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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

HANZER HOLDINGS, a California Limited Partnership, and ARLITA, INC., a California Corporation,

Plaintiffs,

v.

CBS STUDIOS INC., a Delaware corporation,

Defendant.

Case No. 18STCV09231

Assigned to Hon. Maureen Duffy-Lewis, Dept. 38

DEFENDANT CBS STUDIOS INC.'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION

[CBS Studios Inc.'s Responsive Separate Statement and Statement of Additional Facts; Compendium of Evidence; and Evidentiary Objections filed concurrently herewith]

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PUBLIC – REDACTS MATERIALS FROM CONDITIONALLY SEALED RECORD

(Unredacted Version Lodged CONDITIONALLY UNDER SEAL)

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I. INTRODUCTION

Plaintiffs' case suffers from fatal, incurable deficiencies. Most fundamentally, their contract claims fail because neither CBS Studios nor its predecessor in interest, Paramount, has ever had any contractual relationship with either plaintiff. Paramount/CBS never had any contractual relationship with Hanzer Holdings, and never even heard of plaintiff Arlita, Inc. until it filed this lawsuit. Second, even assuming *arguendo* that such a contractual relationship existed (it never did), they premise their entire case on an allegation that the 2016 *MacGyver* remake (the "Remake") is somehow a "spinoff" under a written contract which does not even apply to remakes. Odder still, Plaintiffs were unable to state in deposition which version of the agreement they claim applies here and, to this very minute, they do not know. Finally, even assuming a contractual relationship which would apply to the Remake, Plaintiffs admittedly were and are unable to perform, making it impossible for them to meet an essential element of their claim – performance. Plaintiffs have resisted discovery at every turn for a very simple reason – their allegations are belied by the evidence.

In an effort to manufacture some contractual relationship where none exists, Plaintiffs allege – sometimes using a series of virtually completely redacted documents which they have refused to produce notwithstanding this Court's order that they do so – that they are the successors to Major Talent Agency ("MTA"), a company that dissolved and wound up in September 1985. While MTA had a contractual relationship with Paramount prior to that time, its rights terminated by late 1985 when it dissolved and stopped performing. But, as discovery has revealed, Richard Weston (a former employee of MTA, and now the sole owner of plaintiff Arlita) and Hanzer Holdings saw an opportunity to hide the truth from Paramount – that MTA was gone, could not perform, and was no longer entitled to any ongoing agency commissions from *MacGyver* and MTA's talent clients. So they pulled a fast one. They covertly chose to have another company, Amivida Company ("Amivida"), quickly become a talent agency and start using MTA's name, logo and business address in connection with the *MacGyver* series. While Amivida never had any contractual right to work on *MacGyver*, by masquerading as MTA, Paramount would be none the wiser.

And it worked. For years, Weston's Amivida did business as "Major Talent Agency," while Paramount continued to honor the contract believing it was still doing business with MTA. But it wasn't. Rather, it was dealing with a company with whom it had no contractual relationship whatsoever – namely Amivida's MTA (*i.e.*, "Sham MTA"). Sham MTA serviced the

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MacGyver series for years starting in the mid-1980s, and at times instructed Paramount to change the name of the payee on agency commission checks to Hanzer Holdings, to itself, and to still other companies associated with Weston.

Now, Plaintiffs (including Weston, using still another corporate name, Arlita) have doubled down on their bad acts. But this time, it will not work. Plaintiffs have filed this procedurally improper motion purporting to challenge CBS's "affirmative defenses,"[1] when in reality they are seeking to avoid their burden of proof on their own affirmative claims (which they cannot meet). First, they cannot establish a contractual relationship here. Indeed, far from meeting their burden of proof, neither Plaintiff can establish that they are the successor to any rights of MTA with respect to *MacGyver*. In fact, MTA's rights terminated upon its closure in September 1985, and discovery has revealed that it completely wound up at that time and never performed services on *MacGyver* again. While Plaintiffs claim that MTA, through a series of secret agreements in late November 1985, transferred rights to Ingrid Hanzer and Hanzer Holdings, it could not possibly have done so because it had completely wound up and distributed all of its assets nearly two months earlier, in September 1985. Rather, by late November 1985, Weston's Sham MTA had assumed the identity of and was then doing business as MTA.

Even assuming *arguendo* that the real MTA had transferred its service obligations on *MacGyver* to Ingrid Hanzer ("Ingrid")[2] and Hanzer Holdings in late November 1985 (it could not have done so), such a transfer would have been a clear breach of the agreement, thus terminating any obligations to MTA by late 1985. Even if Plaintiffs could somehow establish that they were successors to MTA's interests in *MacGyver*, they would be successors to a repeatedly breached contract, entitling them to nothing.

In any event, other deficiencies in Plaintiffs' claims abound. First, they admitted during deposition that they do not know what may be the "correct version of the contract," and they attached the incorrect version to their complaint. *See* CBS's Additional Material Fact ("AMF") 5, 6. Second, they premise their complaint on the bare allegation – which they were also unable to explain during deposition – that the Remake is a "spinoff" of the 1985 *MacGyver* television

[1] As CBS expressly stated in its Answer, most of the issues raised in Plaintiffs' motion are not "Affirmative Defenses," but rather relate to elements of Plaintiffs' claims for which Plaintiffs, not CBS, bear the burden of proof. *See* Answer, filed January 5, 2019, at 2:10-11.

[2] Hanzer Holdings' partners Ingrid Hanzer and Annette Hanzer will be referred to by their first names for purposes of clarity and ease of reference only, and not out of a lack of respect.

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series. Remakes are not spinoffs, as even Plaintiff's Weston recognized during deposition. Third, even if there were some applicable contractual relationship here (there is none), Plaintiffs could not perform, making it impossible for them to establish an essential element of their claims – performance. Neither Plaintiff had (or has) the ability to perform the agency services required to earn the "agency commission" at issue in this case. Neither are even agencies in the first instance.

It has not been easy to get even basic discovery from Plaintiffs. But, at long last, discovery has revealed that Plaintiffs' case is fatally flawed on several independent grounds. Plaintiffs' motion is procedurally wrong, substantively meritless, and should not have been filed.

