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Superior Court of California  
County of Los Angeles  
MAY 20 2015  
Sherri R. Carter, Executive Officer/Clerk  
By \_\_\_\_\_, Deputy

7 Attorneys for Defendants,  
UNITED TALENT AGENCY, LLC, GREGORY CAVIC  
8 and GREGORY MCKNIGHT

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES  
12

13 CREATIVE ARTISTS AGENCY, LLC, a ) Case No. SC123994  
Delaware limited liability company ) [Assigned to Hon. Lisa Hart Cole]  
14 )  
Plaintiff, ) Unlimited Civil Case  
15 ) Amount in excess of \$25,000  
vs. )

16 ) **DEFENDANT UNITED TALENT**  
UNITED TALENT AGENCY, LLC, a ) **AGENCY, LLC'S NOTICE OF**  
17 Delaware limited liability company; ) **DEMURRER AND DEMURRER TO**  
GREGORY CAVIC, an individual; ) **COMPLAINT; MEMORANDUM OF**  
18 GREGORY MCKNIGHT, an individual; and ) **POINTS AND AUTHORITIES IN**  
DOES 1 to 50, inclusive, ) **SUPPORT THEREOF**

19 Defendants. )  
20 ) [Notice of Motion to Strike; Motion to Strike;  
21 ) Memorandum of Points & Authorities In  
22 ) Support Thereof; and Request for Judicial  
23 ) Notice filed concurrently herewith]

24 ) Date: December 11, 2015  
25 ) Time: 8:30 a.m.  
26 ) Dept: O

27 ) **RES ID: 150504049037**

28 ) Action filed: April 2, 2015  
Trial Date: None set

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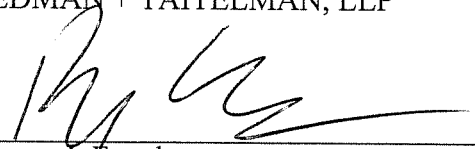
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 11, 2015, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department "O" of the above-entitled court located at 1725 Main Street, Santa Monica, California, 90401, defendant United Talent Agency, LLC will, and hereby does, demur to the Complaint for Damages and Injunctive Relief filed by plaintiff Creative Artists Agency, LLC on the grounds set forth in the attached Demurrer to Complaint and incorporated herein by this reference.

This Demurrer will be based upon this Notice, the Demurrer to Complaint and supporting Memorandum of Points and Authorities attached hereto, the concurrently filed Request for Judicial Notice, upon the pleadings, records and papers on file in this action and on such other evidence as may be presented at the time of the hearing on the Demurrer.

DATED: May 20, 2015

FREEDMAN + TAITELMAN, LLP

By:   
Bryan J. Freedman  
Brian Turnauer  
Sean M. Hardy  
Attorneys for Defendant United Talent Agency, LLC

1 DEMURRER TO COMPLAINT FOR DAMAGES

2 Defendant United Talent Agency, LLC (“UTA”) hereby demurs to the Complaint for  
3 Damages filed by plaintiff Creative Artists Agency, LLC, severally, on each of the following  
4 grounds:

5 1. The fourth alleged cause of action fails to allege facts sufficient to state a cause of  
6 action against UTA for Conspiracy to Breach Fiduciary Duty (CCP § 430.10(e));

7 2. The fourth alleged cause of action for Conspiracy to Breach Fiduciary Duty is  
8 uncertain (CCP § 430.10(f));

9 3. The sixth alleged cause of action fails to allege facts sufficient to state a cause of  
10 action against UTA for Conspiracy to Breach Duty of Loyalty (CCP § 430.10(e)); and

11 4. The sixth cause of action for Conspiracy to Breach Fiduciary Duty is uncertain (CCP  
12 § 430.10(f)).

13  
14  
15 DATED: May 20, 2015

FREEDMAN + TAITELMAN, LLP

16  
17 By: 

Bryan J. Freedman  
Brian Turnauer  
Sean M. Hardy  
Attorneys for Defendant United Talent  
Agency, LLC

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 On March 31, 2015, a group of talent agents and employees left Creative Artists Agency,  
5 LLC (“CAA”) for United Talent Agency, LLC (“UTA”). Less than two days later, in a flailing and  
6 desperate attempt to save face, CAA lashed out and hastily filed this frivolous lawsuit.  
7 Unfortunately, CAA filed a Complaint riddled with falsehoods, inconsistencies, unsubstantiated  
8 allegations, and glaring omissions designed to intentionally mislead the Court. Moreover, CAA’s  
9 Complaint is nothing more than a thinly-veiled attempt to illegally restrict competition through the  
10 court system and stands in direct contravention of California’s strong public policy favoring free and  
11 open competition, and employee mobility. Despite what CAA would like to believe, its front doors  
12 are not a one-way turnstile.

