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Yerushalaim.

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 JOHN MUSERO, an Individual,

12 Plaintiff,

13 vs.

14 CREATIVE ARTISTS AGENCY, LLC, a  
15 Delaware limited liability company;  
16 ANDREW MILLER, an individual; LEAH  
17 YERUSHALAIM, an individual; and DOES 1  
through 10, inclusive.,

18 Defendant.

CASE NO. 19STCV10435

**NOTICE OF RULING ON DEMURRER  
AND MOTION TO STRIKE AND  
EXHIBIT "A" IN SUPPORT**

[Assigned for All Purposes to:  
The Hon. Hon. Yolanda Orozco, Dept. 31]

Action Filed: March 26, 2019

Trial Date: None Set

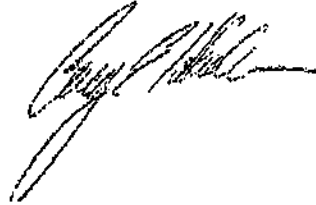
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21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

22 **PLEASE TAKE NOTICE** that defendants demurrer and motion to strike punitive  
23 damages, came before this court at or shortly after 8:30 a.m., in Department 31, with Stephen  
24 Doniger appearing for Plaintiff and Craig Holden appearing for Defendants. In advance of the  
25 hearing, the court issued a tentative ruling, attached hereto as Exhibit "A." After considering the  
26 papers and arguments presented, the court made the tentative ruling the final ruling, except  
27 modified the tentative to provide plaintiff with 20 days from today, or until August 26, 2019, to

1 file an amended complaint as allowed in the ruling. The court granted and sustained the demurrer  
2 to the second and third causes of action with 20 days leave to amend, overruling the demurrer to  
3 the first cause of action. The court also granted the motion to strike punitive damages from the  
4 second and third causes of action, and against defendant CAA on all causes action, and denied the  
5 motion to strike punitive damages against Defendants Miller and Yerushalaim on the first cause of  
6 action.

7  
8 DATED: August 5, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

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12 By:

13 \_\_\_\_\_  
14 Craig E. Holden, Esq.  
15 Attorneys for Defendants Creative Artists Agency,  
16 LLC, Andrew Miller and Leah Yerushalaim.

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**CALIFORNIA STATE COURT PROOF OF SERVICE**

John Musero v. Creative Artists Agency, et al - Case No. 19STCV10436

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071.

On August \_\_, 2019, I served the following document(s): NOTICE OF RULING – ON DEMURRER AND MOTION TO STRIKE AND EXHIBIT “A”

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Stephen M. Doniger  
Scott Alan Burroughs

Attorneys for Plaintiff John Musero

Jessica L. Phillips  
DONIGER / BURROUGHS

603 Rose Avenue  
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The documents were served by the following means:

(BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and:

Placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 5, 2019, at Los Angeles, California.

  
\_\_\_\_\_  
Maria Segovia

# **EXHIBIT “A”**

## DEPARTMENT 31 LAW AND MOTION RULINGS

Counsel may submit on the tentative ruling by emailing Dept. 31 before 8:30 the morning of the hearing. The email address is [smcdept31@lacourt.org](mailto:smcdept31@lacourt.org). Please do not call the court to submit on the tentative. Please do not submit to the tentative ruling on behalf of the opposing party. Please do not e-mail the Court if you plan to appear and argue.

In deciding whether to submit on the tentative ruling or attend the hearing and present oral argument, please keep the following in mind:

The tentative rulings authored by this court reflect that the court has read and considered all pleadings and evidence timely submitted to the court in connection with the motion, opposition, and reply (if any). Because the pleadings were filed, they are part of the public record.

Oral argument is not an opportunity to simply regurgitate that which a party set forth in its pleadings. Nor, is oral argument an opportunity to "make a record" when there is no court reporter present and the statements and arguments of counsel are already part of the record because they were set forth in the pleadings. Finally, simply because a party or attorney disagrees with the court's analysis and ruling or is not satisfied with it does not necessarily warrant oral argument when no new arguments will be articulated.