II. FACTUAL BACKGROUND

A. Paramount Negotiates The Winkler-Rich Agreement Regarding The Creation Of Television Shows

In the early 1980s, four parties – actor/producer Henry Winkler, director/producer John Rich, production/distribution company Paramount, and talent agency MTA –negotiated a services agreement related to the production of prospective television shows (the "Winkler-Rich Agreement"). AMF 1. The parties aimed to leverage the unique skill and services of each party to create and produce quality television series. AMF 2. *MacGyver*, premiering in September 1985, was ultimately one of these shows. AMF 3.

In order to receive its agency commission under the Winkler-Rich Agreement, MTA was required to provide ongoing talent agency services (including but not limited to "servicing the package") on any TV series produced under the agreement."[3] AMF 4. In order for MTA to render agency services on *MacGyver*, it was required to be qualified to do so, namely by performing talent agency services (*i.e.*, having a roster of talent to offer a TV series, and negotiating on their behalf with Paramount), which in turn requires a license from the California Labor Commissioner. AMF 7. In short, MTA had to be a licensed talent agent and perform talent agency services in order to earn the "Agency Commission" set forth in the Winkler-Rich

[3] Plaintiffs rely on the wrong version of the Winkler-Rich Agreement, a final version of which was never signed. The version Plaintiffs attached to their complaint was executed in error, and identified a supposed contracting party which never existed. AMF 5. Neither Plaintiff disputes that the agreement attached to the complaint was *not* the final, agreed-upon version. AMF 6. As such, CBS's citations to the Winkler-Rich Agreement refer to the December 17, 1984 version, and edits thereto, attached as Exhibits C & D to the Declaration of Ronald Jake Jacobson. *See* Jacobson Decl., ¶¶ 8-9.

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Agreement. AMF 8.

Given the unique services that MTA was required to provide, the Winkler-Rich Agreement contained specific conditions in the event that MTA sought to delegate its services to another. Paragraph 19 provided with respect to delegation of services:

> Major Talent Agency, Inc. shall perform such services as may be requested by a joint venture producing the applicable pilot and/or series from time to time, it being agreed that such agency may designate qualified third parties to render such services in the event of unavailability.

AMF 9. Under the plain language of the Winkler-Rich Agreement, MTA was permitted to delegate its service obligations only if it was "unavailable" to perform those services, and then only to a *qualified* replacement. AMF 10. Even then, MTA was required to notify Paramount of any such delegation of services, a pre-condition which Plaintiffs' Weston does not dispute. AMF 11. To be a "qualified" designee to perform MTA's services, the Winkler-Rich Agreement required any designee to be able to provide talent agency services. AMF 12.

B. <u>In September 1985, Major Talent Agency Dissolved, Completely Wound Up and Stopped Performing Under The Winkler-Rich Agreement, A Fact Which Richard Weston And Hanzer Holdings Covered Up</u>

By September 30, 1985, MTA went out of business, completely wound up, and was unable to perform any of its ongoing service obligations under the Winkler-Rich Agreement. AMF 13. At deposition, former MTA employee Weston admitted that by September 30, 1985, "[redacted]. AMF 14. MTA did not designate Hanzer Holdings, Ingrid, Weston, Arlita or anyone else to perform its service obligations on *MacGyver*, much less provide any notice to Paramount that anyone would take over the performance obligations of MTA. AMF 15. Instead, MTA simply and completely wound up by September 30, 1985. AMF 13.

But Plaintiffs Hanzer Holdings and Arlita's Weston wanted the agency commission payments from Paramount to continue. But there was a problem – Weston and Hanzer Holdings recognized, in writing, that any attempt to assign MTA's contractual obligations under the Winkler-Rich Agreement (and also with MTA's talent clients) could render the contracts "voidable" as they "may not be assigned." AMF 16. So, Weston and Hanzer Holdings hatched a plan to dupe Paramount into believing that MTA had not dissolved after all, but rather was continuing to perform talent agency services on *MacGyver*.

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And as discovery in this litigation revealed, Weston and Hanzer Holdings made a series of clandestine agreements amongst themselves. First, by November 8, 1985, Weston quickly started doing business as "Major Talent Agency" through his own loan-out company, Amivida (*i.e.*, Sham MTA).[4] AMF 17. By November 20, 1985, Weston's Amivida/Sham MTA was using the name "Major Talent Agency" in business. AMF 18. Two days later, on November 22, 1985, Weston and Hanzer Holdings created an agreement whereby a company using the name "Major Talent Agency"[5] purported to assign MTA's ongoing service obligations to Ingrid and Annette Hanzer ("Annette"), individually. AMF 19.

Neither Ingrid nor Annette had any ability to perform MTA's work on the *MacGyver* series. AMF 22. Nobody informed Paramount of the assignment or designation of such obligations to those unqualified individuals. AMF 23.

Next, Ingrid and Annette formed a partnership, Hanzer Holdings, to which they covertly assigned their purported service obligations. AMF 24. Like Ingrid and Annette, Hanzer Holdings had had no ability to service the package or otherwise perform any of the required services under the Winkler-Rich Agreement. AMF 25 Once again, nobody informed Paramount of the purported delegation of services to Hanzer Holdings. AMF 26. Had Paramount been informed of the purported assignments to Ingrid, Annette, or Hanzer Holdings, none of whom could possibly perform talent agency services to service the *MacGyver* package, it would have learned that the delegation of services provision in paragraph 19 of the agreement had been breached, repeatedly. AMF 27.

C. Sham MTA (Amivida) Provides Services On *MacGyver*

Wanting to capitalize on real MTA's contract with Paramount, Weston and Hanzer Holdings recognized, in their secret agreements, that a licensed talent agent was required to perform on the *MacGyver* series and continue to service the package. AMF 28. So they had to make it appear that MTA had not dissolved after all, but instead had remained in business. In sum, they wanted to obtain a lucrative agency commission to which they were not entitled.

[4] By November 20, 1985, Weston's Amivida applied *on a rush basis* to become a licensed talent agency doing business as "Major Talent Agency." AMF 20. Simultaneously, Weston changed the corporate name of "Amivida" to "Major Talent Agency". AMF 21.

[5] As a matter of fact, the real MTA could not have entered into the November 22, 1985 agreements as it had been completely wound up and dissolved nearly two months earlier, on September 30, 1985. AMF 13. Notwithstanding this fact, Sham MTA was using the name "Major Talent Agency" by November 22, 1985.

