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9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**
11

12 JOHN MUSERO, an Individual,
13
14 Plaintiff,
15
16 v.
17 CREATIVE ARTISTS AGENCY, LLC, a
18 Delaware limited liability company;
19 ANDREW MILLER, an individual;
20 LEAH YERUSHALAIM, an individual;
21 and DOES 1 through 10, inclusive,
22
23 Defendants.

Case No.:

COMPLAINT FOR:

1. Breach of Fiduciary Duty and Confidentiality;
2. Breach of Implied Covenant of Good Faith and Fair Dealing; and
3. Breach of Contract.

[TRIAL BY JURY DEMANDED]

24 Plaintiff John Musero, (hereinafter referred to as “Musero” or “Plaintiff”), an
25 individual, through his attorneys of record, hereby alleges, and prays to this
26 honorable Court for relief, as follows:
27

1 **PARTIES**

2 1. Plaintiff John Musero (“Musero”), is an individual residing in Los Angeles
3 County, California.

4 2. Defendant Creative Artists Agency, LLC (“CAA” or “Defendant”) is a limited
5 liability company authorized to do business in California and organized under the
6 laws of the State of Delaware with its principal place of business at 2000 Avenue of
7 the Stars, Suite 100, Los Angeles, California.

8 3. Defendant Andrew Miller (“Miller”), is a talent agent with CAA and is an
9 individual residing in Los Angeles County, California.

10 4. Defendant Leah Yerushalaim (“Yerushalaim”), is a talent agent with CAA and
11 is an individual residing in Los Angeles County, California.

12 5. CAA is one of the two largest talent agencies in the world. It is believed to
13 represent a majority of writers in the relevant markets in which it operates.

14 6. CAA has been accused by, *inter alia*, the Writers Guild of America (“WGA”),
15 of being engaged in significant conflicts of interest in how it represents writers,
16 including (1) frequently representing both sides of a deal while favoring the bigger
17 earning client at the expense of the smaller earning client, oftentimes the writer acting
18 as an employee and/or seller, and (2) “packaging” deals such that the agency’s fees
19 are not only untied to the fees paid to the writer, but actually stand to be larger where
20 the fees paid to the writer are smaller.

21 7. In a 2018 handout to its members, the WGA explained the legal duties an agent
22 owes its writer-client and “Conflict of Interest”: “Under California and New York
23 law (and most other states), agencies are fiduciaries with full obligation to their
24 clients, including the obligation to avoid any conflict of interest or to make any deals
25 that benefit the agent at the client’s expense.” It went on to explain that “[a] fiduciary
26 is expected to refrain from acting for his private advantage or otherwise contrary to
27

1 the interests of his client; the fiduciary should fully, without compromise, assert the
2 complete and unmitigated interest of the client.”

3 8. Defendants DOES 1 through 10 are sued herein by fictitious names for the
4 reason that their true names are unknown to Plaintiff. Plaintiff will seek leave to
5 amend this complaint to allege the true names and capacities of these Defendants
6 when the same have been ascertained. Plaintiff is informed and believes and based
7 thereon alleges that these fictitiously named Defendants are responsible for the
8 actions and damages herein alleged.

9 9. Plaintiff is further informed and believes and based thereon alleges that
10 Defendants at all times herein alleged were the agents, employees, servants, joint
11 venturers and/or co-conspirators of each of the other remaining Defendants, and that
12 in doing the things herein alleged were acting in the course and scope of such agency,
13 employment, joint venture and/or conspiracy.

14 INTRODUCTION

15 10. While representing Musero, CAA optioned his creative work to another
16 company that it represented, helped that company pay Musero as little as possible,
17 and when the rights reverted to Musero, CAA redeveloped his creative work with
18 another writer and company it represented without Musero’s knowledge or
19 permission, and then sold that creative work to a major network who developed the
20 work into a pilot without changing the title and without paying or crediting Musero.
21 CAA thus used Musero’s work to generate maximum revenues for itself and its more
22 powerful clients while putting the interests of Musero last.

