SUPREME COURT OF NEW YORK
NEW YORK COUNTY

BROOKS SHERMAN, Plaintiff, v. THE BENT AGENCY, INC. and JENNY BENT, Defendants.	Index No. 652602/2021 **VERIFIED AMENDED COMPLAINT**

Brooks Sherman, by his counsel, Slarskey LLC, and for his Verified Amended Complaint against The Bent Agency, Inc. and Jenny Bent, alleges as follows:

NATURE OF THE ACTION

1. This action arises out of a literary agency's wrongful refusal to pay earned, non-discretionary residual commissions due to a literary agent pursuant to a written commission agreement. Plaintiff Brooks Sherman, a literary agent previously affiliated with Defendant The Bent Agency, Inc. ("TBA"), has earned and accrued rights to a residual commission stream worth well in excess of $1.5 million. TBA paid Mr. Sherman his commissions for seven years, including more than three years after he left TBA. In April 2021, just prior to Plaintiff initiating this action, TBA and its mercurial principal and CEO, Jenny Bent, repudiated the commission obligation and failed to make a required periodic payment.

2. Mr. Sherman's experience as a literary agent is stellar. He has focused on representing authors of the young adult fiction category. Upon joining TBA as an agent in 2014, Mr. Sherman brought with him several existing clients and signed new clients, one of whom

would ultimately become among the world's most successful authors in the young adult category. Mr. Sherman worked at TBA through 2017.

3. The terms of Mr. Sherman's engagement with TBA provide that he is entitled to commissions (a percentage of TBA's fees from Mr. Sherman's clients) for any publishing or production deal procured by Mr. Sherman for his authors during Mr. Sherman's time at TBA. Those commissions are due in perpetuity—regardless of whether Mr. Sherman or the author is still affiliated with TBA.

4. Mr. Sherman achieved great success as an agent at TBA. He was one of TBA's largest producers (by gross commissions) and *certainly* the most visible agent—a rising star in the young adult field. While at TBA, Mr. Sherman sold or assisted in the sale of the publishing and subsidiary rights to Becky Albertalli's *Simon vs. the Homo Sapiens Agenda* (a successful young adult novel adapted into the 2018 major motion picture *Love, Simon*), Adam Silvera's *They Both Die at the End* (a young adult novel released in 2017 with booming paperback sales in the last year, making it the current #1 bestselling young adult novel in the world), Adam Silvera's *More Happy Than Not* (a previously-sold book, currently being adapted into an HBO Max television series), *What If It's Us* (a collaboration between Ms. Albertalli and Mr. Silvera), and several works by Angie Thomas. Ms. Thomas, in particular, is one of the world's most successful young adult novelists, best known for her 2017 debut novel *The Hate U Give*, for which Mr. Sherman procured the publishing deal while at TBA. *The Hate U Give* has been on *The New York Times* Best Seller list without interruption since its initial publication and was adapted into a 2018 major motion picture of the same name.

5. TBA, however, was not a pleasant place to work. TBA's principal and CEO — defendant Jenny Bent—is mercurial and temperamental, and frequently lashed out with verbal tirades directed at Mr. Sherman and others. Morale among TBA agents was incredibly low. Turnover—especially for agents with portable books of business—was high. Mr. Sherman tolerated Ms. Bent for several years, torn between staying and capitalizing on his own success, and leaving to get away from Ms. Bent's abhorrent behavior.

6. Ultimately, Mr. Sherman left TBA in 2017 in favor of another agency, Janklow & Nesbit Associates ("J&N"). Mr. Sherman's high-value authors—particularly Ms. Albertalli, Mr. Silvera, and Ms. Thomas—all went with Mr. Sherman to J&N. Ms. Bent took the news unfavorably and threatened to unlawfully cut off Mr. Sherman's royalties. Consistent with the parties' agreement, however, after Mr. Sherman's departure from TBA and until March 2021, TBA remitted to Mr. Sherman his duly-earned commissions. Thus, in each of the years following Mr. Sherman's departure, Mr. Sherman received from TBA meaningful, regular commission payments for his residuals—between $100,000 and $300,000 per year in each of 2017, 2018, 2019, and 2020—amounts that are *growing* in light of impending movie releases and strong book sales.

7. In March 2021, however, after several years of TBA (properly) remitting royalty commissions to Mr. Sherman, TBA repudiated its agreement with Mr. Sherman. Through counsel, TBA claims that Mr. Sherman "forfeited" his commissions. There is no basis in Mr. Sherman's agreement with TBA—nor at law—by which TBA can force Mr. Sherman to forfeit commissions that were earned during the performance of the contract. Nor does the letter specify *why* or *on what basis* TBA believes Mr. Sherman supposedly forfeited the commissions. Rather,

TBA appears to have strategically breached the obligation to pay Mr. Sherman duly-earned commissions for TBA's own benefit, just as the commissions were increasing.