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Enter Sham MTA. Weston never told Paramount that his company Amivida was using the name and passing itself off as real MTA. AMF 29. Rather, he and Hanzer Holdings covertly agreed that if they were ever asked, he would respond with a misleading statement that [redacted]" hiding the fact that the real MTA had long ago stopped doing any business (and, in fact, had no "continuing" business). AMF 30. As part of the scheme, Amivida/Sham MTA entered into an Independent Consulting Agreement with Hanzer Holdings, ensuring that a licensed talent agency using the name "Major Talent Agency" would perform the required ongoing services. AMF 31.

By January 13, 1986, over 3 months after the real MTA had dissolved and wound up, Sham MTA gave "instructions" to Paramount with respect to *MacGyver*, leading Paramount to believe that it was still dealing with the real MTA. AMF 32. In the first of what would be several instructions regarding where to send agency commission checks, Sham MTA led Paramount to believe that the real MTA had chosen not to dissolve after all, but was simply requesting a change of payee for "all monies which may become due to Major Talent Agency, Inc. in connection with the [Winkler-Rich Agreement]".[6] AMF 33. Even though Paramount abided by the change of payee request, it believed that the real MTA was continuing to service the package for *MacGyver*. AMF 34. Indeed, in January 1986, when Paramount confirmed its understanding – in writing – that "Major Talent Agency" was continuing to provide instructions with respect to *MacGyver*, neither Hanzer Holdings, Weston nor anyone else corrected Paramount's stated belief that "Major Talent Agency" was still in business and performing services. AMF 35. And nobody ever told Paramount that it was doing business with, and paying for the services of, Amivida/Sham MTA, a company with whom Paramount had no contract. AMF 36.

With Paramount none the wiser, Weston's Sham MTA continued to provide talent agency services for the original *MacGyver* as "Major Talent Agency." AMF 37. And Paramount continued to write checks in the name of "payee" Hanzer Holdings, just as Sham MTA had

[6] Plaintiffs rely on a December 19, 1985 letter and a January 10, 1986 **unsigned, unsent** letter from Loeb & Loeb, purporting to inform Paramount that MTA had dissolved and its assets distributed to Ingrid and Annette. Pfau Decl., Exh. 4 & Patrick Decl., Exh 10; SS 49-50 *See* Evid. Obj. Nos. 5, 9. Tellingly, no letter purports to state that any of MTA's ongoing service obligations were delegated to Ingrid or Annette, or to anyone else. SS 49-50. Perhaps more important, by January 13, 1986 and continuing thereafter, Weston's Sham MTA was doing business with Paramount, which believed that it was continuing to do business with the real MTA. AMF 32.

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instructed Paramount to do. AMF 38.[7]

Once Sham MTA operated as "Major Talent Agency" for approximately six months, Sham MTA changed its name to Major Clients Agency, Inc., completing the false narrative that the real MTA had simply changed its name, a common occurrence among agencies at the time. AMF 40. Weston's scheme worked for years, and Paramount was unaware that it had been paying contractual fees to a company with whom it never had any contractual relationship.[8] AMF 41.

D. In 2015, CBS Announces The *MacGyver* Remake

In 2015, CBS announced a remake of the *MacGyver* series, which then premiered in 2016, and is still in production. Compl. ¶¶ 12-13; AMF 43. Several people and entities came forward claiming to be the successors in interest to MTA, including Weston (claiming personal entitlement to the agency commission, and not mentioning Hanzer Holdings), Major Clients Agency (f/k/a Amivida), and Paradigm Talent Agency ("Paradigm").[9] AMF 44.

In 2017 and 2018, Hanzer Holdings, Weston, Major Clients Agency (*i.e.*, Amivida; *i.e.*, Sham MTA), and Arlita entered into still more undisclosed agreements, on which Plaintiffs both rely and refuse to produce in this case in anything other than nearly fully-redacted form. *See* Mot. at 15:20-27; AMF 46. Based on those agreements, Plaintiffs claim that they are the successors to MTA. Mot. at 14. While both Plaintiffs claim entitlement to an "Agency Commission" under the Winkler-Rich Agreement, no version of that agreement applies to remakes. AMF 47. And here, the new *MacGyver* series is a remake and, as such, the Winkler-Rich Agreement does not apply to it. AMF 48.

E. Plaintiffs Could Not And Cannot Perform Any Services

Even assuming the existence of a contractual relationship between the parties (there is none), and even assuming that said contractual relationship applied to the Remake (it does not),

[7] Lest there be any misunderstanding, nobody ever designated Hanzer Holdings to perform services. AMF 39. It was just a payee for the ongoing services which Paramount believed was being provided by the real MTA. AMF 39.

[8] Plaintiffs' corporate shell game was buried for decades and did not see the light of day until this litigation, which explains why Plaintiffs refused to produce documents for well over a year into this case. AMF 42.

[9] Prior to the creation of the Remake, Paradigm repeatedly told CBS that it was the successor in interest to MTA. AMF 45. While Plaintiffs spend multiple pages discussing non-party Paradigm in an attempt to smear CBS (*see* Mot. at 12:15-14:3), Paradigm was simply yet another company who was misled and confused by Weston's Sham MTA shell game. AMF 45.

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Plaintiffs have been and remain unable to perform the services required to earn an agency commission. AMF 49. Neither Plaintiff is a licensed talent agency, has any talent clients to provide to a series, or is legally permitted to perform talent agency services of any kind.[10] Moreover, neither Plaintiff appears to conduct any type of business at all. AMF 50-51. Tellingly, as Weston admitted during deposition, he could not recall any instance where an *unlicensed* talent agency had serviced a package for any television show, ever. AMF 52. At bottom, as a matter of fact and as set forth under Section 1700.5 of the California Labor Code, neither Plaintiff could provide the talent agency services required to earn an agency commission here.

III. LEGAL STANDARD FOR SUMMARY ADJUDICATION

"Summary adjudication is a drastic remedy and any doubts about the propriety of summary adjudication must be resolved in favor of the party opposing the motion." *See's Candy Shops, Inc. v. Sup. Ct.*, 210 Cal. App. 4th 889, 900 (2012). "When a plaintiff moves for summary adjudication on an affirmative defense, the court shall grant the motion '*only* if it *completely disposes*' of the defense." *Id.*; Civ. Proc. Code § 437c(f)(1); *Paramount Petroleum Corp. v. Superior Ct.*, 227 Cal. App. 4th 226, 243 (2014) ("Code of Civil Procedure section 437(c) makes no provision for a partial summary judgment as to liability."). Contrary to Plaintiffs' position here, not every defense asserted is an "affirmative defense" under the Code of Civil Procedure. *See* Civ. Proc. Code § 431.30(b)(2); *State Farm Mut. Auto. Ins. Co. v. Sup. Ct.*, 228 Cal. App. 3d 721, 725 (1991).

