

OCT 09 2015

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8 and GREGORY MCKNIGHT

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

12
13 CREATIVE ARTISTS AGENCY, LLC, a
Delaware limited liability company

14 Plaintiff,

15 vs.

16 UNITED TALENT AGENCY, LLC, a
17 Delaware limited liability company;
GREGORY CAVIC, an individual;
18 GREGORY MCKNIGHT, an individual; and
DOES 1 to 50, inclusive,

19 Defendants.

) Case No. SC123994
) [Assigned to Hon. Lisa Hart Cole]

) Unlimited Civil Case
) Amount in excess of \$25,000

) DEFENDANT UNITED TALENT
) AGENCY, LLC'S NOTICE OF MOTION
) AND MOTION TO STRIKE PORTIONS
) OF PLAINTIFF'S FIRST AMENDED
) COMPLAINT; MEMORANDUM OF
) POINTS AND AUTHORITIES IN
) SUPPORT THEREOF

) Date: May 4, 2016
) Time: 8:30 a.m.
) Dept: O

) RES ID: 151009075101

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

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 4, 2016, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department "O" of the above-entitled court located at 1725 Main Street,
4 Santa Monica, California, 90401, Defendant United Talent Agency, LLC ("UTA" or "Defendant")
5 will, and hereby does, move pursuant to California *Code of Civil Procedure* sections 435 and 436 to
6 strike the following matters from the First Amended Complaint ("FAC") filed by Plaintiff Creative
7 Artists Agency, LLC ("CAA"):

8 1. The entirety of Paragraph 1 of the FAC (¶ 1, 1:6-11) which states as follows:

9 "This case is about a lawless, midnight raid that UTA and its
10 co-conspirators launched against CAA in a desperate attempt to
11 steal clients and employees. Months in the making, this illegal
12 and unethical conspiracy has resulted in a number of agents
13 who were under contract to CAA to brazenly and abruptly
14 breach their contractual obligations to CAA and to
15 intentionally and deliberately interfere with CAA's existing
16 and prospective economic relationships with its clients. In the
17 process, UTA and its co-conspirators have tortiously inflicted
18 damage upon CAA."

15 2. The entirety of Paragraph 2 of the FAC (¶ 2, 1:12-17) which states as follows:

16 "Acting in concert with one another and with full awareness of
17 the indisputable illegality of their conduct, Cavic and
18 McKnight, while still on CAA's payroll and while still
19 accepting generous compensation and benefits from CAA,
20 worked clandestinely with each other and UTA to induce a
21 number of CAA employees to abruptly terminate their
22 employment with CAA and to join UTA. At least three of the
23 employees who UTA, Cavic, and McKnight induced to leave
24 CAA had entered into enforceable, ongoing contracts with
25 CAA."

21 3. The entirety of Paragraph 3 of the FAC (¶ 3, 1:18-25) which states as follows:

22 "CAA is also informed and believes that Cavic and McKnight,
23 in direct violation of their duties to CAA, solicited existing and
24 prospective CAA clients on behalf of UTA while still
25 employed by CAA; delayed meetings and deals with existing
26 and potential CAA clients in order to make it more likely that
27 they would complete such deals after leaving CAA and
28 becoming partners at UTA with the intent to divert as much of
CAA's business to UTA as possible; encourages existing and
prospective CAA clients to avoid exclusive relationships with
CAA and/or to alter their existing relationships with the
agency; and solicited and encouraged other CAA employees to
do the same so that significant economic opportunities could
more easily be diverted to UTA."

1 4. The entirety of Paragraph 4 of the FAC (¶ 4, 1:26-28) which states as follows:
2 “Defendants should not be permitted to profit from their illegal
3 and unethical activities. Consequently, CAA seeks damages,
4 injunctive relief, and restitution as a result of Defendants’
willful, wanton, and malicious corporate raiding.”

5 5. The following portion of Paragraph 48 of the FAC (¶ 48, 8:14) which states as
6 follows:
7 “...unlawful conduct...”

8 6. The entirety of Paragraph 55 of the FAC (¶ 55, 9:16-19) which states as follows:
9 “Defendants knowingly and willfully conspired and agreed
10 amongst themselves to deliberately interfere with CAA’s
11 contractual relationships and furthered the conspiracy by
12 cooperating clandestinely amongst themselves, by covertly
aiding and encouraging one another, and by ratifying and
adopting the wrongful acts of one another.”

