

February 25, 2019

Mr. David Young, Executive Director
Mr. David Goodman, President
Writers Guild of America West
7000 West 3rd Street
Los Angeles, CA 90048

Dear David and David,

We write regarding your recent public declarations that the WGA and ATA are “at war” and your public pledge that there is “no room for compromise” with the ATA.

Simply stated, your actions run completely afoul of the value and respect we have long held for the Guild. For decades, we have worked together to make things better for writers—your members and our clients. Then, without talking to us or using any of the previously agreed-upon AMBA provisions specifically created to work out differences between the ATA and the Guild, you unilaterally initiated the end of our agreement and refused to speak with us for nearly a year.

Then—finally—at our meeting last Tuesday, the Guild, at long last, allowed us to respond to your proposals issue by issue. We told you at the outset of that meeting that the ATA and WGA had common ground on many proposals—and went through those. Next, we spent a few hours walking you through the specific reasons that we firmly believe some of your proposals would harm, rather than help, writers. At the end of the meeting, you committed to us that you would sit down, listen, and discuss potential areas of compromise relating to the proposals that we had issue with, and you would do so multiple times a week for the next six weeks.

Immediately afterwards, however—in violation of the AMBA—you attempted to directly solicit members of the ATA to break away from our association. You sent formal demands not just to our member agencies, but to each of the individual agents employed by our member agencies. You followed that by withdrawing the meeting dates *you* suggested in order to set meetings with managers, lawyers, and others—essentially, everyone but the agents who have been asking for a year to engage with you on these issues. Furthermore, you then publicly asserted that your intention is not to reach a meaningful compromise and a new long-term agreement, but to divide the ATA and induce agents



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to breach their contracts with their ATA member employers. Finally—despite our providing ATA’s position on all your proposals last Tuesday and our committing to meet with you multiple times a week, you accused us of failing to respond to you or tell you our positions. And, now, you’re publicly threatening to sue us (on a made-up legal theory) for something you agreed, for the past 43 years, was fine for us to do.

These actions—coupled with your own rhetoric—transparently demonstrate that you are not intending to negotiate in good faith. As such, before we meet again and spend the time and effort to mend the relationship between your Guild and our association that you seem desperately to be trying to break, we need to know that you are actually willing to do so. ATA members will not be divided. And we will not play games with our clients’ livelihoods. Writers—our clients, your members—deserve much better than this. We thus remain ready and willing to meet with you—as often and for however long it takes to reach common ground—but both sides must come in good faith. We are committing to do so. Are you? If so, we need you to confirm, in writing and publicly, that you are prepared to negotiate on all issues in good faith with us.

We also want to take the opportunity to address some specific—and factually wrong—claims you have made to your members and the public, in the hopes that this gamesmanship can end and we can start the serious work of coming together to reach a new agreement.

Negotiation. You assert that the Guild has authority to make a “power grab,” remake Hollywood, and impose sweeping changes affecting not only writers and agents but also actors, directors, producers and even studios. What you are calling a “Code of Conduct” is not, in fact, about agents’ conduct. Rather, as you have candidly acknowledged, your proposals are a sweeping attempt by the WGA to remake the entire industry, affecting the livelihoods and businesses of all who earn their living in Hollywood. As we told you last week, in telling your members that the Guild has unfettered legal authority to unilaterally impose such restrictions, you are sorely misleading them.

Equally misguided is your claim that agents and agencies will flock to your “Code.” Our agencies – in their diversity of size, client base, and operations—represent a tremendous range of choice available to your members, our clients. We strongly believe that our clients deserve that choice, and that your proposed “Code” would take it away from them. Notwithstanding your attempt to divide ATA members by attempting to sign them to your “Code” directly—in violation of section 4(a) of the AMBA—rest assured that all ATA members will continue to advocate for all our clients, including writers, and will reject your self-described “power grab,” which we believe would harm not only writers but also countless others throughout the entire industry for decades to come. And your timing could not be worse, as you have chosen to do so right at the moment that the creative community is more challenged and threatened than ever before by global corporations armed with billions of dollars and new technology being quickly adopted worldwide. ATA members will stand together on this, and accept only a negotiated agreement that we believe is in our clients’ best interests.

Packaging. You publicly claim that, for packaging services, agencies are paid “3% of the network license fee,” “3%” “deferred until net profits,” and “10% of the show’s gross profits for

the life of the show.” You further assert that this backend is “often far more than the show’s creator earns.” Again, as you know, these assertions are simply **not true**.

- The first “3%” of a package is, in reality, a smaller amount—generally 1.5% or less of a license fee. This fee enables agencies to relieve their clients of the burden of paying commission on packaged shows. Even on a successful series, this upfront fee is often **less** than the agency would make from simply commissioning the talent on the show. Package fees are capped. And fees are often split between agencies, reducing this fee to 0.5% or 0.75%. Shows that go four seasons or less virtually never hit backend, and **these front-end fees are all the money the agency makes on the show**. The clients keep their full salary and pay no commission to the agents.
- The second “3%” is illusory. It is formally eliminated in most streaming contracts, and generally is not paid in most other situations, either, because very, very few television programs—even those that run for many seasons—reach the “net profits” stage that would provide such a payment.
- As for that final 10%, **agencies are never paid 10% of gross profits**. We have explained this to you. Rather, they are paid a percentage—sometimes 10%, sometimes 7.5%, and frequently half that or less due to splits between agencies—of modified adjusted gross profits based on the highest-participating *client’s* definition. What does that mean? It means that **agencies don’t participate in profits until their client does**. And it is not true that agencies “often” earn “far more than their show’s creator.” In those instances where a show hits backend, the agency’s **clients** who created the show typically make far more than the agency does—and they take home the same backend amount they would have had the show been simply commissioned.