"The plaintiff bears the initial burden to show there is no triable issue of material fact as to the defense and that he or she is entitled to judgment on the defense as a matter of law. In so doing, the plaintiff must negate an essential element of the defense, or establish the defendant does not possess and cannot reasonably obtain evidence needed to support the defense." *Id.; Securitas Security Services USA, Inc. v. Sup. Ct.*, 197 Cal. App. 4th, 115, 119-20 (2011). The plaintiff must use admissible evidence. *Miller v. Nestande*, 192 Cal. App. 3d 191, 197 (1987); Civ. Proc. Code § 437c(d). "If the plaintiff does not make this showing, 'it is unnecessary to examine the [defendant's] opposing evidence and the motion must be denied.'" *See's Candy*, 210 Cal. App. 4th at 900; *Rehmani v. Sup. Ct.*, 204 Cal. App. 4th 945, 950 (2012).

[10] No person in California may perform talent agency services without a license from the Labor Commissioner. *See* Cal. Labor Code § 1700.5 ("No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefore from the Labor Commissioner.").

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If a plaintiff establishes a prima facie showing that justifies a ruling it its favor, the burden then shifts to the defendant "to make a prima facie showing of the existence of a triable material factual issue." *See's Candy Shops, Inc.*, 210 Cal. App. 4th at 900. The Court "must 'consider all of the evidence' and … the 'inferences' reasonably drawn therefrom[,] and must view such evidence … and such inferences … in the light most favorable to the opposing party." *Id.*

IV. PLAINTIFFS' MOTION IS PROCEDURALLY IMPROPER

By way of their motion, Plaintiffs improperly seek to shift their burden of proof to CBS on the elements of Plaintiffs' own causes of action. Mot. at 10:2-3 (*See* Plaintiffs' incorrect statement that defenses are all "affirmative defenses."). The vast majority of Plaintiffs' motion targets defenses that are *not affirmative defenses* and, therefore, fails as a matter of procedure.

Plaintiffs assert a cause of action for breach of contract, on which they bear the burden of establishing by a preponderance of the evidence (1) a contract, (2) plaintiff's performance or excuse for nonperformance, (3) a breach, and (4) damages. *State Comp. Ins. Fund v. ReadyLink Healthcare, Inc.*, 50 Cal. App. 5th 422, 449 (2020); Evid. Code § 500. In its Answer, CBS asserted the following defenses for which it does *not* bear the burden of proof at trial, all of which are inexplicably raised in this Motion: CBS's First (Failure to State a Claim),[11] Second (No Injury), Third (No Breach), Fifth (Speculative Damages)[12], Sixth (Not Licensed Talent Agents), and Seventh (No Performance).[13]

Under California law, allegations pled in an answer that refute the allegations of a complaint are not affirmative defenses, but rather are encompassed by the defendant's denial. *See Walsh v. W. Valley Mission Cmty. Coll. Dist.*, 66 Cal. App. 4th 1532, 1547 (1998); *see also* Civ. Proc. Code § 431.30(b)(2). The defendant does not bear the burden of proof on an allegation that, though affirmative in form, is in essence a denial. *Cahill Bros. v. Clementina Co.*, 208 Cal. App. 2d 367, 384 (1962). These defenses negate the very elements of Plaintiffs' claim – performance, breach, and damages; thus, Plaintiffs *really* seek to obtain "partial" summary judgment on *their*

[11] Plaintiffs' motion admits that Failure to State a Claim is not an affirmative defense, conceding that their own motion is improper. *See* Mot. at 18:12-14.

[12] As Plaintiffs have refused to describe their damages in any meaningful way, and because the Remake is currently ongoing, CBS must reserve its right to contest Plaintiffs' damages analysis as speculative (*i.e.*, Defense No. 5).

[13] Moreover, CBS's Answer unambiguously indicates that by asserting its enumerated defenses, it does not intend to shift the burden of proof from Plaintiffs to Defendant. The Answer does not identify the defenses as "Affirmative Defenses."

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own claims, a maneuver specifically prohibited by statute. *Paramount Petroleum Corp.*, 227 Cal. App. 4th at 243; Civ. Proc. Code § 437c(f)(1).

Additionally, Plaintiffs bear the burden to establish standing as the threshold issue necessary to maintain their causes of action (Tenth Defense –Not Successors In Interest). *See Mendoza v. JPMorgan Chase Bank, N.A.*, 6 Cal. App. 5th 802, 810 (2016) ("Standing is a threshold issue necessary to maintain a cause of action, and the burden to allege and establish standing lies with the plaintiff."). Plaintiffs must prove they are the successors in interest to MTA with respect to *MacGyver*. They cannot shift this burden to CBS.

The Court should deny summary adjudication on this basis alone as to defense nos. 1-3, 5-7 and 10. Out of an abundance of caution, CBS will address the substance of each below.

V. PLAINTIFFS FAIL TO STATE A CLAIM (DEFENSE NO. 1)

As discovery has revealed, Plaintiffs attached the wrong version of the agreement to their complaint. AMF 5-6. A plaintiff must prove the existence of the contract between the Plaintiffs and CBS to prevail on a breach of contract cause of action. *Richman v. Hartley*, 224 Cal. App. 4th 1182, 1186 (2014).

As set forth above, Plaintiffs have no contractual relationship with CBS or its predecessor, Paramount. Although they purport to rely on the Winkler-Rich Agreement, Plaintiffs fail to state a claim because they premise their entire claim on the wrong draft of the Winkler-Rich Agreement. Plaintiffs do not dispute, nor can they, that the version attached to their Complaint and Motion was executed in error, did not identify the correct contracting parties, and did not constitute the latest, final version of the agreement.[14] At his deposition, Weston did not dispute that the complaint attaches an incorrect version of the Winkler-Rich Agreement:

[redacted]

AMF 6. Plaintiffs have not provided notice to CBS about what Plaintiffs now claim the correct version to be, and thus have failed to state a claim.

