Deirdre Mangan on their own behalf, and by**
8 **the Guilds on their own behalf, against UTA)**

9 338. Counterclaimants re-allege and incorporate by reference the allegations
10 set forth in paragraphs 1-337.

11 339. The RICO Act, 18 U.S.C. §1962(a), makes it “unlawful for any person
12 who has received any income derived, directly or indirectly, from a pattern of
13 racketeering activity ... , to use or invest, directly or indirectly, any part of such
14 income, or the proceeds of such income, in acquisition of any interest in, or the
15 establishment or operation of, any enterprise which is engaged in, or the activities of
16 which affect, interstate or foreign commerce.”

17 340. The RICO Act defines “racketeering activity” to include “any act which
18 is indictable under title 29, United States Code, section 186 (dealing with restrictions
19 on payments and loans to labor organizations).” 18 U.S.C. §1961(1)(C).
20 Accordingly, violations of the anti-kickback provisions of the LMRA, i.e. Section
21 302, 29 U.S.C. §186(a) and (b), constitute racketeering activity under the RICO Act.

22 341. UTA is a “person” within the meaning of the RICO Act. 18 U.S.C.
23 §1962(a); *see also id.* §1961(3) (“‘person’ includes any individual or entity capable
24 of holding a legal or beneficial interest in property”).

25 342. UTA is also an “enterprise which is engaged in, or the activities of
26 which affect, interstate or foreign commerce” within the meaning of the RICO Act.
27 18 U.S.C. §1962(a); *see also id.* §1961(4) (“‘enterprise’ includes any individual,
28

1 partnership, corporation, association, or other legal entity, and any union or group
2 of individuals associated in fact although not a legal entity”).

3 343. UTA has engaged in a pattern of racketeering activity within the
4 meaning of 18 U.S.C. §1962(a)—namely, its repeated violations of LMRA Section
5 302 in the form of receiving packaging fees from its writer-clients’ employers, the
6 production companies. *See* 29 U.S.C. §186(a), (b). Every time UTA receives any
7 sum of money directly from a production company as part of a package agreement,
8 that payment violates LMRA Section 302. *See id.* UTA has received multiple
9 unlawful payments from the production companies on each show or film packaged
10 by UTA, resulting in hundreds, if not thousands, of separate LMRA Section 302
11 violations over the last ten years. *See* 18 U.S.C. §1961(5). The pattern of
12 racketeering activity directly benefits UTA, as the unlawful payments are a major
13 source of UTA’s income.

14 344. UTA has invested the income or proceeds of its pattern of racketeering
15 activity—namely, the unlawful packaging fees—back into the operation of UTA, in
16 violation of 18 U.S.C. §1962(a).

17 345. In the alternative, UTA and each of the production companies with
18 which UTA deals are groups of persons associated together for the common purpose
19 of engaging in a continuing course of conduct—namely, packaging television and
20 film productions, and paying unlawful packaging fees from the production company
21 to the studio. The association of UTA and each production company is therefore an
22 “enterprise engaged in, or the activities of which affect, interstate or foreign
23 commerce” within the meaning of the RICO Act. 18 U.S.C. §1962(c); *see also id.*
24 §1961(4) (“‘enterprise’ includes any individual, partnership, corporation,
25 association, or other legal entity, and any union or group of individuals associated
26 in fact although not a legal entity”).

1 346. In addition and in the alternative, UTA’s in-house production
2 companies are “enterprise[s] engaged in, or the activities of which affect, interstate
3 or foreign commerce” within the meaning of the RICO Act. 18 U.S.C. §1962(c);
4 *see also id.* §1961(4) (“‘enterprise’ includes any individual, partnership, corporation,
5 association, or other legal entity, and any union or group of individuals associated
6 in fact although not a legal entity”).

7 347. UTA has used the income or proceeds of its pattern of racketeering
8 activity—namely, the unlawful packaging fees—in the acquisition of UTA’s interest
9 in or the establishment or operation of the association-in-fact enterprises described
10 above in paragraph 345, in violation of 18 U.S.C. §1962(a). UTA receives
11 substantial income from packaging fees; UTA necessarily uses those same resources
12 when coordinating its activities with the production companies, such that UTA has
13 either directly or indirectly used the proceeds of its pattern of racketeering activity
14 to obtain an interest in or to establish or operate a RICO enterprise in violation of
15 §1962(a).

