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June 28, 2019

BY FED EX AND EMAIL

Mr. Ari Greenburg
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Dear Mr. Greenburg:

Our firm represents the Writers Guild of America, East and West (collectively, "**Guild**" or "**WGA**") in connection with the matters addressed below. We have reviewed the actions of the Association of Talent Agents (the "**ATA**") and its member agencies, including WME Entertainment, in connection with the ongoing negotiations regarding the code of conduct implemented by the Guild on April 13, 2019 (the "**Code of Conduct**"). Our assessment, based on our review of the facts and as summarized below, is that the ATA and its member agencies, including WME Entertainment, have engaged in collusive actions that constitute unlawful restraints of trade. *See* Sherman Act, 15 U.S.C. § 1. The Guild therefore demands that you cease and desist from this anticompetitive behavior.

In the first instance, we note in response to several recent comments made by ATA members, that the Guild is a union and its conduct is exempt from the antitrust laws by operation of the statutory and non-statutory antitrust exemptions. As the exclusive bargaining representative of its members under the labor laws, the Guild's decision to terminate the AMBA and unilaterally implement its Code of Conduct is well-within its authority under the labor laws and exempt from antitrust scrutiny.

The ATA and its member agencies enjoy no protections under the antitrust laws other than any derivative labor exemption that might apply to an agreement between the Guild and the ATA or its member agencies. The ATA is not a union and, indeed, concedes that it is involved in "a contract negotiation, [and] not a 'labor dispute' and therefore not subject to a collective bargaining process." Absent any derivative labor exemption, the ATA is simply a trade association comprised of competing sellers of agency services. In this regard, the ATA is not different from the more formal trade associations like IATA (competing sellers of air cargo services) and the BBA (competing sellers of banking services) or informal groups of competitors such as the "Heathrow Gardening Club" or the "Crystal Meetings", that have been at the center of the largest international cartel cases prosecuted over the last decade.

Not being exempt, the ATA's member agencies (and the ATA itself) are violating the antitrust laws in several ways.

First, after WGA members terminated further representation by the agencies, the ATA and its members have continued to collusively impose packaging fees on programs written by WGA-represented writers. These packaging fees have been to the benefit of the agents and to the detriment of the agents' WGA- member clients. The ATA and its member agencies enjoy no antitrust exemption for this conduct, which is a *per se* violation of the antitrust laws. *United States v. Jack Foley Real Estate Co.*, 598 F. 2d 1323 (4th Cir. 1979).

Indeed, the ATA and its members have pursued fixed-price talent packages for decades, attested to by their repeated admissions concerning "standard 3-3-10" packaging fees. It is a basic tenet of antitrust law that, where no exemption applies, otherwise competing entities may not directly or indirectly (*e.g.*, through a trade association like the ATA) agree among themselves on the price or any price-related terms for which they will sell their services. Price-fixing encompasses a broad range of agreements including agreements on a pricing formula, agreements on a starting price in negotiations with a common counterparty, or agreements on a range of prices. Thus, any agreement to follow the "standard" 3-3-10 formula or otherwise to use 3-3-10 as a starting point for negotiations is a *per se* violation of the antitrust laws. Any agreement to base the up-front 3% packaging fee, or at least to start negotiations, on an agreed "standard" range of flat fees per episode, which serves as a proxy for the "base license fee", is likewise illegal. Similarly, the agencies' agreement to share a portion of their back-end packaging fees with the Guild's members is nothing more than price fixing of agency services, absent any applicable exemption.

The agencies' collusive agreements have caused tremendous financial harm to the Guild's members by artificially depressing the compensation paid to writers. Monies that would otherwise be paid to the writers are instead paid to the agencies as a packaging fee or otherwise left on the table. As a consequence, the agencies have wrongfully earned hundreds of millions of dollars by virtue of their illegal scheme. This financial cost to the Guild's members is not offset by the agencies' practice of waiving its commission on packaged deals.

Second, the agencies have engaged in direct communications with each other regarding packaging fees, both independently and through the ATA. The ATA has commissioned and published studies that analyze the packaging fee revenues earned by its members. Moreover, agencies routinely agree to split the packaging fees on individual series. The precise division of the packaging fee proceeds is negotiated by and among the agencies involved in the split package. Through these split packages, ATA members appear to have regularly exchanged competitively sensitive information, such as how they price packages, how often they adhere to the 3-3-10 standard, and other elements of how they price package fees charged to studios.