Similarly, you claim that the money paid by the studios in package fees “could be used to hire more writers and pay writers more money.” What is that claim possibly based on? This claim defies history and fact—just ask any studio. In fact, **writers’ salaries on packaged shows and non-packaged (commissioned) shows are not different**.

You also claim that the agency’s packaging work “is normally finished before the pilot is shot.” This too is not true. Packaging agencies provide services to shows throughout their entire life cycle. They continue to help the show find talent, they support the show in network negotiations, and they find new homes for cancelled shows. They also **regularly negotiate new and better compensation packages for the writer clients**—who are typically on two-year deals—over the life of the series, while the package fee remains exactly the same.

Finally, you claim that agencies force writers into working on packages against their wishes. This is not true. Our clients often ask for—no, demand—packages, because they understand when agencies package shows, clients benefit. The work we do alongside and in alignment with our clients gives the written word the best chance of being seen. And—in the rare circumstance our clients don’t want a package—we accommodate that. Indeed, **the current AMBA—to which we voluntarily agreed 43 years ago—requires the same**.

Film finance. You claim several unnamed “independent—mostly film—producers” believe that agencies helping find financing or distribution for films somehow hurts the independent film business. We don’t know with whom you spoke, but as we explained to you in our meeting last Tuesday, we **strongly disagree**. So do most in independent film. Just ask them. In fact, agencies helped secure financing and distribution of more than 1,000 independent films over the past five years—films like *La La Land*; *Manchester by the Sea*; *Book Club*; *Whiplash*; *I, Tonya*; *Call Me by Your Name*; *Hidden Figures*; *Room*; *I Feel Pretty*; *Loving*; *Brooklyn*; *Nocturnal Animals*; *Ben is Back*; *Three Billboards Outside Ebbing, Missouri*; *I Am Not Your Negro*; *Destroyer*; and *Foxtrot*. The agencies’ work in financing and distributing these films didn’t hurt them—it made those films a reality.

Our agencies have departments with dozens of people working to make these projects happen. Assisting in film financing generally is not a highly profitable area for agencies—rather, it is more often a loss leader service we provide for our clients. We do it because our clients value these projects, because independent producers generally do not do this type of work, and because studios largely have abandoned producing these types of film and are not willing to invest in these kinds of passion projects. These films are the vehicles that oftentimes move artists’ careers forward and enabling their agents to negotiate better terms and more controls on subsequent work. Whatever your unnamed sources might be telling you, the truth is that, had agencies not stepped into this gap, many of these important, diverse, and groundbreaking works simply would not have been made and released. Simply commissioning these low budget passion projects does not come close to covering even a small percentage of the investment agencies make in these departments, nor the additional resources needed to find independent financing for our clients’ films. If you don’t want agencies to perform these services for your members, who do you expect to step into the gap?

Affiliates. You also claim that agencies are “moving to become our employers by becoming producers and owning content.” Again, that is flatly false. **No ATA member agency employs writers.** None. Rather, some agencies have *affiliates*—legally separate businesses with separate management and separate operations, housed in separate offices and with separate employees—who perform content-related services. These entities are legally and operationally separate businesses from agencies. Controls are strictly in place to ensure that all transactions are arms’ length and **no agency client is ever coerced into working with an affiliate.** That said, as we have told you, we are willing to listen to your concerns and discuss formalizing some rules of the road to assure clients that their interests never will be compromised.

While you claim that “a few writers will get a great deal” from these affiliate companies but “most writers will get screwed,” **that claim is baseless.** Endeavor Content, WIIP, and Civic Center Media offer **better** deals to talent than the major studios and in fact were launched to provide writers with more opportunities, better terms, and more creative control. Indeed, one of your own board members has described his “terrific” experience working with one of these separate companies. They are simply another important creative option—in a climate of ever-shrinking options—available to writers—one of the many choices offered to them through our diverse agencies.

And you know these things. We've discussed them. Yet you continue to misstate the facts and confuse the issues. **Misinformation serves no one**, and it makes it harder for all of us to work together to create a meaningful new agreement. Hard work, not rhetoric, is what is needed.

We convey all of this—as we did at our first substantive meeting last Tuesday—because we continue to believe there are many, many ways agents can continue to help writers in this ever-evolving media landscape, such as: identifying and preventing abuses, working to reduce lengthy tie-ups and unreasonable span, identifying new and better models for writers to have control over the content, and addressing the **real** causes of writer dissatisfaction. We hope that, notwithstanding your inflammatory rhetoric, you are not in fact intending to try to force writers to fire the agents who tirelessly represent them—and that you have not in fact resolved (as you have publicly stated) that “no compromise” is possible.

We have seen all your tactics at work. There are many different ways to achieve a successful deal for ATA and the Guild. But not being open to negotiate in good faith, and instead “going to war” will not work. It will hurt your members, and it will hurt others in the industry. We remain ready, willing, and able to negotiate an agreement in good faith. Is the same true for you? Because if it's not, we don't see any reason to keep meeting. We await your response.

Sincerely,

Karen Stuart

Karen Stuart
Executive Director

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