[14] Indeed, Plaintiffs rely on an agreement between Paramount and "**WRP Productions, Ltd**," a company which has never existed. AMF 5. Incredibly, Plaintiff Arlita's Richard Weston and Hanzer Holdings' Robert Pfau were unable to discern what version of the agreement they are relying on with respect to their own claims. AMF 6. So apparently Plaintiffs believe they are entitled to millions of dollars but cannot even identify the contract that supports that belief.

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VI. CBS DID NOT BREACH THE WINKLER-RICH AGREEMENT BECAUSE THE NEW *MACGYVER* SERIES IS A REMAKE, NOT A SPINOFF (DEFENSE NOS. 2-3)

Spinoffs and remakes are two separate concepts – now and back in the 1980s. AMF 53. The Winkler-Rich Agreement made no mention of remakes, and does not cover remakes. AMF 47-48. Even Weston could not identify where the term "remake" appears in the agreement (because it does not). AMF 47. While the Winkler-Rich Agreement mentions "spinoffs," the new *MacGyver* series is a remake, and not a spinoff. AMF 48. As such, the Winkler-Rich agreement does not apply to the Remake. That is a fatal flaw in Plaintiffs' case.[15]

It is clear that Plaintiffs wish that the real MTA had made a different, and better, agreement for them. But wishful thinking does not give rise to a contractual obligation as a matter of law. California has codified the fact that no court is to "insert what has been omitted" in a contract: "In the construction of a[n] … instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted …." Cal. Civ. Proc. Code § 1858. This is a principle of law that has been recognized for decades:

> It is widely recognized that the courts are not at liberty to revise an agreement under the guise of construing it. Neither abstract justice nor the rule of liberal interpretation justifies the creation of a contract for the parties which they did not make themselves. Courts cannot make for the parties better agreements than they themselves made or rewrite contracts because they operate harshly or inequitably as to one of the parties.

Hinckley v. Bechtel Corp., 41 Cal. App. 3d 206, 211 (1974).

As set forth above, the Winkler-Rich Agreement does not provide for any agency commissions for remakes. Under CCP Section 1858 and *Hinckley*, Plaintiffs' tacit request that the Court create a better agreement than what was actually made is improper as a matter of law.

Here, the Remake is just that, a remake, not a spinoff. AMF 48. Because the agreement on which Plaintiffs premise their claims does not apply to the Remake, Plaintiffs' lawsuit fails.

[15] Even the evidence Plaintiffs submitted in connection with this Motion establishes that the new *MacGyver* series is a remake rather than a spinoff. *See* Decl. of Darren Patrick, Ex. 7, (handwritten notes from third-party Paradigm that the new series "is not a spinoff- it is a remake of the original series" and as a result "we don't think this [Winkler-Rich] agreement applies.").

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VII. AS A MATTER OF LAW, PLAINTIFFS CANNOT BE THE SUCCESSORS-IN-INTEREST TO MTA, A COMPANY WHICH WOUND UP OVER 35 YEARS AGO (DEFENSE NO. 10)

Plaintiffs cannot meet their burden to establish, with undisputed and admissible evidence, that they are the successors in interest to the real MTA, a company which dissolved and completely wound up 35 years ago, in September 1985. *Mendoza*, 6 Cal. App. 5th at 810. *See* Evid. Obj. Nos. 6-11.[16] Even if California law authorized Plaintiffs to seek summary adjudication of CBS's tenth defense, which it does not, Plaintiffs are not the successors-in-interest to MTA, as set forth below.

A. MTA Could Not Have Delegated, And Did Not Delegate, Its Rights And Obligations To Plaintiffs

By September 30, 1985, MTA had completely dissolved, wound up, distributed all of its assets and ceased to exist. AMF 13. Within days thereafter, Weston's Amivida adopted the name and started doing business as "Major Talent Agency." By November 20, 1985, his Sham MTA was "doing business as" "Major Talent Agency." AMF 18. Two days later, on November 22, 1985, Hanzer Holdings and a company calling itself "Major Talent Agency" entered into the series of secret agreements purporting to give Hanzer Holdings rights relating to *MacGyver*, none of which were shared with Paramount until well into this litigation (some 35 years after the fact).

The real MTA could not have entered into those November 22, 1985 agreements for a very simple reason: it had wound up and distributed all of its assets nearly 2 months earlier (by September 30, 1985), and both Weston and Ingrid certified as much *under penalty of perjury*. AMF 13. As such, the real MTA could not possibly have entered into those assignment agreements whereby it purports to recite that MTA assigned rights to Ingrid and Annette, who in turn assigned rights to Hanzer Holdings. Nothing could have been assigned in those agreements. And *Sham MTA was the only company who was using the name "Major Talent Agency" in*

[16] Additionally, Plaintiffs have failed to produce the so-called "In Anticipation of Litigation Agreements" on which they rely in their Motion, notwithstanding this Court's order that they do so over a month ago. *See* February 25, 2021 Minute Order,. Given that Plaintiffs have refused to provide discovery necessary to test Plaintiffs' claims about these agreements, the motion can and should be denied on this ground alone. *See* Civ. Proc. Code § 437c(h) (court shall deny motion for summary adjudication where facts essential to justify opposition may exist but cannot be presented).

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November 1985. Sham MTA was Amivida, a company which never had any rights relating to *MacGyver* to assign in the first instance.

Nor was Hanzer Holdings the "designee" of MTA. Mot. at 16. There is not a shred of evidence that anyone, much less MTA, ever designated Hanzer Holdings to perform services of any kind on *MacGyver*. AMF 39.

B. Even Assuming *Arguendo* That MTA Had Delegated Its Service Obligations To Hanzer Holdings (As Plaintiffs Now Claim), Such A Delegation Would Have Been A Breach Of The Winkler-Rich Agreement, Excusing CBS's And Its Predecessor's Performance, And Negating Any Purported Successor Rights

Breach "is a ground for termination at the option of the injured party." *Whitney Inv. Co. v. Westview Dev. Co.*, 273 Cal. App. 2d 594, 602 (1969); Civ. Code § 1689. One party's material breach of a contract excuses the other party's performance. *Plotnik v. Meihaus*, 208 Cal. App. 4th 1590, 1602 (2012); *see also Alki Partners, LP v. DB Fund Servs., LLC*, 4 Cal. App. 5th 574, 592 (2016) ("Where one party's obligation is dependent on the prior proper performance of the other party, and that other party does not perform, the obligation is excused.").

