

1 Neville L. Johnson, SBN 66329
2 *njohnson@jjllplaw.com*
3 Douglas L. Johnson, SBN 209216
4 *djohnson@jjllplaw.com*
5 Daniel B. Lifschitz, SBN 285068
6 *dlifschitz@jjllplaw.com*
JOHNSON & JOHNSON LLP
439 North Canon Drive, Suite 200
Beverly Hills, California 90210
Tel: 310-975-1080
Fax: 310-975-1095

7 Jeffrey A. Koncius, SBN 189803
8 *koncius@kiesel.law*
9 Melanie M. Palmer, SBN 286752
10 *palmer@kiesel.law*
KIESEL LAW LLP
8648 Wilshire Boulevard
Beverly Hills, California 90211
Tel: 310-854-4444
Fax: 310-854-0812

Daniel L. Warshaw, SBN 185365
dwarshaw@pswlaw.com
Bobby Pouya, SBN 245527
bpouya@pswlaw.com
PEARSON, SIMON & WARSHAW LLP
15165 Ventura Boulevard, Suite 400
Sherman Oaks, California 91403
Tel: 818-788-8300
Fax: 818-788-8104

11 *Attorneys for Plaintiff and the Class*

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JAY MARTEL, an individual, on behalf
15 of himself and all others similarly
16 situated,

17 Plaintiffs,

18 v.

19 WRITERS GUILD OF AMERICA
20 WEST, INC., a California corporation;
21 VIACOM MEDIA NETWORKS, a
22 Delaware corporation; COMEDY
23 PARTNERS LLC, a New York limited
24 liability company; CENTRAL
25 PRODUCTIONS LLC, a Delaware
26 limited liability company; LRF
27 DEVELOPMENT COMPANY, INC., a
28 California corporation; HELLO
DOGGIE, INC., a Delaware
corporation; and DOES 1-10,

Defendants.

CASE NO.: 2:21-cv-2389

CLASS ACTION

COMPLAINT FOR:

- 1) BREACH OF COLLECTIVE BARGAINING AGREEMENT
- 2) BREACH OF DUTY OF FAIR REPRESENTATION

DEMAND FOR JURY TRIAL

1 Plaintiff Jay Martel (“Martel” or “Plaintiff”), on behalf of himself and all
2 others similarly situated, alleges as follows upon personal knowledge as to
3 Plaintiff’s own conduct and on information and belief as to all other matters based
4 on an investigation by counsel, such that each allegation has evidentiary support or
5 is likely to have evidentiary support upon further investigation and discovery:

6 **NATURE OF THE ACTION**

7 1. Defendants Viacom Media Networks (“VMN”), Comedy Partners LLC
8 (“Comedy”), Central Productions LLC (“Central”), LRF Development Company,
9 Inc. (“LRF”), and Hello Doggie, Inc. (“Hello”) (collectively the “Employer
10 Defendants”) are signatories to, or have otherwise assumed or personally guaranteed
11 obligations under, the triannual Theatrical and Television Basic Agreements (the
12 “Basic Agreements”) negotiated by Defendant Writers Guild of America, West Inc.
13 (“WGA”). Each of the Basic Agreements issued in 2011, 2014, and 2017 requires
14 the Employer Defendants to pay television writers covered thereby, including
15 Plaintiff, specified royalties for the commercial exploitation of their work.

16 2. For years, the Employer Defendants failed to abide by the requirements
17 of the Basic Agreements by improperly computing or simply not paying residuals
18 owed thereunder for the use of television motion pictures in new media (“New
19 Media Use”), in particular with respect to ad-supported video-on-demand services
20 (“AVOD”). The Employer Defendants clandestinely undertook this pattern and
21 practice across dozens of television programs (including, by way of example, *Key &*
22 *Peele*, *The Daily Show with Trevor Noah*, and *Tosh.0*) (collectively the “Series”).