13 7. The following portion of Paragraph 56 of the FAC (¶ 56, 9:27) which states as
14 follows:
15 “...unlawful conduct...”

16 8. The entirety of Paragraph 57 of the FAC (¶ 57, 10: 4-7) which states as follows:
17 “As a direct and proximate result of Defendants’ tortious
18 conduct, CAA has been forced to protect its interests by
19 bringing actions against third parties, including Heyman, Lesak,
and Nuciforo, and has incurred, and will continue to incur,
attorneys’ fees and other expenditures therein.”

20 9. The entirety of Paragraph 58 of the FAC (¶ 58, 10: 8-11) which states as follows:
21 “Defendants performed the foregoing wrongful acts, conduct,
22 and omissions intentionally, fraudulently, maliciously, and
23 oppressively in willful and conscious disregard of CAA’s rights
24 and with the intent and design to damage CAA. By reason
thereof, CAA is entitled to recover punitive damages in an
amount to be determined at the time of trial.”

25 10. The entirety of Paragraph 69 of the FAC (¶ 69, 12: 8-11) which states as follows:
26 “As a direct and proximate result of Defendants’ tortious
27 conduct, CAA has been forced to protect its interests by
28 bringing actions against third parties, including Heyman, Lesak,
and Nuciforo, and has incurred, and will continue to incur,
attorneys’ fees and other expenditures therein.”

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11. The entirety of Paragraph 70 of the FAC (§ 70, 12: 12-15) which states as follows:
“Defendants performed the foregoing wrongful acts, conduct, and omissions intentionally, fraudulently, maliciously, and oppressively in willful and conscious disregard of CAA’s rights and with the intent and design to damage CAA. By reason thereof, CAA is entitled to recover punitive damages in an amount to be determined at the time of trial.”

12. The following portion of Paragraph 78 of the FAC (§ 78, 13:25-27) which states as follows:
“Defendants knowingly and willfully conspired and agreed amongst themselves to commit the foregoing acts and to deliberately interfere with CAA’s prospective economic relationship with its clients and with Nuciforo, Lesak, and Heyman.”

13. The following portion of Paragraph 79 of the FAC (§ 79, 13:28, 14:1-2) which states as follows:
“Defendants furthered the conspiracy by cooperating amongst themselves, by lending aid and encouragement to one another, and by ratifying and adopting the wrongful acts of one another.”

14. The entirety of Paragraph 80 of the FAC (§ 80, 14:15-18) which states as follows:
“Defendants performed the foregoing wrongful acts, conduct, and omissions intentionally, fraudulently, maliciously, and oppressively in willful and conscious disregard of CAA’s rights and with the intent and design to damage CAA. By reason thereof, CAA is entitled to recover punitive damages in an amount to be determined at the time of trial.”

15. The following portion of Paragraph 81 of the FAC (§ 81, 14:19) which states as follows:
“...unlawful conduct...”

16. The entirety of Paragraph 82 of the FAC (§ 82, 14:24-27) which states as follows:
“As a direct and proximate result of Defendants’ tortious conduct, CAA has been forced to protect its interests by bringing actions against third parties, including Heyman, Lesak,

1 and Nuciforo, and has incurred, and will continue to incur,
2 attorneys' fees and other expenditures therein."

3 17. The following portion of Paragraph 111 of the FAC (§ 111, 19:28, 20: 1-3) which
4 states as follows:

5 "As a direct and proximate result of the wrongful acts
6 substantially assisted and encouraged by Cavic, McKnight, and
7 UTA, CAA has been forced to protect its interests by bringing
8 actions against third parties, including Heyman, Lesak, and
9 Nuciforo, and has incurred, and will continue to incur,
10 attorneys' fees and other expenditures therein."

11 18. The entirety of Paragraph 112 of the FAC (§ 112, 20:4-8) which states as follows:

12 "Cavic, McKnight, and UTA encouraged, assisted, and
13 performed the foregoing wrongful acts, conduct, and omissions
14 intentionally, fraudulently, maliciously, and oppressively in
15 willful and conscious disregard of CAA's rights and with the
16 intent and design to damage CAA. By reason thereof, CAA is
17 entitled to recover punitive damages in an amount to be
18 determined at the time of trial."