23 BACKGROUND

24 **I. John Musero is a professional writer.**

25 11. Plaintiff John Musero is a Los Angeles based professional writer. Formerly a
26 prosecutor and an in-house studio lawyer at Columbia Pictures, Musero worked for
27 showrunner Aaron Sorkin as a Staff Writer on the third season of the acclaimed HBO

1 drama series, *The Newsroom*, which received praise and numerous awards, including
2 an Emmy Award nomination for Outstanding Lead Actor in a drama series and
3 winning the Gracie Allen Award for Outstanding Female Actor in a Supporting Role
4 in a Drama

5 12. Musero received writing credit for his work on each of the six episodes of the
6 *The Newsroom*'s third and final season.¹

7 13. While writing on *The Newsroom*, Musero met with local talent agents and
8 agencies to represent him in his official career as a writer, including helping him
9 secure future employment as a writer on another television series following the
10 conclusion of *The Newsroom*.

11 **II. Musero's representation by CAA.**

12 14. CAA touts itself as a licensed talent agency that represents "many of the most
13 successful professionals in film, television, music..." It describes itself as a "full-
14 service entertainment agency" that renders services to its clients in connection with
15 their activities in the entertainment and sports industries. CAA describes its role, in
16 part, by stating: "In consideration for CAA's services, which are rendered pursuant to
17 contracts between CAA and its clients, CAA receives commissions on monies and
18 other consideration that CAA's clients receive for their services as a result of
19 contracts of employment entered into, substantially negotiated, renegotiated, or
20 renewed during the term of CAA's representation..." *Id.*

21 15. In March of 2014, Musero met with CAA agents Andrew Miller ("Miller")
22 and Leah Yerushalaim ("Yerushalaim") both of whom worked in the television
23 literary department.

24
25
26 ¹ Writing credits are governed by the Writers Guild of America ("WGA") and are
27 used to distinguish a writer's brand, determine how much a writer is compensated,
28 and can be tied to future residuals and royalty payments.

1 16. Three months later, Musero and Miller confirmed via telephone that Musero
2 would be represented by CAA, through Miller and Yerushalaim, going forward.
3 Defendants then began acting and communicating on Musero's behalf.

4 17. Musero communicated to Miller and Yerushalaim that his goal was to obtain a
5 steady stream of income by working as a writer employed on another television series
6 and to supplement that income by selling his original works (in the form of television
7 series pitches and pilots) to producers, production companies, studios, streamers,
8 networks, cable companies and other buyers ("Buyers"). Musero placed his trust in
9 Defendants to uphold their fiduciary duties and to act properly on his behalf with
10 respect to his employment, including submitting him for work on television shows.
11 Musero relied on CAA, Miller, and Yerushalaim to use their judgment and expertise
12 to act in his best interest, and to always put his interest ahead of their own.

13 **III. Defendants' mishandling of Musero's original television pilot *Influence***

14 18. After his employment on HBO's *The Newsroom*, Musero wrote and developed
15 his first original television pilot titled *Influence*. In approximately September of 2014,
16 Musero submitted *Influence* to Defendants, received notes and revised the pilot.
17 Miller and Yerushalaim then sent *Influence* to a handful of producers.

18 19. Storyline Entertainment, also a CAA client, read *Influence* and expressed
19 interest. In December of 2014, Defendants coordinated a meeting with Musero and
20 Storyline Entertainment to discuss producing his pilot.

21 20. For seven months following Musero's meeting with Storyline, he specifically
22 asked Defendants if *Influence* should be shopped to other producers and asked for
23 updates and advice regarding how to attach Storyline. Musero's requests went
24 unanswered until finally being advised that Storyline was no longer interested.

25 21. Upon information and belief, Defendants failure to shop *Influence* and seek
26 other Buyers eliminated any competition whatsoever and gave Storyline de facto
27 exclusive control over Plaintiff's work for seven months for no consideration

1 (allowing Storyline to effectively hold a free option on *Influence*). In so doing,
2 Defendants effectively drove down its value to the harm of Plaintiff and the benefit of
3 Storyline, their more powerful client.