23 3. Between late 2019 and early 2020, the Employer Defendants negotiated
24 a collective settlement with the WGA concerning their systemic underpayment and
25 nonpayment of royalties for distribution of the Series in the AVOD market (the
26 “Settlement”), wiping out the Employer Defendants’ historical liabilities across the
27 Series in exchange for a single paltry lump-sum payment (the “Settlement
28 Payment”). The WGA and the Employer Defendants then proceeded to bury the

1 Settlement Agreement in confidentiality.

2 4. During the years leading up to the Settlement Agreement, the Employer
3 Defendants' exploitation of the Series in the AVOD market was nothing short of
4 prolific, with thousands of episodes and excerpts of the Series uploaded to various
5 digital platforms. The Employer Defendants did so in recognition of the fact that the
6 rapidly accelerating trend of consumers trading broadcast television for digital
7 streaming ("cord-cutting") rendered New Media Use the future of the industry. The
8 Employer Defendants were able to reap massive windfalls from exploitation of the
9 Series in the AVOD market while simultaneously obfuscating and failing to remit
10 the full balance of royalties for which the Series' writers were to be paid.

11 5. The Settlement Agreement represents a colossal failure of the WGA to
12 adequately discharge its duty of fair representation to Plaintiff and the Class. The
13 Employer Defendants' massive AVOD exploitation of the Series has resulted in
14 content from the Series being streamed billions of times on revenue-generating
15 digital platforms, such that the paltry Settlement Payment cannot possibly provide
16 adequate compensation for the Employer Defendants' conduct across the Series'
17 affected writers. The inexplicable nature of the foregoing renders the WGA's
18 conduct as alleged not only arbitrary, but possibly made in bad faith. From the
19 amount of the settlement, it would appear that the WGA prioritized its ongoing
20 working relationship with the Employer Defendants ahead of the rights of the Basic
21 Agreements' intended beneficiaries, rolling up and cleansing the Employer
22 Defendants' years-long violations of the Basic Agreements for pennies on the dollar.

23 6. Plaintiff brings this nationwide class action against the Employer
24 Defendants for their failure to properly account to Plaintiff and Class members for
25 income derived from the exploitation of the Series in the AVOD market and the
26 WGA's violation of the duty of fair representation towards Plaintiff and Class
27 members by extinguishing their claims through the Settlement Agreement.

28 7. Plaintiff and Class members seek monetary damages, injunctive, and/or

1 declaratory relief against the Employer Defendants for their willful breach of the
2 Basic Agreements and the WGA for their violation of the duty of fair representation.

3 **THE PARTIES**

4 **Plaintiff**

5 8. Plaintiff Jay Martel is an Emmy and Peabody Award-winning writer
6 and producer who served as showrunner for *Key & Peele*, one of the television
7 programs included in the Series. Martel is a dues-paying member of the WGA in
8 good standing whose writing work on *Key & Peele* is covered by the Basic
9 Agreements. Martel's historical royalty entitlement for use of *Key & Peele* in the
10 AVOD market was extinguished by the Settlement Agreement.

11 **Defendants**

12 9. Defendant Writers Guild of America West, Inc. is a California
13 corporation that represents television writers, including Plaintiff and the Class, with
14 its principal place of business and corporate headquarters located in Los Angeles,
15 California. The WGA is a party to the Basic Agreements and Settlement Agreement.

16 10. Defendant Viacom Media Networks is a division of Viacom
17 International Inc., a Delaware corporation with its principal place of business and
18 corporate headquarters located in New York, New York. VMN is a personal
19 guarantor of LRF's obligations under the Basic Agreements and a party to the
20 Settlement Agreement.

21 11. Defendant Comedy Partners LLC is a New York limited liability
22 company with its principal place of business and corporate headquarters located in
23 New York, New York. Comedy has assumed the obligations of a signatory to the
24 Basic Agreements, Corporation Management Solutions, Inc., and is a party to the
25 Settlement Agreement.

26 12. Defendant Central Productions LLC is a Delaware corporation with its
27 principal place of business and corporate headquarters located in New York, New
28 York. Central is a signatory to the Basic Agreements and a party to the Settlement

1 Agreement.

2 13. Defendant LRF Development Company, Inc. is a California
3 corporation with its principal place of business and corporate headquarters located
4 in Beverly Hills, California. LRF is a signatory to the Basic Agreements and a party
5 to the Settlement Agreement.

6 14. Defendant Hello Doggie, Inc. is a Delaware corporation with its
7 principal place of business and corporate headquarters located in New York, New
8 York. Hello is a signatory to the Basic Agreements and a party to the Settlement
9 Agreement.