16 348. UTA has used the income or proceeds of its pattern of racketeering
17 activity—namely, the unlawful packaging fees—in the acquisition of UTA’s interest
18 in or in the establishment or operation of the production companies described above
19 in paragraph 346, in violation of 18 U.S.C. §1962(a). UTA receives substantial
20 income from packaging fees; UTA necessarily uses those same resources in funding
21 its own in-house production company enterprises, such that UTA has either directly
22 or indirectly used the proceeds of its pattern of racketeering activity to obtain an
23 interest in or to establish or operate a RICO enterprise in violation of §1962(a).

24 349. Each of the above enterprises exists separate and apart from the pattern
25 of racketeering activity alleged herein.

26 350. 18 U.S.C. § 1964(c) provides a private cause of action to “[a]ny person
27 injured in his business or property by reason of a violation of” the RICO Act.

1 351. Under any of the above alternative theories, Hall, Mangan, and the
2 Guilds have lost money or property as a result of UTA's violations of §1962(a)
3 within the meaning of 18 U.S.C. §1964(c). UTA's pattern of racketeering activity
4 (i.e. its receipt of packaging fees) has allowed it and the other Agencies to dominate
5 the marketplace for agent's services, thereby harming the Guilds' members,
6 including Hall and Mangan, by denying them conflict-free representation and
7 lowering their income. In addition, as noted above, Hall and Mangan have been
8 required to spend money to retain other professionals to provide services their agents
9 should have been providing; have seen their compensation reduced by virtue of
10 packaging fees; and have been denied employment opportunities because of the
11 misalignment of incentives that results from UTA's packaging fee practices,
12 including UTA's reinvestment of packaging fees in its operations and/or in its
13 acquisition of an interest in or establishment or operation of any of the above
14 alternative RICO enterprises, as alleged in more detail above. The Guilds have been
15 required to expend their own resources monitoring UTA's packaging fees, educating
16 members about UTA's packaging fee abuses, preparing a comprehensive campaign
17 to address those abuses and end packaging fees, and enforcing their members'
18 contractual rights after UTA failed to do so. The Guilds have also lost dues revenue
19 due to packaging fees and their reinvestment in UTA or in the alternative RICO
20 enterprises, which permits the racketeering activity to continue.

21 352. As a result of UTA's violations of §1962(a), Counterclaimants are
22 entitled to injunctive relief, including but not limited to an order requiring the
23 dissolution or reorganization of UTA. 18 U.S.C. § 1964(a).

24 353. As a result of UTA's RICO violations, Counterclaimants are also
25 entitled to treble damages, as well as attorney's fees and costs. 18 U.S.C. § 1964(c).

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NINTH CLAIM FOR RELIEF

**Maintenance of Racketeering Enterprise, 18 U.S.C. §1962(b)
(brought by Barbara Hall and Deirdre Mangan on their own behalf, and by
the Guilds on their own behalf, against UTA)**

354. Counterclaimants re-allege and incorporate by reference the allegations set forth in paragraphs 1-353.

355. The RICO Act, 18 U.S.C. §1962(b), makes it “unlawful for any person through a pattern of racketeering activity ... to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.”

356. The RICO Act defines “racketeering activity” to include “any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations).” 18 U.S.C. §1961(1)(C). Accordingly, violations of the anti-kickback provisions of the LMRA, i.e. Section 302, 29 U.S.C. §186(a) and (b), constitute racketeering activity under the RICO Act.

357. UTA is a “person” within the meaning of the RICO Act. 18 U.S.C. §1962(a); *see also id.* §1961(3) (“‘person’ includes any individual or entity capable of holding a legal or beneficial interest in property”).

358. UTA is an “enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce” within the meaning of the RICO Act. 18 U.S.C. §1962(b); *see also id.* §1961(4) (“‘enterprise’ includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity”).

359. UTA has engaged in a pattern of racketeering activity within the meaning of 18 U.S.C. §1962(a)—namely, its repeated violations of LMRA Section 302 in the form of receiving packaging fees from its writer-clients’ employers, the production companies. *See* 29 U.S.C. §186(a), (b). Every time UTA receives any

1 sum of money directly from a production company as part of a package agreement,
2 that payment violates LMRA Section 302. *See id.* UTA has received multiple
3 unlawful payments from the production companies on each show or film packaged
4 by UTA, resulting in hundreds, if not thousands, of separate LMRA Section 302
5 violations over the last ten years. *See* 18 U.S.C. §1961(5). The pattern of
6 racketeering activity directly benefits UTA, as the unlawful payments are a major
7 source of UTA’s income.