13 While the Complaint’s factual inaccuracies will be exposed throughout this litigation, CAA’s  
14 duplicity appears right on the face of the Complaint. Pursuant to California *Labor Code* section  
15 2855, personal services contracts that collectively exceed seven years in duration are void as a matter  
16 of law. In its Complaint, CAA alleges that Defendants interfered with, and conspired to interfere  
17 with, the employment contracts of agents Martin Lesak and Jason Heyman. As CAA is well aware,  
18 those employment contracts have collectively long exceeded the seven-year rule. Heyman and  
19 Lesak’s contracts are therefore unenforceable, rendering CAA’s causes of action for interference  
20 with those contracts legally unsustainable.

21 With no way around this fatal flaw, CAA instead deliberately misleads the Court by alleging  
22 that Lesak and Heyman began their employment with CAA in 2009. CAA entirely suppresses the  
23 fact that it first entered into a written employment agreement with both Lesak and Heyman on July  
24 8, 2005. This omission was no honest mistake or simple oversight.

25 In fact, CAA filed a private arbitration demand against Lesak and Heyman **the day after the**  
26 **Complaint’s filing** conceding that Lesak and Heyman were hired by CAA on July 8, 2005. (RJN,  
27 Ex. “C”, ¶ 13; Ex. “D”, ¶ 13.) This transparent attempt to deceive the Court violates the truthful  
28 pleading and sham pleading doctrines. *See, Cantu v. Resolution Trust Corp.*, 4 Cal.App.4th at 877-

1 878 (“When the plaintiff pleads inconsistently in separate actions, the plaintiff’s complaint is nothing  
2 more than a sham that seeks to avoid the effect of a demurrer.”); *see also, Dwan v. Dixon* (1963) 216  
3 Cal.App.2d 260, 264 (“to make allegations which are directly contradictory to the facts within their  
4 own knowledge is to defeat the rule of truthful pleading”); *Cantu v. Resolution Trust Corp.* (1992) 4  
5 Cal.App.4th 857, 877 (“the plaintiff may not plead facts that contradict the facts or positions that the  
6 plaintiff pleaded in earlier actions or suppress facts that prove the pleaded facts false”).

7 In truth, CAA’s reasoning for omitting this salient fact also stems from an even deeper and  
8 significantly more embarrassing place. CAA alleges in the Complaint that UTA induced Heyman  
9 and Lesak to terminate their (unenforceable) employment with CAA and move to UTA. (Complaint  
10 at ¶¶ 43-45.) CAA did not mention in the Complaint that Heyman and Lesak were once partners  
11 with and employees of UTA, both subject to binding and enforceable partnership agreements. In  
12 2005, CAA poached Heyman and Lesak from UTA and induced them to join CAA.

13 The 2005 employment agreements between Heyman, Lesak and CAA, which CAA elusively  
14 omits from the Complaint, states in no uncertain terms that:

15 CAA understands that you may take certain actions (including without limitation  
16 the possible termination of your employment with United Talent Agency, Inc.,  
17 “UTA”), in reliance on CAA’s promise not to revoke [this offer], and your ability  
18 to accept the offer *on or before July 11, 2005.*”  
(*See* RJN, Exhibits “A” and “B” at p. 1)

19 CAA even went so far as to indemnify Heyman and Lesak in 2005 for their breach of the  
20 UTA agreements and for their anticipated solicitation of UTA’s clients. In other words, CAA  
21 induced these very agents to terminate their employment with UTA in 2005, yet now allege that  
22 UTA’s hiring back of those agents is somehow actionable.

23 Moreover, CAA not only pleads factually spurious allegations, but also alleges causes of  
24 action that are legally unsustainable. CAA’s causes of action against UTA for conspiracy to breach  
25 fiduciary duty and duty of loyalty fail as a matter of law, as no such duties exist by and among  
26 competitors.

27 For the reasons set forth below, UTA respectfully requests the Court sustain this demurrer to  
28 CAA’s fourth and sixth causes of action with prejudice.