19 19. The following portion of Paragraph 135 of the FAC (§ 135, 24:2-5) which states as
20 follows:

21 "As a direct and proximate result of the wrongful acts
22 substantially assisted and encouraged by Cavic, McKnight, and
23 UTA, CAA has been forced to protect its interests by bringing
24 actions against third parties, including Heyman, Lesak, and
25 Nuciforo, and has incurred, and will continue to incur,
26 attorneys' fees and other expenditures therein."

27 20. The entirety of Paragraph 136 of the FAC (§ 136, 24: 6-10) which states as follows:

28 "Defendants performed the foregoing wrongful acts, conduct,
and omissions intentionally fraudulently, maliciously, and
oppressively in willful and conscious disregard of CAA's rights
and with the intent and design to damage CAA. By reason
thereof, CAA is entitled to recover punitive damages in an
amount to be determined at the time of trial."

29 21. The following portion of Paragraph 138 of the FAC (§ 138, 24: 22) which states as
30 follows:

"...unlawful, and/or fraudulent..."

1 22. The following portion of Paragraph 140 of the FAC (§ 140, 24: 27) which states as
2 follows:

3 “...unlawful...”

4 23. The following portion of Paragraph 142 of the FAC (§ 142, 25:8) which states as
5 follows:

6 “...unlawful...”

7 24. The entirety of the sixth prayer for relief, which prays “For an award of punitive and
8 exemplary damages against Defendants according to proof[.]” (See FAC at 26:1-2).

9 25. The following portion of the eighth prayer for relief, which states as follows:

10 “including, to the extent permitted by law, CAA’s attorneys’ fees incurred in
11 prosecuting this action[.]” (See FAC at 26:6-7).

12 26. The entirety of the ninth prayer for relief, which states as follows:

13 “For an award of attorneys’ fees, to the extent permitted by law, including, without
14 limitation pursuant to California Code of Civil Procedure Section 128.5 and 128.7 for
15 attorneys’ fees incurred by CAA in third-party actions that CAA has been required to
institute as a result of Defendants’ tortious conduct[.]” (See FAC at 26:8-11).

16 This Motion will be made pursuant to California *Code of Civil Procedure* Sections 435 and
17 436 and on the ground that (1) the allegations regarding UTA’s illegal, unethical, and wrongful
18 conduct are unsupported and inadequate and not drawn in conformance with the laws of this state;
19 (2) the allegations supporting CAA’s claims for punitive and/or exemplary damages are unsupported
20 and inadequate and not drawn in conformance with the laws of this state; and (3) the allegations
21 supporting CAA’s claims for attorney’s fees are unsupported and inadequate and not drawn in
22 conformance with the laws of this state.

23 This Motion will be based on upon this Notice and the supporting Memorandum of Points
24 and Authorities attached hereto, upon the pleadings, records and papers on file in this action, and
25 such evidence as may be presented at the time of the hearing on the Motion to Strike.

1 DATED: October 9, 2015

FREEDMAN + TAITELMAN, LLP

2
3 By: 

4 Bryan J. Freedman
5 Brian Turnauer
6 Sean M. Hardy
7 Attorneys for Defendant United Talent
8 Agency, LLC, Gregory Cavic, and Gregory
9 McKnight
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TABLE OF CONTENTS