Further, a party breaches a contract when it repudiates the contract. *Taylor v. Johnston*, 15 Cal. 3d 130, 137 (1975). A party's repudiation may be implied by conduct "where the promisor puts it out of his power to perform so as to make substantial performance of his promise impossible." *Id.* When a party "place[s] itself in a position such that substantial performance under the contract was impossible" it has committed a breach and the other party is excused from performing. *Cty. of Solano v. Vallejo Redevelopment Agency*, 75 Cal. App. 4th 1262, 1276 (1999).

Breach No. 1: Unbeknownst to Paramount until discovery in this case, MTA ceased its ongoing business activities, had dissolved and fully wound up by September 30, 1985. As Weston testified in deposition:

[redacted]

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[redacted].

AMF 13-14. As such, *as a matter of fact*, by September 30, 1985, MTA did not exist and could no longer perform.

As such, by September 30, 1985, MTA could no longer service the *MacGyver* package, and under *Taylor* and *City of Solano*, Paramount was excused from its continuing performance of obligations to MTA. Indeed, by winding up, MTA made it impossible for it to perform under the Winkler-Rich Agreement. It did not become "unavailable," but rather it ceased to exist (as Weston admitted during deposition) and delegated its service obligations to no one.

Breach No. 2: Even had the real MTA assigned its obligations under the Winkler-Rich Agreement to Ingrid and Annette (and then to Hanzer Holdings), as Plaintiffs now contend, such assignments would constitute further breaches of the Winkler-Rich Agreement, thereby excusing Paramount's performance.

A party may not assign a contract where it was entered into because of special knowledge, skill, or ability of the party such that "performance by another would be an essentially different thing from that contracted for." *Murphy v. Luthy Battery Co.*, 74 Cal. App. 68, 74–75 (1925). As a matter of well-established law, a contract with a corporation offering specialized services contemplates assignment *only to a qualified successor*. *Haldor, Inc. v. Beebe*, 72 Cal. App. 2d 357, 365 (1945); *see also Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882, 905 (2015) (assignment not permitted from dissolved corporation to shareholders where contract requires "services requiring special skill, capacity or taste."); *Farmland Irr. Co. v. Dopplmaier*, 48 Cal. 2d 208, 222 (1957) (assignment prohibited if it would materially impair the nonassigning party's chance of obtaining the expected performance).

Consistent therewith, a party may not relieve itself of its contractual obligations by assigning them absent consent of the obligee. Civ. Code § 1457; *Airport Plaza v. Blanchard*, 188 Cal. App. 3d 1594 (1987) (a corporate party's proposed dissolution and assignment of its obligations to its shareholders violates a contract because deprives the promisee of the corporation's continuing liability). Where, as here, the obligee does not consent, "the relations of himself and the [assignor] as to such burden [a]re not affected by the assignment of the contract." *Jacobs Facilities, Inc.*, 239 Cal. App. 4th at 903.

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Here, the evidence is clear that MTA failed to delegate its ongoing service obligations to anyone, much less a qualified third party. Paragraph 19 of the Winkler-Rich Agreement expressly provides:

> Major Talent Agency, Inc. shall perform such services as may be requested by a joint venture producing the applicable pilot and/or series from time to time, it being agreed that such agency may designate **qualified** third parties **to render such services** in the event of **unavailability**.

In other words, such obligations could only be delegated: 1) if MTA was unavailable, and 2) to a qualified third party. Notice to Paramount of the delegation was also required. AMF 10-11.

Here, MTA never designated anyone to perform its ongoing service obligations, much less followed the pre-conditions of the contract. It simply ceased to exist on September 30, 1985. Even had MTA done so (it did not), it certainly did not designate any "qualified" third parties – Ingrid, Annette and Hanzer Holdings were not ever in the television business, were not talent agents and had no ability or license to earn an agency commission. And they certainly never provided notice to Paramount that Ingrid, Annette or Hanzer Holdings were now going to service the package. Rather, Sham MTA entered the picture and serviced the contract. They successfully pulled the wool over Paramount's eyes for years, but that gives them precisely no rights now.[17]

Breach No. 3: Even assuming it validly assigned its service obligations, MTA could not just disappear and walk away from its obligations. Rather, as a matter of law, even had it assigned its obligations, MTA was required to act as a "surety" for its performance under the Winkler-Rich Agreement. Under California law, an assignor has continuing liability under a contract and acts "in the nature of a surety for the [assignee] for the performance of the obligation." *Hearn Pac. Corp. v. Second Generation Roofing, Inc.*, 247 Cal. App. 4th 117, 149 (2016); *see also* Civil Code § 1457 (burden of obligation not transferable without consent of obligee); *Airport Plaza v. Blanchard*, 188 Cal. App. 3d 1594 (1987) (where corporation had continuing contractual obligations to promisee, dissolution of the corporation and assignment of its obligations to its shareholders constituted a breach of the contract because it deprived promisee of corporation's continuing liability); *Bliss v. California Co-op. Producers*, 30 Cal. 2d

[17] Arlita's Weston (then using the name "Major Talent Agency") lied to Paramount over and over again. Had anyone ever told Paramount that Ingrid and Annette (or Hanzer Holdings) had been assigned to perform MTA's obligations on MacGyver, Paramount would have known something was "very wrong." AMF 27.

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240, 250 (1947) (corporation with continuing contractual obligations that goes out of business breaches the contract).

In light of the foregoing authorities, even had the fully wound-up, non-existent MTA somehow assigned its ongoing service obligations under the Winkler-Rich Agreement to Ingrid and Annette in November 1985, it nevertheless would have remained bound to perform those obligations as a "surety." After September 1985, however, MTA no longer existed, and its axiomatic that it could not act as a surety as it was required to do under *Hearn Pac. Corp*. Hanzer Holdings and Weston hid that breach from Paramount too. Under *Airport Plaza* and *Bliss*, MTA's dissolution breached the Winkler-Rich Agreement because MTA became incapable of performing its ongoing service obligations or remaining liable as a surety to do so.