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II.

**PROCEDURAL BACKGROUND AND SUMMARY**

By its Complaint for Damages, CAA has alleged the following causes of action against UTA: (1) Intentional Interference with Contractual Relations; (2) Intentional Interference with Prospective Economic Advantage; (3) Conspiracy to Breach Fiduciary Duty; (4) Conspiracy to Breach Duty of Loyalty; and (5) Violations of Business & Professions Code, Section 17200. Of these causes of action, the fourth cause of action for Conspiracy to Breach Fiduciary Duty and sixth cause of action for Conspiracy to Breach Duty of Loyalty fail outright.

As a matter of California law, a party *cannot* be liable for a conspiracy to breach a fiduciary duty or a duty of loyalty unless that party, itself, owes a fiduciary duty or a duty of loyalty to the injured party. Here, however, UTA is not alleged to be a fiduciary of CAA, nor is UTA alleged to owe a duty of loyalty to CAA. Rather, as is conceded in the Complaint, UTA was merely a competitor of CAA. (*See*, Complaint at ¶¶ 54, 65.) Thus, absent an independent duty owed by UTA to CAA, no cause of action for Conspiracy to Breach Fiduciary Duty or Conspiracy to Breach Duty of Loyalty has been, or can be, alleged by CAA against UTA.

Based on the facts alleged, CAA has not, and cannot, state either a cause of action against UTA for Conspiracy to Breach Fiduciary Duty or a cause of action for Conspiracy to Breach Duty of Loyalty.

III.

**PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 430.10, THIS COURT HAS THE AUTHORITY TO GRANT THE REQUESTED DEMURRER**

California *Code of Civil Procedure* section 430.10 states in relevant part:

The party against whom a complaint . . . has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds:

- ...  
(e) The pleading does not state facts sufficient to constitute a cause of action.  
(f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible  
....

As such, based upon the language in section 430.10, a demurrer is properly asserted both

1 where a plaintiff has failed to state facts sufficient to constitute a cause of action and where a  
2 pleading is ambiguous or unintelligible. Section 430.30 further adds, “[w]hen any ground for  
3 objection to a complaint . . . appears on the face thereof, or from any matter of which the Court is  
4 required to or may take judicial notice, the objection on the ground may be taken by a demurrer to  
5 the pleading.” Accordingly, when a complaint is defective in whole or in part and the defects  
6 appear on the face of the complaint, the defendant may properly object by demurrer. Not only does  
7 a demurrer test the sufficiency of the factual allegations in the complaint, but it also tests whether  
8 those facts are pleaded with sufficient certainty and particularity. (*Banerian v. O’Malley* (1974) 42  
9 Cal.App.3d 604.)

10 If under the substantive law no liability exists, a demurrer is proper and it is not an abuse of  
11 discretion for a court to deny the plaintiff leave to amend its complaint. (*Berkeley Police Assn. v.*  
12 *City of Berkeley* (1977) 76 Cal.App.3d 931, 943; *see also Lawrence v. Bank of America* (1985) 163  
13 Cal.App.3d 431, 437.) Additionally, in *Lee v. Interinsurance Exchange* (1996) 50 Cal.App.4<sup>th</sup> 694,  
14 724, the court noted: “[I]t is proper to sustain a demurrer without leave to amend if it is probable  
15 from the nature of the defects and previous unsuccessful attempts to plead that plaintiff cannot state  
16 a cause of action.” As the facts and nature of CAA’s claims are clear and no liability exists as will  
17 be shown below, the Court should grant the UTA’s Demurrer without leave to amend. Based upon  
18 the foregoing, due to the defects apparent in CAA’s fourth and sixth causes of action, UTA  
19 respectfully requests that this Court grant its Demurrer without leave to amend.

