DOKOZA DGA TERM AND ISSUES MEMO MAY 2, 2016

1. Dokoza's Lenhoff & Lenhoff Agency contract was for 1year with automatic 1 year renewals up to the 7 year limit.

2. The ATA/DGA Agreement contains, and contained during all relevant times, Rider "D," which terms apply to agency agreements with DGA members, including the subject agreements with Dokoza. Rider "D" contains a "90 Day Clause." The 90 Day Clause provides, in pertinent part: "If during any period of ninety (90) consecutive days immediately preceding the giving of notice of termination herein described, the Director (1) fails to be employed or (2) fails to receive a bona fide offer then either Director or Agent may terminate the employment of Agent hereunder by giving written notice of termination to the other party, subject to the following provisions: . . . C. Actual employment of or contracts or bona fide offers for the employment of the Director in any field whatever in which the Director is represented by the Agent shall be deemed to be employment. If the Director has been employed or has had contracts or bona fide offers for employment in any field in which Director is represented by Agent the Director may not terminate so long as Director is entitled to an amount equal to his last compensation at a pro rata equivalent to 3 weeks of services."

3. Dokoza gave notice of termination to Plaintiff on or about November 4, 2014 during her employment on a TV show entitled "A to Z." This employment had been procured by Plaintiff, and the final payment for Dokoza's services on "A to Z" was dated on or about January 7, 2015, several months after Dokoza's notice of termination. Further, pursuant to Rider "D" (subparagraph "C"), Dokoza received an amount equal to her last compensation at a pro rata rate equivalent to three (3) weeks of services. Because of Rider "D," which restricts the conditions under which a contract between the agent and client may be terminated and

because Dokoza received equivalent compensation, Plaintiff's contract with Dokoza was not terminable at will. Specifically, because Dokoza was employed at the time she gave notice of termination, her notice was null and void and constituted a breach of contract.

4. Dokoza & UTA argue at length that the ATA/DGA Agreement does not place restrictions on the employment agreements between Dokoza and Lenhoff. Dokoza & UTA expounds that the intent of the ATA/DGA Agreement is "to give the DGA member under a written agency agreement for a fixed term 'an out' in certain situations where the relationship was unproductive or materially changed." Dokoza & UTA concurs that the objective is to prevent either an agent or Director from being "stuck", where the Director is not getting work. Neither Dokoza nor UTA says anything about an obvious, reasonable inference that the ATA/DGA Agreement (including Rider "D") exists to offer some fairness and stability to the agent who has procured employment – and satisfactory employment. More importantly, favoring a discussion about intent over the express language, Dokoza fail to look at the contractual language contained in Rider "D" itself. For example, the following subparagraph D (under the 90 Day Clause), explicitly provides for a restriction upon termination in another context: "If the Director is represented by the Agent in connection with the sale, lease, license or other disposition of literary material or package shows and the Director receives or is entitled to receive guaranteed compensation for the sale, lease, license or other disposition of literary material or package shows during the period of ninety (90) days in question, the Director may not terminate." Rider "D," para. 3, sub. D (emphasis). Contrary to Defendants' attempts to explain Rider "D"'s objective, the plain meaning of the contractual language shows that a purpose of the ATA/DGA Agreement is to protect the agent, where the agent is a procuring cause of gainful employment and/or a fruitful rights' deal.

5. More problematic is the fact that, despite the lengthy discussions offered by Defendants about contractual intent, what is noticeably absent from their papers is a discussion of applicable law. Neither Dokoza nor UTA cites or discusses the leading authority in the Ninth Circuit on the topic of "at-will" employment, in the context of an interference with contract and UCL claims. Again, as stated above, the case of *CRST Van Expedited, Inc. v. Werner Enterprises, Inc.*, 479 F.3d 1099 (9th Cir. 2007) stands for the proposition that a UCL "unlawfulness" claim can be premised upon a tortious interference with contract claim. Both Dokoza and UTA "duck" this authority, when they argue that Lenhoff's UCL claim is deficient. With respect to an interference with contract claim, *CRST Van Expedited* holds that, where termination rights are "limited" by the parties, the contract is not at-will. *Id.* at 1106.

6. In reaching the above conclusion, the Ninth Circuit, in *CRST*, relied upon the California Supreme Court case of *Guz v. Bechtel Nat'l Inc.,* 24 Cal.4th 317 (2000). This fundamental case on the California law of at-will employment is, also, conveniently left out of Defendants' memoranda. The California Supreme Court, in *Guz*, observed that, "[w]hile the statutory presumption of at-will employment is strong, it is subject to several limitations." *Id.* at 335–36. The Supreme Court continued, "[t]he statute [Labor Code section 2922] does not prevent the parties from *agreeing* to any limitation, otherwise lawful, on the employer's termination rights." *Id.* at 336. Accordingly, "the parties may agree that the employer's termination rights will vary with the particular circumstances. The parties may define for themselves what cause or causes will permit an employee's termination and may specify the procedures under which termination shall occur. The agreement may restrict the employer's termination rights to a greater degree in some situation, while leaving the employer freer to act as it sees fit in others." *Id.*

7. Here, Lenhoff contends that the parties, by virtue of Rider "D," agreed to termination rights that restricted such rights and which rights varied according to particular circumstances. As a result, the subject agreements with Dokoza were not at-will; accordingly, Lenhoff need not plead and prove an "independently wrongful act" in order to sufficiently plead interference with contract. *See Reeves v. Hanlon*, 33 Cal.4th 1140 (2004).