I. INTRODUCTION 1

II. PROCEDURAL HISTORY 2

III. LEGAL AUTHORITY FOR STRIKING PORTIONS OF THE FIRST AMENDED
COMPLAINT 2

IV. THE ALLEGATIONS THAT UTA HAS COMMITTED ILLEGAL ACTS SHOULD BE
STRICKEN..... 3

V. THE REQUEST FOR PUNITIVE DAMAGES SHOULD BE STRICKEN 4

VI. THE PRAYER FOR ATTORNEYS' FEES SHOULD BE STRICKEN..... 6

VII. CONCLUSION 8

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TABLE OF AUTHORITIES

CASES

Anglo American Land Co. v. Sundberg (1924) 66 Cal.App. 331 2

City of Industry v. Gordon (1972) 29 Cal.App.3d 90..... 6,7

Cohen v. Groman Mortuary, Inc. (1964) 231 Cal.App.2d 1 6

Cyrus v. Haveson (1976) 65 Cal.App.3d 306..... 5

G.D. Searle & Co. v. Superior Court (1975) 49 Cal.App.3d 22 5, 6

Grieves v. Superior Court (1984) 157 Cal.App.3d 159..... 3

Lehto v. Underground Constr. Co. (1977) 69 Cal.App.3d 933 6

Mahoney v. Corralejo (1974) 36 Cal.app.3d 966..... 5

Santisas v. Goodin (1998) 17 Cal.4th 599..... 7, 8

Stout v. Turney (1978) 22 Cal.3d 718..... 7

Super 7 Motel Associates v. Wang (1993) 16 Cal.App.4th 541 8

Turman v. Turning Point of Central California, Inc. (2010) 191 Cal.App.4th 53 6

Witte v. Kaufman (2006) 141 Cal.App.4th 1201 9

Xuereb v. Marcus & Millichap, Inc. (1992) 3 Cal.App.4th 1338..... 7

STATUTES

Code of Civil Procedure Section 128.5 7

Code of Civil Procedure Section 128.7 7

Code of Civil Procedure Section 425.16 7

Code of Civil Procedure Section 431.10 1, 2

Code of Civil Procedure Section 431.10(b)..... 2

Code of Civil Procedure Section 435 1, 2

Code of Civil Procedure Section 436 1, 2

Code of Civil Procedure Section 436(a)..... 2,3

1 Code of Civil Procedure Section 436 (b).....3

2 Code of Civil Procedure Section 1717 6

3 Code of Civil Procedure Section 1032 7

4 Code of Civil Procedure Section 1032, subdivision (b)6

5 Code of Civil Procedure Section 1033.56,7

6 Code of Civil Procedure Section 1033.5, subdivision (a)(10).....7

7 Code of Civil Procedure Section 32944,5

8 Code of Civil Procedure Section 3294 (a).....4

9

10 OTHER AUTHORITIES

11 Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial § 7:177 (2014)3

12 Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial § 7:182 (2014)2,3

13 Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial § 7:179 (2014)4

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 This action involves a straightforward business dispute between Plaintiff Creative Artists
5 Agency, LLC (“CAA”) and Defendant United Talent Agency, LLC (“UTA”) and nothing more.
6 However, CAA has attempted to turn this matter into a slander campaign against UTA. Like its
7 original Complaint in this action, CAA’s First Amended Complaint (“FAC”) is riddled with
8 irrelevant statements, half-truths and downright lies. In fact, much of the FAC consists of
9 irrelevant, false, improper or immaterial matters subject to being stricken under *Code of Civil*
10 *Procedure* sections 435, 436 and 431.10. It is clear from even a cursory reading of the FAC that
11 CAA only fired off these hyperbolic and improper accusations in an attempt to publicly embarrass
12 UTA.

13 After sifting through all of the irrelevant, false, improper or immaterial matters, the
14 allegations contained in the FAC are simple. CAA alleges that UTA somehow interfered with its
15 business operations by hiring several CAA employees, causing damage to CAA. The only reason
16 that the incendiary allegations were made was so that CAA could provide the FAC to the press,
17 which CAA has done. There is no justification for the continuing presence of these allegations in
18 the FAC.

19 Ultimately, as set forth herein, CAA’s FAC is replete with improper allegations, including
20 claims of “unlawful” and “illegal” activities. These false and abusive allegations add nothing to the
21 claims being asserted in the FAC. They are therefore “irrelevant, false or improper matter” and
22 should be stricken. Just as in its original Complaint, CAA attempts to prejudice UTA by continuing
23 a smear campaign against UTA through its FAC, no doubt relying on the litigation privilege to
24 protect it from defamation claims by UTA. It is clear that much of the FAC alleges irrelevant, false,
25 improper or immaterial matters which have absolutely nothing to do with this action but are
26 prejudicial to UTA and therefore should be stricken. Further, CAA has not and is unable to plead
27 sufficient facts to support an award of punitive or exemplary damages. Lastly, CAA has not
28

1 pleaded any facts to support the attorney's fee claim in its eighth and ninth prayers for relief. As
2 such, any references to such forms of relief should also be stricken.

3
4 **II.**

5 **PROCEDURAL HISTORY**

6 On April 2, 2015, CAA initiated this action by filing its initial Complaint for Damages. On
7 May 20, 2015, Defendants filed demurrers and motions to strike as to the Complaint. Rather than
8 oppose these motions, CAA filed its FAC on September 4, 2015. In its FAC, CAA has alleged the
9 following causes of action against UTA: (1) Intentional Interference with Contractual Relations; (2)
10 Inducing Breach of Contract; (3) Intentional Interference with Prospective Economic Advantage; (4)
11 Aiding and Abetting Breach Fiduciary Duty; (5) Aiding and Abetting Breach of Duty of Loyalty;
12 and (6) Violations of Business & Professions Code, Section 17200. Despite being the subject of
13 UTA's initial motion to strike, CAA retained its improper prayers for punitive damages and
14 attorney's fees in its FAC. CAA additionally failed to remove a host of irrelevant and improper
15 matters from its FAC. For these reasons, and as discussed more fully below, UTA's motion to strike
16 should properly be granted.