4 **IV. Defendants' mishandling of Musero's original television pilot *Main Justice***

5 22. In September of 2015, Musero submitted a new original television pilot titled
6 *Main Justice* to Defendants. Musero pitched *Main Justice* as a television legal drama
7 series about the Attorney General and the nation's most powerful prosecutors
8 working at the Department of Justice.²

9 23. In October and November 2015, Defendants and Musero's literary manager³
10 ("Manager") worked with Musero to refine *Main Justice* and prepare it for
11 consideration and sale to Buyers. Defendants and the Manager compiled a list of
12 Buyers to whom each agreed to submit *Main Justice*.

13 24. In November 2015, the Dan Jinks Company ("Jinks"), a CBS Studios affiliate,
14 confirmed that they were interested in developing and producing the *Main Justice*
15 pilot and bringing it to CBS Studios. It was Musero's Manager who submitted his
16 pilot to Jinks. That same month, Musero met with a Jinks executive, followed by a
17 second meeting in December 2015.

18 25. In November of 2015, Musero, of his own accord, shared *Main Justice* with
19 producer Robert Katz ("Katz") who then submitted it to Nick Pepper ("Pepper"),
20 Head of Television at The Mark Gordon Company (a prolific producer of several hit
21 television series including *Grey's Anatomy*, *Criminal Minds* and *Designated*

22
23 ² In 2015, in accordance with the WGA registration guidelines Musero duly
24 registered *Main Justice* with The Writers Guild of America, West, Inc.

25 ³ Literary managers support, and complement, the agents in furthering their writer-
26 client's career. While only agents can legally procure employment for their clients for
27 a fee, both agent and manager cover the industry for information and submit client
28 material to executives, producers, directors and talent (which can lead to selling a
client's pilot and/or pitch, or obtaining a writing assignment).

1 *Survivor*). Although CAA also represented The Mark Gordon Company, it was
2 Musero, not CAA, who got his pilot read and considered by Pepper at The Mark
3 Gordon Company.

4 26. Pepper read *Main Justice* and was interested. Defendants then set up a meeting
5 with Musero, Katz and Pepper regarding possible development. What made The
6 Mark Gordon Company a more attractive potential buyer than Jinks was the fact that
7 Jinks would still need to take the additional step of submitting *Main Justice* to CBS
8 Studios (where Jinks was a producer) and get its interest and approval before Jinks
9 could move forward with a competing offer. The Mark Gordon Company, on the
10 other hand, was an independently financed studio that could make a cash offer by
11 itself for *Main Justice*.

12 27. Musero urged Defendants and his Manager to follow up with other Buyers to
13 whom they had submitted his pilot but were still waiting for a response, and to pursue
14 additional Buyers until The Mark Gordon Company made a formal offer. Defendants
15 and his Manager assured Musero that they would.

16 28. Upon information and belief, Defendants stopped shopping *Main Justice* to
17 other Buyers, and did so at a time when the interest of an accomplished, high-profile
18 television producer - The Mark Gordon Company - could have only increased
19 demand for *Main Justice*. In a typical scenario, a writer's agent will generate the
20 interest of multiple Buyers to drive competitive bids and gain exposure for the writer.
21 Here, when Defendants ceased shopping *Main Justice* to other Buyers once The Mark
22 Gordon Company voiced interest, Defendants – as they had done previously with
23 *Influence* – attempted to eliminate any competition (outside of Jinks who couldn't
24 offer money without also interesting CBS Studios) to the benefit of Pepper and The
25 Mark Gordon Company and the harm of the Plaintiff. In so doing, Defendants
26 favored their more powerful Buyer client to the detriment of their less powerful
27 writer client.

1 29. In January 2016, The Mark Gordon Company wrote that they wanted to
2 formally initiate a deal with Musero for *Main Justice* and, in February 2016, it finally
3 made by an initial offer and negotiations began. It was Musero’s attorney, not the
4 Defendants, who handled the negotiations on Musero’s behalf.

5 30. During this time, Musero’s Manager continued to cultivate Jinks’ interest in
6 developing and producing the *Main Justice* pilot with the aim of bringing it to CBS
7 Studios. To that end, Musero had a third meeting with Jinks by telephone in February
8 2016.

