Marvin S. Putnam
Direct Dial: 424-653-5588
marvin.putnam@lw.com

10250 Constellation Blvd., Suite 1100
Los Angeles, California 90067
Tel: +1.424.653.5500 Fax: +1.424.653.5501
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Beijing	Moscow
Boston	Munich
Brussels	New York
Century City	Orange County
Chicago	Paris
Dubai	Riyadh
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Seoul
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

April 12, 2019

VIA EMAIL

WGA West Board of Directors
Attn: David Young, David Goodman
7000 West 3rd Street
Los Angeles, CA 90048

WGA East Council
250 Hudson Street, Suite 700
New York, New York 10013

Re: WGA Purported Delegation of Authority

Dear Board and Council Members,

On March 20, 2019, the Writers Guild of America, West, Inc., on behalf of itself and the Writers Guild of America, East, Inc. (collectively, "WGA") issued a notice to talent managers and attorneys purporting to "delegate" to those managers and attorneys the authority to procure employment and negotiate the terms of that employment on behalf of WGA members.

We write to advise you that the WGA's purported delegation violates both California's Talent Agency Act ("TAA") and New York's General Business law, and to demand its immediate retraction.

California Labor Code section 1700.5 states that "No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner." Cal. Lab. Code § 1700.5; *see id.* §§ 1700.6-1700.22 (setting forth procedures and standards regarding licenses); *id.* §§ 1700.23-1700.47 (regulating talent agency operations and management). The California courts and Labor Commissioner have consistently held that the TAA "requires anyone who solicits or procures artistic employment or engagements for artists to obtain a talent agency license," and has consistently required individuals who receive money in violation of this law to disgorge those earnings.[1] Similarly, New York General

[1] *See, e.g.*, *Marathon Entm't, Inc. v. Blasi*, 42 Cal. 4th 974, 985 (2008); *Doughty v. Hess*, TAC No. 39547 (Cal. Labor Comm'r April 4, 2017) (TAA applied to attorney and manager, contract voided *ab initio*); *Menefee v. Octagon, Inc.*, TAC No. 42950 (Cal. Labor Comm'r March 24, 2017) (contract voided, and manager ordered to repay artist commissions); *Transeau v. 3 Artist Management*, TAC No. 7306 (Cal. Labor Comm'r June 16, 2009) (management company engaged in procuring engagements, contract voided).

Business Law, Article 11, section 172 states that "No person shall open, keep, maintain, own, operate or carry on any employment agency unless such person shall have first procured a license therefor as provided in this article." N.Y. Gen. Bus. Law Art. 11 § 172; *see id.* § 171(d) (defining "theatrical employment agency" as an employment agency); *id.* §§ 173-178 (setting forth procedures and standards regarding licenses); *id.* §§ 179, 181, 185, 186-194 (regulating talent agency operations and management).

We understand that the WGA has informed managers and attorneys that they (and the producers who engage talent through such unlawful methods) are free to disregard state licensing laws because the WGA has the power to override such laws as a matter of federal labor law. **This is patently false.** Well-established law demonstrates the opposite. The flaws in the WGA's legal theory are many. To note just a few:

- Federal labor law is primarily concerned with employment after hiring, not procurement, which is subject to state regulation and which, pursuant to that regulation, can be performed only by licensed talent agents.

- The state regulatory schemes are not in direct or indirect conflict with federal labor law, and in fact, have coexisted for many decades. Such conflict, which does not exist here, is required under the relevant preemption doctrines. This is critical because—absent preemption—state law applies in full to these managers and attorneys, who risk both their businesses and their professional status if they willfully violate the law at the WGA's behest.

- The WGA cannot "delegate" authority it does not have. The WGA, like all unions, is empowered to bargain collectively on behalf of its members. The WGA cannot, consistent with its duties under federal labor law, negotiate individual deals to the benefit of some members and the detriment of others, *or delegate the right to do so.*

The Association of Talent Agents ("ATA") considers any and all unlawful procurement entered into at the behest of the WGA to be unfair and unlawful competition that will harm the ATA and its member agencies. Accordingly, we demand the immediate retraction of the WGA's purported "delegation." **ATA will take appropriate action as needed, against any person engaged in unfair competition, to protect the lawful interests of its members.**

Very truly yours,

Marvin S. Putnam
of LATHAM & WATKINS LLP