17 **III.**

18 **LEGAL AUTHORITY FOR STRIKING PORTIONS OF THE FIRST AMENDED**
19 **COMPLAINT**

20 California *Code of Civil Procedure* sections 435 and 436 authorize a motion to strike
21 allegations in a complaint, even if limited to phrases. (*Anglo American Land Co. v.*
22 *Sundberg* (1924) 66 Cal.App. 331, 333.) Any "irrelevant, false or improper matter" will be subject
23 to a motion to strike. (Code Civ. Proc. § 436(a).) This includes requests for remedies that are
24 unsupported by the causes of action alleged in the complaint. (Code Civ. Proc. § 431.10(b); *see*
25 *also* Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial § 7:182 (2014) ("A motion
26 to strike can be used to attach claims for damages that are not supported by the causes of action
27 pleaded.") Here, CAA also seeks punitive damages on five of its causes of action against UTA,
28 despite alleging no facts to support such an award. The Court has authority to strike punitive
damages from a complaint. (See *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166-168.)

1 In the instant case, the FAC makes numerous, spurious references to an alleged illegal
2 and/or fraudulent scheme by UTA. However, CAA has no authority to prosecute criminal
3 violations. Likewise, CAA does not allege, nor can it allege, a cause of action for fraud against
4 UTA. These allegations are specious, improper, and irrelevant to this case. They are designed for
5 the press, which has been covering this litigation, and to obfuscate the otherwise straightforward
6 allegations in the FAC. Likewise, CAA has not stated sufficient facts to support its claims for
7 punitive damages and attorneys' fees alleged in the FAC. For these reasons and those set forth
8 herein, UTA's Motion to Strike should be granted in its entirety.

9 IV.

10 **THE ALLEGATIONS THAT UTA HAS COMMITTED ILLEGAL ACTS SHOULD BE**
11 **STRICKEN**

12 The motion to strike may be used as a "scalpel" to strike out any improper matter inserted in
13 a pleading or any part of a pleading that is not drawn in conformity with the laws of this state. (*See*
14 *Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial* § 7:177 (2014); *see also* *Code*
15 *Civ. Proc.* § 436(a) and (b).) This includes allegations which are not essential to the claim or
16 defense. (*Id.*) "For example, in a straight promissory note action, allegations that defendant's
17 failure to pay was "wrongful, malicious and illegal . . . are conclusions of the pleader and 'irrelevant
18 matter,' subject to [a] motion to strike." (*Weil & Brown, Cal. Practice Guide: Civil Procedure*
19 *Before Trial* § 7:179 (2014).)

20 In this case, in a blatant attempt to gain leverage over UTA, CAA – in a civil pleading -
21 accuses UTA of engaging in an illegal and unethical scheme. Specifically, CAA's FAC includes an
22 entirely superfluous "Introduction," alleging that UTA "launched" a "lawless, midnight raid" in a
23 "desperate attempt to steal clients and employees." (*See generally*, FAC at ¶¶ 1-4.) Tellingly, this
24 "Introduction," with its hyperbolic prose befitting a dime store novel, is completely divorced from
25 the FAC's "Factual Background," which is contained in a separate section. (*See generally*, FAC at
26 ¶¶ 18-48.) The entire "Introduction" is thus composed solely of improper and irrelevant matter, and
27 should be stricken outright. Moreover, CAA repeats these outlandish allegations of "unlawful"
28 activities throughout its FAC, even though CAA knows no criminal case has been filed against

1 UTA and CAA never contacted any law enforcement agency regarding the allegations made in the
2 FAC. The only reason that these incendiary allegations were made was to enable CAA to provide
3 the FAC to the press, which it has done.

4 In light of the foregoing, any allegations of illegality and unlawful conduct should be
5 stricken from the FAC as such claims have no application in this case. They constitute irrelevant,
6 false or improper matters having nothing to do with the alleged case against UTA.