9 31. Upon information and belief, instead of playing Pepper and Jinks against each
10 other to increase the price, Miller and Yerushalaim improperly disclosed to Pepper
11 that Musero was waiting on Jinks and CBS to make a competitive cash offer for *Main*
12 *Justice* and counseled Pepper to hold off on improving upon his initial offer. In so
13 doing, Defendants shared Musero’s confidential communications and negotiation
14 strategies with CAA client The Mark Gordon Company Musero in order to drive
15 down the value of *Main Justice* to the detriment of Musero, but to the benefit of its
16 larger and more profitable client, The Mark Gordon Company.

17 32. Two months later, in April of 2016, The Mark Gordon Company and Musero
18 struck a deal wherein The Mark Gordon Company obtained a one-year option to
19 purchase the rights to *Main Justice* under the Option and Executive
20 Producer/Consulting Services Agreement [“Agreement”] between Musero and The
21 Mark Gordon Company dated as of April 13, 2016. Shortly thereafter, Musero, Katz,
22 and Pepper began work on the script.

23 33. In June of 2016, Musero delivered the first rewrite to The Mark Gordon
24 Company.⁴ The Mark Gordon Company paid Musero for commencement of the first

25
26 ⁴ A “rewrite” is an industry term to denote the work done by a writer to edit and
27 refine a piece of writing. Writers are typically paid per rewrite and budget minimums
28 are regulated by the WGA.

1 rewrite (pursuant to the Agreement) and Defendants received their ten percent (10%)
2 commission fee as Musero's agents. Thereafter, Pepper provided additional notes and
3 feedback and Musero commenced a second rewrite that was delivered in August of
4 2016.

5 34. Aside from paying Musero for the commencement of the first rewrite, The
6 Mark Gordon Company neglected to pay him during this period for the following
7 additional amounts when they were due under the Agreement: (1) the amount owed
8 for the Option (due upon execution of the Agreement); (2) the amount owed for
9 Musero's delivery of the first rewrite (due upon delivery); (3) the amount owed for
10 Musero's commencement of the second rewrite (due upon commencement); and (4)
11 the amount owed for Musero's delivery of the second rewrite (due upon delivery).

12 Although payment collection is an agent's obligation, Miller and Yerushalaim
13 provided Musero and his lawyer with no assistance in their attempts to get Musero
14 paid monies that were long overdue. In September 2016, with the help of his lawyer,
15 Musero finally received the amounts owed him for the first rewrite and the second
16 rewrite, but only after he agreed to forfeit the option money that was also owed him.

17 35. When Musero needed help getting paid on time, Defendants neglected to
18 advocate on his behalf. When Musero had to give up his option money in order to get
19 paid for work he already did, Defendants neglected to advocate on his behalf. And
20 each time Defendants neglected to advocate on Musero's behalf, Defendants
21 advantaged their larger client, The Mark Gordon Company, to the detriment of their
22 smaller client, Musero.

23 36. In June of 2017, the one-year option expired with no renewal or purchase
24 negotiations for the property. The rights to *Main Justice* thus reverted to Musero.

25 **V. Defendants' Misappropriation of Musero's *Main Justice***

26 37. In September of 2017, the entertainment news site Deadline.com announced:
27 "Eric Holder is going to Hollywood. The former U.S. Attorney General has teamed

1 with top producer Jerry Bruckheimer for *Main Justice*, a legal drama series project,
2 which has been set up at CBS. Written by Sascha Penn (“Penn”) and executive
3 produced by Holder and Bruckheimer...” (“Bruckheimer’s *Main Justice*”).

4 38. The Deadline.com article further read: “Centered around the U.S. Attorney
5 General, the show takes us into the tumultuous world of the 5th floor of the
6 Department of Justice where he takes on the biggest legal and investigative cases in
7 the country...” Musero’s *Main Justice* is also centered around the U.S. Attorney
8 General. Musero’s *Main Justice* also takes the audience into the tumultuous world of
9 the 5th floor of the Department of Justice. Musero’s *Main Justice* also takes on the
10 biggest legal and investigative cases in the country. And the Attorney General in both
11 Bruckheimer’s *Main Justice* and Musero’s *Main Justice* is fictional.