8 360. UTA is a “person” that, “through a pattern of racketeering activity”—
9 i.e. through UTA’s repeated violations of LMRA Section 302—has “acquire[d] or
10 maintain[ed], directly or indirectly, any interest in or control of” UTA, in violation
11 of §1962(b). Specifically, UTA’s pattern of racketeering activity—i.e. its repeated
12 receipt of packaging fees—is directly linked to its maintenance of control over its
13 business, as packaging fees have indeed become a major part of UTA’s business
14 model. UTA’s packaging fee practices are maintained and directed from the very
15 top of the organization.

16 361. In the alternative, UTA and each of the production companies with
17 which UTA deals are groups of persons associated together for the common purpose
18 of engaging in a continuing course of conduct—namely, packaging television and
19 film productions, and paying unlawful packaging fees from the production company
20 to the studio. The association of UTA and each production company is therefore an
21 “enterprise engaged in, or the activities of which affect, interstate or foreign
22 commerce” within the meaning of the RICO Act. 18 U.S.C. §1962(b); *see also id.*
23 §1961(4) (“‘enterprise’ includes any individual, partnership, corporation,
24 association, or other legal entity, and any union or group of individuals associated
25 in fact although not a legal entity”).

26 362. In addition and in the alternative, UTA’s in-house production
27 companies are “enterprise[s] engaged in, or the activities of which affect, interstate
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1 or foreign commerce” within the meaning of the RICO Act. 18 U.S.C. §1962(b);
2 *see also id.* §1961(4) (“‘enterprise’ includes any individual, partnership, corporation,
3 association, or other legal entity, and any union or group of individuals associated
4 in fact although not a legal entity”).

5 363. Accordingly, UTA is a “person” that, “through a pattern of racketeering
6 activity”—i.e. through UTA’s repeated violations of LMRA Section 302—has
7 “acquire[d] or maintain[ed], directly or indirectly, any interest in or control of” the
8 associated-in-fact enterprises described above in paragraph 361, in violation of
9 §1962(b). Specifically, UTA’s pattern of racketeering activity—i.e. its repeated
10 receipt of packaging fees—is directly linked to its interest in or control of the
11 associated-in-fact enterprises, as UTA’s past packaging fees are used to fund its
12 continued packaging fee practices, and are the very purpose of UTA’s participation
13 in the associated-in-fact enterprises.

14 364. In addition, UTA is a “person” that, “through a pattern of racketeering
15 activity”—i.e. through UTA’s repeated violations of LMRA Section 302—has
16 “acquire[d] or maintain[ed], directly or indirectly, any interest in or control of” the
17 in-house production company enterprises described above in paragraph 362, in
18 violation of §1962(b). Specifically, UTA’s pattern of racketeering activity—i.e. its
19 repeated receipt of packaging fees—is directly linked to its interest in or control of
20 the in-house production company enterprises, as UTA’s past packaging fees are used
21 to fund its new forays into production via these enterprises.

22 365. Each of the above enterprises exists separate and apart from the pattern
23 of racketeering activity alleged herein.

24 366. 18 U.S.C. § 1964(c) provides a private cause of action to “[a]ny person
25 injured in his business or property by reason of a violation of” the RICO Act.

26 367. Hall, Mangan, and the Guilds have lost money or property as a result
27 of UTA’s violations of §1962(b) within the meaning of 18 U.S.C. §1964(c). UTA’s

1 pattern of racketeering activity (i.e. its receipt of packaging fees) has allowed it and
2 the other Agencies to dominate the marketplace for agent's services, thereby
3 harming the Guilds' members, including Hall and Mangan, by denying them
4 conflict-free representation and lowering their income. In addition, as noted above,
5 Hall and Mangan have been required to spend money to retain other professionals
6 to provide services their agents should have been providing; have seen their
7 compensation reduced by virtue of packaging fees; and have been denied
8 employment opportunities because of the misalignment of incentives that results
9 from UTA's control of its business to continue its unlawful packaging fee practices,
10 as alleged in more detail above. The Guilds have been required to expend their own
11 resources monitoring UTA's control of its business to continue its unlawful
12 packaging fee practices, educating members about UTA's packaging fee abuses,
13 preparing a comprehensive campaign to address those abuses and end packaging
14 fees, and enforcing their members' contractual rights after UTA failed to do so. The
15 Guilds have also lost dues revenue due to UTA's control of its business to continue
16 its unlawful practice of receiving packaging fees.