Breach No. 4: Even assuming a valid assignment from Ingrid and Annette to Hanzer Holdings, such an assignment would constitute yet another breach. Ingrid and Annette were not "unavailable" on November 22, 1985 when they purported to assign MTA's obligations under the Winkler-Rich Agreement to Hanzer Holdings. As such, they violated a pre-condition for any delegation of their service obligations. Moreover, Hanzer Holdings was not "qualified" to perform MTA's service obligations, as it was not a talent agency nor did it have any ability to service the package. Hanzer Holdings had no ability to earn the "agency commission" set forth in the Winkler-Rich Agreement.

C. Plaintiffs Are Estopped From Asserting That They Are The Successors-In-Interest To MTA (DEFENSE NOS. 4 & 9)

The doctrine of equitable estoppel "provides that a person may not deny the existence of a state of facts if that person has intentionally led others to believe a particular circumstance to be true and to rely upon such belief to their detriment." *Krolikowski v. San Diego City Employees' Ret. Sys.*, 24 Cal. App. 5th 537, 564–65 (2018). Equitable estoppel applies where: (1) the party to be estopped is apprised of the facts; (2) intends that his conduct be acted upon, or acts in such a manner that the party asserting the estoppel had a right to believe it was so intended; (3) the other party is ignorant of the true state of facts; and (4) relies upon the conduct to his injury. *Id.* The "existence of an estoppel is generally a factual question" and cannot be resolved on summary adjudication based on disputed facts. *Id.* at 565.

Starting in 1985, and continuing for years until their scheme was uncovered in this case, Weston and Hanzer Holdings misled Paramount. They led Paramount to believe that MTA had not dissolved after all, but rather had continued in business and performed its service obligations

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on *MacGyver*. It was really Weston's Amivida/Sham MTA who serviced the *MacGyver* package, which was unknown to Paramount because Weston was using MTA's name, logo and business address. Amivida had precisely no contractual relationship with Paramount, but managed to dupe Paramount into paying a lucrative agency commission for years.

In light of the foregoing, Plaintiffs are estopped from claiming that they are the successors in interest to the real MTA. Hanzer Holdings and Arlita's Weston knew that MTA could no longer perform services under the Winkler-Rich Agreement by no later than September 30, 1985 because it simply no longer existed. By November 1985, Weston's Amivida/Sham MTA was using the "Major Talent Agency" name, logo and address. In January 1986, Weston's Amivida/Sham MTA was giving instructions to Paramount as if it were the real MTA, with the clear intention that Paramount believe that MTA had chosen not to dissolve after all, but rather was continuing to work on the *MacGyver* series. Weston's entire purpose was to get Paramount to rely on his work as "Major Talent Agency," and continue to pay agency commissions to which neither Plaintiff, in any iteration, was ever entitled. Paramount, in fact, continued to pay agency commissions to companies which never had any rights to them. Just as Weston had planned, Paramount had no knowledge that Weston's Sham MTA was not the real MTA. AMF 23, 26, 34.

Having engaged in a highly misleading corporate shell game, and having collected agency commissions from Paramount on *MacGyver* to which they were never entitled, Plaintiffs are estopped from asserting that they are the successors-in-interest to the real MTA.[18]

VIII. IN ANY EVENT, PLAINTIFFS CANNOT MEET AN ESSENTIAL ELEMENT OF THEIR CONTRACT CLAIMS – PEFORMANCE (DEFENSE NOS. 6-7)

Even if Plaintiffs could prove they are the successors in interest to MTA's rights and obligations (they cannot), and that the Remake is a spinoff (it is not) such that the Winkler-Rich Agreement applies (it does not), they still cannot recover because they cannot perform the agency services required under their claimed contract (whatever the version).

A. Plaintiffs Cannot Perform Any Service Obligations To Earn The "Agency Commission" At Issue Herein

"[O]ne who cannot perform his part of a contract is not entitled to performance on the part of his contractee." *McDorman,* 50 Cal. App. 2d at 141; *see also* Civ. Code § 1439 ("Before any

[18] These acts of third parties Weston, Amivida/Sham MTA and Major Clients Agency, Inc. (yet another corporate name Weston used as part of his shell game) create triable issues of material fact regarding CBS's "Acts or Omissions of Third Parties" defense (No. 9).

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party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party…").

As they conceded in deposition, neither Plaintiff has any ability to perform the functions necessary to earn the "agency commission" at issue herein. Neither is a talent agency in the first instance; neither has any pool of talent to offer any television series; and neither has the necessary license to perform talent agency services. Plaintiffs recognize, as they must, that "[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner." Mot. at 23:17-19. In order to "perform," Plaintiffs must have a talent agency license or else their performance would violate California law. Labor Code § 1700.5; *Styne v. Stevens*, 26 Cal. 4th 42, 51 (2001) ("even the incidental or occasional provision of [talent agency] services requires licensure."). But they never had any such license.

For a variety of reasons, Plaintiffs' argument that CBS was supposed to ask Plaintiffs to perform does not make any logical sense. First, the Remake is not a spinoff, and so the Winkler-Rich Agreement does not even apply to the series by its own terms. Second, no one ever informed Paramount or CBS that Hanzer Holdings or Arlita had assumed MTA's agency obligations. Third, Plaintiffs cannot compel CBS to demand performance when such a demand would be futile[19] or would lead to an illegal result (given Plaintiffs' lack of any talent agency license).[20]

Plaintiffs argue, without any support, that they "are not required to have a talent agency license to … perform under the [Winkler-Rich] Agreement." Mot. at 24:17-18. Plaintiffs' argument contradicts the express language of Paragraph 19 (which expressly addresses an "agency," and required a "qualified" designee to perform services to earn an "Agency Commission"), as well as the parties' own course of conduct during the 1980s and 1990s (where

[19] *See Cook v. Snyder*, 16 Cal. App. 2d 587, 591 (1936); *Cox v. Delmas*, 99 Cal. 104, 120–21 (1893) ("it is well settled that previous demand is not required, when… it fully appears that it would have been unavailing, when it would not have changed the rights and relations of the parties, and would have been a mere useless and idle ceremony.").

[20] Cal. Civ. Code § 1643 ("A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect . . ."); *see also id.* § 3541 ("An interpretation which gives effect [to a contract] is preferred to one which makes [it] void."); *Lewis & Queen v. N.M. Ball Sons*, 48 Cal. 2d 141, 150 (1957) ("the courts generally will not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an illegal act. The reason for this refusal is not that the courts are unaware of possible injustice between the parties… but that this consideration is outweighed by the importance of deterring illegal conduct.").