12 39. At all relevant times CAA represented both the producer, Jerry Bruckheimer
13 (“Bruckheimer”), the production company/studio, Jerry Bruckheimer TV
14 (“Bruckheimer TV”), and the writer, Sascha Penn (“Penn”). Upon information and
15 belief, the same agent who previously represented Musero and Musero’s *Main*
16 *Justice* – Andrew Miller, also represented Bruckheimer’s *Main Justice* and its writer,
17 Penn.

18 40. Upon information and belief, despite Bruckheimer’s *Main Justice* being
19 represented as a project inspired by Eric Holder, Holder was not in any way a part of,
20 or involved in, the earliest stages of its development. Rather, Holder’s belated
21 involvement was designed to create the false appearance of an independent project
22 that began with Holder.

23 41. Upon information and belief, CAA agent Miller personally initiated the
24 development of Bruckheimer’s *Main Justice* with his client, Penn, and his other client
25 Bruckheimer TV.

1 42. Upon information and belief, Penn (unlike Musero) does not have a
2 prosecutorial, legal or political background. Penn had previously never written in this
3 genre.

4 43. Upon information and belief, Miller and Penn created a pitch document which
5 was used to sell Bruckheimer's *Main Justice* to CBS during the summer of 2017.
6 That pitch document was preceded by, borrowed from, and harvested the concept,
7 pitch, series overview and pilot created by Musero under the same title, *Main Justice*,
8 each of which was shared with, and represented by, Miller.

9 44. Upon information and belief, in February of 2018, CBS approved the
10 production of Bruckheimer's *Main Justice* pilot. The one-hour pilot for
11 Bruckheimer's *Main Justice* was written by Penn based upon the pitch he made to
12 CBS that prior summer. It was cast and produced for millions of dollars.

13 45. Upon information and belief, both Bruckheimer's *Main Justice* and Musero's
14 *Main Justice* conclude with a final scene that contains a shocking ambush
15 assassination attempt on the Attorney General on a D.C. street at night.

16 46. Upon information and belief, CBS did not pick up Bruckheimer's *Main*
17 *Justice* for the fall 2018 lineup.

18 47. Upon information and belief, Defendants profited significantly from their
19 work on the Bruckheimer's *Main Justice* pilot despite CBS not picking it up to series.

20 48. By selling a competing project under the same title about the same thing,
21 agent Miller foreclosed any possibility of the prior project he had represented and
22 commissioned, Musero's *Main Justice*, being sold. In so doing, Defendants
23 advantaged its more powerful client, Jerry Bruckheimer and Bruckheimer TV, at the
24 significant expense of its less powerful client, Musero.

25 **VI. Defendants' additional failures in representing Musero**

26 49. Shortly after signing with Defendants, in the fall of 2014, Musero requested,
27 and would continue to request on numerous occasions, that Miller and Yerushalaim

1 submit him for staffing opportunities to write on another television series. Miller and
2 Yerushalaim repeatedly stated that they had done so, and would continue to submit
3 him for staffing.

4 50. Upon information and belief, Miller and Yerushalaim never submitted Musero
5 to staff for an open position on any television series despite their statements to the
6 contrary.

7 51. What Miller and Yerushalaim did send Musero on, during the fall of 2014,
8 were a few “general meetings,” typically used to help a new writer network within
9 the industry and discuss potential projects to develop with producers. By December
10 of 2014, Miller and Yerushalaim stopped sending Musero on general meetings.

11 52. Upon information and belief, from December of 2014 to November of 2016
12 Defendants did not initiate or send Musero on a single general meeting.

13 53. In October of 2016, Musero once again pressed Miller and Yerushalaim about
14 his lack of job interviews.

15 54. On or about November 2, 2016, for the first time in nearly two years,
16 Yerushalaim wrote to Musero and said “We’re hearing that THE GOOD WIFE
17 SPINOFF is looking to add a writer to the staff” and asked Musero about his
18 experience that would “fit the bill.” Musero responded by outlining his qualifying
19 credentials and indicated that he was very interested and would like to be submitted.

