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6 **LENHOFF ENTERPRISES, INC. dba**
7 **LENHOFF & LENHOFF**

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

10
11 **LENHOFF ENTERPRISES, INC.,**)
12 a California corporation dba)
13 **LENHOFF & LENHOFF,**)

14 Plaintiff,)

15 vs.)

16 **UNITED TALENT AGENCY,**)
17 **INC., a California corporation;**)
18 **INTERNATIONAL CREATIVE**)
19 **MANAGEMENT PARTNERS**)
20 **LLC, a Delaware limited liability**)
21 **company; and DOES 1 through 5,**)
22 **inclusive,**)

23 Defendants.)

CASE NO. 2:15-cv-1086

**COMPLAINT FOR DAMAGES,
DECLARATORY, AND
INJUNCTIVE RELIEF FOR
VIOLATIONS OF THE
SHERMAN ACT, UNFAIR
COMPETITION LAW,
INTENTIONAL
INTERFERENCE WITH
CONTRACT, AND
INTENTIONAL
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE**

DEMAND FOR JURY TRIAL

24 Plaintiff **LENHOFF ENTERPRISES, INC.** (hereinafter sometimes
25 referred to as "Plaintiff") hereby alleges as follows:

26 **PARTIES**

27 1. Defendant **United Talent Agency, Inc.** (hereinafter sometimes
28 "UTA") is, and at all material times was, a corporation existing under the laws
of the State of California and licensed to do and doing business in the State of
California.

1 2. Defendant International Creative Management Partners LLC
2 (hereinafter sometimes “ICM”) is, and at all material times was, a limited
3 liability company existing under the laws of the State of Delaware and licensed
4 to do and doing business in the State of California.

5 3. Plaintiff is ignorant of the true names and capacities of Defendants
6 sued herein as Does 1 through 5, inclusive, and therefore sues these Defendants
7 by such fictitious names. Plaintiff will amend this complaint to allege their
8 true names and capacities when ascertained. Plaintiff is informed and believes
9 and thereon alleges that each of the fictitiously named Defendants is
10 responsible in some manner for the occurrences alleged in this complaint, and
11 that Plaintiff’s damages as alleged were proximately and legally caused by the
12 Defendants’ conduct.

13 4. At all times material herein, each Defendant was the agent, servant
14 and employee of each of the remaining Defendants, and acting within the
15 purpose, scope and course of said agency, service and employment, with the
16 express and/or implied knowledge, permission and consent of the remaining
17 Defendants, and each of them, and each of said Defendants ratified and
18 approved the acts of Defendants.

19 **JURISDICTION/VENUE**

20 5. This court has subject matter jurisdiction, pursuant to 15 U.S.C. §
21 2, and Sections 4, 4C, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 15c, 22,
22 and 26. This court has pendent jurisdiction over the California State law
23 claims. Venue is proper pursuant to 28 U.S.C. § 1400(a), because the
24 defendants or their agents reside or may be found within this district and
25 because defendants transact business, including the alleged tortious acts, within
26 this district.

27 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

28 **A. Background – Lenhoff & Lenhoff**

 6. Lenhoff & Lenhoff (“Plaintiff”) is a Talent Agency that was
established in 1997. Plaintiff is franchised with the Screen Actors Guild,

1 Writers Guild of America, and the Directors Guild of America. Plaintiff's
2 principals have been representing talent since 1988.

3 7. Plaintiff represents Writers, Directors, Producers and
4 Cinematographers. In addition to this representation, Charles Lenhoff has been
5 active within the Association of Talent Agents ("ATA") and vocal about the
6 merits of adopting a Code of Ethics by ATA franchise members and the
7 adverse effect of "poaching" on talent agents and, particularly, the talent they
8 represent.

9 8. Plaintiff is a boutique agency consisting of two agents, with a roster
10 of clients that it has cultivated and nurtured over the years. All of Plaintiff's
11 clients, including Client #1 and Client #2 herein, are represented by Plaintiff on
12 an exclusive basis. Plaintiff alleges that it has spent years building up its
13 clients' "brands", including Clients #1 and #2, in the marketplace and in
14 positioning them in the best possible light. Presently, Plaintiff has
15 approximately thirty (30) clients of which eighteen (18) are consistently
16 revenue-producing with Producers being, by far, the highest earners. Plaintiff
17 has nine (9) Producer clients. A loss of, e.g., two (2) Producer clients would
18 mean a devastating loss of between twenty to twenty-five percent of Plaintiff's
19 revenue.

19 **B. Background – UTA and ICM**

20 9. Defendant UTA is a large talent agency, ranked behind CAA
21 (Creative Artists Agency) and WME (William Morris/Endeavor). On
22 information and belief, UTA employs over one hundred thirty five (135) agents
23 and services approximately 5,000 to 6,000 clients. Plaintiff is informed that
24 UTA is controlled by approximately twenty-four partners.

25 10. Plaintiff is informed and believes that Defendant ICM was renamed
26 "ICM Partners" sometime in 2012. On information and belief, ICM employs
27 approximately four hundred (400) agents and is controlled by approximately
28 twenty-nine partners. On information and belief, Plaintiff alleges that ICM
services approximately 4,000 to 6,000 clients.

C. “Poaching” Activities By UTA Against Plaintiff

11. Beginning on or about May 2012, an agent employed by UTA within its “Production Department” (“UTA Agent #1” or “Agent #1”) contacted a client of Plaintiff, suggesting that the client sever its relationship with Plaintiff and let UTA represent them exclusively.

12. Soon thereafter, Plaintiff responded by contacting Andrew Thau, Senior Counsel at UTA. Plaintiff advised that UTA’s employee (Agent #1) was tortiously interfering with Plaintiff by attempting to induce that exclusive client to breach its agreement with Plaintiff. Plaintiff requested that the solicitations/poaching activity cease. Plaintiff was informed that it would.