8. TBA has plainly repudiated its obligation to pay Mr. Sherman his rightfully owed commissions—valued well in excess of $1.5 million over the next decade. After Plaintiff filed this action, Plaintiff learned that Defendants in fact collected the April 2021 commissions—and are unlawfully withholding them, and threatening extra-contractual and illegal deductions against them.

9. Moreover, TBA's improper conduct has created additional injury to Mr. Sherman and to competition in the industry: TBA has effectively misappropriated the goodwill between Mr. Sherman and his authors, and its unfair conduct has an anticompetitive effect, by chilling authors from freely exercising their right to switch agencies. TBA's and its principal should accordingly be held liable for breach of contract, misappropriation, unfair competition, and violation of New York Labor Law.

PARTIES

10. Plaintiff Brooks Sherman is a natural person residing in Brooklyn, New York.

11. Defendant The Bent Agency, Inc. is a corporation existing under the laws of the State of New York. While Mr. Sherman was associated with TBA and thereafter, TBA maintained a principal place of business in Manhattan. Its Chief Executive Officer resides in New York, New York.

12. Defendant Jenny Bent is a natural person. According to the Department of State website, she resides in New York, New York.

VENUE

13. Venue is proper in this Court pursuit to CPLR § 503 because Defendant TBA is a New York corporation with a principal place of business in New York, TBA's Department of State website lists Ms. Bent's New York, New York address, Ms. Bent resides in New York, New York, and Mr. Sherman worked for Defendants in New York, New York.

DETAILED ALLEGATIONS

A. Background on Mr. Sherman

14. Mr. Sherman is a seasoned and experienced literary agent. He graduated from Vassar College with a degree in Drama. After working for several years at a book publisher, Mr. Sherman became a literary agent at FinePrint Literary Management ("FinePrint"), where he remained until 2014.

15. While at FinePrint, Mr. Sherman became focused on the children's books category, *i.e.,* young adult novels, picture books, and middle-grade novels. Since 2000, the "young adult novel" market has flourished. In particular, there has been great success among books which have been adapted into feature films, and works focused on pertinent social issues, such as young womens' rights, racial equality, and adolescents' struggles with sexuality and sexual identity. Notable young adult hits over the past two decades include books and movie adaptation of the *The Hunger Games* dynasty, *The Fault In Our Stars*, *Moxie*, and, as discussed below, works by three of Mr. Sherman's clients—Becky Albertalli, Adam Silvera, and Angie Thomas.

16. In a typical literary agency relationship, an author maintains a day-to-day relationship with a particular literary agent (here, Mr. Sherman). The agent, in turn, is affiliated with a literary agency—such as FinePrint, TBA, or another agency. The literary agent and

agency procure publishing deals for the authors, entitling the author to royalties. In exchange, the publisher remits a portion of the royalties as a commission to the literary agency—which then apportions the commission between the agency and the individual agent.

17. Notwithstanding the *legal* relationship between the author and the agency, the author typically maintains the *business* relationship with the individual agent. That is because the *agent*, and not the *agency*, works with the author day-to-day to develop concepts for new works, refine works in progress, and market the works. Therefore, it is common that, if an agent leaves one agency and goes to another agency, the agent's authors may leave along with the particular agent.

18. Agents (including Mr. Sherman) typically spend *years* developing goodwill with authors, investing in the relationships, and working with the authors to develop their ideas for the hope of eventual commercial success. The goodwill in a successful agent-author relationship has unique value: successful agents often are more readily able to attract attention from publishers for their other clients, which increases the likelihood of success for those other clients. The goodwill between the agent and the author also burnishes the reputation of the agency with which the agent maintains a relationship, providing additional benefit to the agency and all of its clients. It is contemplated that an agency utilize those commercial relationships in good faith.

19. An agent's commission is typically "earned" when the agent and agency procure the publishing deal for an author on a particular work. Even after an agency or an author leaves a particular agency, the agency remains the "agency of record" *vis a vis* the publisher. Therefore, even after an agent and an associated author leave an agency, the agency retains the right to

service (*i.e.,* collect royalties, perform the accounting, and remit commissions) any work for which the deal was struck while the author and agent were affiliated with the agency.

20. While at FinePrint, Mr. Sherman began representing as an agent a handful of authors who, over the past ten years, have become among the most prominent and successful young adult authors in the world.

21. In 2013, Mr. Sherman began representing Becky Albertalli. Ms. Albertalli is the author of *Simon vs. The Homo Sapiens Agenda*, a novel about a 17-year-old high school student confronting issues associated with being a closeted gay individual. Mr. Sherman procured the publishing deal for the domestic rights of *Simon vs. the Homo Sapiens Agenda* while at FinePrint, and the book was released in April 2015. The book was adapted into the major motion film *Love, Simon* in 2018—a deal which Mr. Sherman procured while at TBA.

22. Also in 2013, while at FinePrint, Mr. Sherman began representing Adam Silvera, another popular young adult novelist. Mr. Silvera is the author of *They Both Die at the End* and *More Happy Than Not*, among others, and several collaborations with Ms. Albertalli. Mr. Sherman sold the domestic rights for *More Happy Than Not* at FinePrint, and, as discussed below, built on that success while at TBA.

23. Mr. Sherman struck lucrative deals for each of his authors while at FinePrint, which continued to generate substantial royalties and commissions while he was an agent at TBA and today. By the end of his time at FinePrint, Mr. Sherman had emerged as a rising agent in the young adult fiction space and had developed a 'portable' book of business, meaning that his authors were committed to *him*, and would travel with him if he moved to a new agency. Equally important, Mr. Sherman positioned his clients and himself to build on that success in the coming

years—as Mr. Sherman left FinePrint for TBA. Ms. Albertalli, Mr. Silvera, and others have continued working with Mr. Sherman when he joined TBA, and when he then left TBA for another agency. Throughout the various agency changes, Mr. Sherman has achieved great success for his clients and for the agencies with whom he affiliated.

B. Defendants Engage Mr. Sherman

24. Mr. Sherman joined TBA in January 2014.

25. As noted, by the time he arrived at TBA, Mr. Sherman was an attractive asset to TBA because he brought with him a portable set of clients, many of whom were already working on projects which could quickly become revenue-generating.

26. TBA, like FinePrint, is an independent literary agency based in Manhattan. TBA is controlled entirely by defendant Jenny Bent, on information and belief, the sole owner of TBA.

27. The terms of TBA's engagement of Mr. Sherman as a literary agent are set forth, in part, in written "Agency Engagement" agreements. The first Agency Engagement was dated December 2013 (immediately prior to Mr. Sherman's joining TBA in 2014). The second is dated January 1, 2015. The two agreements are substantially similar in material respects, except for the percentages due to Mr. Sherman. The one- (2013) and two- (2015) page Agency Engagements are buttressed by the parties' course of conduct, industry standard practices, and various oral and written (*e.g.,* email) understandings.

28. Mr. Sherman's sole responsibility as a TBA literary agent was to "develop and/or represent clients" of TBA—*i.e.,* to "offer customary literary agent services"—so long as he worked at TBA. Those services include "represent[ing] as an agent" TBA-approved clients

designated as associated with Mr. Sherman ("Clients"), and "solicit[ing] on behalf of [Mr. Sherman's] Clients" "agreements [*i.e.,* publishing or derivative rights deals with publishers or production companies]." The Agency Agreement provides that TBA "shall not control the means and methods of accomplishing [Mr. Sherman's] results."

29. Mr. Sherman's "sole compensation" under the Agency Engagement is stated to be a percentage of commissions TBA received from deals struck between Mr. Sherman's Clients and publishers, production companies, or other third-party payors while Mr. Sherman is engaged as a literary agent at TBA—*i.e.,* "Covered Contracts."

30. The percentages due to Mr. Sherman vary based on quantity of sales and form of publication. Under the 2013 agreement, Mr. Sherman is due 70% of domestic rights commissions and 50% of foreign rights commissions while he remains at TBA. The 2015 Agency Engagement creates a 'tiered' structure—Mr. Sherman is due 50% of TBA's commissions of all commissions up to $12,500 for a particular work, with such percentage escalating to 70% for sales above the initial $12,500 for domestic books, film, and audio rights. (The 2015 agreement, just like the 2013 agreement, provides a flat 50% for foreign rights.)

31. Under both agreements, once a literary agent has procured a deal for a particular author during the agent's time at TBA (a "Covered Contract"), the agent's right to commissions vests.[1] Both Agency Engagements specifically provide that, if Mr. Sherman's employment with

[1] The 2013 Agency Engagement purports to divest an agent from commissions on Covered Contract if the agent is terminated from TBA within one year. The 2015 Agency Engagement purports to divest an agent from commissions on Covered Contracts if the agent is terminated from TBA within one year *or* if a TBA terminates the agent's employment for 'gross misconduct.' Neither of those provisions is relevant here—it is undisputed that TBA never terminated Mr. Sherman's employment relationship; Mr. Sherman quit in 2017, and TBA paid Mr. Sherman his commissions for several years thereafter.

TBA is terminated, he is entitled to a flat "fifty percent (50%) [of commissions received by TBA] after the effective date of termination so long as the applicable Covered Contract remains in effect." Thus, a literary agent is entitled to commissions on behalf of agreements struck during tenure at TBA *even after* a literary agent leaves TBA.

32. That feature is outlined in the Agency Engagement, is consistent with industry standard, and respects the legal principle that, once a commission is earned, it cannot be forfeited. The right to commissions *in perpetuity* is particularly meaningful because, even after the rights to a work are sold, it often takes years for the work to be further refined, released, and become commercially successful. Ensuring the protection of an agent's right to commissions permits an agent to leave a firm without fear of losing the long-term value he or she created by investing time and effort in a client relationship, and striking a publishing deal. As discussed below, TBA—respecting the contract and industry norms—paid Mr. Sherman his residual commissions for over three years after he left TBA.

33. For the first year of TBA's engagement of Mr. Sherman, TBA paid Mr. Sherman as an employee—*i.e.,* paying "commissions" and issuing Mr. Sherman a Form W-2 (the form designated for *employees*).[2] Beginning in 2015, TBA began paying Mr. Sherman as an independent contractor—*i.e.,* issuing Mr. Sherman a Form-1099 (the form designated for *independent contractors*).

34. On information and belief, Ms. Bent shifted Mr. Sherman, and others, to independent contractor status to skirt New York City and State, as well as Federal, employment

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[2] Mr. Sherman, through undersigned counsel, misapprehended the circumstances concerning Mr. Sherman's employment with TBA in a letter to TBA and Ms. Bent dated March 31, 2021. TBA initially treated Mr. Sherman as an employee—by paying him as a W-2 employee—but then misclassified him as an independent contractor.

tax implications. Indeed, on information and belief, for the same reason, Ms. Bent also designated her personal address as New Hampshire, even though TBA's office was based in Manhattan and she resided on East 42nd Street.

35. Ms. Bent and TBA misclassified Mr. Sherman as an independent contractor beginning in 2015. TBA and Ms. Bent maintained the exact same (overbearing) control over Mr. Sherman and other workers as she did in 2014: Mr. Sherman was expected to be in TBA's office during regular office hours, performed his duties at the direction of Ms. Bent, and was treated by Ms. Bent and TBA no differently than an at-will employee—*i.e.*, subject to the unpredictable whims and dictates of Ms. Bent.

C. Mr. Sherman's Success at TBA

36. Mr. Sherman was extremely successful as an agent at TBA. During Mr. Sherman's three years at TBA, *i.e.,* from 2014 through 2017, Mr. Sherman was one of the largest producers at TBA (by gross commissions) and *certainly* the most visible agent.

37. Mr. Sherman's three high-value clients—Ms. Albertalli, Mr. Silvera, and Ms. Thomas—each greatly advanced their careers while Mr. Sherman was affiliated with TBA. Mr. Sherman successfully procured substantial and lucrative contracts for each while at TBA, and attracted additional authors for his and TBA's portfolio.

38. Mr. Sherman was instrumental in Ms. Albertalli's success during this time period. While at TBA, Mr. Sherman co-sold the foreign rights and subsidiary rights to her *Simon* work to Fox 2000 (now Disney Studios). In 2018, Fox 2000 released the major motion picture *Love, Simon*, for which each of Ms. Albertalli, TBA, and Mr. Sherman received compensation.

39. Additionally, Mr. Sherman sold three other works for Ms. Albertalli while at TBA: *What If It's Us*, a collaboration between Ms. Albertalli and Mr. Silvera which ultimately launched in 2018, and two other books (one of which is due to be published in April 2021).

40. Beyond his collaboration work with Ms. Albertalli, Mr. Silvera added to his individual success during the time Mr. Sherman was with TBA. Prior to joining TBA, Mr. Sherman had sold the domestic rights to Mr. Silvera's *More Happy That Not*. While at TBA, Mr. Sherman leveraged the prior success, obtaining for TBA the benefit of a subsidiary rights sale for the same work. *More Happy Than Not* is currently being developed for an HBO Max television show—which will yield substantial commissions to both TBA and Mr. Sherman.

41. Similarly, while at TBA, Mr. Sherman sold the rights to Mr. Silvera's *They Both Die at the End*. That work was initially successful in hardcopy format when it was released in 2017 (for which TBA and Mr. Sherman were duly-compensated). Beginning around the beginning of the COVID pandemic in early-2020, as the book was converted into paperback form (and as book sales rose with readers stuck at home), sales of *They Both Die at the End* unexpectedly sky-rocketed. The commissions from those sales would only be earned in the most recent pay period prior to the filing of this action—*i.e.,* April 2021.

42. Mr. Sherman's greatest success was working with Angie Thomas. Mr. Sherman began representing Ms. Thomas while at TBA. Working with Mr. Sherman, Ms. Thomas became one of today's most prominent and successful young adult novelists. Mr. Sherman successfully sold to HarperCollins the domestic publishing rights to Ms. Thomas's debut, *The Hate U Give*, along with a follow-on work. The book was published in 2017 and has been on *The New York Times* Best Seller list without interruption since its initial publication. It has been incorporated

into educational curricula and was adapted into a 2018 major motion picture. TBA has collected hundreds of thousands of dollars in commission from Ms. Thomas from 2015 through 2021 as a result of *The Hate U Give*—and, until March 2021, has always remitted payment to Mr. Sherman.

43. As part of the *The Hate U Give* deal, HarperCollins also obtained the rights to a follow-up Thomas work *On The Come Up.* Ms. Thomas and HarperCollins released *On The Come Up* in February 2019, and the work was extremely well-received. Royalties to Ms. Thomas, and commissions to TBA and Mr. Sherman are certain to *further* increase as a result of an imminent film production of *On The Come Up.*

D. Mr. Sherman Leaves TBA Amidst Ms. Bent's Abusive Behavior

44. Mr. Sherman succeeded as a literary agent at TBA *in spite of* Defendant Jenny Bent's (*i.e.,* TBA's principal)'s demeaning and mercurial management style. Ms. Bent was an absentee manager who regularly worked from her home—so as to not confront a work staff that despised her. Rather than *support* her agents, she regularly belittled them—including Mr. Sherman.

45. Mr. Sherman and other agents often disagreed with Ms. Bent's dictated strategies. When her strategies inevitably failed, instead of taking responsibility, she would pawn the blame on others. She was, however, careful to protect her brand and revenue stream—while verbally abusive to her agents, she was cautious to not create a paper trail of her tirades, and mindful that TBA's agents, who remitted to her up to 50% of their commissions on an annual basis, were incredibly valuable to her.

46. Ms. Bent was especially cruel to her assistants. While Mr. Sherman was associated with TBA, he regularly observed Ms. Bent berate her personal assistants. Ms. Bent constantly went through new assistants—who inevitably quit or were abruptly fired.

47. Ms. Bent fostered a toxic work environment, threatening agents that if they left TBA she would retaliate against them, or seek to assure their failure. TBA's agents were thus caught in an unwinnable situation—they were beholden to TBA and to Ms. Bent, to protect their commission streams, but could not stomach Ms. Bent's unpleasantness. Ms. Bent's abhorrent management style was consistent with her flouting of legal obligations in operating TBA. As noted, Ms. Bent and TBA improperly compensated workers as independent contractors, rather than employees, to avoid accountability, avoid tax liabilities, and increase her bottom line. Despite taking up to 50% of each agent's gross revenues on an annual basis—$100,000-$300,000 per year in the case of Mr. Sherman alone—Ms. Bent refused to provide her employees with any benefits, including health insurance or savings plans. TBA agents kept quiet about their concerns, with justifiable fears of Ms. Bent's lashing out or retaliating.

48. For some time, Mr. Sherman simply 'held his nose' to the unpleasantness—avoiding Bent and the unsavory work environment she had created.

49. In 2017, several TBA agents ultimately left TBA amidst Bent's abusive practices.

50. In early 2017, unable to endure Bent's degrading behavior any longer, Mr. Sherman decided to leave TBA in favor of another agency, Janklow & Nesbit Associates ("J&N").

51. Pertinently, Ms. Thomas's *The Hate U Give* was due to launch in February 2017—*i.e.,* right around the time Mr. Sherman planned to leave TBA. Mr. Sherman obviously wanted to protect his existing commissions from Ms. Albertalli's, Mr. Silvera's, and Ms. Thomas's sales procured, which he had procured while at TBA. Although the Agency Engagements are clear that Mr. Sherman would be entitled to "Termination Commissions," *i.e.,* "fifty percent (50%) after the effective date of termination so long as the applicable Covered Contract remains in effect," Mr. Sherman was concerned about Ms. Bent's temperamental and erratic behavior. Thus, upon telling Ms. Bent that he would be switching agencies, Mr. Sherman sought assurances from TBA that it would honor his commissions for already-procured works, and also sought to tie other loose ends prior to his departure.

52. While Bent initially threatened retaliation against Mr. Sherman for his departure—pettily stating that she "feel[s] sorry" for Mr. Sherman, and threatening to unlawfully cut off Mr. Sherman's commissions (as she later did here)—TBA ultimately confirmed and honored its agreement with Mr. Sherman. That is, for "Covered Contracts", *i.e.,* submissions made and consummated on behalf of clients while Mr. Sherman was engaged by TBA, Mr. Sherman continued to receive the commission payments due to him (until recently). For all new deals consummated after Mr. Sherman joined J&N, those commissions belong to J&N. TBA and Mr. Sherman also agreed that, after Mr. Sherman's departure, TBA would compensate Mr. Sherman a flat 50% of all his commissions, regardless of the source (a change from the previous categorical and tiered structure).