20 55. Musero later discovered that at the time Yerushalaim e-mailed him regarding
21 THE GOOD WIFE SPINOFF, there was no open position and the television series’
22 writer’s room had been fully staffed for a couple of months.

23 56. During November and December 2016, Defendants (at the behest of Musero’s
24 new literary manager) sent him to meet with two producers on general meetings for
25 the first time in nearly two years. Thereafter, Defendants ceased communications
26 with Musero and never responded to, or contacted, him again.

1 57. During Musero's representation by Defendants, Musero was never sent to
2 interview for a single writing position on a television series. Prior to Musero being
3 represented by Defendants, Musero had successfully secured on his own, without
4 representation, an interview with, and then got hired by, acclaimed showrunner
5 Aaron Sorkin to write on HBO's *The Newsroom*.

6 58. During Musero's representation by Defendants, the only writing income
7 Musero earned was from the *Main Justice* deal that Musero secured on his own with
8 Pepper and The Mark Gordon Company through Katz.

9 **VII. Statute of Limitations**

10 59. At all relevant times a fiduciary relationship existed between the parties such
11 that the Plaintiff reasonably trusted and relied upon Defendants to act in Plaintiff's
12 best interest, which reasonably induced Plaintiff to not be aware of or inquire into
13 Defendants' actions on Plaintiff's behalf. As such, any potential statute of limitations
14 defense is subject to equitable tolling and/or equitable estoppel and Plaintiff's claims
15 cannot be time barred.

16 **FIRST CAUSE OF ACTION**

17 (Breach of Fiduciary Duty and Confidentiality Against All Defendants, and Each)

18 60. Plaintiff repeats, realleges and incorporates herein by reference as though fully
19 set forth the allegations contained in Paragraphs 1 through 60.

20 61. Defendants owed Musero an undivided duty of loyalty during the time that he
21 was represented by CAA. As Plaintiff's agents, Defendants owed fiduciary duties to
22 act in Plaintiff's best interest, to be loyal, to be careful and refrain from taking actions
23 that would reduce or usurp Plaintiff's profits, to advise Plaintiff candidly, to not put
24 Defendants' interest above Plaintiff's interests, to not intentionally withhold material
25 information from Plaintiff, to not share confidential information and communications
26 to Plaintiff's detriment, and to not steal Plaintiff's creative works. Plaintiff reposed
27 special faith, trust and confidence in Defendants to carry out the duties herein alleged.

1 Defendants were the first and only talent agency that Plaintiff worked with and he
2 deferred to and trusted their expertise greatly.

3 62. Defendants' job was to procure employment for Plaintiff, to sell Plaintiff's
4 original television pitches and pilots to Buyers, and negotiate contracts on Plaintiff's
5 behalf in connection with his creative work and services.

6 63. Defendants breached their fiduciary duties to Plaintiff by, *inter alia*:

- 7 a. promising, and then failing, to submit Plaintiff for a single paid writing
8 position during the nearly three years that Defendants exclusively
9 represented Plaintiff following his indisputable success on HBO's *The*
10 *Newsroom*;
- 11 b. promising, and then failing, to advocate for Plaintiff with third parties
12 while failing to negotiate a contract with Storyline Entertainment for its
13 interest in his original work *Influence* to the benefit of Defendants'
14 larger and more profitable client, Storyline Entertainment, and the
15 detriment of Plaintiff;
- 16 c. promising, and then failing, to advocate for Plaintiff with third parties
17 while failing to negotiate a contract with The Mark Gordon Company
18 for its interest in his original work *Main Justice* to the benefit of
19 Defendants' larger and more profitable client, The Mark Gordon
20 Company, and to the detriment of Plaintiff;
- 21 d. disclosing confidential negotiation communications and strategy to the
22 side opposite Plaintiff - The Mark Gordon Company – regarding The
23 Mark Gordon Company's option of Plaintiff's pilot, *Main Justice*, to the
24 benefit of Defendants' larger and more profitable client, The Mark
25 Gordon Company, and the disadvantage of Plaintiff;
- 26 e. failing to seek and collect timely payment from The Mark Gordon
27 Company on Plaintiff's behalf for writing services rendered by Plaintiff