7 V.

8 **THE REQUEST FOR PUNITIVE DAMAGES SHOULD BE STRICKEN**

9 Under California law, the recovery of exemplary or punitive damages is governed by Civil
10 Code § 3294, which specifically sets forth the type of conduct which justifies their award. Civil
11 Code § 3294 provides:

12 “(a) In an action for the breach of an obligation not arising from contract, where it is
13 proven by clear and convincing evidence that the defendant has been guilty of
14 oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may
15 recover damages for the sake of example and by way of punishing the defendant.”
16 Civil Code § 3294(a).

17 The words “oppression”, “fraud” and “malice” are specifically defined in Civil Code §
18 3294:

19 “(c) As used in this section, the following definitions shall apply: (1) “Malice” means
20 conduct which is intended by the defendant to cause injury to the plaintiff or despicable
21 conduct which is carried on by the defendant with a willful and conscious disregard of
22 the rights or safety of others. (2) “Oppression” means despicable conduct that subjects
23 a person to cruel and unjust hardship in conscious disregard of that person's rights. (3)
24 “Fraud” means an intentional misrepresentation, deceit, or concealment of a material
25 fact known to the defendant with the intention on the part of the defendant of thereby
26 depriving a person of property or legal rights or otherwise causing injury.”

27 Hyperbole alone is insufficient to support a claim for punitive damages. For instance, “[n]o
28 amount of descriptive adjectives or epithets may turn a negligence action into an action for
29 intentional or willful misconduct.” (*Mahoney v. Corralejo* (1974) 36 Cal.app.3d 966, 973.) In its
30 first, second, third, sixth, and ninth causes of action, CAA seeks punitive and exemplary damages
31 against UTA. (FAC, ¶¶ 58, 70, 80, 112, 136.) The alleged “conduct” supporting such punitive and
32 exemplary damages is generic boilerplate, and is ascribed to all defendants in this action in a

1 conclusory manner. Indeed, the FAC fails to attribute any malicious, oppressive, or fraudulent acts
2 to UTA. Thus, CAA's allegations are insufficient to transform its first, second, third, sixth, and
3 ninth causes of action into a punitive damages claim. CAA's prayer for punitive damages flies in
4 the face of the well-settled principle that conclusory and vague allegations of malice, oppression,
5 fraud, or intent to injure are insufficient as a matter of law to state a claim for punitive damages.
6 (*G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29; *Cyrus v. Haveson* (1976) 65
7 Cal.App.3d 306, 317.)

8 To plead a claim for punitive damages, CAA must assert the ultimate facts from which it
9 can be reasonably inferred that UTA acted with malice, oppression, or fraud against CAA within
10 the meaning of Civil Code section 3294. (*Cyrus, supra*, at 316-317.) In *Lehto v. Underground*
11 *Constr. Co.* (1977) 69 Cal.App.3d 933, the Court of Appeal held that it is essential that the facts and
12 circumstances which constitute a claim for punitive damages must "be set out clearly, concisely and
13 with sufficient particularity . . . to enable the Court to determine whether, on the facts pleaded, there
14 is any foundation, prima facie at least, for the fraud." (*Id.* at 944.)

15 Merely stating that a defendant's acts were reckless, willful or intentional fails to meet the
16 pleading requirements for the recovery of punitive damages. (*Cohen v. Groman Mortuary, Inc.*
17 (1964) 231 Cal.App.2d 1, 8-9.) Similarly, conclusory allegations that the defendant acted "willfully
18 and knowingly" are insufficient to plead a claim for punitive damages. (*G.D. Searle & Co., supra*,
19 49 Cal.App.3d at 27.) Indeed, even discriminatory conduct does not rise to the level of malice,
20 oppression, or fraud sufficient to state a claim for punitive damages. (*See Turman v. Turning Point*
21 *of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63-64 (motion to strike punitive damages
22 claim granted, even though complaint adequately alleged gender discrimination claim).)

23 There are no allegations against UTA sufficient to establish punitive damages. Based on the
24 foregoing, it is clear CAA has not pleaded sufficient facts to support a claim for punitive damages.
25 As such, the Motion to Strike CAA's request for punitive damages should be granted.