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ongoing talent agency services were provided by a licensed talent agency in exchange for agency commissions). Indeed, even Sham MTA obtained a talent agency license and provided talent agency services for the original *MacGyver* series. AMF 20, 37.

B. CBS Was Not Required to Seek An Administrative Adjudication Before The Labor Commissioner Because The Commissioner Does Not Have Jurisdiction Over This Dispute

The Labor Commissioner has primary jurisdiction over controversies arising between artists and their talent agents. *See Dozoka v. Lenhoff Enters., Inc.*, Cal. Lab. Comm'r Case No. TAC – 41756, at 3 (Dec. 6, 2016) (the Labor Commissioner exercises jurisdiction over controversies between "artists" and "agents" under the Talent Agencies Act). However, the Labor Commissioner does ***not*** have jurisdiction over disputes related to the Talent Agency Act unless the dispute involves an artist and one who procured employment for that artist. *See, e.g., American First Run v. OMNI Entm't Grp.,* Cal. Lab. Comm'r Case No. TAC 32-95, at 4 (Apr. 8, 1996) (noting that the Labor Commissioner lacks jurisdiction where the petitioner is not an artist and the respondent is not a talent agent). Indeed, "the purpose of the [TAA] is to protect artists from unscrupulous representatives." *Turtle Rock Studios, Inc. v. Digital Development Mgmt., Inc.*, Cal. Lab. Comm'r Case No. TAC - 41987, at 9 (Mar. 20, 2017).

Particularly pertinent here, the Labor Commissioner has recognized that an attempt to classify a production company as an "artist" under the Talent Agency Act, regardless of its role in a dispute, defies the intent behind the Act. "[T]o conclude that Walt Disney Pictures, Warner Brothers Entertainment, Inc., Universal Pictures, Lucasfilm Ltd. LLC, Industrial Light and Magic or any major production company can be an 'artist' under the [Talent Agencies] Act . . . is simply not the legislative intent behind The Act." *Turtle Rock Studios, Inc. v. Digital Development Mgmt., Inc.*, Cal. Lab. Comm'r Case No. TAC - 41987, at 9 (Mar. 20, 2017). As explained in *Turtle Rock*, the Labor Commissioner lacks jurisdiction over a dispute between a production company/studio and an agency because such production companies/studios are not "artists" within the meaning of the TAA in this context. *Id.*[21] Indeed, Plaintiffs recognized that the Labor Commissioner lacked jurisdiction here. Plaintiffs' Mot. at 25:25-27 ("the Labor Commissioner has held it lacks jurisdiction to adjudicate disputes regarding package commissions.")

[21] Plaintiffs' reliance on *Styne* is misguided as that case involved a typical Talent Agencies Act dispute between an artist and a manager over talent agency services performed without a license. *Styne v. Stevens*, 26 Cal. 4th 42, 48 (2001).

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In light of *American First Run* and *Turtle Rock Studios*, the Labor Commissioner lacks jurisdiction to adjudicate the current dispute. CBS does not claim that it is an "artist," as that term is defined by the Talent Agencies Act. Nor does CBS assert that Plaintiffs have "engage[d] in the 'occupation' of procuring employment for an artist." *Waisbren v. Peppercorn Prods., Inc.*, 41 Cal. App. 4th 246, 253 (1995). In fact, neither Plaintiff has ever done so. Rather, CBS asserts that the Winkler-Rich Agreement, assuming *arguendo* it applies to the Remake, must be interpreted to require Plaintiffs to be "qualified" to perform talent agency services on a television series in order to earn an "Agency Commission," *i.e.*, be licensed talent agents with an available roster of talent to offer a TV series, and have the ability to negotiate agreements on an artist's behalf.[22]

In sum, as Plaintiffs recognized at one point in their papers, the Labor Commissioner does not have jurisdiction over a contract interpretation dispute between a studio and a company which claims entitlement to an "Agency Commission." *See* Mot. at 25:25-27.[23]

IX. CONCLUSION

For all of the foregoing reasons, Plaintiffs' Motion should be denied in its entirety.

Dated: April 1, 2021

VENABLE LLP

By: _____

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[22] The Winkler-Rich Agreement "was intended to benefit from the services of Major Talent Agency, Inc. for the life of the series produced under the Winkler-Rich Agreement and for any applicable spin-off series therefrom." AMF 2-4. In order to earn any agency commission, the agency must be available to and provide ongoing services, be a licensed talent agent, have a pool of talent to offer to the series, and represent that talent in connection with the series. AMF 4, 7-8.

[23] The cases relied on by Plaintiffs, *Hyperion Animation Co. v. Toltec Artist, Inc.* (Cal. Lab. Com., Dec. 27, 1999) TAC No. 7-99 and *Burnett v. Riggs* (Cal. Lab. Com., May 10, 2011) TAC No. 10192, bear no resemblance to this case and are inapposite. Both of those cases involved disputes between an artist and their representative over whether the artist's representative had violated the Talent Agencies Act by acting as an unlicensed talent agent. *Hyperion*, TAC No. 7-99 at 2 (artist was a writer, director and producer in a dispute with representative); *Burnett*, TAC No. 10192 at 4-5 (artist was a producer in a dispute with his representative). Unlike *Hyperion* and *Burnett*, this case involves a contract interpretation dispute between a television studio and two companies which are seeking agency commissions for servicing a package, which is entirely outside the Labor Commissioner's jurisdiction.

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, Suite 2300, Los Angeles, CA 90067.

On **April 1, 2021,** I served a copy of the foregoing document(s) described as **DEFENDANT CBS STUDIOS, INC.'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION** on the interested parties in this action addressed as follows:

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By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☑ **BY ELECTRONIC SERVICE (CCP § 1010.6; CRC Rule 2.251(g)):** I transmitted the above-stated document(s) and an unsigned copy of this declaration from my computer (electronic notification address ***mjdeveney@venable.com***) located Venable LLP, 2049 Century Park East, Suite 2300, Los Angeles, CA 90067 to the interested parties in this action whose names and e-mail addresses are listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. Service by e-mail or electronic transmission was agreed upon based on a court order or an agreement of the parties to accept service.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 1, 2021, at Los Angeles, California.

Michele J. Deveney