1 on *Main Justice*, which failure resulted in Plaintiff losing money owed
2 him in order to get paid for work that he already did, all of which was to
3 the benefit of Defendants' larger and more profitable client, The Mark
4 Gordon Company, and to the detriment of Plaintiff;

5 f. misappropriating Plaintiff's original and creative work in *Main Justice*,
6 developing it with producer Jerry Bruckheimer, production company
7 Bruckheimer TV and writer Penn, selling it to, and getting it made at
8 CBS, thereby conferring a significant economic benefit to CAA, Miller
9 and Yerushalaim; and

10 g. falsely representing to Musero that it was pursuing writing opportunities
11 for him, such as occurred with regard to the *The Good Wife* Spinoff
12 where Defendants knew or should have known that the positions had
13 been filled and a fully staffed writer's room had commenced.

14 64. As a direct and proximate cause of Defendants' breaches, Plaintiff has
15 suffered damages in an amount that is in excess of the minimum jurisdiction of the
16 Superior Court.

17 65. Defendants' conduct as described herein was done with a conscious disregard
18 for the rights of Plaintiff, with the intent to unjustly profit at Plaintiff's expense. Such
19 conduct was unauthorized and constitutes oppression, fraud, and/or malice under
20 California Civil Code §3294, entitling Plaintiff to an award of punitive damages in an
21 amount appropriate to punish or set an example of the Defendants in an amount to be
22 determined.

23 ///

24 ///

1 **SECOND CAUSE OF ACTION**

2 (Breach of Implied Covenant of Good Faith and Fair Dealing Against All
3 Defendants, and Each)

4 66. Plaintiff repeats, realleges and incorporates herein by reference as though fully
5 set forth the allegations contained in Paragraphs 1 through 60, inclusive, of this
6 Complaint.

7 67. During Defendants' representation of Plaintiff there was an implicit covenant
8 of good faith and fair dealing.

9 68. Defendants breached their implied covenant of good faith and fair dealing to
10 Plaintiff by, *inter alia*:

- 11 a. promising, and then failing, to submit Plaintiff for a single paid writing
12 position during the nearly three years that Defendants exclusively
13 represented Plaintiff following his indisputable success on HBO's *The*
14 *Newsroom*;
- 15 b. promising, and then failing, to advocate for Plaintiff with third parties
16 while failing to negotiate a contract with Storyline Entertainment for its
17 interest in his original work *Influence* to the benefit of Defendants'
18 larger and more profitable client, Storyline Entertainment, and the
19 detriment of Plaintiff;
- 20 c. promising, and then failing, to advocate for Plaintiff with third parties
21 while failing to negotiate a contract with The Mark Gordon Company
22 for its interest in his original work *Main Justice* to the benefit of
23 Defendants' larger and more profitable client, The Mark Gordon
24 Company, and to the detriment of Plaintiff;
- 25 d. disclosing confidential negotiation communications and strategy to the
26 side opposite Plaintiff - The Mark Gordon Company – regarding The
27 Mark Gordon Company's option of Plaintiff's pilot, *Main Justice*, to the

1 benefit of Defendants' larger and more profitable client, The Mark
2 Gordon Company, and the disadvantage of Plaintiff;

- 3 e. failing to seek and collect timely payment from The Mark Gordon
4 Company on Plaintiff's behalf for writing services rendered by Plaintiff
5 on *Main Justice*, which failure resulted in Plaintiff losing money owed
6 him in order to get paid for work that he already did, all of which was to
7 the benefit of Defendants' larger and more profitable client, The Mark
8 Gordon Company, and to the detriment of Plaintiff;
- 9 f. misappropriating Plaintiff's original and creative work in *Main Justice*,
10 developing it with producer Jerry Bruckheimer, production company
11 Bruckheimer TV and writer Penn, selling it to, and getting it made at
12 CBS, thereby conferring a significant economic benefit to CAA, Miller
13 and Yerushalaim; and
- 14 g. falsely representing to Musero that it was pursuing writing opportunities
15 for him, such as occurred with regard to the *The Good Wife* Spinoff
16 where Defendants knew or should have known that the positions had
17 been filled and a fully staffed writer's room had commenced.