Participation in split packages therefore provides the agencies with a robust mechanism for monitoring compliance with the overarching collusive scheme.

More recently, and despite the termination of the AMBA and the cessation of discussions with the Guild, the ATA continues to coordinate agency positions on packaging. The ATA has sent letters to its members, held briefing sessions, and otherwise advocated against members signing the Code of Conduct. The ATA and its member agencies have further reinforced their collusive agreements through exclusionary practices, seeking to unfairly and illegally exclude lawyers and managers from having any role in facilitating employment opportunities for WGA members.

Recent media reports suggest that "top players" are "spending hours and days working together on a common mission—defending their core business practices." Since the "core business practices" under attack in the WGA lawsuit concern packaging, it appears that competitor agencies are meeting, either at ATA trade association meetings or otherwise, to discuss their packaging practices. Just as, as WME has asserted in a letter, Endeavor Content, Wiip, and Civic Center Drive "are competitors," so are the agencies. So WME, CAA and UTA cannot set business terms and practices together without violating the antitrust laws. The same is true for every other member of the ATA. The "days and hours" the agencies have spent "negotiating with themselves" have resulted only in a collusive agreement on agency compensation, manifested in the agencies' joint offer to share a fixed percentage of back-end packaging fees with Guild members. The ATA admits that its "leaders [have] spent hours thinking about" how to allocate these fees among their clients. Absent any exemption this is nothing more than a group of competing sellers of agency services agreeing to fix the terms of competition among themselves.

Third, the agencies have collusively agreed not to sign the Guild's Code of Conduct. Following news that Verve had negotiated a Code of Conduct and Franchise Agreement with the WGA, the ATA and its leading members closed ranks and threatened to retaliate against Verve and, implicitly, against any agency that subsequently reached an agreement with the Guild. For example, Karen Stuart, the Executive Director of the ATA wrote to her members, stating that Verve's decision to sign the Code of Conduct "will ultimately harm their business and the artists they represent." As the agencies have repeatedly conceded, abandoning packaging reduces studio costs. However, despite the significant cost advantage now enjoyed by Verve and its clients, Stuart asserts that Verve's business will suffer, and its clients will have fewer job opportunities. Stuart's email is thus a very clear message, sent on behalf of all ATA members, that the ATA members will collectively refuse to deal with Verve in the future. Stuart concluded her message with a warning that the ATA's members "must remain strong and united" and that their "Negotiating Committee continues to meet every week and remains committed to ***bringing about stability in our industry***" (emphasis added). Stuart's message is clear: the ATA members have agreed to stabilize pricing and pricing practices for agency services and any agency that undermines that effort will be blackballed.

To ensure that the ATA's message to either "stand strong" or face a group boycott would be received by non-ATA agencies, the ATA ensured that the substance of Stuart's email was published on the same day by Deadline and ATA members gave interviews to Deadline and Variety, in which many of the ATA talking points were repeated. For example, David Gersh denied that his agency was individually negotiating with the Guild, noting that Verve's decision was not "a crack in the ATA." Jim Gosnell told Variety that "APA has no intention of signing the WGA's Code of Conduct" and that APA "stands in unity with all of its members." Gosnell added that the ATA's goal was "to bring stability back to our industry." No agency to date has refuted Stuart's, Gersh's or Gosnell's comments.

While the ATA and its member agencies further presume that they are entitled to set the agenda for negotiations with the Guild: they are not. The Guild, as the exclusive representative for its members, is exclusively empowered to determine whether to delegate authority to represent its members and, if it does decide to so delegate, the scope of that authority. Thus, the Guild may unilaterally determine the scope of negotiations with the agencies, as well as unilaterally determine if it will permit the agencies to negotiate collectively through the ATA.

Once the ATA and its Negotiating Committee (comprised of employees of competing agencies) said they will not discuss the Code of Conduct with the Guild, the Guild announced that it would not engage with the agencies collectively. Nonetheless, the agencies unquestionably intend to continue to coordinate on their dealings with the Guild. In response to requests made by David Young to initiate individual negotiations with the agencies:

- Stephen Kravit of The Gersh Agency responded first: "under no circumstances will The Gersh Agency meet with you separate from the ATA."