20 IV.

21 **CAA HAS NOT ALLEGED, AND CANNOT ALLEGE, A CAUSE OF ACTION FOR**  
22 **CONSPIRACY TO BREACH FIDUCIARY DUTY AGAINST UTA**

23 “By its nature, tort liability arising from conspiracy presupposes that the coconspirator is  
24 legally capable of committing the tort, i.e., that he or she owes a duty to plaintiff recognized by law  
25 and is potentially subject to liability for breach of that duty.” (*Applied Equipment Corp. v. Litton*  
26 *Saudi Arabia Ltd.* (1994) 7 Cal. 4th 503, 511.) Consequently, California courts have held that a  
27 nonfiduciary **cannot** be held liable for conspiracy to breach a fiduciary duty. (*See, Everest Investors*  
28 *8 v. Whitehall Real Estate Partnership Xi* (2002) 100 Cal. App. 4th 1102, 1109; *Kidron v. Movie*

1 *Acquisition Corp.* (1995) 40 Cal. App. 4th 1571, 1597 (“ [a] nonfiduciary cannot conspire to breach  
2 a duty owed only by a fiduciary”); *accord, Doctors’ Co. v. Superior Ct.* (1989) 49 Cal. 3d 39, 44  
3 (“[a] cause of action for civil conspiracy may not arise, however, if the alleged conspirator, though a  
4 participant in the agreement underlying the injury, was not personally bound by the duty violated by  
5 the wrongdoing”).

6 As alleged in Paragraph 54 of the Complaint, UTA was a competitor of CAA. (*See,*  
7 Complaint at ¶ 54, 9:5.) Nowhere is it alleged, nor can it be alleged, that UTA was a “fiduciary” of  
8 CAA, or had a “special relationship” with CAA that resulted in the creation of a fiduciary  
9 relationship. Certain relationships give rise to fiduciary duty as a matter of law, including  
10 partnerships, joint-venturer relationships, corporate officers and boards of directors and their  
11 shareholders, and trustee-beneficiary relationships. (*See, e.g., Oakland Raiders v. National Football*  
12 *League* (2005) 131 Cal. App. 4th 621, 632-633.) Absent a special relationship or agreement  
13 between the parties, courts will not impose a fiduciary relationship. (*See, e.g., Committee on*  
14 *Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal. 3d 197, 222 (“before a person can  
15 be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for  
16 the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of  
17 law.”).)

18 In sum, absent any fiduciary relationship with CAA, a cause of action for Conspiracy to  
19 Breach Fiduciary Duty against UTA will not lie. Therefore, UTA’s demurrer to CAA’s fourth cause  
20 of action for Conspiracy to Breach Fiduciary Duty must be sustained.

21 V.

22 **CAA HAS NOT ALLEGED, AND CANNOT ALLEGE, A CAUSE OF ACTION FOR**  
23 **CONSPIRACY TO BREACH DUTY OF LOYALTY AGAINST UTA**

24 For the same reasons as CAA’s fourth cause of action for Conspiracy to Breach Fiduciary  
25 Duty, CAA’s sixth cause of action for Conspiracy to Breach Duty of Loyalty fails as a matter of law.  
26 CAA alleges that UTA is liable for civil conspiracy because it agreed and acted with others to cause  
27 CAA employees to breach their duty of loyalty to CAA. (Complaint at ¶ 87.) “A cause of action for  
28 civil conspiracy may not arise, however, if the alleged conspirator, though a participant in the

1 agreement underlying the injury, was not personally bound by the duty violated by the  
2 wrongdoing[.]” (*Doctors' Co. v. Superior Court*, 49 Cal.3d at 44.) Conspiracy is not an independent  
3 tort; *it cannot create a duty* or abrogate an immunity. It allows *tort recovery only against a party*  
4 *who already owes the duty* and is not immune from liability based on applicable substantive tort law  
5 principles. (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th at 514.)

6 CAA fails to allege, and cannot allege, that any duty of loyalty is owed to it by UTA. Again,  
7 UTA is a direct competitor of CAA. No special relationship exists between UTA and CAA which  
8 could conceivably give rise to a duty of loyalty. (*See, e.g., Van de Kamp v. Bank of America* (1988)  
9 204 Cal.App.3d 819, 834 (trustee-beneficiary relationship), *Kerner v. Superior Court* (2012) 206  
10 Cal.App.4th 84, 126 (attorney-client relationship), *Boulenger v. Morison* (1928) 88 Cal.App. 664,  
11 668-669 (principal-agent relationship).)

12 In sum, absent an independent duty of loyalty owed by UTA to CAA, a cause of action for  
13 Conspiracy to Breach Duty of Loyalty against UTA must fail. Therefore, UTA’s demurrer to  
14 CAA’s sixth cause of action for Conspiracy to Breach Duty of Loyalty must be sustained.