If you submit on the tentative, you must immediately notify all other parties email that you will not appear at the hearing. If you submit on the tentative and elect not to appear at the hearing, the opposing party may nevertheless appear at the hearing and argue the motions. If all parties to the motion submit, this tentative ruling will become the final ruling after the hearing date and it will be memorialized in a minute order. This tentative ruling is not an invitation, nor an opportunity, to file further documents relative to the hearing in question. No such document will be considered by the Court.

\*\*Tentative rulings on Motions for Summary Judgment will only be available for review in the courtroom on the day of the hearing.

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**Case Number:** 19STCV10435 **Hearing Date:** August 05, 2019 **Dept:** 31

**DEMURRER IS SUSTAINED IN PART; MOTION TO STRIKE GRANTED IN PART.**

### Background

On March 26, 2019, Plaintiff John Musero filed the instant action against Defendants Creative Artists Agency, LLC ("CAA"); Andrew Miller; Leah Yerushalaim; and Does 1 to 10. The Complaint asserts causes of action for:

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

Defendants demurred to the entire complaint on the grounds that the three causes of action fail to state facts sufficient to sustain a cause of action and are uncertain.

### Legal Standard on Demurrer

A demurrer for sufficiency tests whether the complaint states a cause of action. *Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747. When considering demurrers, courts read the allegations liberally and in context. (*Wilson v. Transit Authority of City of Sacramento* (1962) 199 Cal.App.2d 716, 720-21.) In a demurrer

proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) “A demurrer tests the pleading alone, and not on the evidence or facts alleged.” (*E-Fab, Inc. v. Accountants, Inc. Servs.* (2007) 153 Cal.App.4th 1308, 1315.) As such, the court assumes the truth of the complaint’s properly pleaded or implied factual allegations. (*Id.*) However, it does not accept as true deductions, contentions, or conclusions of law or fact. (*Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 538.)

### Legal Standard on Motion to Strike

Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof. (Code of Civ. Proc., § 435, subd. (b)(1); Cal. Rules of Court, Rule 3.1322(b).) The court may, upon a motion or at any time in its discretion and upon terms it deems proper: (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of any pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Code of Civ. Proc., § 436, subs. (a)-(b); *Stafford v. Shultz* (1954) 42 Cal.2d 767, 782 [“Matter in a pleading which is not essential to the claim is surplusage; probative facts are surplusage and may be stricken out or disregarded”].)

### Discussion

#### ***Third Cause of Action for Breach of Contract***

To state a cause of action for breach of contract under *Desny v. Wilder*, a plaintiff must allege: (1) plaintiff submitted (i.e., disclosed) his ideas to the defendant, (2) plaintiff clearly conditioned his disclosure upon the defendant’s agreement to pay for it if used; (3) defendant voluntarily accepted the disclosure knowing the condition upon which it was being made (i.e., the defendant must have had an opportunity to reject the disclosure); (4) the defendant actually used plaintiff’s ideas rather than their own ideas or ideas from other sources and those ideas had value. (*Desny v. Wilder* (1956) 46 Cal.2d 715, 737-739, 744; *Faris v. Enberg* (1979) 97 Cal.App.3d 309, 318; *Mann v. Columbia Pictures* (1982) 128 Cal.App.3d 628, 647, n.6.)

A contract must be pled verbatim in the body of the complaint, be attached to the complaint and incorporated by reference, or be pled according to its legal effect. (*Bowden v. Robinson* (1977) 67 Cal.App.3d 705, 718.) “In order to plead a contract by its legal effect, plaintiff must ‘allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.’” (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489.)

Defendants demur to Plaintiff’s third cause of action for breach of contract on the grounds that the Complaint fails to allege the formation of an implied contract between Plaintiff and Defendants or that Defendants agreed to pay for and used Plaintiff’s idea.

Defendants argue that first, the Complaint does not allege facts supporting the conclusion that Plaintiff and Defendants entered into an implied contract whereby there was a mutual understanding that Defendants would purchase *Main Justice*. Defendants assert that Plaintiff has failed to allege facts that he disclosed his *Main Justice* idea for sale to Defendants, that he conditioned his disclosure of *Main Justice* on Defendants’ payment for any use of that idea, and that Defendants agreed to such terms in advance. Defendants contend that the fact that the Complaint alleges that *Main Justice* was provided to or misappropriated by Defendants is grossly insufficient as a matter of law. Defendants argue that instead, there must be a “bilateral understanding of payment” for the plaintiff’s disclosure of his idea and that no such allegations are made. (*Montz v. Pilgrim Films & TV, Inc.* (9th Cir. 2011) 649 F.3d 975, 976.)