18 69. Defendants have been unjustly enriched and an agreement is implied in law for
19 Defendants to tender Plaintiff a proper credit and the reasonable value of *Main*
20 *Justice*.

21 70. As a direct and proximate cause of Defendants' breaches, Plaintiff has suffered
22 damages in an amount that is in excess of the minimum jurisdiction of the Superior
23 Court.

24 71. Defendants' conduct as described herein was done with a conscious disregard
25 for the rights of Plaintiff, with the intent to unjustly profit at Plaintiff's expense. Such
26 conduct was unauthorized and constitutes oppression, fraud, and/or malice under
27 California Civil Code §3294, entitling Plaintiff to an award of punitive damages in an

1 amount appropriate to punish or set an example of the Defendants in an amount to be
2 determined.

3 **THIRD CAUSE OF ACTION**

4 (Breach of Contract Against all Defendants, and Each)

5 72. Plaintiff repeats, realleges and incorporates herein by reference as though fully
6 set forth the allegations contained in Paragraphs 1 through 60, inclusive, of this
7 Complaint.

8 73. The disclosure of the *Main Justice* script, along with any and all supporting
9 materials and documents, by Plaintiff to Defendants was of substantial benefit to
10 Defendants. This disclosure was consideration given in exchange for a promise by
11 Defendants to work for Plaintiff to market and sell *Main Justice* to a Buyer and to
12 credit and pay Plaintiff the reasonable value for his work.

13 74. Defendants were aware of this obligation as they worked closely with Plaintiff
14 to, in part, refine *Main Justice* and prepare it for consideration and sale to a Buyer,
15 coordinate meetings with Plaintiff and Pepper and The Mark Gordon Company,
16 provide input regarding the Buyers to whom to send *Main Justice*.

17 75. By virtue of Defendants' actions, communications and history representing
18 Plaintiff, an agreement was implied in fact.

19 76. Plaintiff performed all covenants and conditions required of him pursuant to
20 the agreement.

21 77. Defendants breached the agreement by misappropriating Plaintiff's original
22 and creative work in *Main Justice*, developing it with producer Jerry Bruckheimer,
23 Bruckheimer TV and writer Penn, selling it to CBS, conferring a significant
24 economic benefit to CAA, Miller and Yerushalaim.

25 78. Defendants have been unjustly enriched and an agreement is implied in law for
26 Defendants to tender Plaintiff a proper credit and the reasonable value of *Main*
27 *Justice*.

1 79. As a direct and proximate cause of Defendants' breaches, Plaintiff has suffered
2 damages in an amount that is in excess of the minimum jurisdiction of the Superior
3 Court.

4 80. Defendants' conduct as described herein was done with a conscious disregard
5 for the rights of Plaintiff, with the intent to vex, annoy, and/or harass Plaintiff and to
6 unjustly profit at Plaintiff's expense. Such conduct was unauthorized and constitutes
7 oppression, fraud, and/or malice under California Civil Code §3294, entitling
8 Plaintiff to an award of punitive damages in an amount appropriate to punish or set
9 an example of the Defendants in an amount to be determined.

10
11 **PRAYER FOR RELIEF**

12 (Against All Defendants, and Each of Them)

13 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 14 1. That Plaintiff be awarded his general, special and other damages in an
15 amount to be determined at trial;
- 16 2. That Defendants account to Plaintiff for all profits derived from the
17 exploitation of Plaintiff's content, and disgorge said profits, as well as
18 compensate Plaintiff for the damages suffered thereby as a result of the
19 conduct alleged herein, each in an amount to be established at trial;
- 20 3. That Plaintiff be awarded punitive damages for Defendants' fraudulent
21 and oppressive actions, as permitted by law;
- 22 4. That Plaintiff be awarded pre-judgment interest as permitted by law;
- 23 5. That Plaintiff be awarded the costs of this action;

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6. That Plaintiff be awarded such further legal and equitable relief as the Court may deem just and proper.

Respectfully submitted,

By: 

Dated: March 26, 2019

Stephen M. Doniger, Esq.
Jessica L. Phillips, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff