

1 Ethan Preston (263295)
 2 PRESTON LAW OFFICES, LLC
 3 1658 North Milwaukee Avenue, No. 253
 4 (312) 492-4070 (phone)
 5 (312) 262-1007 (facsimile)
 6 ep@eplaw.us

7 David C. Parisi, Esq. (162248)
 8 Suzanne Havens Beckman, Esq. (188814)
 9 PARISI & HAVENS LLP
 10 15233 Valleyheart Drive
 11 Sherman Oaks, California 91403
 12 (818) 990-1299 (phone)
 13 (818) 501-7852 (facsimile)
 14 dcparsi@parisihavens.com
 15 shavens@parisihavens.com

16 *Attorneys for Plaintiffs Timothy DuFour and*
 17 *Kenneth Tanner, on their own behalves*
 18 *and on behalf of all others similarly situated,*

19 **IN THE UNITED STATES DISTRICT COURT**
 20 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

21 TIMOTHY DuFOUR and KENNETH
 22 TANNER, individuals, on their own behalves No.
 23 and on behalf of all others similarly situated,

24 Plaintiffs, **CV 09 3770** CLASS ACTION COMPLAINT

25 v.

26 BE., LLC, DYNAMIC SHOWCASES, LLC,
 27 California limited liability companies,
 28 MONTEREY FINANCIAL SERVICES, INC.,
 MTS HOLDINGS GROUP, INC., California
 corporations, 1901 CO., a Nevada corporation,
 BE MARKETING LIMITED, a private limited
 company registered in England and Wales,
 ERIK DeSANDO, BARRY FALCK, JACOB
 STEINBECK, VITALY RASHKOVAN, and
 DOES 1-100, inclusive,

Defendants.

CLASS ACTION COMPLAINT

Plaintiffs Timothy DuFour ("DuFour") and Kenneth Tanner ("Tanner"), by their
 attorneys, make this complaint against Defendants Be., LLC ("Be LLC"), Dynamic
 Showcases, LLC ("Dynamic Showcases"), Monterey Financial Services, Inc. ("Monterey"),
 MTS Holdings Group, Inc. ("MTS"), 1901 Co., Be Marketing Ltd. ("Be UK"), Erik DeSando

Class Action Complaint

FILED

AUG 17 2009

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CRB

1 ("DeSando"), Barry Falck ("Falck"), Jacob Steinbeck ("Steinbeck"), Vitaly Rashkovan
2 ("Rashkovan"), and Does 1 to 100, (collectively, "Defendants"). Plaintiffs' allegations are
3 based on information and belief, except to their own actions, which are based on knowledge.
4

5 **Nature of the Claim**

6 1. This class action arises from Defendants' operation and participation in an
7 enterprise known variously as "Be Productions," "My Talent Service," "My Artist's Place,"
8 "Be Entertainment," "Gonnabe," and/or "Gonnabe.com" (hereinafter referred to as "Be
9 Productions"). Be Productions purports to provide a variety of services to children, which its
10 agents implicitly and explicitly represent as facilitating the advancement of their customers'
11 careers in the entertainment industry. In exchange for an upfront fee (ranging in the thousands
12 of dollars), Be Productions purported to provide "discounts" for acting lessons and for access
13 to auditions for its customers before entertainment industry professionals, who could in turn
14 provide gainful employment in the entertainment industry.

15 2. Be Productions is an unregistered advance-fee talent service under the
16 definition of the Advance-Fee Talent Service Act ("AFTSA") (Cal. Lab. Code §§ 1701-
17 1701.20). Be Productions' contracts with its customers violate AFTSA and cannot be enforced
18 by Be Productions. *See* Cal. Lab. Code § 1701.4(d) (2009). Be Productions violated AFTSA
19 by (1) publishing false and/or misleading information about its prices and services; (2)
20 charging class members for registering or listing them as customers; (3) referring class
21 members to third parties for a variety of services, where Defendants had a direct or indirect
22 financial interest in those third parties or accepted any compensation for the referral. Cal. Lab.
23 Code § 1701.12 (2009). The operation of Be Productions also violates the unfair competition
24 law ("UCL") (Cal. Bus. & Prof. Code §§ 17200-17204). DuFour and Be Productions' other
25 customers have been damaged by paying Be Productions fees under illegal contracts, for which
26 they did not receive the benefit of the bargain.

27 3. One of the best summaries of this case can be found in a newscast
28 investigation into Be Productions by the ABC affiliate station for San Francisco. *See* KGO-

1 TV, *Complaints over East Bay talent agency's business*, at [http://abclocal.go.com/kgo/story?](http://abclocal.go.com/kgo/story?section=news/7_on_your_side&id=6345835)
 2 [section=news/7_on_your_side&id=6345835](http://abclocal.go.com/kgo/story?section=news/7_on_your_side&id=6345835) (Aug. 23, 2008). In this newscast, Be
 3 Productions' denial that AFTSA applies to it is directly and explicitly contradicted by the
 4 California state senator who wrote AFTSA:
 5

6 [California State Senator Sheila Kuehl] wrote a powerful state law to regulate
 7 [these types of talent companies.] The law is Section 1701 of the California
 8 Labor Code. It says talent companies that charge an advance fee must follow
 9 lots of rules . . .

10 "We are not governed by 1701," says Be Productions owner Erik Desando.
 11 Desando says Be Productions, formerly known as My Artist's Place, does
 12 charge fees up front and does help kids get into show business, but it is not an
 13 advance fee talent service. . . . "Those things you're talking about, they're being
 14 done, but they're being done by outside companies, not ours. So, in other words,
 15 (if) you want to meet an agent through us, you can't meet an agent through us.
 16 You have to meet an agent through the showcase company we contract with,"
 17 says Desando. . . .

18 ABC7 legal analyst Dean Johnson says using outside vendors would not exempt
 19 Be from the law . . . "They take an advance fee and for that fee you get access to
 20 essentially everything that an artist would want to develop his or her career,"
 21 says Johnson. "That is the kind of service that is exactly what the authors of the
 22 talent service agencies statute intended to cover." *The author [of AFTSA]*
 23 *agrees. "They do fall under the definition of advance fee talent agencies, so*
 24 *in and of itself, by not posting a bond they are violating the law," says State*
 25 *Sen. Kuehl. "We made the law very broad in order to snare these kinds of*
 26 *folks."* We asked Desando if he could see why someone would think he would
 27 fall under 1701. "Nope, not if they know our business," says Desando. "I've got
 28 our own high priced attorneys there telling us, you're not, we don't sell talent
 services." . . .

"This really smacks right into the advance fee talent services because it is
 indirectly providing service to the talent," says Dean Fryer with the Labor
 Commission. Still, Desando says, not me. . . .

(A true and correct copy of KGO-TV's transcript for the newscast is attached as Exhibit 1)

(emphasis added). DuFour and Tanner bring this Complaint as a class action brought on behalf
 of persons who paid fees and/or contracted with Be Productions and agreed to pay fees to Be
 Productions. DuFour and Tanner seek statutory damages, attorneys' fees, and injunctive and
 equitable relief under AFTSA (Cal. Lab. Code § 1701.16) and restitution and injunctive and
 equitable relief under the UCL (Cal. Bus. & Prof. Code § 17203) for the class.

4. Monterey acts to collect unpaid portions of Be Productions fees from Class
 members. In the course of attempting to collect these fees, Monterey violates or threatens to
 violate the Fair Debt Collection Practices Act ("FDCPA") (15 U.S.C. §§ 1692-1692p), the

1 Rosenthal Fair Debt Collection Practices Act ("RFDCPA") (Cal. Civ. Code §§ 1788-1788.33),
 2 and California's Consumer Credit Reporting Agencies Act ("CCRAA") (Cal. Civ. Code §§
 3 1785.1-1785.36). These practices have caused DuFour, Tanner, and other class members actual
 4 damages in the form of declined and reduced credit, forced purchase of credit reports and
 5 credit monitoring, postage and private courier costs, mileage, long-distance telephone charges,
 6 lost cell phone airtime, emotional distress, increased credit costs, and amounts paid to settle
 7 fraudulent debts. DuFour and Tanner also seek actual damages, statutory damages, attorneys'
 8 fees, and injunctive and equitable relief, where applicable, under the FDCPA (15 U.S.C. §
 9 1692k(a)), CCRAA (Cal. Civ. Code § 1785.31), RFDCPA (Cal. Civ. Code § 1785.33) and the
 10 UCL (Cal. Bus. & Prof. Code § 17203) for a subclass of persons from whom Monterey has
 11 sought to collect unpaid portions of Be Productions' fees.

12 **Parties**

13
 14 5. Plaintiff Timothy DuFour is a natural person residing in Granada Hills,
 15 California.

16 6. Plaintiff Kenneth Tanner is a natural person residing in North Hollywood,
 17 California.

18 7. Defendant Be., LLC is a California limited liability company which now lists
 19 its address with the California Secretary of State as 2029 Century Park East, Suite 900, Los
 20 Angeles, California 90067. Be LLC is the corporate predecessor to My Artist's Place, LLC.
 21 Until May 2009, Be LLC maintained its headquarters in Emeryville, California.

22 8. Defendant Monterey Financial Services, Inc. is a California corporation. It
 23 maintains its headquarters at 4095 Avenida De La Plata, Oceanside, California 92056.

24 9. Defendant Dynamic Showcases, LLC is a California limited liability
 25 company which lists its address with the California Secretary of State as 1841 N Avenue 52,
 26 Los Angeles, California 90042.

27 10. Defendant MTS Holdings Group, Inc. is a California corporation. It lists its
 28 headquarters address with the California Secretary of State as 545 Banning Street, Compton,

1 California 90222.

2 11. Defendant Be Marketing Limited is a private limited company organized
3 under the laws of England and Wales. Be UK lists its registered address with the Registrar of
4 Companies for England and Wales as 57 Woody Close, Delves Lane, County Durham, Consett
5 DH8 7HN, United Kingdom. Be UK's registered company secretary is Bournemouth Limited,
6 which lists its address as Palm Grove House PO Box 438, Road Town, Tortola, British Virgin
7 Islands. Be UK does business in California, but has not registered with the California
8 Secretary of State.

9 12. Defendant 1901 Co. is a Nevada corporation. 1901 Co. lists its address with
10 the California Secretary of State as Caracasbaaiweg 199, Curaçao, Netherlands Antilles.

11 13. Defendants Erik DeSando, Barry Falck, Jacob Steinbeck are natural persons
12 who are, on information and belief, members or managers of Be LLC and residing in
13 California.

14 14. Defendant Vitaly Rashkovan is a natural person who is MTS's authorized
15 agent for service of process. On information and belief, Rashkovan is the owner and an officer
16 of MTS, and resides in California.

17 15. Plaintiffs are currently ignorant of the true names and capacities, whether
18 individual, corporate, associate, or otherwise, of the defendants sued herein under the fictitious
19 names Does 1 through 100, inclusive, and therefore, sues such defendants by such fictitious
20 names. Plaintiffs will seek leave to amend this complaint to allege the true names and
21 capacities of said fictitiously named defendants when their true names and capacities have
22 been ascertained. Plaintiffs are informed and believe and based thereon alleges that each of the
23 fictitiously named Doe defendants is legally responsible in some manner for the events and
24 occurrences alleged herein, and for the damages suffered by Plaintiffs.

25 16. Plaintiffs are informed and believe and based thereon alleges that all
26 Defendants, including the fictitious Doe defendants, were at all relevant times acting as actual
27 agents, conspirators, ostensible agents, partners and/or joint venturers and employees of all
28

1 other defendants, and that all acts alleged herein occurred within the course and scope of said
 2 agency, employment, partnership, and joint venture, conspiracy or enterprise, and with the
 3 express and/or implied permission, knowledge, consent, authorization and ratification of their
 4 co-defendants; however, each of these allegations are deemed "alternative" theories whenever
 5 not doing so would result in a contraction with the other allegations.
 6

7 **Jurisdiction and Venue**

8 17. Plaintiffs DuFour and Tanner assert a claim under 15 U.S.C. § 1692k(a).
 9 This Court has subject matter jurisdiction under 15 U.S.C. § 1692k(a) and 28 U.S.C. § 1331.

10 18. Defendants Be LLC, Dynamic Showcases, Monterey, and MTS are
 11 California entities which have their principal place of business in California, and can only be
 12 citizens of California. Defendant Be UK is a foreign entity whose principal place of business
 13 is, on information and belief, in California. Defendant 1901 Co. is a Nevada corporation with
 14 its principal place of business in the Netherlands Antilles, and can only be a citizen of Nevada.
 15 Defendants Erik DeSando, Barry Falck, and Jacob Steinbeck are natural persons and are
 16 alleged to reside in California, and are alleged to be citizens of California. This Complaint
 17 alleges claims on behalf of a proposed class whose members reside in California and
 18 throughout the other forty-nine states and U.S. territories. The members of the proposed class
 19 are minimally diverse from the Defendants. On information and belief, the aggregate of the
 20 amount in controversy in these class claims exceed the sum or value of \$5 million and the total
 21 number of class members exceeds 100. This Court has subject matter jurisdiction over this
 22 case under 28 U.S.C. § 1332(d)(2).

23 19. This Court has personal jurisdiction over the Defendants under California
 24 Code of Civil Procedure section 410.10 because, *inter alia*, the acts alleged herein were
 25 committed in Alameda County.

26 20. Venue is also proper before this Court under 28 U.S.C. § 1391(a)(2), (c).

27 **Intradistrict Assignment**

28 21. A substantial part of the events which give rise to the claim occurred in

1 Alameda County. Under Local Rule 3-2(c), (d), this civil action should be assigned to the San
2 Francisco or Oakland division of the Northern District of California.

3
4 **Allegations as to Plaintiff's Individual Claims**

5 22. Tanner and DuFour entered into a contract ("Contract") with Be Productions
6 on February 5, 2009 and March 7, 2009, respectively. (A copy of these Contracts, which are
7 true and correct except for redactions by counsel under Federal Rule 5.2, are attached as
8 Exhibits 2 and 3.)

9 23. Be Productions marketed its services using a promotional pamphlet. Be
10 Productions marketed and provided certain services via its website at <http://www.gonnabe.com>
11 (hereinafter, "Gonnabe.com"). The Contract itself, the promotional pamphlet, Gonnabe.com,
12 Be Productions' other written marketing materials, and statements by Be Production's agents,
13 implicitly and explicitly stated that Be Productions' services would facilitate the advancement
14 of the career of Plaintiffs' children in the entertainment industry.

15 24. The promotional pamphlet marketed three different packages or service
16 level: the "Superstar," the "Movie Star," and the "Guest Star." Tanner purchased the "Guest
17 Star" package for \$2,520. DuFour purchased the "Movie Star" package for \$3,000.

18 25. Tanner made an initial payment to Be Productions of \$325. Monterey
19 withdrew four monthly payments of \$208.38 from Tanner's bank account for March, April,
20 May, and June. A total of \$1,500 was debited from DuFour's bank account under the Contract:
21 one payment to Be Productions in March 2009 and three other monthly payments to Monterey,
22 in April, May, and June 2009. Plaintiffs' children did not receive income from professional
23 employment in the entertainment industry prior to paying these fees. Plaintiffs' children have
24 not obtained income from professional employment in the entertainment industry.

25 26. In exchange for Plaintiffs' payments, Be Productions purportedly arranged
26 for discounts on Be Production's service providers' fees. The availability of the purported
27 "discounts" varied by the service level purchased by the customer. (See Ex. 3.) These services
28 included "Talent Showcase[s,]" which were auditions with agents, managers, and casting

1 directors. The "Showcase Registration Fee" was \$50 per audition, although the promotional
2 pamphlet indicated the value of the registration was \$6,500.

3 27. The promotional pamphlet also listed additional fees for maintaining a
4 profile on Gonnabe.com. Other discounted services included acting, modeling, and singing
5 workshops/lessons, photoshoots, duplicate photos, and professional "evaluation."

6 28. Be Productions "consolidated" its operations in or about May 2009: in
7 practice, this apparently means that Be Productions closed down its local operations in several
8 California cities, and turned over servicing its customers to "My Talent Services." The
9 consolidation has dramatically disrupted customers' Be Productions' services and the
10 availability of its employees. Prior to the "consolidation," Be Productions maintained its
11 headquarters at 5900 Hollis Street, Suite R2, Emeryville, California 94608. After the
12 consolidation, Plaintiffs were no longer able to contact the Be Productions Talent Director
13 assigned to manage their children's careers, and have not received many of the services
14 promised under the Contracts.