1 VI.

2 THE PRAYER FOR ATTORNEY'S FEES SHOULD BE STRICKEN

3 Attorney's fees are not recoverable unless provided for by contract or statute. (*City of*
4 *Industry v. Gordon* (1972) 29 Cal.App.3d 90, 93.) In its Prayer for Relief, CAA requests attorney's
5 fees for all of its causes of action, but fails to refer to applicable statutory authority that permits such
6 an award. (See, FAC, Prayer for Relief, ¶¶ 8, 9.) If attorney's fees are sought pursuant to contract,
7 that right is governed by Civil Code section 1717, which provides:

8 (a) *In any action on a contract, when the contract specifically provides that*
9 *attorney's fees and costs, which are incurred to enforce that contract, shall be*
10 *awarded either to one of the parties or to the prevailing party, then the party*
11 *who is determined to be the party prevailing on the contract, whether he or she*
12 *is the party specified in the contract or not, shall be entitled to reasonable*
13 *attorney's fees in addition to other costs. (Emphasis added.)*

14 CAA's action is not based on a contract, and no contract has been alleged which would support an
15 award of attorney's fees. Further, no statute can support CAA's claim for attorney's fees.

16 CAA notably does not rely on Civil Code section 1717, nor could it, as that statute's
17 applicability is "limited [to] *only* contract actions, where the theory of the case is breach of contract,
18 and where the contract sued upon itself specifically provides for an award of attorney fees incurred
19 to enforce *that* contract." (*Xuereb v. Marcus & Millichap, Inc.* (1992) 3 Cal.App.4th 1338, 1342)
20 (Emphasis in original.) Section 1717 does not apply to noncontract causes of action, such as "fraud
21 [based claims] arising out of a contract" that contains an attorney fees provision. (*Stout v.*
22 *Turney* (1978) 22 Cal.3d 718, 730.) "If an action asserts both contract and tort or other noncontract
23 claims, section 1717 applies only to attorney fees incurred to litigate the contract claims." (*Santisas*
24 *v. Goodin* (1998) 17 Cal.4th 599, 615.) As all of CAA's claims sound in tort rather than contract,
25 section 1717 provides no basis for CAA's attorney's fees prayer.

26 CAA's prayer for attorney's fees purports to rely on Code of Civil Procedure section 1032,
27 subdivision (b). That statute concerns the recovery of litigation costs and provides no independent
28 basis for an attorney's fee award. Code of Civil Procedure sections 1032 and 1033.5 authorize a trial
court to award attorney's fees as a form of costs *only* if the parties have entered into a contract that
permits such an award, or if an *independent* statute permitting such an award. Section 1032,

1 subdivision (b) states that “a prevailing party” is “entitled as a matter of right to recover costs in any
2 action or proceeding.” Section 1033.5, subdivision (a)(10), in turn, “provides . . . that attorney fees
3 are ‘allowable as costs under Section 1032’ when they are ‘authorized by’ either ‘Contract,’
4 ‘Statute,’ or ‘Law.’ Thus, recoverable litigation costs do include attorney fees, but *only* when the
5 party entitled to costs has a [contractually based right or other] legal basis, *independent* of the cost
6 statutes.” (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 606-607) (emphasis added.)

7 To assess whether a prevailing party is entitled to fees under section 1033.5, courts must
8 determine whether the lawsuit: (1) involves a claim covered by a contractual attorney fee clause; and
9 (2) is between the parties to that contract. (*Super 7 Motel Associates v. Wang* (1993) 16 Cal.App.4th
10 541, 544.) In the instant case, the answer to both questions is a resounding “No.” Simply put, CAA
11 never entered into any agreement with UTA – let alone an agreement containing an attorney’s fee
12 provision. CAA’s reliance on section 1032 is thus entirely misplaced. That statute has no
13 applicability to the case at bar and provides no basis for an award of attorney’s fees to CAA.

14 Finally, CAA alleges that it is entitled to attorney’s fees “pursuant to California Code of Civil
15 Procedure Section 128.5 and 128.7 for attorneys’ fees incurred by CAA in third-party actions that
16 CAA has been required to institute as a result of Defendants’ tortious conduct.” (*See*, FAC, Prayer
17 for Relief, ¶ 9.) Such a prayer has no legal basis whatsoever. Apparently, CAA would have this
18 Court award it attorney’s fees based on conduct that occurs in an unrelated, third party action –
19 despite there being no written agreement between UTA and CAA. As this Court is well aware,
20 Section 128.5 and 128.7 allow courts discretion to award *monetary sanctions* to punish bad-faith
21 litigation conduct, pursuant to a duly-noticed motion. These statutes *do not* provide for the recovery
22 of attorney’s fees generally to the prevailing party in an action. “An award of sanctions [under
23 sections 128.5 or 128.7] is markedly different from an award of attorney fees under section 425.16.
24 Like a punitive damages award in civil litigation, an award of sanctions is intended to punish a party
25 for bad faith conduct, not to compensate or reward the opposing party.” (*Witte v. Kaufman* (2006)
26 141 Cal.App.4th 1201, 1209.) Clearly, these two statutes do not support CAA’s meritless prayer for
27 attorney’s fees.