13. However, on or about March 2014, Plaintiff learned that UTA Agent #1 contacted another client of Plaintiff’s, offering that client employment on a TV series that UTA claimed to have “packaged.”

14. Again, Plaintiff contacted Andrew Thau of UTA and, again, requested that the phone calls to Plaintiff’s clients cease.

15. On or about April 2014, Plaintiff received notice from another client that Agent #1 had been calling on the client. Plaintiff was informed by the client that Agent #1 had been calling every three (3) months for the past two (2) years.

16. Significantly, Plaintiff was informed that Agent #1 had been told, repeatedly, by Plaintiff’s client to stop calling.

17. Plaintiff contacted its trade representative at the ATA and requested that the ATA intervene. Plaintiff is informed, believes, and alleges that the ATA notified UTA and asked UTA to discuss the matter with Plaintiff. When UTA contacted Plaintiff, Plaintiff asked that UTA make itself available for a meeting to discuss the contact that now appeared to be a “robo-dialing” program that, Plaintiff is informed and believes and thereon alleges, was engineered or, at least, authorized by Defendant UTA.

18. Defendant UTA refused to meet with Plaintiff, contending that its activities in contacting Plaintiff’s exclusive clients were legitimate because

1 “poaching” was an “acceptable avenue for talent pursuit” and not actionable.
2 Plaintiff responded that UTA was engaged in tortious interference.

3 19. On or about April 2014, and continuing thereafter, Plaintiff
4 provided to UTA its list of exclusively represented clients, so that UTA would
5 have clear notice of Plaintiff’s clients. This was done on a monthly basis until
6 November 2014, and Plaintiff’s client list was sent by email and by registered
7 letter, with copies to the Association of Talent Agents. Plaintiff continued its
8 request that UTA cease its predatory practices.

9 20. As a result of the numerous calls made by UTA to Plaintiff’s
10 clients, together with UTA’s refusal to stop the calls when asked by Plaintiff’s
11 clients and by Plaintiff, Plaintiff alleges that its relationship with various clients
12 has, and continues to be, disrupted, as more fully set forth below.

13 **D. Interference By UTA/The “Packaging” Inducement**

14 21. On or about November 4, 2014, a client of Plaintiff’s informed
15 Plaintiff that she no longer wished to be represented by Plaintiff. No reasons
16 were given. This particular client (“Client #1”), a director, producer, and DGA
17 unit production manager, had been signed with Plaintiff for approximately four
18 (4) years. Plaintiff alleges that Client #1 had been served very effectively by
19 Plaintiff, and her career was on an upward trajectory during the entire
20 relationship. In particular, Plaintiff alleges that Client #1 tripled her income in
21 just four (4) years that she was represented by Plaintiff. In return, Client #1
22 had shown her gratitude with gifts and praise, only to abruptly terminate the
23 relationship without an explanation. Client #1 even referred several clients to
24 Plaintiff.

25 22. Within hours of Client #1’s termination of her contract with
26 Plaintiff, Plaintiff learned that she had removed Plaintiff from her IMDb
27 (“Internet Movie Database”) online listing.

28 23. Less than one (1) month later, on or about December 1, 2014,
Plaintiff learned that the DGA (“Director’s Guild”) website listed Agent #1 as
the former client’s agent. Plaintiff was instrumental in getting Client #1 into

1 the DGA, which was major goal for Client #1.

2 24. Further, on information and belief, Plaintiff alleges that Client #1
3 was induced to sever her contract with Plaintiff by the representation that she
4 would be part of UTA's Packaging activities. As more fully set forth below,
5 by promising Plaintiff's client that she would be included in a "package", the
6 client was being informed that she would *not* have to pay the customary ten
7 percent (10%) commission to her new agency, UTA. Instead, UTA would be
8 looking to earning a "packaging fee," which, typically, amounts to Six Percent
9 (6%) of the TV Program License Fees, Ten Percent (10%) of the Modified
10 Gross Receipts, as well as, in some instances, an additional Fifteen Percent
11 (15%) share of publication rights, a Twenty Percent (20%) share of stage
12 rights, and a Twenty-Five Percent (25%) share of merchandising.
13 Significantly, these rights – and income stream – are for the "life of the work,"
14 as more fully discussed below.

15 **E. Interference By ICM/The "Packaging" Inducement**

16 25. Similarly, in June 2014, Plaintiff alleges that ICM poached a client
17 of Plaintiff's ("Client #2"), a director, producer, and production manager.
18 Again, Client #2 was exclusive to Plaintiff.

19 26. As with Client #1, Client #2's announcement of a "change" was
20 abrupt. Client #2, also, had received vigorous representation by Plaintiff and
21 had enjoyed a very successful career with Plaintiff. For example, Plaintiff had
22 successfully moved Client #2 into a position as a Producing Director – a key
23 goal for Client #2. Nevertheless, Plaintiff alleges, within an approximate
24 twenty-four (24) hour period after advising Plaintiff that Client #2 was
25 terminating his exclusive contract with Plaintiff, Client #2 had entered into a
26 multi-year contract on a television series. Plaintiff alleges that, with respect to
27 the above television series, Plaintiff had submitted Client #2 to the Employer
28 and Executive Producer and had pre-negotiated a deal for the series. Plaintiff
is informed, believes, and thereon alleges that Defendant ICM was speaking to
Client #2 prior to his termination of Plaintiff. Further, on information and

1 belief, Plaintiff alleges that ICM advised Client #2 that, if he terminated
2 Plaintiff, he would be hired by the Employer – not knowing that Plaintiff had
3 already submitted Client #2 for the job.

4 27. Plaintiff further alleges that, as with Client #1, a major inducement
5 by the large agency (here, ICM) to Client #2 was the promise of packaging on
6 other projects and, therefore, the nonpayment of commissions by the client.