17 368. As a result of UTA's violations of §1962(b), Counterclaimants are
18 entitled to injunctive relief, including but not limited to an order requiring the
19 dissolution or reorganization of UTA. 18 U.S.C. § 1964(a).

20 369. As a result of UTA's RICO violations, Counterclaimants are also
21 entitled to treble damages, as well as attorney's fees and costs. 18 U.S.C. § 1964(c).

22 **TENTH CLAIM FOR RELIEF**

23 **Control of Racketeering Enterprise, 18 U.S.C. §1962(c)**
24 **(brought by Barbara Hall and Deirdre Mangan on their own behalf, and by**
25 **the Guilds on their own behalf, against UTA)**

26 370. Counterclaimants re-allege and incorporate by reference the allegations
27 set forth in paragraphs 1-369.

1 371. Section 1962(c) makes it “unlawful for any person employed by or
2 associated with any enterprise engaged in, or the activities of which affect, interstate
3 or foreign commerce, to conduct or participate, directly or indirectly, in the conduct
4 of such enterprise’s affairs through a pattern of racketeering activity.”

5 372. UTA is a “person” within the meaning of the RICO Act. 18 U.S.C.
6 §1962(a); *see also id.* §1961(3) (“‘person’ includes any individual or entity capable
7 of holding a legal or beneficial interest in property”).

8 373. UTA and each of the production companies with which UTA deals are
9 groups of persons associated together for the common purpose of engaging in a
10 continuing course of conduct—namely, packaging television and film productions,
11 and paying unlawful packaging fees from the production company to the studio. The
12 association of UTA and each production company is therefore an “enterprise
13 engaged in, or the activities of which affect, interstate or foreign commerce” within
14 the meaning of the RICO Act. 18 U.S.C. §1962(c); *see also id.* §1961(4)
15 (“‘enterprise’ includes any individual, partnership, corporation, association, or other
16 legal entity, and any union or group of individuals associated in fact although not a
17 legal entity”).

18 374. In addition, UTA’s in-house production companies are “enterprise[s]
19 engaged in, or the activities of which affect, interstate or foreign commerce” within
20 the meaning of the RICO Act. 18 U.S.C. §1962(b); *see also id.* §1961(4)
21 (“‘enterprise’ includes any individual, partnership, corporation, association, or other
22 legal entity, and any union or group of individuals associated in fact although not a
23 legal entity”).

24 375. UTA is a “person” that is “associated” with the enterprises described
25 above in paragraphs 373 through 374 and that has “conduct[ed] or participate[d] in
26 the conduct of such enterprise[s]’[] affairs through a pattern of racketeering
27 activity”—i.e. through UTA’s repeated violations of LMRA Section 302—in

1 violation of §1962(c). Specifically, UTA’s pattern of racketeering activity—the
2 payment by production companies of packaging fees to UTA—is one of the primary
3 purposes of the association in fact between UTA and the production companies, i.e.
4 the enterprises described in paragraph 373. Likewise, UTA’s pattern of racketeering
5 activity—the payment by production companies of packaging fees to UTA—funds
6 UTA’s investments in its own in-house production companies, i.e. the enterprises
7 described in paragraph 374.

8 376. Each of the above enterprises exists separate and apart from the pattern
9 of racketeering activity alleged herein.

10 377. 18 U.S.C. § 1964(c) provides a private cause of action to “[a]ny person
11 injured in his business or property by reason of a violation of” the RICO Act.