Defendants contend that second, and equally fatal to Plaintiff’s claim, is the absence of any allegations that Defendants themselves actually used any of the ideas Plaintiff submitted to them – as opposed to third parties – as required by *Desny*. Defendants argue that the Complaint alleges that third parties, not Defendants themselves, produced a show with the same title *Main Justice*. Defendants assert that the elements of a *Desny* claim are not satisfied by alleging that a third party used Plaintiff’s idea without alleging use by Defendants.

Defendants finally argue that the claim is prohibitively uncertain, as the pleading has not provided Defendant with any information regarding the alleged contract such as with whom it was entered into, when it was entered, and what the terms of the contract were.

In opposition, Plaintiff argues that he alleges facts to establish both the formation and breach of an implied-in-fact contract. Plaintiff counters Defendants' argument that no contract was formed because Plaintiff did not clearly condition his disclosure on an obligation by Defendants to pay for its use by arguing that Defendants ignore that they were Plaintiff's agents. As between agents and their clients, an implied agreement exists that the agents will use the work given to them by their clients to secure compensation for their clients. Plaintiff argues that the parties' agency agreement, their conduct, and industry custom all evidence such an agreement requiring Plaintiff to be compensated if Defendants found a buyer interested in using the ideas disclosed in Plaintiff's *Main Justice*. Plaintiff further asserts that he may also establish the existence of an implied-in-fact contract by showing that people in the idea-recipient's line of work generally pay for ideas received if they use them.

In reply, Defendants argue that Plaintiff admits that Defendants "were [his] agents, and that the understood (agreement) between agents and their clients is that the agents will use the work given to them by their clients to secure compensation for the clients." Defendants would not have paid Plaintiff. Defendants assert that an agent works to find others to compensate their client for their work. Defendants contend that had a buyer purchased Plaintiff's work, his agents would have ensured he was credited and paid by that buyer for use of his work. Defendants argue that Plaintiff would have been paid by the buyer and his agents would have received a portion of that payment.

The Court finds that Plaintiff has failed to allege facts sufficient to state a cause of action for breach of contract. Although Plaintiff alleges that "[b]y virtue of Defendants' actions, communications and history representing Plaintiff, an agreement was implied in fact," in order to state a cause of action for breach of contract under *Desny*, Plaintiff must allege that he "clearly conditioned" his disclosure upon Defendants' agreement to pay for it if used. While Plaintiff has alleged the general nature of Plaintiff's relationship with Defendants, the allegations as they stand do not indicate that Plaintiff "clearly conditioned" his disclosure of the *Main Justice* script upon Defendants' agreement to pay for it if used. Instead, the Complaint merely alleges that the nature of Plaintiff's relationship with Defendants was one in which "[i]n consideration for CAA's services, which are rendered pursuant to contracts between CAA and its clients, CAA receives commissions on monies and other consideration that CAA's clients receive for their services as a result of contracts of employment entered into, substantially negotiated, renegotiated, or renewed during the term of CAA's representation . . ." and that Defendants act and communicate on Plaintiff's behalf. (Complaint ¶ 15-16.) Nothing indicates that Defendants' actions, communications, and history of representing Plaintiff made it so that an implied in fact agreement was created wherein Plaintiff clearly conditioned his disclosure of the *Main Justice* script upon Defendants' agreement to pay for it if used.

Based on the foregoing, Defendants' demurrer to the third cause of action for breach of contract is SUSTAINED with leave to amend.

### ***Second Cause of Action for Breach of Implied Covenant of Good Faith and Fair Dealing***

The elements for breach of the implied covenant of good faith and fair dealing are: (1) existence of a contract between plaintiff and defendant; (2) plaintiff performed his contractual obligations or was excused from performing them; (3) the conditions requiring defendant's performance had occurred; (4) the defendant unfairly interfered with the plaintiff's right to receive the benefits of the contract; and (5) the plaintiff was harmed by the defendant's conduct. (*Merced Irr. Dist. V. County of Mariposa* (E.D. Cal. 2013) 941 F.Supp.2d 1237, 1280 (discussing California law).) "[T]he implied covenant of good faith and fair dealing is limited to assuring compliance with the *express terms* of the contract, and cannot be extended to create obligations not contemplated by the contract." (*Ragland v. U.S. Bank Nat. Assn.* (2012) 209 Cal.App.4th 182, 206 (quoting *Pasadena Live v. City of Pasadena* (2004) 114 Cal.App.4th 1089, 1094).)