E. TBA Properly Remits Commissions After Mr. Sherman Leaves TBA

53. Mr. Sherman joined J&N in May 2017. Mr. Sherman's high-value authors—Ms. Albertalli, Mr. Silvera, Ms. Thomas, and several others—all went with Mr. Sherman to J&N, where Mr. Sherman remained as a literary agent until early 2021.

54. While at J&N, Mr. Sherman continued to have success as a literary agent. Mr. Sherman continued to win production contracts for Ms. Albertali and Mr. Silvera, who also began collaborating with one another. And Ms. Thomas, in particular, became wildly popular during that time period. Mr. Sherman parted ways with Ms. Albertalli and Mr. Silvera in 2020 and 2019, respectively, but continued representing Ms. Thomas until February 2021.

55. While Mr. Sherman was focused on obtaining new deals for his clients for the benefit of J&N, his previously-procured TBA projects (*i.e.,* his "Covered Contracts") were just beginning their commercial success. As noted, even after a book or production deal is reached, it takes some time to reach final production and commercialization. After Mr. Sherman left TBA: the movie *Love, Simon* (the film adaptation of *Simon vs. the Homo Sapiens Agenda*) was released in 2018, a tremendous success for Ms. Albertalli, and two additional works are due to be published imminently. Ms. Albertalli and Mr. Silvera's collaboration, *What If It's Us*, was published in November 2018. Mr. Silvera's *They Both Die at the End* was published in September 2017. Ms. Thomas's *The Hate U Give* was published as a novel in February 2017 and the movie adaptation premiered in October 2018. And her follow-up book *On The Come Up* was published in February 2019, with a movie launch imminent.

56. It is undisputed that each of the foregoing were "Covered Contracts," *i.e.,* deals which Mr. Sherman struck while affiliated with TBA.

57. Consistent with the parties' agreement, after Mr. Sherman's departure from TBA and until March 2021, TBA has remitted duly-earned commissions to Mr. Sherman—*i.e.,* the 50% post-termination commissions outlined in Agency Engagements.

58. The domestic publishing industry typically pays royalties and commissions on a bi-annual basis—*i.e.,* twice per year, in early-April and October. Thus, each April and October, a publisher would remit royalties to TBA, and then TBA would remit the 50% commission to Mr. Sherman (along with a breakdown of Mr. Sherman's compensation).[3] Similarly, TBA periodically remitted smaller installments to Mr. Sherman for non-regular payments—*e.g.,* for foreign works or for when Mr. Sherman's authors reached bonus thresholds—which do not operate on the biannual schedule for ordinary, domestic royalties.

59. Since Mr. Sherman's departure, TBA's commissions to Mr. Sherman have been meaningful—*i.e.,* ranging between $139,673.39 and $295,434.60 per year. Those commissions are due to *grow* in light of new books and film releases arising out of contracts entered between Mr. Sherman's clients and third parties while Mr. Sherman worked at TBA.

F. Defendants Repudiate the Commission Agreement

60. In March 2021, after several years of TBA remitting royalty commissions to Mr. Sherman as agreed, TBA repudiated its agreement with Mr. Sherman. More specifically, on March 23, 2021—*i.e.,* two weeks before TBA was due to receive its April 2021 commissions, and TBA would then be obligated to remit 50% to Mr. Sherman—TBA, through counsel, sent

[3] Since Mr. Sherman's departure from TBA, Jenny Bent has refused to provide Mr. Sherman with the publisher royalty statements supposedly underlying TBA's payments to Mr. Sherman. Mr. Sherman is thus unable to verify that the commissions TBA paid from 2017 through 2021 were, in fact, accurate.

Mr. Sherman a letter claiming that Mr. Sherman "hereby forfeited [his] right to receive any additional commissions."

61. TBA has no basis in the contract—nor by law—to force Mr. Sherman to forfeit commissions that were earned during Mr. Sherman's performance of agent representation duties while at TBA.

62. The letter does not specify *why* or *under what circumstances* TBA believes Mr. Sherman breached his obligations. The letter alludes to vague, conclusory allegations that Mr. Sherman failed to operate "in an honest and loyal fashion" and "overall not acting in the best interest of [TBA]," including through "numerous material breaches"—but does not cite to a single incident of Mr. Sherman's alleged misconduct.

63. TBA's letter is simply incompatible with the Agency Engagement's language requiring TBA to pay post-termination commissions on Covered Contracts, with the language providing that TBA "shall not control the means and methods of accomplishing [Mr. Sherman's] results," and with Mr. Sherman's being among TBA's most successful literary agents. Rather, TBA appears to have deliberately breached its commission obligations to Mr. Sherman—just as commissions were spiking.

64. TBA's repudiation is antithetical to the parties' agreement and to fundamental law concerning earned commissions. TBA and Ms. Bent plainly acted in bad faith, without any basis to breach the payment obligation. Unfortunately, TBA's and Ms. Bent's breach is entirely consistent with Ms. Bent's erratic tendencies.

65. On March 31, 2021, Mr. Sherman's undersigned counsel delivered Defendants' counsel a letter demanding TBA's assurances that—notwithstanding TBA's March 23 letter

repudiating its commissions obligation—TBA in fact would make payments on the impending April 2021 commissions. Counsel explained, in detail, that TBA's refusal to pay commissions is a breach of its obligations under the Agency Engagement, and is illegal under New York law.

66. TBA did not alter its position.

67. TBA typically pays Mr. Sherman within the first two weeks of the month of the biannual payments—*i.e.,* April or October. TBA has not made payment as of the date hereof—well outside the two-week window. Based on the historic payments, and anticipated increases, the April 2021 commission should have been well in excess of $50,000. The total value of the Mr. Sherman's commissions over the expected economic performance of Mr. Sherman's authors contracts is well in excess of $1.5 million—an amount which TBA seeks to expropriate from Mr. Sherman.

G. Defendants Convert April 2021 Commissions

68. Plaintiff and Defendants, each through counsel, exchanged communications into April 2021—in Plaintiff's attempt to stave off litigation. When those discussions hit an impasse, Plaintiff filed this action on April 16 (due to a glitch, Plaintiff re-filed on April 20)—and emailed copies of the Complaint to Defendants' counsel on April 16 and 20.

69. On April 20, after Defendants refused to accept service of process, counsel for the parties spoke via phone.

70. During that conversation, counsel for Defendants expressly stated that—after the parties' discussion hit an impasse and *as Plaintiff was filing this action*—Defendants had received the April 2021 commissions. Mr. Sherman's April 2021 commissions were "$79,000" and the gross commissions (prior to the 50/50 split) were $158,000 in April 2021.

71. But for Plaintiff's counsel's inquiring about the April 2021 commissions, Defendants would not have disclosed that they in fact receive such funds.

72. Those figures validate Plaintiff's theory—*i.e.,* that Plaintiff's commissions are *increasing*.

73. Defendants did dispute that TBA owed Mr. Sherman the commissions—the contract was clear that Mr. Sherman was owed 50% of commission in perpetuity, and that the monies received were predicated on Mr. Sherman's "Covered Contracts."

74. Rather, Defendants argued the irrelevant point that Mr. Sherman's commissions might be subject to some deduction for "counterclaim" or "offset"—although there is no provision in the Agency Engagement for either, Defendants have not articulated (much less quantified) any offset, and neither vitiates TBA's obligation to *first pay Mr. Sherman commissions* in the first instance.

75. Defendants are plainly engaged in wage theft.

First Claim for Relief: Breach of Contract (TBA)

76. Plaintiff incorporates the Detailed Allegations above herein.

77. TBA and Mr. Sherman are parties to a valid, enforceable contract concerning Mr. Sherman's work for TBA and TBA's obligation to pay Mr. Sherman non-discretionary commissions.

78. Mr. Sherman performed his duties under the parties' agreement by "offer[ing] customary literary agent services," and procuring "Covered Contracts," *i.e.,* clients' agreements with publishers, production companies, or other third-parties for the exploitation of Mr. Sherman's clients' works.

79. As a result of procuring Covered Contracts, Mr. Sherman is entitled to "fifty percent (50%) [of commissions from Covered Contracts] after the effective date of termination [of Mr. Sherman's employment with TBA] so long as the applicable Covered Contract remains in effect."

80. TBA has ratified the obligation to pay the 50% commissions by paying those commissions from 2017 through 2020.

81. TBA repudiated its obligation to pay commissions by sending a letter in March 2021 notifying Mr. Sherman that it would not honor the 50% commissions.

82. TBA has thereby harmed Mr. Sherman in an amount equal to the projected future value of the commissions from all Covered Contracts.

<u>Second Cause of Action: Misappropriation (TBA)</u>

83. Plaintiff incorporates the Detailed Allegations above herein.

84. The relationship between an agent and his client is a unique and valuable intangible asset. It is the product of the agent's labor, skill, and expenditure.

85. The terms of Mr. Sherman's engagement with TBA require that Mr. Sherman's clients enter into direct contractual privity with TBA, and not with Mr. Sherman, for purposes of establishing the terms of the client-agent relationship.

86. The contract between Mr. Sherman and TBA does not specifically address or contemplate the goodwill associated with the relationship between Mr. Sherman and his clients, which exists *outside* of the contractual relationships.

87. TBA has misappropriated the goodwill of Mr. Sherman's relationship with his authors, by usurping for itself 100% of the commissions earned from the client publishing arrangements negotiated by Mr. Sherman.

88. TBA is therefore required to disgorge its ill-gotten profits, *i.e.,* the 50% commissions it has unlawfully retained for itself, as a result of TBA's misappropriation of the goodwill associated with Mr. Sherman's client relationships.

Third Cause of Action: Unfair Competition (TBA)

89. Plaintiff incorporates the Detailed Allegations above herein.

90. New York law prohibits unfair competition, which includes anti-competitive practices.

91. TBA has engaged in a pattern of unfair and bad faith behavior, including threatening to cut off agents' royalty streams, withholding agents' royalties after they leave TBA, claiming interests in authors' royalties after they leave TBA, interfering with agencies that agents and authors join after leaving TBA, and imposing unduly burdensome and unenforceable provisions on its agreements with agents.

92. By engaging in such conduct, TBA has caused competitive injury, insofar as agents and authors have become reluctant to freely move among agencies. TBA's chilling of agents and authors tends to increase the cost of author talent representation, and damage the underlying relationship between the agent and the author.

93. TBA is therefore required to disgorge its lost profits obtained through such unlawful behavior.

Fourth Claim for Relief: New York Labor Law § 191 and 198 (TBA and Ms. Bent)

94. Mr. Sherman was an employee of TBA in 2014.

95. TBA is required to pay Mr. Sherman commissions immediately after TBA's receipt of commissions from third parties, *e.g.,* publishers or production studios, received on behalf of transactions procured by Mr. Sherman while Mr. Sherman was an agent working for TBA.

96. TBA has failed to timely pay Mr. Sherman earned, non-discretionary commissions beginning in April 2021 as a result of his 2014 Covered Contracts. The amount of the April 2021 commission is unknown as of the date hereof. TBA has failed to provide a statement of unpaid commissions.

97. Ms. Bent is liable for all such nonpayment and/or underpayment as the principal of TBA.

98. TBA's breaches violate, *inter alia*, New York Labor Law §§ 191(1)(c) and 198(1)-(a).

99. Mr. Sherman is entitled to recovery of the full amount of the April 2021 non-payment as they pertain to Covered Contracts procured in 2014, all reasonable attorney's fees, prejudgment interest, and an additional amount as liquidated damages equal to one hundred percent of the total amount of unpaid commissions.

100. Additionally, TBA misclassified Plaintiff as an independent contractor, rather than an employee, from 2015 through 2017. Mr. Sherman is entitled to the same relief for the April 2021 non-payment as it pertains to Covered Contracts procured from 2015 through 2017.

Fifth Claim for Relief: Conversion and Wage Theft (TBA and Ms. Bent)

101. Defendants received $158,000 in gross commissions in April 2021, $79,000 of which are property of Mr. Sherman.

102. Defendants concealed that they were in possession of such funds, which Plaintiff only discovered when Plaintiff's counsel inquired about the receipt of funds.

103. Defendants refused to turn over the $79,000 to Mr. Sherman.

104. Instead, Defendants unlawfully retained the funds, and threatened to illegally deduct from such funds based on an "offset."

105. Defendants' deducting based on an "offset" is illegal because the Agency Engagement does not cover any such "offset" and Mr. Sherman has earned those funds.

106. Defendants have acknowledged that Mr. Sherman is entitled to the funds pursuant to the Agency Engagement, the Agency Engagement contains no provision for deduction, and that any such deduction would be unlawful. Therefore, Defendants acted wilfully in withholding Mr. Sherman's commissions and making deductions against them.

WHEREFORE Plaintiff seeks judgment:

A. Awarding compensatory monetary damages of at least $1,500,000, equal to the value of Mr. Sherman's commissions;

B. Awarding monetary damages of at least $1,500,000 in the form of disgorgement and/or lost-profits for TBA's misappropriation and/or unfair competition;

C. Liquidated damages equal to one hundred percent of all unpaid or underpaid commissions under New York Labor Law § 191 and 198;

D. Awarding attorneys fees, costs, and other expenses of litigation;

E. Punitive damages for Defendants' conversion of commissions;

F. Such further and other relief as the Court may determine warranted.

New York, NY
April 28, 2021

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Counsel for Plaintiff Brooks Sherman

I have read the foregoing Verified Complaint and know the contents thereof to be true to my knowledge, except as to the matters therein stated to be upon information and belief, and that as to those matters I believe them to be true.

Brooks Sherman

Sworn to before me this

28 day of April, 2021

Notary Public

CAMILE TAYLOR
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01TA6137717
Qualified in Nassau County
Commission Expires January 8, 2022