12 378. Hall, Mangan, and the Guilds have lost money or property as a result
13 of UTA’s violations of §1962(c) within the meaning of 18 U.S.C. §1964(c). UTA’s
14 pattern of racketeering activity (i.e. its receipt of packaging fees) has allowed it and
15 the other Agencies to dominate the marketplace for agent’s services, thereby
16 harming the Guilds’ members, including Hall and Mangan, by denying them
17 conflict-free representation and lowering their income. In addition, as noted above,
18 Hall and Mangan have been required to spend money to retain other professionals
19 to provide services their agents should have been providing; have seen their
20 compensation reduced by virtue of packaging fees; and have been denied
21 employment opportunities because of the misalignment of incentives that results
22 from UTA’s packaging fee practices, as alleged in more detail above. The Guilds
23 have been required to expend their own resources monitoring UTA’s packaging fee
24 practices, educating members about UTA’s packaging fee abuses, preparing a
25 comprehensive campaign to address those abuses and end packaging fees, and
26 enforcing their members’ contractual rights after UTA failed to do so. The Guilds
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1 have also lost dues revenue due to UTA’s control of the above-described enterprises
2 to obtain packaging fees.

3 379. As a result of UTA’s violations of §1962(c), Counterclaimants are
4 entitled to injunctive relief, including but not limited to an order requiring the
5 dissolution or reorganization of UTA. 18 U.S.C. § 1964(a).

6 380. As a result of UTA’s RICO violations, Counterclaimants are also
7 entitled to treble damages, as well as attorney’s fees and costs. 18 U.S.C. § 1964(c).

8 **ELEVENTH CLAIM FOR RELIEF**

9 **Racketeering Conspiracy, 18 U.S.C. §1962(d)**

10 **(brought by Barbara Hall and Deirdre Mangan on their own behalf, and by**
11 **the Guilds on their own behalf, against UTA)**

12 381. Counterclaimants re-allege and incorporate by reference the allegations
13 set forth in paragraphs 1-380.

14 382. Section 1962(d) makes it “unlawful for any person to conspire to violate
15 any of the provisions” of the RICO Act, i.e., 18 U.S.C. §1961(a)-(c).

16 383. UTA is a “person” within the meaning of the RICO Act. 18 U.S.C.
17 §1962(a); *see also id.* §1961(3) (“‘person’ includes any individual or entity capable
18 of holding a legal or beneficial interest in property”).

19 384. UTA and its officers conspired to violate 18 U.S.C. §1962(a) by
20 agreeing to reinvest the proceeds of UTA’s pattern of racketeering activity—namely,
21 the receipt of packaging fees in violation of LMRA Section 302—back into the
22 operation of UTA, as described in more detail above, in violation of §1962(d). In
23 the alternative, UTA and its officers conspired to violate 18 U.S.C. §1962(a) by
24 agreeing to reinvest the proceeds of UTA’s pattern of racketeering activity—namely,
25 the receipt of packaging fees in violation of LMRA Section 302—into UTA’s
26 acquisition of an interest in and/or UTA’s control of the associated-in-fact
27 enterprises described in paragraph 345 above, and/or UTA’s acquisition of an

1 interest in and/or UTA’s control of the in-house production company enterprises
2 described in paragraph 346 above, in violation of §1962(d).

3 385. UTA and its officers also conspired to violate 18 U.S.C. §1962(b) by
4 agreeing to “acquire or maintain, directly or indirectly, any interest in or control of”
5 UTA “through a pattern of racketeering activity”—namely, the receipt of packaging
6 fees in violation of LMRA Section 302—as described in more detail above, in
7 violation of §1962(d). In the alternative, UTA and its officers conspired to violate
8 18 U.S.C. §1962(b) by agreeing to “acquire or maintain, directly or indirectly, any
9 interest in or control of” the associated-in-fact enterprises described in paragraph
10 361 above, and/or the in-house production company enterprises described in
11 paragraph 362 above, “through a pattern of racketeering activity”—namely, the
12 receipt of packaging fees in violation of LMRA Section 302—as described in more
13 detail above, in violation of §1962(d).

14 386. UTA also conspired with its officers and with the production companies
15 to violate §1964(c) by agreeing “to conduct or participate, directly or indirectly, in
16 the conduct of” the RICO enterprises described in paragraph 373 and 374 “through
17 a pattern of racketeering activity”—namely, the receipt of packaging fees in
18 violation of LMRA Section 302—as described in more detail above, in violation of
19 §1962(d).

20 387. 18 U.S.C. § 1964(c) provides a private cause of action to “[a]ny person
21 injured in his business or property by reason of a violation of” the RICO Act.