10 15. Plaintiff is ignorant of the true names and capacities of the Defendants
11 sued herein as DOES 1 through 10, inclusive, and therefore sues such Defendants by
12 fictitious names. Plaintiff will seek leave of Court to amend this Complaint to allege
13 their true names and capacities when they have been ascertained.

14 16. The WGA, Employer Defendants, and DOES 1-10 are collectively
15 referred to herein as “Defendants.”

16 17. Plaintiff is informed and believes, and thereon alleges, that each of the
17 fictitiously named Defendants were responsible in some manner for the occurrences
18 herein alleged, and that Plaintiff’s and Class members’ losses, as herein alleged,
19 were proximately caused by Defendants’ conduct.

20 18. Defendants at all times herein alleged were the agents, employees,
21 servants, joint venturers and/or co-conspirators of each of the other remaining
22 Defendants, and that in doing the things herein alleged were acting in the course and
23 scope of such agency, employment, joint venture, and/or conspiracy.

24 19. At all times herein mentioned, the conduct complained of emanated
25 from the California operations of the Defendants, such that California has a
26 significant interest in protecting both the citizens of its own state from the conduct
27 of Defendants as well as ensuring that such California-based activity does not
28 unfairly impinge on the rights of non-California Class members.

1 \\
2

JURISDICTION AND VENUE

3 20. This Court has jurisdiction over this matter based on Section 301 of the
4 Labor Management Relations Act of 1947 (“LMRA”), 29 U.S.C. § 185, and 28
5 U.S.C. § 1331, as well as Section 9(a) of the National Labor Relations Act, 29
6 U.S.C. § 159(a), 28 U.S.C. § 1337.

7 21. Pursuant to 28 U.S.C. § 1391, venue is proper in this District, as
8 Plaintiff resides in the District, Defendants each transact significant business in the
9 District (including employing Class members), and a substantial part of the events
10 or omissions giving rise to the Complaint occurred in the District.

11 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

12 22. Plaintiff and the Class members were employed by the Employer
13 Defendants as writers in connection with the Series and represented by the WGA as
14 members thereof.

15 23. The royalty entitlements of Plaintiff and the Class members from the
16 Employer Defendants in connection with the Series are each governed by the Basic
17 Agreements.

18 24. The Basic Agreements, and each of them, contain a Sideletter on
19 Exhibition of Motion Pictures Transmitted Via New Media (the “Sideletters”). New
20 Media Use of the Series by the Employer Defendants, including in the AVOD
21 market, is subject to the terms of the Sideletters.

22 25. Under the Sideletters, if the Employer Defendants desired to stream the
23 Series via AVOD, they were obligated to make residual payments equal to (a)
24 between three and one-half percent (3.5%) and five and one-half percent (5.5%) of
25 the applicable minimum under the relevant Basic Agreement for use within one year
26 of a Series’ applicable free “streaming window” (with an exception for use of
27 “excerpts” of the Series), followed by (b) two percent (2%) of Employer
28 Defendants’ “accountable receipts” as defined for use outside the aforementioned

1 “streaming window.” While the Sideletters permit the use of excerpts from the
2 Series in new media for the purpose of promoting the Series, such excerpts may not;
3 (x) exceed five (5) minutes in length; or (y) be used on new media sites that archive
4 the contents of several prior seasons of the Series and are designed to enable the
5 viewer to search the archives using a sophisticated search engine. Such excerpts do
6 not qualify as promotional use and must be paid for by the Employer Defendants.

7 26. For numerous years leading up to the Settlement, the Employer
8 Defendants uploaded thousands of episodes and excerpts of the Series for AVOD
9 exploitation, yet failed to properly compensate Plaintiff and the Class for these
10 exploitations under the terms of the Basic Agreements. Additionally, the Employer
11 Defendants’ use of excerpts was so prolific that, in many instances, they represented
12 substantial portions of the Series being streamed for free, thereby failing to serve a
13 bona fide promotional purpose and, in fact, cannibalizing other compensable
14 markets (such as home video sales). The Employer Defendants undertook this
15 course of conduct in knowing derogation of Class members’ rights, effectively
16 converting the Series’ primary market from cable television to New Media Use in
17 order to enrich themselves at the expense of Plaintiff and the Class.