- In response to this email, ATA Executive Director Karen Stuart asked: "Can I share with group"? The following responses make clear that she did so.

- Richard B. Levy of ICM Partners then responded: "we will not [negotiate] individually." Instead, he insisted that any proposal from Guild must be to "the entire ATA negotiating committee."

- Jay Sures of UTA stated: "Since you have an official WGA proposal, I think it is best for you to send it to your counterpart at the ATA."

- Rick Rosen of WME added: "WME believes the path to resolution is through the ATA. . . . We again invite you to send your proposals to the ATA for consideration by our entire negotiating committee."

- Julia Johnson of APA noted: "While we are always open to, and have repeatedly requested, frank discussions in an effort to reach a new commercial understanding that serves both the agencies and your members, we will not do so individually."

- Craig Wagner of Paradigm opined that "as an ATA member we feel it would be inappropriate and counterproductive to have unilateral discussions or negotiations directly with the WGA without the involvement of the ATA."

- Elliot Stahler of Kaplan Stahler summed up the position of the agencies: "Consistent with the responses of our fellow ATA negotiating committee member agencies, Kaplan Stahler Agency has no interest in individually negotiating with the WGA."

Notably, not a single member of the ATA's negotiating committee has said otherwise. The ATA and its members are thus engaged in an illegal concerted refusal to deal with the Guild—unless or until the union accedes to this trade association's demand on packaging rights. The Guild has in no way consented to this collusive behavior and the ATA and its members' insistence on collective negotiation is *per se* illegal.

To summarize, in response to the Code of Conduct coming into force, the ATA has furthered its members' conspiracy to restrain competition among themselves by directing its members not to agree to the Code of Conduct, to forgo price competition, and instead to follow the compensation structure advocated by the ATA. The ATA members' collective refusal to deal with the WGA violates the antitrust laws. *See Cooperativa de Medicos Oftalmologos de Puerto Rico*, Dkt. No. C-4603 (F.T.C. Feb. 2017). Moreover, the ATA's offer to share 0.8%, and then 2%, of back-end packaging fees is nothing more than a naked agreement among competitors to fix prices, absent any derivative labor exemption. As the U.S. Department of Justice observed in finding that a trade association's practice of negotiating contracts on behalf of its members violated the antitrust laws:

> Antitrust law treats naked agreements among competitors that set prices as per se illegal. Where competitors economically integrate in a joint venture, however, such agreements, if reasonably necessary to accomplish the procompetitive benefits of the integration, are analyzed under the rule of reason. [The Association's] negotiation of contracts on behalf of its members was not ancillary to any procompetitive purpose of [the Association] or reasonably necessary to

> achieve any efficiencies. . . . [Association] members do not share any financial risk in providing [their] services, do not collaborate in a program . . . to control costs or ensure quality, do not integrate their delivery of [services], and do not otherwise integrate their activities to produce significant efficiencies.

Competitive Impact Statement, *United States of America v. Chiropractic Assocs., Ltd. of South Dakota*, Case No. 13-cv-4030, at 3-4 (D.S.D. Apr. 8, 2013).

Therefore, the Guild demands that WME Entertainment cease and desist from its anticompetitive behavior, including that WME Entertainment cease:

1. communicating with either the ATA or any other agency regarding its strategy, intent or substance of its negotiations with the Guild on any topic;

2. coordinating its negotiations with the Guild with either the ATA or any other agency;

3. providing details of its packaging fees to the ATA or any other agency, including but not limited to in connection with "shared" package deals;

4. adhering to the "standard" 3-3-10 structure for package fees, either as a formula for determining a package fee or as a starting point for negotiations regarding a package fee;

5. adhering to all agreed-upon "standard" proxies for basic license fees;

6. threatening to deny business to or otherwise retaliate against agencies that negotiate with the Guild or agree to the Code of Conduct;

7. threatening lawyers and managers that are working with writers who have terminated WME Entertainment.

Moreover, WME Entertainment's actions unquestionably give rise to an obligation to preserve all records in its possession, custody and control that pertains to the claims and contentions described herein. WME Entertainment should treat this letter as a demand by the Guild that it does so. "Documents" includes, for purposes of this letter, both hard copy and electronically stored information ("**ESI**") and all emails, voicemails, communications, files and databases, video and other recordings that refer to or relate to the above-described claims.