“The prerequisite for any action for breach of the implied covenant of good faith and fair dealing is the existence of a contractual relationship between the parties, since the covenant is an implied term in the contract.” (*Smith v. San Francisco* (1990) 225 Cal.App.3d 38, 49.) A contract must be pled verbatim in the body of the complaint, be attached to the complaint and incorporated by reference, or be pled according to its legal effect. (*Bowden v. Robinson* (1977) 67 Cal.App.3d 705, 718.) “In order to plead a contract by its legal effect, plaintiff must ‘allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.’” (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489.)

Defendants demur to the second cause of action for breach of implied covenant of good faith and fair dealing on the grounds that Plaintiff does not allege the existence of a contract at any point through paragraph 71, the final paragraph of the second cause of action. Defendants argue that the first allegation of the existence of a contract is in paragraph 75, in the third cause of action. Defendants assert that thus, there is no allegation either actually in the second cause of action or incorporated into the second cause of action by reference alleging the existence of an underlying contract.

In opposition, Plaintiff argues that he alleges a contractual relationship with Defendants through (1) the original agent-talent representation contract between Plaintiff and Defendants, and (2) the implied contract between Plaintiff and Defendants whereby Plaintiff’s disclosure of *Main Justice* was given in exchange for a promise by Defendants to market and sell *Main Justice* to a Buyer and to credit and pay Plaintiff the reasonable value for his work.

In reply, Defendants argue that there is no information about the contract, which itself is not even alleged, underlying the breach of covenant of good faith and fair dealing claim. Defendants assert that Plaintiff’s opposition does nothing to help clear the matter up, instead making it less clear what contract or contracts Plaintiff alleges to be at issue.

The Court finds that Plaintiff has failed to allege facts sufficient to state a cause of action for breach of implied covenant of good faith and fair dealing. The Complaint fails to allege the substance of the contracts’ relevant terms. As noted above, Plaintiff has failed to adequately plead its *Desny* breach of contract claim. As to the other “contract” Plaintiff allegedly entered with Defendants, Plaintiff fails to allege what the terms of the contract were such that Defendants are liable for breach of the implied covenant of good faith and fair dealing. The Complaint only alleges the circumstances under which Defendants would receive commissions and other consideration and that Defendants began acting and communicating on Plaintiff’s behalf three months after initial contract with Defendants Miller and Yerushalaim. (Complaint ¶ 14-16.) The Complaint fails to allege what services were to be rendered by any of the parties and who the parties to the contract were.

Based on the foregoing, Defendants’ demurrer to the second cause of action for breach of implied covenant of good faith and fair dealing is SUSTAINED with leave to amend.

### ***First Cause of Action for Breach of Fiduciary Duty and Confidentiality***

“The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach.” (*Tribeca Companies, LLC v. First American Title Insurance Company* (2015) 239 Cal.App.4th 1088, 1114.) “A confidential relationship exists when one party gains the confidence of the other and purports to act or advise with the other’s interest in mind.” (*Younan v. Equifax Inc.* (1980) 111 Cal.App.3d 498, 516 n. 15.) “The breach of fiduciary duty can be based upon either negligence or fraud, depending on the circumstances.” (*Tribeca Companies, LLC, supra*, 239 Cal.App.4th at 1114.)

Before a party can be charged with the breach of a fiduciary obligation, the party must knowingly undertake to act on behalf and for the benefit of another or enter into a relationship which imposes this undertaking as a matter of law. (*City of Hope Nat. Med. Ctr. v. Genentech, Inc.* (2008) 43 Cal.4th 375, 386; see also *GAB Business Services, Inc. v. Lindsey & Newsom Claim Services, Inc.* (2000) 83 Cal.App.4th 409, 416



(fiduciary duties are imposed by law or undertaken by agreement) *disapproved of on other grounds by Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1154.)