18 27. At some point, the WGA became aware of the Employer Defendants’
19 conduct as described hereinabove. This led to the WGA filing an arbitration claim
20 against the Employer Defendants in or about October of 2018. However, rather than
21 inform the affected Class members of the arbitration and organize an effective
22 prosecution of their claims, the WGA kept the Class in the dark, made no attempt to
23 gather evidence from or connect its constituent members, and ultimately abandoned
24 the arbitration in favor of a confidential Settlement Agreement extinguishing all
25 Class claims related to use of the Series in the AVOD market.

26 28. The Settlement Agreement, which virtually none of the Class members
27 (including Plaintiff) have ever seen, provides no basis for the Settlement Payment’s
28 calculation. However, given the number of renowned television programs

1 comprising the Series, as well as the Employer Defendants’ prolific exploitation
2 thereof in the AVOD market (amounting to billions of streams), it is inexplicable
3 that the Settlement Payment provides an appropriate measure of compensation for
4 years of underpayment and nonpayment under the Basic Agreements across the
5 hundreds of writers who worked on the Series. The fact that the Defendants took
6 affirmative steps to hide the Settlement Agreement from any third-party scrutiny
7 only reinforces its indefensibility.

8 29. As television writers covered by the Basic Agreements in connection
9 with the Series, Plaintiff and members of the Class are entitled to appropriate
10 compensation thereunder, including with respect to the uses and periods
11 encompassed by the improper Settlement Agreement.

12 **CLASS ACTION ALLEGATIONS**

13 30. Plaintiffs bring this class action pursuant to Federal Rules of Civil
14 Procedure 23(a) and 23(b) on their own behalf and on behalf of a class defined as
15 follows:

16
17 All persons and entities in the United States, their
18 successors in interest, assigns, heirs, executors, trustees,
19 and administrators whose claims for payment from the
Employer Defendants in connection with the Series were
released under the Settlement Agreement.

20 31. Plaintiff reserves the right to redefine the Class as the facts and/or
21 evidence may warrant.

22 32. This action is properly maintainable as a class action.

23 33. The Class for whose benefit this action is brought is so numerous that
24 joinder of all Class members is impracticable. While Plaintiff does not presently
25 know the exact number of Class members, due to the number of Series implicated
26 by the Settlement Agreement, there are believed to be at least several hundred Class
27 members.

28 34. The Class is so numerous that joinder of all Class members is

1 impracticable.

2 35. There are questions of law and fact common to Plaintiff and the Class,
3 the answers to which are apt to drive resolution of this litigation, and those questions
4 predominate over any questions affecting only individual members of the Class.

5 These common questions of law and fact include, but are not limited to:

- 6 a. The proper measure of residuals payable to Plaintiff and the
7 Class for AVOD exploitation of the Series under the Basic
8 Agreements;
- 9 b. Whether the Employer Defendants failed to properly calculate
10 residuals payable to Plaintiff and the Class for AVOD
11 exploitation of the Series under the Basic Agreements;
- 12 c. Whether Defendants breached their contractual obligations by
13 failing to properly calculate residuals payable to Plaintiff and the
14 Class for AVOD exploitation of the Series under the Basic
15 Agreements;
- 16 d. Whether the Employer Defendants failed to compensate Plaintiff
17 and the Class for AVOD exploitation of excerpts of the Series
18 that did not qualify as promotional use thereof under the Basic
19 Agreements;
- 20 e. Whether the Settlement violated the WGA's duty of fair
21 representation towards Plaintiff and the Class;
- 22 f. Whether interest should be paid on the withheld compensation;
- 23 g. Whether Plaintiff and the Class have been damaged by
24 Defendants' actions or conduct;
- 25 h. The proper measure of damages; and
- 26 i. Whether Plaintiff and the Class are entitled to injunctive relief.

27 36. Plaintiff's claims are typical of the claims of the Class. Defendants'
28 common course of conduct in violation of law as alleged herein has caused Plaintiff

1 and Class members to sustain the same or similar injuries and damages. Plaintiff's
2 claims are thereby representative of and coextensive with the claims of the Class.

3 37. Plaintiff is a member of the Class, does not have any conflicts of
4 interest with other proposed Class members, and will prosecute the case vigorously
5 on behalf of the Class. Counsel representing Plaintiff is competent and experienced
6 in litigating complex class actions, including those involving the entertainment
7 industry. Plaintiff will fairly and adequately represent and protect the interests of
8 Class members.