7 28. The “packaging fee”, Plaintiff alleges, dwarfs what the smaller
8 agent (such as Plaintiff) could ever earn, while allowing the largest agencies
9 (viz., CAA, WME, ICM, and UTA) to unfairly compete with smaller agencies
10 for talent (by offering to “waive” the 10% commission). Moreover, as more
11 fully set forth below, Plaintiff alleges that, as the result of this unfair
12 competition, the power of the above agencies has increased, as they have
13 grown and consolidated their control. Today, and especially since 2002, these
14 large agencies are, Plaintiff alleges, more than titular agents. Because these
15 “Uber Agencies” stockpile talent, as well as exercise control over the
16 development, production, financing, distribution, advertising, and even the
17 technology for content delivery to the consumer, they have morphed into,
18 Plaintiff alleges, producers and de-facto employers.

19 29. While a handful of talent and their representatives, undoubtedly,
20 flourish, Plaintiff alleges that, with the elimination of smaller agencies due to
21 unfair competition, an increasing number of writers, actors, directors, etc. are
22 finding it more difficult to obtain representation. Specifically, Plaintiff is
23 informed, approximately thirty-nine (39) agencies have either disappeared
24 through consolidation (buy/sell/or merge), moved into talent management, or
25 they have simply disappeared, since 2002, as more fully set forth herein. As a
26 result, Plaintiff alleges, far too many talented individuals within the State of
27 California and elsewhere are either not working or they find their work is being
28 stifled where they are not the “marquee” element driving the Package. Plaintiff
alleges that the Uber Agencies control the talent; accordingly, if Artists want
their idea to get financed, produced, and distributed, they must agree to the

1 Agency receiving a packaging fee or else there will be no “traction” from the
2 Agency packaging team.

3 30. Ultimately, Plaintiff further alleges, the consumer suffers, because
4 of the lack of diversity and creativity caused by the monopoly described below.

5 **F. Trade and Commerce/Unlawful Agreement/Monopoly**

6 ***a. Talent Agencies Act/Relevant Regulations***

7 31. The Talent Agencies Act was enacted in 1913, modified in 1937,
8 1943, 1959, 1967 and renamed in 1978.

9 32. In 1982, Recording Contracts were excluded under the Act, and a
10 “talent agency” was defined under California Labor Code Section 1700.4, in
11 pertinent part, as a “person or corporation who engages in the occupation of
12 procuring, offering, promising, or attempting to procure employment or
13 engagements for an artist or artists”

14 33. Pursuant to Section 1700.39 of the Act, “[n]o talent agency shall
15 divide fees with an employer, an agent or other employee of an employer.”
16 Despite the above prohibition and the “general materials” agreement (discussed
17 below), Plaintiff alleges that packaging fees are, essentially, a division of fees
18 that an AMPTP Studio employer and/or Production entity would, normally,
19 earn in upfront guaranteed compensation and backend contingent
20 compensation.

21 ***b. The Packaging Or “General Materials” Agreement Exemption***

22 34. Plaintiff alleges that, beginning in 1959 up to the current time, the
23 California Labor Commissioner has taken the position that the Package
24 Agreement (also known as the “General Materials” Agreement) falls outside
25 the jurisdiction of the Labor Commission; accordingly, such contracts need not
26 be approved. In particular, in a letter from the California Labor Commission,
27 dtd. June 22, 1959, to counsel for the William Morris Agency, the State Labor
28 Commissioner stated: “The decision that this form is not such as requires the
approval of the Labor Commissioner is based upon the fact that this type of
contract is concerned exclusively with ‘creative property or package show’ and

1 contains nothing with respect to the employment of an artist for the rendering
2 of his personal services or for the advising and counseling of artists in their
3 professional careers.” (Emphasis)

4 35. As recently as 1998, the State Labor Commissioner was asked to
5 respond to a draft petition and its request for a change in the Labor
6 Commissioner’s policy towards packaging agreements and their exemption
7 from the Talent Agencies Act (Labor Code §§ 1700 – 1700.47). In its letter in
8 response to the draft petition, dtd. October 30, 1998, the Labor Commission
9 cited, among other things, the prior 1959 Labor Commission opinion (above).
10 Further, the Labor Commission, observed, “it appears that artists benefit from
11 package agreements.”

12 36. Even assuming that the Labor Commissioner’s above analysis
13 about “artist benefit” under packaging was not flawed at *that* time (1998),
14 which Plaintiff denies, Plaintiff alleges that, in 2015, the longstanding opinion
15 of the California Labor Commission concerning the “packaging exemption” is
16 no longer correct, fair, or sustainable. As more fully set forth herein, Plaintiff
17 alleges that, in light of the enormous flood of outside investment into talent
18 agencies since 2002, consolidation of talent agencies, and monopolization of
19 the television market by the Uber Agencies, the loyalties of the Uber Agencies
20 have become *more* than divided. Rather, Plaintiff alleges, the Uber Agencies
21 are loyal to the package, itself, and not to their individual clients.

22 ***c. Prior Restrictions Upon Agency Production***

23 37. During the 1930’s, there was substantial vertical integration within
24 the entertainment business. In particular, Music Corporation of America
25 (“MCA”) was a major player, as it was both acting as an agency for talent and
26 producing. In or about 1938/1939, Plaintiff alleges that the Screen Actor’s
27 Guild (“SAG”) required that MCA and others cease their production. In or
28 about 1952, this same restriction imposed by SAG was applied to television
production.

38. However, MCA managed to escape the SAG television restriction

1 until on or about the 1960's, at which time the U.S. Justice Department, under
 2 Attorney General Robert F. Kennedy, commenced an antitrust investigation
 3 into MCA and its Manager, Lew Wasserman. Eventually, MCA relented and
 4 agreed to cease its television production activities.

5 ***d. Conspiracy: 2002 Expiration of SAG Basis Contract With ATA [“Rule***
 6 ***16(g)”]***

7 39. SAG's Agency Regulations [a/k/a “Rule 16(g)"] were originally
 8 created in 1939.