“A fiduciary or confidential relationship can arise when confidence is reposed by persons in the integrity of others, and if the latter voluntarily accepts or assumes to accept the confidence, he or she may not act so as to take advantage of the other's interest without that person's knowledge or consent.” (*Pierce v. Lyman* (1991) 1 Cal.App.4th 1093, 1101-1102.) “The basic fiduciary obligations are two-fold: undivided loyalty and confidentiality.” (*Id.* at 1102.)

Defendants demur to the first cause of action on the grounds that it fails to allege facts that illustrate what confidential information was taken from the Plaintiff and shared inappropriately with others, with whom that information was shared, or when. Defendants argue that assuming Plaintiff has pled the existence of a fiduciary relationship and has adequately pled that he was damaged as a result of this duty, Plaintiff has failed to allege adequate facts to satisfy the second element: breach of the duty.

Defendants assert that Plaintiff's conclusory allegation that Defendants “misappropriated Plaintiff's original and creative work” is entirely insufficient. Defendants contend Plaintiff's bare allegation that the Defendants “harvested” his work is unintelligible and vague. Defendants argue that Plaintiff's conclusory allegation of “misappropriation” without more simply fails to state a claim.

In opposition, Plaintiff argues that the Complaint painstakingly describes the violation of trust and confidence by Defendants, all of which was to Plaintiff's detriment.

In reply, Defendants argue that vagueness permeates the entire complaint, rendering Defendants unable to decipher who is accused of doing what.

The Court finds that Plaintiff has alleged facts sufficient to state a cause of action for breach of fiduciary duty and confidentiality. As noted by Plaintiff, the Complaint alleges in detail the violations of trust and confidence by Defendants. (Complaint ¶¶ 31, 36-45, 63(a)-(g).) While Defendants would prefer more specificity, the Complaint adequately apprises Defendants of the charges against them. Any ambiguities may be clarified during discovery. The instant action is not one for fraud; accordingly, there is no heightened pleading standard.

Based on the foregoing, Defendants' demurrer to the first cause of action for breach of fiduciary duty and confidentiality is OVERRULED.

### Motion to Strike

#### ***Punitive Damages***

Punitive damages may be imposed where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. (Civ. Code, § 3294, subd. (a).) “Malice” is conduct intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on with a willful and conscious disregard of the rights or safety of others. (Civ. Code, § 3294, subd. (c)(1).) Despicable conduct is “conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people. Such conduct has been described as ‘having the character of outrage frequently associated with crime.’” (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1287.) “Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.” [Citation.]” (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.)

A motion to strike punitive damages is properly granted where a plaintiff does not state a prima facie claim for punitive damages, including allegations that defendant is guilty of oppression, fraud or malice. (*Turman v. Turning Point of Cent. California, Inc.* (2010) 191 Cal.App.4th 53, 63.) “Mere negligence, even gross negligence, is not sufficient to justify such an award” for punitive damages. (*Kendall Yacht Corp. v. United California Bank* (1975) 50 Cal.App.3d 949, 958.)

For corporate punitive damages liability, section 3294, subdivision (b), the plaintiff must show that a managing agent, officer, or director of the corporation authorized or ratified the wrongful conduct for which punitive damages are sought. (Civ. Code, § 3294, subd. (b); *White v. Ultamar* (1999) 21 Cal.4th 563, 572.) An individual must be in a corporate policymaking position in order to be considered a managing agent for the purposes of imposing punitive damages liability on the corporation. (*Myers v. Trendwest Resorts, Inc.* (2007) 148 Cal.App.4th 1403, 1437.) A “managing agent” includes “only those corporate employees who exercise substantial independent authority and judgment in their corporate decision-making so that their decisions ultimately determine corporate policy.” (*White, supra*, 21 Cal. 4th at p. 566.) While “supervisors who have broad discretionary powers and exercise substantial discretionary authority in the corporation could be managing agents,” those “supervisors who have no discretionary authority over decisions that ultimately determine corporate policy would not be considered managing agents even though they may have the ability to hire or fire other employees.” (*Id.*)

“[P]unitive or exemplary damages, which are designed to punish and deter statutorily defined types of wrongful conduct, are available only in actions ‘for breach of an obligation *not* arising from contract.’ [Citation.] In the absence of an independent tort, punitive damages may not be awarded for breach of contract ‘even where the defendant’s conduct in breaching the contract was wilful, fraudulent, or malicious.’” [Citations.]” (*Cates Construction, Inc. v. Talbot Partners* (1999) 21 Cal.4th 28, 61.)