9 38. A class action is superior to all other available means for the fair and
10 efficient adjudication of this controversy. Individual joinder of all Class members is
11 not practicable, and questions of law and fact common to the Class predominate
12 over any questions affecting only individual members of the Class. Each Class
13 member has been damaged and is entitled to recovery by reason of Defendants'
14 improper practices. Class action treatment will allow those similarly situated
15 persons to litigate their claims in the manner that is most efficient and economical
16 for the parties and the judicial system. The injury suffered by each Class member,
17 while meaningful on an individual basis, is not of such magnitude as to make the
18 prosecution of individual actions economically feasible. Individualized litigation
19 increases the delay and expense to all parties and the Court. By contrast, class action
20 treatment will allow those similarly situated persons to litigate their claims in the
21 manner that is most efficient and economical for the parties and the judicial system.

22 39. Defendants have acted and refused to act on grounds generally
23 applicable to the entire Class, thereby making appropriate final injunctive relief or
24 corresponding declaratory relief with respect to the Class as a whole.

25 40. Plaintiff anticipates no unusual difficulties in the management of this
26 litigation as a class action.

27 41. The nature of notice to the proposed Class is contemplated to be by
28 direct postal mail or electronic means based upon Defendants' records or, if such

1 notice is not practicable, by the best notice practicable under the circumstance
2 including publication on the internet or in major newspapers.

3 **TOLLING AND ESTOPPEL**

4 42. Any applicable statutes of limitations that might otherwise bar any of
5 Plaintiff's claims are tolled by Defendants' knowing and active concealment of the
6 Employer Defendants' misconduct, as well as the Settlement Agreement and
7 material terms thereof.

8 43. A reasonable person would not have known of the existence of a
9 possible claim against Defendants within the limitations period, as the Employer
10 Defendants concealed their misconduct from Plaintiff and the Class, and the WGA
11 concealed their pursuit of claims regarding the aforementioned misconduct (as well
12 as the Settlement Agreement resolving same) from Plaintiff and the Class. There is
13 nothing in the public record to suggest that a single Class member participated in the
14 Settlement's negotiation, with virtually none of them aware that their claims against
15 the Employer Defendants were being negotiated away in the first instance.

16 44. The Employer Defendants provided no indication to the Class members
17 that they were withholding royalties due and owed for exploitation of the Series in
18 the AVOD market. Class members simply received undifferentiated paychecks from
19 the Employer Defendants and were never provided information necessary to discern
20 what royalties were attributable to AVOD use, much less whether they were
21 properly calculated under the Basic Agreements, all of which was in the exclusive
22 possession of the Employer Defendants. The WGA, upon discovering the Employer
23 Defendants' misconduct, failed to notify and organize the Class members in pursuit
24 of their claims, leaving them unaware that their rights were being extinguished by
25 the WGA through the Settlement process.

26 45. Indeed, the WGA's failure to actively involve any of the Class
27 members in the process of obtaining the Settlement is inexplicable. Given the scope
28 of impacted Series and multiplicity of resulting Employer Defendants and Class

1 Members, the strength of the WGA's case against the Employer Defendants
2 necessarily rested on organizing the Class members to effectively gather, exchange,
3 and compare information regarding the Employer Defendants' practices. The WGA,
4 however, did the exact opposite, bringing and settling Class members' claims under
5 a shroud of secrecy and attempting to maintain that secrecy in perpetuity. Plaintiff
6 and the Class members rely on the WGA, as the enforcer of their rights under the
7 Basic Agreements (for which the Class members pay significant membership dues
8 to the WGA), to properly and fully apprise them as to when and how those rights are
9 disposed of, which the WGA purposefully failed to do.

10 46. Due to Defendants' concealment of the true facts from Plaintiff and
11 members of the Class as alleged herein, Class members could not have reasonably
12 discovered the substantial sums of money being denied them by the Employer
13 Defendants, nor the startling inadequacy of the Settlement Payment in relation to
14 those sums. Defendants are therefore estopped from relying on any statutes of
15 limitations in defense of this action.

16 47. In addition, Defendants' conduct as described herein constitute
17 continuing wrongs such that the statute of limitations on these breaches of fiduciary
18 duty claims of Plaintiff and the Class has been tolled and will not begin to run until
19 the commission of the last wrongful act of the Defendants.