9 40. Rule 16(g) was the franchise agreement between SAG and the
 10 Association of Talent Agents (“ATA”) until 2002, as more fully set forth
 11 below.

12 41. The ATA is a non-profit trade association comprised of
 13 approximately 101 talent agencies, including such major agencies as WME
 14 (William Morris Endeavor), CAA (Creative Artist's Agency), ICM, and UTA.
 15 On information and belief, Plaintiff alleges that the above agencies (the “Big
 16 4”) exercise effective control over the ATA Board of Directors (“ATA
 17 Board”), and these agencies substantially cover the overhead costs of the ATA.

18 42. On or about April 20, 2000, the ATA opened up negotiations with
 19 SAG, demanding “financial interest”, i.e., the right to invest in, or be invested
 20 in, by outside/offshore investors, ad agencies, advertisers and independent
 21 producers, etc. SAG opposed the ATA's demand, viewing the financial
 22 interest to be self-dealing, self-serving, and a conflict of interest (contrary to
 23 agent's duty to obtain the highest quote for the agent's client).

24 43. Prior to April 2000, Rule 16(g), clearly, forbade an agency to
 25 possess *any* financial interest in a production or distribution company or vice
 26 versa. The 1991 SAG/ATA Basic Contract, Section XVI (“Agents To Be
 27 Independent”), provided, in pertinent part: “A. Other than as herein permitted,
 28 no person, firm or corporation engaged or employed in the production or
 distribution of motion pictures or owning any interest in any company so
 producing or distributing, shall own any interest in an agent, directly or

1 indirectly, nor shall any such person, firm or corporation own or control any
2 indebtedness of the agent or of any of its owners, nor shall any such person,
3 firm or corporation share in the profits of the agent.”

4 44. On or about October 20, 2000, the SAG/ATA agreement [“Rule
5 16(g)"] expired.

6 45. Accordingly, commencing on October 20, 2000, a contractual 15-
7 month period ensued, with the parties attempting to negotiate the issue of
8 “financial interest.”

9 46. In February 2002, a tentative agreement was reached with the ATA
10 for a “limited” financial interest. Among other things, this tentative agreement
11 allowed agents to take up to twenty percent (20%) stakes in production and
12 distribution companies, and it allowed advertising firms and independent (non-
13 studio) producers to take up to ten percent (10%) and twenty percent (20%)
14 stakes, respectively, in talent agencies.

15 47. On April 20, 2002, this tentative agreement was submitted for
16 approval to SAG’s members and rejected. This was the first time in its sixty-
17 nine year history that the SAG membership had rejected the negotiated
18 agreement with agents.

19 48. On April 21, 2002, the SAG National Board unanimously voted to
20 temporarily suspend enforcement of Rule 16(a) of the SAG Constitution, so
21 that its members are not subjected to disciplinary proceedings, in light of the
22 expiration of Rule 16(g).

23 49. Meanwhile, the ATA Board of Directors, which, Plaintiff alleges,
24 was controlled by the largest agencies at that time, viz., CAA, ICM, UTA,
25 Broder Webb Chervin Silbermann, The William Morris Agency, and Endeavor
26 (which last two agencies merged, in 2009, into WME) was attempting to sell
27 its membership on the notion that an expired franchise agreement would
28 benefit every talent agency, large or small. The promise was that the expiration
would allow for “new strategic alliances” that would create “more
opportunities” – not less. However, Plaintiff is informed, believes, and thereon

1 alleges, the members of ATA's Strategic Planning Committee (which consisted
2 of representatives from the largest packaging agencies, ICM, UTA, William
3 Morris, Endeavor, and Broder Webb) were interested in changing the business
4 model of *their* agencies from a "service based" business to an "asset based"
5 receivables business.

6 50. Accordingly, Plaintiff is informed, believes, and thereon alleges
7 that, beginning in 2002 and continuing to the present time, the objective of
8 UTA, ICM and the other two "Uber Agencies" was, in fact, to force the
9 *termination* of Rule 16(g). Plaintiff alleges, on information and belief, that,
10 unbeknownst to the other members of the ATA during the negotiations with
11 SAG, the largest agencies existing at that time, including Defendants UTA and
12 ICM, had conspired and agreed, amongst themselves, that it was in *their* best
13 interests to proceed *without* Rule 16(g). The expiration, they realized, would
14 allow the largest talent agencies to enjoy unfettered, vertical integration of their
15 businesses, more concentration of economic power, and more control over
16 production and distribution.

17 51. Contrary to the representations made by the ATA Board to its
18 smaller members, the plan was not at all to create new "alliances" with small,
19 independent agencies. Rather, Plaintiff alleges that, in bringing about the
20 demise of Rule 16(g), the intent of Defendants UTA, ICM, as with the other
21 Uber agencies, was to destroy competition and to build a monopoly.

22 52. Plaintiff alleges that this destruction of competition was made
23 possible by enormous outside funding (primarily, private equity) that flooded
24 into the large agencies after 2002 – all of which funding was made possible by
25 the expiration of Rule 16(g). Plaintiff is informed, believes, and thereon
26 alleges that, since 2002, the amount of money that the largest talent agencies
27 have received from private equity sources, in return for a stake in those
28 agencies, is over \$5.6 billion.

53. Plaintiff alleges that this funding has allowed the Uber Agencies to,
among other things, consolidate their power over the television market, as

1 more fully set forth herein.

2 *e. UTA – Aggregation of Power since 2002*

3 54. UTA was founded in 1991, as the result of a merger between two
4 literary and talent agencies. In the beginning, UTA had, approximately,
5 twenty-six agents.

