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Re: Demand for dismissal per Rule 11 in *Lenhoff Enterprises, Inc. v. United Talent Agency, Inc.*, et al., No. 2:15-cv-1086 (C.D. Cal.)

Dear Counsel:

As you know, Judge O'Connell recently dismissed Plaintiff's Second Amended Complaint ("SAC") in its entirety for failure to state a claim. Plaintiff's Third Amended Complaint ("TAC") fails to address any of the critical pleading deficiencies outlined in the Court's December 17, 2015 order. Moreover, the scant new allegations of the TAC contain numerous and blatant misstatements of fact. It is abundantly clear that Plaintiff's counsel conducted no reasonable investigation before filing the TAC to determine if the alleged claims were "warranted by existing law" or if the "factual contentions ha[d] evidentiary support." *See* Fed. R. Civ. P. 11(b)(2)(3). Accordingly, we are left with no choice but to demand the immediate dismissal of the above-referenced lawsuit because it violates Rule 11 of the Federal Rules of Civil Procedure.

In its December 17 order, the Court held that Plaintiff had failed to sufficiently allege a conspiracy to exclude smaller agencies from co-packaging agreements. Critically, the Court relied in part on the fact that the SAC conceded that "Defendants do in fact participate in co-packaging agreements with non-Big 4 Agencies," as it alleged that 16 of 105 sampled co-packaging agreements for 2014-2015 included a smaller agency. Order at 11. Thus, the Court found, "Plaintiff's own allegations contradict its claim that Defendants' co-packaging agreements are exclusive to the Big 4 Agencies." *Id.*

In an apparent effort to supply, in the TAC, some factual contentions different from those in the SAC and thus escape a third (and perhaps final) dismissal, Plaintiff's TAC now alleges different and inconsistent facts about the alleged market for packaged scripted series. In particular, the TAC includes two new exhibits, Exhibits A and B (and references to these exhibits in the body of the TAC), purporting to show that UTA, ICM, WME and CAA (referred to as the "Uber Agencies" in the TAC) refuse to enter into co-packaging

agreements with non-Uber Agencies. We do not know from where the purported "data" in these Exhibits is sourced, since the TAC never provides that information. We suspect that if this information were from a reputable and identifiable source, it would have been identified. Regardless, and unsurprisingly, data contained in Exhibits A and B is riddled with inaccuracies and omissions. Listed below are just a few examples of the false statements found in just the first few pages of each exhibit:

1. Exhibits A and B claim that the series *Banshee* was co-packaged by Defendant UTA and CAA. In fact, UTA packaged that series itself; it did not enter into a co-packaging agreement with CAA.

2. Exhibits A and B claim that the series *Better Call Saul* was co-packaged by Defendants UTA and ICM. But in fact, UTA was not involved in packaging that series at all. To compound this error, Paragraph 42 of the TAC alleges that UTA "coerc[ed]" AMC to renew the series *Halt and Catch Fire* "in order to get a different and higher rated series, *Better Call Saul*." Not only is the allegation of a linkage between the series pure fiction, but as stated above, UTA was not involved in packaging the series *Better Call Saul* at all.

3. Exhibits A and B claim that the series *Key & Peele* was packaged by UTA alone. In fact, UTA co-packaged that series with The Gersh Agency (and not one of the so-called "Uber Agencies").

These are just a few of the many inaccuracies in these Exhibits. Plaintiff has no basis for the allegations set forth in Exhibits A and B to the TAC, or for its allegations in the TAC relating to those exhibits—including, notably, the allegations that UTA refuses to enter into co-packaging agreements with non-Uber Agencies.

The TAC is rife with statements of so-called "fact" that Plaintiff knows, or should know, are false. It is well-settled that Rule 11 sanctions are appropriate in such circumstances. *See Truesdell v. S. Cal. Permanente Med. Grp.*, 293 F.3d 1146, 1153-54 (9th Cir. 2002) (holding that district court did not abuse its discretion in awarding Rule 11 sanctions where it "properly concluded that the allegations and other factual contentions in Plaintiff's complaint lacked evidentiary support") (internal quotations omitted); *Moser v. Bret Harte Union High Sch. Dist.*, 366 F. Supp. 2d 944, 985 (E.D. Cal. 2005) (ordering sanctions under Rule 11 based on attorney's submission of "pleadings asserting meritless objections and false statements of facts"). Given these factual inaccuracies, we demand that the TAC be dismissed forthwith. If not, UTA will pursue all available rights and remedies as appropriate, including the imposition of sanctions pursuant to Rule 11.

Please let me know by Wednesday, February 10, 2016, whether you will agree to withdraw the TAC and dismiss this lawsuit with prejudice. If you would like to discuss these matters further, please feel free to contact me or my co-counsel, Bryan Freedman.

Sincerely,

Steven A. Marenberg

cc: Bryan Freedman, Esq.