20 **FIRST CAUSE OF ACTION**

21 **BREACH OF COLLECTIVE BARGAINING AGREEMENT**

22 **(On Behalf of Plaintiff and All Class Members Against the Employer**
23 **Defendants and DOES 1-5)**

24 48. Plaintiff realleges and incorporates by reference allegations contained
25 in the preceding paragraphs, as though fully set forth herein.

26 49. At all times mentioned in the Complaint, Plaintiff and the Class were
27 entitled to certain royalties guaranteed under the Basic Agreements for the
28 Employer Defendants' exploitation of the Series in the AVOD market, which may

1 be accessed via the following link: <https://www.wga.org/contracts/contracts/mba>.

2 50. Pursuant to Section 2(b) of the 2011 Sideletter (beginning on page 580
3 of the 2011 Basic Agreement), if the Employer Defendants desired to stream the
4 Series within one (1) year of the expiration of a defined streaming window, they
5 were required to make “a residual payment equal to three and one-half percent
6 (3.5%) of the applicable minimum for the television motion picture under Article
7 15.B (or under Appendix A, where applicable)” of the 2011 Basic Agreement,
8 during which time the Employer Defendants “may allow excerpts of those television
9 motion pictures that are being streamed to be used on free-to-the consumer,
10 advertiser-supported services transmitted via new media without any additional
11 payment therefor.” For streaming the Series outside the aforementioned one (1) year
12 period, the Employer Defendants must pay “residuals at the rate of two percent (2%)
13 of [the Employer Defendants’] ‘accountable receipts,’” as defined therein.

14 51. Pursuant to Section 2.1 of the 2011 Sideletter, the Employer
15 Defendants “may [additionally] use an excerpt or excerpts from a television motion
16 picture (other than a television motion picture ninety (90) minutes or more in length)
17 in new media for the purpose of promoting the television motion picture, provided
18 that such excerpt(s) does not exceed five (5) minutes in length.” If the use of an
19 excerpt in new media is not promotional or exceeds relevant length limitations, the
20 Employer Defendants are required to pay defined residuals for their use based upon
21 the length of the except and the platform on which it is being exploited.

22 52. Under Section 2(b)(4)(A) of the 2014 Sideletter (beginning on page
23 640 of the 2014 Basic Agreement), the residual percentages required to stream the
24 Series within one (1) year of the expiration of the defined streaming window were
25 increased to “four percent (4%) effective May 2, 2014 (four and one-half percent
26 (4.5%) effective May 2, 2015 and five percent (5%) effective May 2, 2016),” while
27 the same section of the 2017 Sideletter (beginning on page 658 of the 2017 Basic
28 Agreement) increased it to “five percent (5%) (five and one-half percent (5.5%))

1 effective May 2, 2018).” The relevant provisions are otherwise largely carried over
2 from each prior iteration of the Basic Agreements and Sideletters.

3 53. The Employer Defendants breached their obligations under the Basic
4 Agreements by failing to remit the royalties guaranteed thereunder. Instead, the
5 Employer Defendants purposefully utilized their own *ad hoc* metrics for AVOD
6 royalty calculation (such as imputed per-episode or per-click fees) instead of those
7 provided for in the Sideletters to the Basic Agreements. Further, the Employer
8 Defendants misclassified excerpts of the Series as “promotional” when they failed to
9 meet the criteria for such classification under the Basic Agreements, uploading such
10 excerpts in such voluminous amounts that they failed to provide any bona fide
11 promotion (and in fact cannibalized non-AVOD revenues) for the Series. Each of
12 these actions taken by the Employer Defendants was intended to and had the effect
13 of depriving Plaintiff and the Class of significant royalties to which they were
14 entitled under the Basic Agreements, constituting breach thereof.

15 54. By reason of the foregoing breaches, Plaintiff and the Class have
16 suffered and continue to suffer substantial damages in the form of lost earnings with
17 respect to the Series, the precise amount of which will be proven according to proof
18 at the time of trial.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATION OF THE DUTY OF FAIR REPRESENTATION**

21 **(On Behalf of Plaintiff and All Class Members Against WGA and DOES 5-10)**

22 55. Plaintiff realleges and incorporates by reference allegations contained in
23 the preceding paragraphs, as though fully set forth herein.

24 56. Because the WGA has exclusive statutory authority to represent its
25 members, it has a corresponding legal obligation to exercise its discretion with
26 complete good faith and honesty, and to avoid arbitrary or irrational conduct.

27 57. At all times mentioned in this Complaint, the WGA had an affirmative
28 duty to promote the economic welfare of its members.

1 58. At all times mentioned in this Complaint, Plaintiff and the Class were
2 entitled to royalties from the Employer Defendants in amounts guaranteed under the
3 Basic Agreements for exploitation of the Series in the AVOD market.

4 59. The WGA, in breach of its statutory duty of fair representation owing
5 to Plaintiff and the Class, conspired with the Defendant Employers to deprive
6 Plaintiff and the Class of their rightful compensation under the Basic Agreements.
7 The WGA's pursuit, negotiation, and execution of the Settlement was conducted to
8 the exclusion of Class members' involvement or input, and the WGA failed to
9 undertake even basic investigatory steps that would have bolstered its claims in
10 arbitration. The resulting Settlement Payment obtained by the WGA bears no
11 rational relationship to the Employer Defendants' liability as released by the
12 Settlement Agreement. Rather, the Settlement constitutes a "sweetheart deal"
13 intended to cleanse the Defendant Employers of years of accrued liability for a
14 miniscule fraction of the royalties that billions of AVOD-related streams should
15 have generated for Plaintiff and the Class under the Basic Agreements.

16 60. The WGA's handling of the Settlement, for which no rational
17 justification exists, can only be explained by a lack of a sincere effort to protect
18 Class members' rights. Indeed, the WGA's conduct evinces bad faith and hostility
19 towards Plaintiff and the Class, as the legal and factual landscape at the time of their
20 conduct provided no support for accepting such an unfavorable Settlement.

21 61. Through the foregoing conduct, the WGA prevented Plaintiff and the
22 Class from obtaining the benefit of the Basic Agreements and violated the duty of
23 fair representation owed to Plaintiff and the Class.

24 62. As a direct, foreseeable, and legal result of the WGA's acts, Plaintiff
25 and the Class have suffered and continue to suffer substantial damages in the form
26 of lost earnings with respect to the Series, the precise amount of which will be
27 proven according to proof at the time of trial.

28 \\

PRAYER FOR RELIEF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Plaintiff, on behalf of himself and Class members, respectfully requests of the Court the following relief:

1. An order certifying the proposed Class, designating Plaintiff as the named representative of the Class, and designating the undersigned as Class Counsel;
2. A declaration that Defendants are financially responsible for notifying all Class members that the pertinent Basic Agreements obligate Defendants to include, pay, and/or credit Plaintiff and other Class members the income derived from the AVOD exploitation of the Series;
3. An injunction requiring Defendants to abide by the express terms of the Basic Agreements with respect to AVOD exploitation of the Series;
4. An award to Plaintiff and the Class of compensatory damages in an amount to be proven at trial;
5. An award of attorneys’ fees and costs, as allowed by law;
6. An award of pre-judgment and post-judgment interest, as provided by law;
7. For leave to amend the Complaint to conform to the evidence presented at trial; and

\\
\\
\\
\\
\\
\\
\\
\\
\\
\\

1 8. For such other, further, and different relief as the Court deems proper
2 under the circumstances.

3
4 DATED: March 17, 2021

JOHNSON & JOHNSON LLP

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: _____ /s Douglas L. Johnson
Douglas L. Johnson
Neville L. Johnson
Daniel B. Lifschitz

KIESEL LAW LLP
Jeffrey A. Koncius
Melanie M. Palmer

PEARSON, SIMON & WARSHAW LLP
Daniel L. Warshaw
Bobby Pouya

Attorneys for Plaintiff and the Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the Class, hereby demands trial by jury.

DATED: March 17, 2021

JOHNSON & JOHNSON LLP

By: _____ /s Douglas L. Johnson
Douglas L. Johnson
Neville L. Johnson
Daniel B. Lifschitz

KIESEL LAW LLP
Jeffrey A. Koncius
Melanie M. Palmer

PEARSON, SIMON & WARSHAW LLP
Daniel L. Warshaw
Bobby Pouya

Attorneys for Plaintiff and the Class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: ['Key & Peele' Writer Claims Writers Guild Unfairly Wiped Out Royalties Payments for 'Paltry' Settlement Deal](#)