## 15 VI.

### 16 THE FOURTH AND SIXTH CAUSES OF ACTION ARE 17 FATALLY UNCERTAIN

18 The instant Demurrer should additionally be sustained because both the fourth and sixth  
19 causes of action against UTA are fatally uncertain. In each of these causes of action, CAA was  
20 required to state “the essential facts upon which a determination of the controversy depends” with  
21 “clearness and precision so that nothing is left to surmise.” (*Bernstein v. Piller* (1950) 98  
22 Cal.App.2d 441, 443.) “Mere recital, references to or allegations of material facts which are left to  
23 surmise are subject to a special demurrer for uncertainty.” (*Id.* at 443-444.) CAA must set forth the  
24 essential facts of its case “ ‘with reasonable precision and with particularity sufficient to acquaint  
25 [the] defendant with the nature, source, and extent’ ” of CAA’s claim. (*Doe v. City of Los*  
26 *Angeles* (2007) 42 Cal.4th 531, 550.) ***Legal conclusions are insufficient.*** (*Id.*, at p. 551, fn. 5.) As  
27 shown above, the Complaint consists of a series of conclusory and often contradictory allegations.  
28

1 To state that UTA cannot reasonably be apprised of the nature of the allegations against it is an  
2 understatement.

3 Here, the fourth and sixth causes of action continuously lump UTA, the other named  
4 defendants, and the unnamed Doe defendants together in its allegations by ascribing alleged  
5 conduct to "Defendants." These causes of action are replete with instances where CAA  
6 impermissibly lumps UTA together with the other defendants, making it impossible to understand  
7 why each person has been sued. (*See* Complaint at ¶¶ 53, 56, 57, 83, 84.) (*See also* *Hawley Bros.*  
8 *Hardware Co. v. Brownstone* (1899) 123 Cal. 643, 645-648 (holding that a demurrer should have  
9 been sustained for uncertainty where the complaint indiscriminately used "defendant" to refer to  
10 several possible parties); *Code of Civil Procedure* § 430.10(f) (a complaint is subject to demurrer  
11 where it is "uncertain," "ambiguous," or "unintelligible.').) As a result, these causes of action are  
12 fatally uncertain under *Code of Civil Procedure* § 430.10(f) and the Demurrer as to the fourth and  
13 sixth causes of action should be sustained without leave to amend.

14 **VII.**

15 **CONCLUSION**

16 For the foregoing reasons, UTA respectfully requests that the Court sustain its Demurrer as  
17 to each of the fourth and sixth causes of action to CAA's Complaint without leave to amend.

18  
19 DATED: May 20, 2015

FREEDMAN + TAITELMAN, LLP

20  
21 By: 

22 Bryan J. Freedman  
23 Brian Turnauer  
24 Sean M. Hardy  
25 Attorneys for Defendant United Talent  
26 Agency, LLC  
27  
28

## CRS RECEIPT

## INSTRUCTIONS

Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.

CALIFORNIA, COUNTY OF LOS ANGELES	
)	CASE NO.: BC000000
)	NOTICE OF MOTION AND MOTION
)	TO COMPEL ANSWERS TO PERMITS
)	INTERROGATORIES
)	
)	DATE: January 17, 2020
)	TIME: 2:10 pm
)	COURT:
)	RES ID: 131112001085

## RESERVATION INFORMATION

**Reservation ID:** 150504049037  
**Transaction Date:** May 4, 2015  
**Case Number:** SC123994  
**Case Title:** CREATIVE ARTISTS AGENCY, LLC VS UNITED TALENT AGENCY, LLC  
**Party:** UNITED TALENT AGENCY LLC (Defendant)  
**Courthouse:** Santa Monica Courthouse  
**Department:** O  
**Reservation Type:** Demurrer - with Motion to Strike  
**Date:** 12/11/2015  
**Time:** 08:30 am

## FEE INFORMATION (Fees are non-refundable)

**First Paper Fee:** (See below)

First Paper (Unlimited Civil)	Receipt Number: 1150504K7855-1	\$435.00
Motion to Strike (not anti-SLAPP)	Receipt Number: 1150504K7855-2	\$60.00
<b>Total Fees:</b>		<b>\$495.00</b>

## PAYMENT INFORMATION

**Name on Credit Card:** MICHAEL A TAITELMAN  
**Credit Card Number:** XXXX-XXXX-XXXX-6956

**A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE MOTION/DOCUMENT FACE PAGE.**