Defendants move to strike those portions of the Complaint seeking punitive damages. Defendants argue that the factual allegations of the Complaint fail to allege a sufficient basis to support a claim for punitive damages against Defendants. Defendants argue that aside from conclusory allegations that Defendants acted maliciously, there are no requisite factual allegations to support any malicious, oppressive or fraudulent conduct. Defendants assert that the Complaint further fails to plead facts to justify a punitive damages claim against CAA as the Complaint does not allege that any CAA officer, director, or managing agent, knew that any agent was unfit or ratified the allegedly tortious actions of any employee. Defendants contend that Plaintiff’s claim for punitive damages on his breach of contract claim is void as a matter of law.

Defendants argue that Plaintiff’s Complaint fails to allege any specific facts that can lead to the sustaining of a finding of malice, oppression, or fraud. Defendants assert that although the Complaint contains the “magic language” of Civil Code section 2394, it fails to present any facts which support those conclusory allegations. Defendants contend that Plaintiff is alleging that, in retrospect, he was unhappy with his representation by Defendants, that Defendants neglected him or pursued a strategy in his representation with which he now disagrees, and now believed they did not adequately fight for the realization of his ideas. Defendants argue that at worst, and even if taken as true for pleading purposes, Plaintiff alleges that Defendant Miller passed on Plaintiff’s idea to another writer, who used the idea as the basis for his own work. Defendants assert that these claims are, at their core, creative and commercial disagreements in the entertainment industry and allegations of neglect; they do not rise to the level of “malice, oppression, or fraud” or constitute an “extreme indifference” which “decent citizens should not tolerate” as required by statute and case law. Defendants contend that the allegations also fail to come close to meeting any standard of specificity; they are based entirely on “information and belief.”

In opposition, Plaintiff argues that because its breach of fiduciary duties and breach of the implied covenant of good faith and fair dealing claims rest on (1) the special relationship of trust and confidence that an agent owes a client and (2) the oppressive, if not fraudulent violation of those obligations through Defendants’ wanton self-dealing, claims for punitive damages are properly grounded in those claims.

The Court finds that Plaintiff has alleged facts sufficient to state a prima facie case for punitive damages as to Defendants Miller and Yeushalaim. Given the Court’s ruling sustaining the demurrer to the second and third causes of action, the only cause of action at issue is Plaintiff’s first cause of action for breach of fiduciary duty and confidentiality. Because of Defendants’ relationship to Plaintiff as fiduciaries, Plaintiff’s allegations are sufficient to state a prima facie case for punitive damages, as the allegations support a finding of malice or oppression.

As to Defendant CAA, the Court finds that Plaintiff has failed to allege facts sufficient to state a prima facie case for punitive damages. The Complaint fails to allege that Defendants Miller and Yeushalaim were managing agents, officers, or directors of the corporation or that any other managing agent, officer, or director of the corporation authorized or ratified Defendant Miller and Yueshalaim's conduct.

Finally, as to the third cause of action for breach of contract, Plaintiff concedes that the motion to strike is properly granted, as Plaintiff's punitive damages prayer was never intended to apply to it.

Based on the foregoing, Defendants Miller and Yueshalaim's motion to strike punitive damages is DENIED as to the first cause of action. Defendant CAA's motion to strike punitive damages is GRANTED with leave to amend. Defendants' motion to strike punitive damages as to the third cause of action is GRANTED without leave to amend. Defendants' motion to strike punitive damages as to the second cause of action is DENIED as moot.

### Conclusion

Defendants' demurrer to the first cause of action for breach of fiduciary duty and confidentiality is OVERRULED. Defendants' demurrer to the second and third causes of action is SUSTAINED with 30 days leave to amend.

Defendants Miller and Yueshalaim's motion to strike punitive damages is DENIED as to the first cause of action. Defendant CAA's motion to strike punitive damages is GRANTED with 30 days leave to amend. Defendants' motion to strike punitive damages as to the third cause of action is GRANTED without leave to amend. Defendants' motion to strike punitive damages as to the second cause of action is DENIED as moot.

Moving parties to give notice.

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