6 55. Beginning in 2002 and continuing to the present time, UTA has
7 expanded into production. In or about 2007, Plaintiff is informed, UTA and
8 the Internet advertising agency, Spot Runner, created an independent studio for
9 digital media called 60Frames Entertainment (“60 Frames”). Although,
10 Plaintiff is further informed, 60Frames ceased operations in 2009, this
11 independent studio was, clearly, in the production business – as opposed to,
12 solely, representing talent. Further, with respect to financial investment,
13 Plaintiff is informed and believes and thereon alleges that funding for the
14 60Frames joint venture came from such sources as Tudor Investment
15 Corporation, a \$13 billion hedge fund, and the Pilot Group, a private
16 investment company.

17 56. With respect to feature films, Plaintiff is informed, believes, and
18 alleges that UTA has expanded its film finance and international sales business
19 within its Independent Film Group. Not only is Independent Film Group
20 involved with strategies for financing, packaging, and distribution, Plaintiff is
21 informed, believes, and alleges that Independent Film Group and its employees
22 are listed as “producer” and “production company” on several upcoming
23 projects.

24 57. In addition, on or about 2012, UTA launched UTA Brand Studio.
25 According to UTA’s own literature, UTA Brand Studio – “A Brand New
26 Story”, Brand Studio was created to “help companies develop and sustain
27 strong brand attachment.” (Emphasis) Plaintiff alleges that, in the television
28 market, studios are, customarily, *employers* of talent and not talent agents (who
have the role of procuring employment).

58. While UTA, as with the other large agencies, expands into these

1 new markets, Plaintiff alleges that they have ventured far outside the
 2 parameters set by the California Business and Professions Code, including
 3 without limitation its definitions of “talent agency” and “artist.” While,
 4 Plaintiff alleges, UTA’s clients may eventually be employed by a UTA Brand
 5 Studio client, the companies serviced by UTA Brand Studio, by other wings of
 6 UTA, and/or by joint ventures formed by UTA cannot be deemed “artists”
 7 within the meaning of California Labor Code Section 1700.4 (b). Further,
 8 Plaintiff alleges that the lifting of the “financial interest” restriction under Rule
 9 16(g), in 2002, has led to direct violations by the Uber Agencies of California
 10 Labor Code Section 1700.40 (b). Section 1700.40 (b) provides as follows:
 11 “No talent agency may refer an artist to any person, firm, or corporation in
 12 which the talent agency has a direct or indirect financial interest for other
 13 services to be rendered to the artist, including, but not limited to, photography,
 14 audition tapes, demonstration reels or similar materials, business management,
 15 personal management, coaching, dramatic school, casting or talent brochures,
 16 agency-client directories, or other printing.” (Emphasis)

17 59. Plaintiff alleges that the above relationship (between large agency
 18 and corporate client) is fraught with conflict. Further, if a percentage of the
 19 large agency is owned by an advertising firm and the agency is involved with
 20 an advertisement for a large corporation, who is the agency, truly,
 21 representing?

22 ***f. Private Equity: ICM Acquisition Of Broder Webb Chervin Silbermann***
Agency/CAA Sells Majority Stake/WME And Silver Lake

23 60. Again, Plaintiff is informed, over \$6.5 billion in private equity has
 24 been received by Defendants UTA, ICM, WME, and CAA. It is common
 25 knowledge, Plaintiff is informed, believes, and alleges, that WME is planning a
 26 public offering and/or may issue debt on future artist earnings.

27 61. With respect to ICM, Plaintiff is informed, it received
 28 approximately \$100 million from a private equity firm, Rizvi Traverse
 Management (“Rizvi”), in return for a large stake in ICM. This occurred in

1 2005 – just three (3) years after the expiration of Rule 16(g).

2 62. The following year, Plaintiff is further informed, ICM purchased
3 Broder Webb Chervin Silbermann (“Broder Webb”) for \$70 million (ICM
4 CEO Jeff Berg and Bob Broder had served on the ATA Strategic Planning
5 Committee in 2002). Accordingly, the implosion of the 2002 SAG Franchise
6 Agreement allowed for the above investment by Rizvi and ICM’s purchase of
7 Broder Webb. Broder Webb, at that time, represented several large-earning
8 TV producers, including Chuck Lorre, who created “Two and a Half Men” and
9 “Big Bang Theory” as well as Christopher Lloyd, co-creator of “Modern
10 Family,” and Vince Gilligan, the creator of “Breaking Bad.” Not only did
11 Broder Webb represent the above TV producers, Broder Webb controlled the
12 packages.

13 63. Plaintiff is informed, believes, and alleges that ICM was able to
14 raise funding for its acquisition of Broder Webb because i) Rule 16(g) had
15 expired; and ii) the package fees earned by Broder Webb’s clients were viewed
16 as “assets” rather than as mere agent commissions and, therefore, could attract
17 such funding. Plaintiff is informed, believes, and alleges that the Broder Webb
18 packages were “factored” (because, as “assets”, the package fees could be
19 viewed as long-term accounts receivable) and valued at \$70 million.

20 64. In view of the timing of ICM’s purchase of Broder [shortly after the
21 expiration of Rule 16(g)], Plaintiff is informed, believes, and thereon alleges
22 that ICM’s plan to raise capital and consolidate with Broder was “in the works”
23 during the negotiations over Rule 16(g) and before its expiration.

24 65. During this same time period, in or about 2009, Plaintiff is
25 informed, CAA received \$350 million against a \$1 billion valuation from TPG
26 Capital (“TPG”) (a private equity fund with \$59 billion in reported total
27 assets), in exchange for a 35% stake in CAA. In October 2014, Plaintiff is
28 informed, it was announced that TPG would be taking a majority stake in
CAA. Plaintiff is further informed, believes, and thereon alleges that TPG
agreed to pay an additional \$225 million for a 53% majority stake in CAA.

1 66. In 2006, prior to the above purchase by TPG, Plaintiff is informed,
2 TPG, together with other partners, acquired the Spanish-language broadcaster,
3 Univision, in a \$13.7 billion leveraged buyout. Plaintiff alleges that Univision
4 is an employer of talent and that TPG's ownership interest in Univision (and
5 CAA) creates an inherent conflict.

6 67. In 2009, William Morris merged with Endeavor Agency, becoming
7 William Morris Endeavor or WME. Thereafter, in 2012, it was announced that
8 a private equity firm, Silver Lake Partners, would be acquiring a minority
9 interest in WME (believed to be approximately 31%). This cash infusion
10 transformed WME into a "technologically entertainment and media company."

11 Plaintiff is informed, believes, and thereon alleges that the primary impetus
12 behind the cash from Silver Lake was to expand into the direct-to-consumer
13 release of content by WME talent and to create a worldwide marketing
14 business and global media fund. On information and belief, Plaintiff alleges
15 that the above fund owns copyrights and distribution rights in perpetuity and
16 that these copyrights and distribution involve products and productions that
feature the work of WME's clients.

17 68. In 2013, Plaintiff is informed, WME and Silver Lake purchased
18 IMG (with earnings of \$160 million annually derived from producing fees) for
19 a reported \$2.5 billion. Plaintiff is informed that Mubadala Development
20 Company, an investment vehicle for the United Arab Emirates, is a minority
21 investor in the purchase by WME of IMG.

22 69. In recent years, Plaintiff is informed, WME has made over fifteen
23 (15) strategic investments in companies across the digital media landscape,
24 including the interactive advertising, social media, social gaming, and online
25 retail sectors. Plaintiff is further informed that, on January 28, 2015, WME
26 purchased, via its IMG arm, Dixon Talent. Dixon Talent is a management
27 company that represents such talent as Jimmy Kimmel, Stephen Colbert, and
28 Jon Stewart. Plaintiff alleges that this purchase by WME further blurs the lines
between Agents and Talent Managers and creates more conflict.

1 70. Not only has there been tremendous consolidation, ushered in by
2 the unfettered right to be invested *in* and investment *by* Defendants UTA and
3 ICM, as well as the other two largest agencies, Plaintiff alleges that the very
4 nature of Defendants UTA and ICM, as *agents*, has been transformed into
5 something else, i.e., into businesses never contemplated by the Talent Agencies
6 Act. Moreover, this consolidation has resulted in an injury to the relevant
7 marketplace (television) and an injury to competition, as more fully set forth
8 below.

9 ***g. Monopolization of the Relevant Market (Television)***

10 71. Based on a 2014/2015 survey of scripted television talent
11 production deals (both network and cable), Plaintiff alleges that the Big 4
12 Agencies control, approximately, ninety-two percent (92%) of the Television
13 market talent deals with the Association Of Motion Picture And Television
14 Producers (“AMPTP”) Employers. WME represented approximately 116
15 talent deals (33.04%); CAA represented approximately 88 talent deals
16 (25.92%); UTA represented approximately 82 talent deals (23.36%); and ICM
17 represented approximately 35 talent deals (9.97%).

18 72. According to a 2012/2013 sampling conducted by Penske Business
19 Media, the Advertiser Upfronts presented the fall TV schedule as follows: 39
20 new scripted TV Series on the air, with WME packaging 30 series, CAA
21 packaging 16 series, UTA packaging 11 series (with 1 split with Gersh
22 Agency), ICM packaging 5 series, and Vision Arts packaging a single series.

23 73. Plaintiff alleges that this domination of the market would not be
24 possible without the ability to “package” a group of the major talent or star
25 components of a television program or series. Further, Plaintiff alleges, the
26 monopolization of the television market has been made possible by the
27 choreographed “planned implosion” of Rule 16(g) and, thereafter, the financial
28 investment opportunities that Defendants UTA and ICM knew would be
coming their way as a result.

74. This monopolization is evidenced by the increased domination by

1 the Uber Agencies of the television landscape from 2002 to the present time.
 2 While, today, the Big 4 account for approximately 92% of the Television
 3 market, their share was dramatically less pre-2002. At that time, Plaintiff is
 4 informed, there were approximately 146 talent deals with AMPTP employers,
 5 90 of which were represented by the Uber Agencies. In other words, pre-2002,
 6 Defendants UTA, ICM, and the other two Uber Agencies accounted for a
 7 significantly smaller percentage, viz., 62% of the Television market.

8 ***h. Packaging***

9 75. According to the WGA (Writers Guild of America – a recognized
 10 labor union)/Artists' Manager Basic Agreement of 1976 [the franchise
 11 agreement between agents and writers negotiated by the William Morris
 12 Agency and ICM and untouched in over thirty-nine (39) years], the fee,
 13 commission, or compensation that may be earned by an Artists' Manager
 14 [Agent] of a television program or series is termed a "package commission."

15 76. While, under the above WGA Basic Agreement, an Artists'
 16 Manager cannot require that a Writer sign a package representation agreement
 17 as a condition of representing the Writer, an Artists' Manager may request a
 18 Writer to sign a package representation agreement.

19 77. Further, when package representation agreements are entered into,
 20 the WGA Basic Agreement calls for annual franchise fees (referred to as
 21 "Negotiator's Fees") that are to be deposited into a "Negotiator's Fund"
 22 established by the WGA and the AMG (Artist's Managers Guild), which is
 23 currently known as the ATA.

24 78. Plaintiff reserves the right to supplement and amend this complaint
 25 with more details concerning whether UTA and ICM have adhered to the
 26 WGA Rider W Contract between Agent and Artist, which discloses Exhibit
 27 "N" in transparent fashion, and, further, whether they have paid the above
 28 annual franchise fees or Negotiator's Fees and, if so, how much.

i. Predatory Practices: Poaching and "Pricing"

79. Plaintiff alleges that, in addition to expanding into its production,

1 advertising, among other ventures, it was the further plan of UTA and ICM,
2 commencing in 2002 and continuing to the present, to poach clients from
3 smaller agencies, particularly in the television market.