1 Since CAA cannot demonstrate a right to attorney's fees as to all causes of action if it should
2 prevail on its FAC either under statute or contract, this Court should issue an order striking CAA's
3 request for attorney's fees and all allegations related thereto as improper and not drawn in
4 conformity with California law.

5 VII.

6 CONCLUSION

7 Based on the foregoing, UTA respectfully requests that the Court grant its Motion to Strike in
8 its entirety.

9
10 DATED: October 9, 2015

FREEDMAN + TAITELMAN, LLP

11
12 By: 

Bryan J. Freedman

Brian Turnauer

Sean M. Hardy

Attorneys for Defendant United Talent
Agency, LLC, Gregory Cavic, and Gregory
McKnight

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA**]
3 **COUNTY OF LOS ANGELES**] **]ss.**

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 500, Los
6 Angeles, California 90067.


7 On **October 9, 2015**, I served the foregoing document(s) described as: **DEFENDANT**
8 **UNITED TALENT AGENCY, LLC'S NOTICE OF MOTION AND MOTION TO STRIKE**
9 **PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT; MEMORANDUM OF**
10 **POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action
11 by placing the original OR true copies thereof enclosed in sealed envelopes addressed as
12 follows:

13 Anthony J. Oncidi
14 Keith A. Goodwin
15 PROSKAUER ROSE LLP
16 2049 Century Park East, Suite 3200
17 Los Angeles, CA 90067
18 aoncidi@proskauer.com
19 kgoodwin@proskauer.com
20 (310) 557-2900 – Telephone
21 (310) 557-2193 – Fax
22 *Attorneys for Plaintiff,*
23 *Creative Artists Agency, LLC*

24 **By United States Mail:** I am readily familiar with the firm's practice for collection and
25 processing correspondence for mailing. Under that practice, it would be deposited with the
26 United States Postal Service on that same day with postage thereon fully prepaid at Los
27 Angeles, California in the ordinary course of business. I am aware that on motion of the
28 party served, service is presumed invalid if postal cancellation date or postage meter date is
more than one day after date deposit for mailing in affidavit.

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

Executed on **October 9, 2015** at Los Angeles, California.


Christina Puello

CRS RECEIPT

INSTRUCTIONS
<p>Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> <p style="font-size: small; margin: 0;">CALIFORNIA, COUNTY OF LOS ANGELES</p> <p style="margin: 0;">} CASE NO: BC000000</p> <p style="margin: 0;">} NOTICE OF MOTION AND MOTION</p> <p style="margin: 0;">} TO COMPEL ANSWERS TO PERMITS</p> <p style="margin: 0;">} INTERROGATORIES</p> <p style="margin: 0;">} DATE: January 14, 2016</p> <p style="margin: 0;">} TIME: 2:30 pm</p> <p style="margin: 0;">} DEPT: 1</p> <p style="margin: 0;">} RES ID: 131112001085</p> </div>

RESERVATION INFORMATION

Reservation ID: 151009075101
Transaction Date: October 9, 2015
Case Number: SC123994
Case Title: CREATIVE ARTISTS AGENCY, LLC VS UNITED TALENT AGENCY, LLC
Party: UNITED TALENT AGENCY LLC (Defendant)
Courthouse: Santa Monica Courthouse
Department: O
Reservation Type: Motion to Strike (not anti-SLAPP) - without Demurrer
Date: 5/4/2016
Time: 08:30 am

FEE INFORMATION(Fees are non-refundable)

First Paper Fee: Party asserts first paper was previously paid.

Description	Fee
Motion to Strike (not anti-SLAPP) - without Demurrer	\$60.00
Total Fees:	Receipt Number: 1151009K1395 \$60.00

PAYMENT INFORMATION

Name on Credit Card: Michael Taitelman
Credit Card Number: XXXX-XXXX-XXXX-6956

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