22 388. Hall, Mangan, and the Guilds have lost money or property as a result
23 of UTA’s violations of §1962(d) within the meaning of 18 U.S.C. §1964(c). As
24 noted above, Hall and Mangan have been required to spend money to retain other
25 professionals to provide services their agents should have been providing; have seen
26 their compensation reduced by virtue of packaging fees; and have been denied
27 employment opportunities because of the misalignment of incentives that results

1 from UTA’s packaging fee practices, as alleged in more detail above. The Guilds
2 have been required to expend their own resources monitoring UTA’s packaging fee
3 practices, educating members about UTA’s packaging fee abuses, preparing a
4 comprehensive campaign to address those abuses and end packaging fees, and
5 enforcing their members’ contractual rights after UTA failed to do so. The Guilds
6 have also lost dues revenue due to UTA’s conspiracies to violate the RICO Act.

7 389. As a result of UTA’s violations of §1962(c), Counterclaimants are
8 entitled to injunctive relief, including but not limited to an order requiring the
9 dissolution or reorganization of UTA. 18 U.S.C. § 1964(a).

10 390. As a result of UTA’s RICO violations, Counterclaimants are also
11 entitled to treble damages, as well as attorney’s fees and costs. 18 U.S.C. § 1964(c).

12 **TWELFTH CLAIM FOR RELIEF**

13 **Declaratory Relief, 28 U.S.C. §§2201, 2202**

14 **(brought by Barbara Hall and Deirdre Mangan on their own behalf, and by**
15 **the Guilds on their own behalf, against Counterclaim Defendant UTA)**

16 391. Counterclaimants re-allege and incorporate by reference the allegations
17 set forth in paragraphs 1-390.

18 392. The Declaratory Relief Act, 28 U.S.C. §2201 *et seq.* provides that “[i]n
19 a case of actual controversy within its jurisdiction, ... any court of the United States,
20 upon the filing of an appropriate pleading, may declare the rights and other legal
21 relations of any interested party seeking such declaration, whether or not further
22 relief is or could be sought. Any such declaration shall have the force and effect of
23 a final judgment or decree and shall be reviewable as such.” *Id.* §2201(a).

24 393. Section 2202 provides that “[f]urther necessary or proper relief based
25 on a declaratory judgment or decree may be granted, after reasonable notice and
26 hearing, against any adverse party whose rights have been determined by such
27 judgment.”

1 2. Declare that UTA’s collusive agreement not to negotiate individually
2 with the Guilds constitutes an illegal group boycott in violation of Section 1 of the
3 Sherman Act, 15 U.S.C. § 1;

4 3. Declare that UTA’s collusive agreement to blacklist writers and other
5 individuals and entities who object to packaging fees or agree to the Guilds’ Code
6 of Conduct constitutes an illegal group boycott in violation of Section 1 of the
7 Sherman Act, 15 U.S.C. § 1;

8 4. Declare that UTA’s collusive agreement to a fixed packaging fee model
9 constitutes illegal price-fixing in violation of the Cartwright Act, California Business
10 and Professions Code §16700 *et seq.*;

11 5. Declare that UTA’s collusive agreement not to negotiate individually
12 with the Guilds constitutes an illegal group boycott in violation of the Cartwright
13 Act, California Business and Professions Code §16700 *et seq.*;

14 6. Declare that UTA’s collusive agreement to blacklist writers and other
15 individuals and entities who object to packaging fees or agree to the Guild’s Code
16 of Conduct constitutes an illegal group boycott in violation of the Cartwright Act,
17 California Business and Professions Code §16700 *et seq.*;

18 7. Declare that packaging fees constitute a breach of UTA’s fiduciary duty
19 to its writer-clients;

20 8. Declare that UTA’s packaging fee practices constitute constructive
21 fraud under Civil Code §1573;

22 9. Declare that packaging fees constitute an unfair and/or unlawful
23 practice under California’s UCL because they breach UTA’s fiduciary duty to its
24 writer-clients; constitute constructive fraud under Civil Code §1573; violate LMRA
25 Section 302, 29 U.S.C. §186(a) and (b); and deprive writers of loyal, conflict-free
26 representation, divert compensation away from the writers and other creative talent
27 that are responsible for creating valuable television and film properties, and

1 undermine the market for writers' creative endeavors;

2 10. Declare, under 28 U.S.C. §2201, that packaging fees violate Section
3 302 of the Labor Management Relations Act, 29 U.S.C. §186(a) and (b);