4 80. Plaintiff is informed, believes, and thereon alleges that, within the
5 past ten (10) years, Defendants UTA and ICM have been engaged in a willful
6 and wanton policy and practice of poaching top echelon clients of smaller
7 agencies earmarked as “low hanging fruit” under the guise of the “right to
8 compete” in order to stockpile talent for packaging.

9 81. As set forth herein, Plaintiff alleges that, as with its recent clients
10 that UTA and ICM lured away, UTA and ICM make representations to
11 prospective clients (who are already under contract with smaller agencies) that
12 they are in the “process of packaging a TV series” or that UTA is representing
13 an “executive producer/show runner” – which is “code” for, “we can offer you
14 work, and you will be part of a package and will not have to pay the 10%
15 commission you are paying XYZ Agency.”

16 82. Plaintiff alleges that the packaging opportunity, which is,
17 effectively, unavailable to smaller agencies (because the Uber Agencies have
18 poached top-tiered talent), allows the largest agencies to engage in predatory
19 “pricing.” In other words, Plaintiff alleges, the smaller agencies, who charge
20 ten percent (10%), are undercut by the largest agencies, including UTA and
21 ICM, who can offer to charge the prospective television client *zero*.

22 83. Plaintiff further alleges that the largest talent agencies may earn
23 packaging fees *in perpetuity*, whether or not they continue to represent the
24 client driving the package. Meanwhile, the smaller agencies are capped at a
25 ten percent (10%) commission of fees received from procuring employment for
26 the client and/or they are restricted by California’s “7 Year Rule”, pursuant to
27 California Labor Code Section 2855.

28 **G. Interstate Commerce**

84. Plaintiff alleges that Defendants’ conduct substantially affects
interstate commerce throughout the United States and has caused and continues

1 to cause antitrust injury throughout the United States.

2 **H. Statute Of Limitations/Conspiracy: Continuing Violation**

3 85. Plaintiff alleges that Defendants' conspiracy, as more fully alleged
4 hereinabove, has been a continuing violation to the present time.

5 **FIRST CAUSE OF ACTION**

6 **(For Violations Under The Sherman Act – Section 2)**

7 86. Plaintiff hereby adopts, incorporates, and reiterates all the
8 preceding allegations of this complaint.

9 87. Plaintiff alleges that Defendants UTA and ICM have attempted to
10 combine or conspire with other entities to monopolize trade or commerce in
11 violation of 15 U.S.C. § 2, as more fully set forth hereinabove.

12 88. Plaintiff further alleges that Defendants have i) engaged and
13 continue to engage in exclusionary or predatory conduct; ii) with the specific
14 intent to destroy competition and build a monopoly; and iii) with a dangerous
15 probability of achieving monopoly power in the relevant market (viz.,
16 television).

17 89. Plaintiff alleges that Defendants' conduct has caused an antitrust
18 injury, i.e., harm to the competitive process, itself, and has caused damage to
19 Plaintiff and has deprived Plaintiff of fair competition in the market for
20 Plaintiff's services as a television agent.

21 90. As a direct and proximate cause, Plaintiff has sustained damages in
22 an amount according to proof.

23 **SECOND CAUSE OF ACTION**

24 **(For Unlawful/Unfair Business Practices)**

25 91. Plaintiff hereby adopts, incorporates, and reiterates all the
26 preceding allegations of this complaint.

27 92. Plaintiff alleges that Defendants' conduct, alleged above,
28 constitutes unfair competition and unlawful and unfair business practices in
violation of California Business and Professions Code §§ 17200 *et seq.*

1 93. Defendants' acts were unfair, unlawful, and/or unconscionable,
2 both in their own right and because they violated the Sherman Act.

3 94. Defendants' conduct injured Plaintiff; accordingly, Plaintiff is a
4 "person" that has suffered an injury in fact and that has lost money or property
5 as a result of unfair and/or unlawful competition, pursuant to California
6 Business and Professions Code § 17204.

7 95. Plaintiff alleges that it is entitled to disgorgement of Defendants'
8 unlawful gains and restitution, pursuant to California Business and Professions
9 Code § 17203.

10 **THIRD CAUSE OF ACTION**

11 **(For Intentional Interference With Contract)**

12 96. Plaintiff hereby adopts, incorporates, and reiterates all the
13 preceding allegations of this complaint.

14 97. Plaintiff and the clients identified herein (Clients #1 and #2) had
15 valid, exclusive contracts.

16 98. Plaintiff alleges that Defendants' had knowledge of such contracts.
17 Further, Plaintiff alleges, Defendant UTA had been given notice of Plaintiff's
18 complete client list.

19 99. Plaintiff alleges that Defendants committed intentional acts
20 designed to induce a breach of such contract, as well as committing acts in
21 order to disrupt other contractual relationships between Plaintiff and its clients.

22 100. Plaintiff further alleges that Defendants actually induced the breach
23 of its clients, as more fully alleged above, and have continued to disrupt other
24 contractual relationships between Plaintiff and its other clients.

25 101. As a direct and proximate cause, Plaintiff alleges that it has
26 sustained damage in an amount according to proof.

27 102. Plaintiff is further informed and believes and thereon alleges that
28 the above-described conduct by Defendants was done with malice and/or
oppression and/or fraud in that its purpose was/is to eliminate Plaintiff as a

competitor. Thus, Plaintiff seeks an award of punitive damages in an amount according to proof.

FOURTH CAUSE OF ACTION

(For Intentional Interference With Prospective Economic Advantage)

103. Plaintiff hereby adopts, incorporates, and reiterates all the preceding allegations of this complaint.

104. Plaintiff and the clients identified herein had an economic relationship that probably would have resulted in a future economic benefit beyond the scope of the contract above.

105. Plaintiff alleges that Defendants had knowledge of such relationship.

106. Plaintiff alleges that Defendants committed intentional acts designed to disrupt the relationship.

107. Plaintiff alleges that Defendants engaged in wrongful acts through their unlawful, unfair, and predatory practices in violation of the Sherman Act, as more fully set forth above.

108. Plaintiff alleges that Defendants actually disrupted Plaintiff's relationship with the clients identified herein.

109. As a direct and proximate result, Plaintiff alleges that it was harmed.

110. Plaintiff is further informed and believes and thereon alleges that the above-described conduct by Defendants was done with malice and/or oppression and/or fraud in that its purpose was/is to eliminate Plaintiff as a competitor. Thus, Plaintiff seeks an award of punitive damages in an amount according to proof.

FIFTH CAUSE OF ACTION

(For Declaratory Relief)

111. Plaintiff adopts, reiterates, and incorporates all of the preceding allegations of this complaint.

112. An actual controversy has arisen and now exists between Plaintiff

1 and Defendants in that Plaintiff contends:

2 (a) Defendants have committed violations of the Sherman Act,
3 15 U.S.C. § 2, as alleged above;

4 (b) The alleged conduct of Defendants violates the California
5 Labor Code Section 1700 *et seq.* and, specifically, Section 1700.39; and

6 (c) The alleged conduct of Defendants is “unlawful” and/or
7 “unfair” within the meaning of California Business and Professions Code
8 Section 17200 *et seq.*

9 113. Plaintiff is informed and believes and thereon alleges that
10 Defendants contend to the contrary.

11 114. A judicial declaration is necessary and appropriate at this time
12 under the circumstances in order that Plaintiff may ascertain its rights and
13 duties relative to the above-matters.

14 **SIXTH CAUSE OF ACTION**

15 **(For Injunctive Relief)**

16 115. Plaintiff adopts, reiterates, and incorporates all of the preceding
17 allegations of this complaint.

18 116. Unless the conduct of Defendants as alleged herein is prevented
19 and restrained, defendants will continue to violate Plaintiff’s rights causing
20 great and irreparable harm. Accordingly, Plaintiff seeks a preliminary and
21 permanent injunction to enjoin Defendants’ unlawful, unfair, and
22 anticompetitive conduct. Unless a preliminary injunction is issued, Plaintiff
23 will suffer great and irreparable injury and the likelihood of success on the
24 merits is great.

25 WHEREFORE, Plaintiff prays for judgment against Defendants, and each
26 of them, as follows:

27 **AS TO THE FIRST CAUSE OF ACTION FOR VIOLATIONS UNDER 28 THE SHERMAN ACT**

1. For appropriate injunctive and declarative relief pursuant to the
Sherman Act and California Business and Professions Code §§ 17200 *et seq.*

1 and any other extraordinary relief as this court may deem just and proper to
2 remedy the violations and to prevent future violations of a like or similar
3 nature, as more fully set forth below;

4 2. For actual damages; and

5 3. For treble damages for each and every violation of the Sherman
6 Act, pursuant to 15 U.S.C. §§ 15 and 26.

7 **AS TO THE SECOND CAUSE OF ACTION FOR**
8 **UNLAWFUL/UNFAIR BUSINESS PRACTICES**

9 1. For disgorgement and/or restitution, pursuant to California
10 Business and Professions Code § 17203.

11 **AS TO THE THIRD CAUSE OF ACTION FOR INTENTIONAL**
12 **INTERFERENCE WITH CONTRACT**

13 1. For general damages in an amount according to proof;

14 2. For special damages in an amount according to proof; and

15 3. For exemplary and punitive damages in an amount necessary to
16 punish and set an example of Defendants;

17 **AS TO THE FOURTH CAUSE OF ACTION FOR INTENTIONAL**
18 **INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

19 1. For general damages in an amount according to proof;

20 2. For special damages in an amount according to proof; and

21 3. For exemplary and punitive damages in an amount necessary to
22 punish and set an example of Defendants.

23 **AS TO THE FIFTH CAUSE OF ACTION FOR DECLARATORY**
24 **RELIEF**

25 1. For a declaration that:

26 (a) Defendants UTA and ICM have committed violations of the
27 Sherman Act, 15 U.S.C. § 2, as alleged above;

28 (b) The alleged conduct of Defendants UTA and ICM violates
the California Labor Code Section 1700 *et seq.* and, specifically, Section
1700.39; and

1 (c) The alleged conduct of Defendants UTA and ICM is
2 “unlawful” and/or “unfair” within the meaning of California Business and
3 Professions Code Section 17200 *et seq.*

4 **AS TO THE SIXTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF**

5 1. For a permanent injunction prohibiting Defendants UTA and ICM
6 from the predatory practice of client poaching from any and all talent agencies
7 that represent television clients.

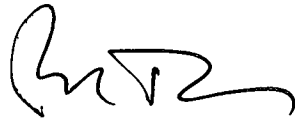
8 **AS TO ALL CAUSES OF ACTION**

9 1. For attorney's fees pursuant to 15 U.S.C. §§ 15 and 26, California
10 Code of Civil Procedure Section 1021.5, and as otherwise permitted under law;

11 2. For costs of suit incurred herein, including without limitation
12 prejudgment interest, pursuant to 15 U.S.C. §§ 15 and 26 and as otherwise
13 permitted under law; and

14 3. For such other and further relief as this court may deem just and
15 proper.

16 DATED: February 13, 2015 LAW OFFICES OF PHILIP J. KAPLAN

17
18 By 

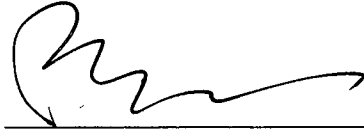
19 Philip J. Kaplan
20 Attorney for Plaintiff
21 LENHOFF ENTERPRISES, INC.
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Demand For Jury Trial

Plaintiff hereby demands a jury trial in this action pursuant to Federal Rules of Civil Procedure, Rules 38 and 81.

DATED: February 13, 2015

LAW OFFICES OF PHILIP J. KAPLAN



Philip J. Kaplan
Attorney for Plaintiff
LENHOFF ENTERPRISES, INC.