Examples of documents that are subject to this preservation notice and that must be maintained by WME Entertainment are as follows:

- All communication between (1) any employee, officer or director of WME Entertainment or any person or entity that represents WME Entertainment and (2)

the ATA, Karen Stuart, or any person or entity claiming to represent the ATA regarding (a) packaging fees, (b) the Guild's Code of Conduct, or (c) discussions or negotiations with the Guild.

- All communications between (1) any employee, officer or director of WME Entertainment or any person or entity that represents WME Entertainment and (2) any employee, officer or director of any other ATA member or any person or entity claiming to represent any other ATA member regarding (a) packaging fees, (b) the Guild's Code of Conduct, or (c) discussions or negotiations with the Guild.

- All notes, memoranda, email or any other document that discusses, concerns or reflects either (1) meetings of the ATA's Negotiation Committee, (2) briefings or other communications made by the ATA to its members, or (3) meetings between WME Entertainment and any other ATA member regarding (a) packaging fees, (b) the Guild's Code of Conduct, or (c) discussions or negotiations with the Guild.

- All documents discussing, concerning or reflecting any discussions or agreements on "shared" packages.

- All documents discussing, concerning or reflecting any agreement or understanding between WME Entertainment and any other ATA member(s) regarding either (a) the 3-3-10 formula for calculating packaging fees, or (b) a flat dollar amount or range of dollar amounts that would serve as a proxy for a base license fee.

- All documents discussing, concerning, or reflecting any situation where WME Entertainment earned a packaging fee despite providing only one "packaging element" to a project.

- All documents discussing, concerning, or reflecting any complaints received by WME Entertainment concerning WME Entertainment efforts to collect a packaging fee despite having no role in procuring the employment opportunity for its client.

- Data sufficient to show all packaging fee revenues received by WME Entertainment for each of the last 10 years.

- Data sufficient to show all commission revenues received by WME Entertainment for each of the last 10 years from WGA members.

- All documents analyzing, discussing or relating to the financial impact that the agencies' practice of charging packaging fees has on studios and/or writers.

- All documents analyzing, discussing or relating to the effect that the agencies' practice of charging packaging fees has on the output of filmed entertainment.

The above list is not exhaustive. To fulfill your preservation obligations, you must take reasonable steps to preserve all relevant hard copy documents and ESI, including, but not limited to:

a. Suspending WME Entertainment's data destruction and backup tape recycling policies;

b. preserving relevant software, including legacy software (unless an exact copy or mirror image is made and stored) and hardware that is no longer in service but was in service during the relevant time period;

c. retaining and preserving necessary information to access, review, and reconstruct (if necessary) relevant electronic data, including identification codes and passwords, decryption applications, decompression software, reconstruction software, network access codes, manuals, and user instructions;

d. retaining and preserving all relevant backup tapes or other storage media; and

e. any other reasonable steps necessary to prevent the destruction, loss, override, or modification of relevant data, either intentionally or inadvertently, such as through modification of WME Entertainment document retention policy and systems.

f. All electronically stored information must be preserved intact and without modification.

The above list is not exhaustive. Preservation of ESI includes preservation not only of the electronic information itself, but also of relevant related data, including:

a. active, archived, and deleted copies of electronic information, such as emails, voicemails, text messages, instant messages (IMs), calendars, diaries, word processing files, spreadsheets, PDFs, JPEGs, PowerPoint presentations, temporary internet files, cookies, and .ZIP files, among others;

b. databases and computer logs; and

c. metadata about the information, including the date it was created, the date it was last modified, and the name of the individual who created;

whether stored online, offline, in a cloud-based server or in other electronic storage, or on any computers, handheld devices, tablets, cell phones, or other devices. The above list is not exhaustive.

Please reply no later than July 15, 2019 that WME Entertainment will cease and desist from continuing to act anticompetitively and that you will comply with the document preservation demands outlined herein.

Nothing in this letter is intended or should be construed as an admission or waiver of any rights or remedies that the Guild has, all of which are hereby expressly reserved. In this letter, the Guild has not endeavored to set forth each and every fact, argument and legal claim it has or may have against the ATA, the members of its Negotiation Committee, WME Entertainment, and those acting in concert with them, and expressly reserves the right to raise any additional or different facts or legal theories.

Sincerely,

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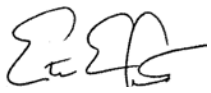

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