4 11. Declare, under 28 U.S.C. §2201 and/or 18 U.S.C. §1964(a), that
5 packaging fees violate the Racketeer Influenced Corrupt Organizations Act, 18
6 U.S.C. §1962(a) (b), (c), and (d);

7 12. Enjoin UTA and its affiliates, successors, transferees, assignees,
8 parents, owners, controlling shareholders, and other officers, directors, partners,
9 agents and employees thereof, and all other persons acting or claiming to act on its
10 behalf or in concert with it, from entering into new packaging fee agreements in
11 which one or more writer-clients of UTA works as a writer, or from receiving any
12 monetary payments or other things of value from any production company that
13 employs any writer client of UTA;

14 13. Enjoin UTA and its affiliates, successors, transferees, assignees,
15 parents, owners, controlling shareholders, and other officers, directors, partners,
16 agents and employees thereof, and all other persons acting or claiming to act on its
17 behalf or in concert with it, from, in any manner, continuing, maintaining, or
18 renewing the conduct, conspiracy, or combinations alleged herein, or from entering
19 into any other conspiracy or combination having a similar purpose or effect, and
20 from adopting or following any practice, plan, program or device having a similar
21 purpose or effect, including the following:

22 (a) Entering negotiations or discussions with one or more other agencies,
23 without the Guilds' authorization, regarding (i) adherence to the Guild'
24 Code of Conduct, (ii) the signing of a franchise agreement with the Guilds,
25 (iii) non-public agreements reached with the Guild during negotiations or
26 discussion regarding the Code of Conduct or a new franchise agreement,
27 or (iv) the status or contents of any such non-public negotiations or

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discussions;

- (b) Agreeing with one or more other agencies on the terms of any proposal, edit, or negotiating position regarding the Guilds’ Code of Conduct or franchise agreement without the Guilds’ authorization to negotiate collectively, or otherwise collectively refusing to negotiate or discuss the Code of Conduct or a franchise agreement with the Guilds except on the condition that the Guilds include in those discussions one or more other agencies or their representatives;
- (c) Agreeing with one or more other agencies on the terms or conditions of any packaging agreement;
- (d) Not dealing with, or threatening not to deal with any Guild member, agency or clients of an agency, attorney, manager, production company, studio or any other person who supports a prohibition on packaging, has agreed to adhere to the Code of Conduct, or has otherwise signed a franchise agreement with the Guilds that prohibits packaging; or
- (e) Enforcing the terms of any packaging agreement or otherwise directly or indirectly receiving packaging fees from a production company or studio.

14. Enjoin UTA and its affiliates, successors, transferees, assignees, parents, owners, controlling shareholders, and other officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on its behalf or in concert with it, from, in any manner, blacklisting any writer, lawyer, agency or other individual or entity that objects to packaging fee practices, represents writers who have objected to packaging fee practices including writers who have fired their agents, enters an agency franchise agreement with the Guild, or is represented by such an agency;

1 15. Order UTA to provide an accounting of all moneys received by UTA
2 in connection with projects or programs for which Hall, Mangan, or other Guild
3 members were employed as writers;

4 16. Require UTA to pay restitution to Hall and Mangan in an amount equal
5 to the funds that would have been paid to Hall and Mangan in the absence of UTA’s
6 unlawful and unfair packaging fees;

7 17. Require UTA to disgorge all profits generated from unlawful and unfair
8 packaging fees;

9 18. Award Hall and Mangan compensatory and punitive damages based on
10 UTA’s breach of fiduciary duty;

11 19. Award Counterclaimants treble damages for UTA’s violations of
12 Section 1 of the Sherman Act, 15 U.S.C. §1;

13 20. Award Counterclaimants treble damages for UTA’s RICO violations,
14 18 U.S.C. §1964(c);

15 21. Award Counterclaimants their costs and attorneys’ fees; and

16 22. Award such further and additional relief as is just and proper.

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18 DATED: August 19, 2019

Stephen P. Berzon
Stacey Leyton
P. Casey Pitts
Rebecca C. Lee
ALTSHULER BERZON LLP

Anthony R. Segall
Juhyung Harold Lee
ROTHNER, SEGALL & GREENSTONE

W. Stephen Cannon
Ethan E. Litwin
CONSTANTINE CANNON LLP

_____/s/ Stacey Leyton
Stacey Leyton

*Attorneys for Defendants and
Counterclaimants*