15 29. In late June or early July 2009, Tanner canceled Monterey's authorization to
16 debit Be Productions fees from his bank account. Beginning on or about July 6, Monterey
17 began to call Tanner virtually daily to dun him for unpaid Be Productions fees. Monterey
18 represents it will adversely affect Tanner's credit, implying that it will report the unpaid
19 portion of Be Productions' fees as a valid debt to the national credit reporting agencies
20 (including TransUnion, Experian, and Equifax) ("CRAs"). Monterey has not sent Tanner
21 written notice consistent with 15 U.S.C. § 1692g(a).

22 30. In the middle of June 2009, DuFour canceled the Monterey's authorization
23 to deduct Be Productions fees from his bank account. Beginning on or about July 11, 2009,
24 Monterey began to call DuFour virtually daily to dun him for unpaid Be Productions fees.
25 Monterey represents it will ruin DuFour's credit, and intimates it will report the unpaid portion
26 of Be Productions' fees as a valid debt to the national CRAs. Monterey has not sent DuFour
27 written notice consistent with 15 U.S.C. § 1692g(a).

Allegations as to Class Certification

31. **Class Definition:** Plaintiffs seek to certify a class and a subclass under Federal Rule 23(b)(2) and 23(b)(3). Plaintiffs bring this Complaint against Defendants on behalf of themselves and the class (the "Class") of

- (a) persons who, on behalf of a minor or themselves, entered into a contract with Be Productions (or any of its corporate successors or predecessors) which required payment in return for Be Productions' services at any time when such payments exceeded the minors' income from employment in the entertainment industry; except
- (b) not any person who is i) any Judge or Magistrate presiding over this action and members of their families; ii) Defendants, their subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest, and current or former employees, officers and directors of Defendants; iii) persons who properly execute and file a timely request for exclusion from the class; iv) and the legal representatives, successors or assigns of any such excluded persons.

Members of the Class may be notified of the pendency of this action by email, mail, and/or supplemented (if deemed necessary or appropriate by the Court) by published notice. Members of the Class can be readily identified from Defendants' records.

32. **Subclass Definition:** Plaintiffs bring this Complaint against Defendants on behalf of themselves and a subclass (the "Subclass") of Class members who have received communications from Monterey seeking to collect unpaid portions of Be Productions' fees and/or threatening their credit, or stating or implying that Monterey will report the unpaid portions of Be Productions' fees as a valid debt to any of the CRAs.

33. **Class Numerosity:** The exact number of members of the Class is unknown and is not available to Plaintiffs at this time, but such information is readily ascertainable by Defendants. Gonnabe.com indicates that it has over 6,000 registered users. On this basis, Plaintiffs therefore believe that members of the Class number in the thousands. Therefore, individual joinder of all members of the Class is likely to be impracticable.

34. **Subclass Numerosity:** The exact number of members of the Class is unknown and is not available to Plaintiffs at this time, but such information is readily ascertainable by Defendants. As there are likely thousands of Class members, and it is likely

1 that a significant portion of those have not fully paid Be Productions' fees, individual joinder
2 of all members of the Subclass is likely to be impracticable.

3 35. **Class Commonality:** Common questions of fact and law exist as to all
4 members of the Class and predominate over the questions affecting only individual members
5 of the Class. Identification of the individuals who qualify as a member of the Class will be
6 sufficient to establish liability to the Class member. These common questions include whether:
7

- 8 (a) one or more of the Defendants are advance-fee talent services, under the
definition of California Labor Code subsection 1701(a);
- 9 (b) Be Productions' contracts violated California Labor Code subsection
10 1701.4;
- 11 (c) any of the Defendants charged Class members for providing auditions;
- 12 (d) any of the Defendants charged Class members for registering or listing
13 them for employment in the entertainment industry, or as a customer of
Be Productions;
- 14 (e) any of the information regarding Be Productions' services or prices
15 which any of the Defendants caused to be published was false,
fraudulent, or misleading information;
- 16 (f) any of the Defendants referred Class members to third parties who
17 charged the Class members for auditions, for listing for employment in
the entertainment industry or as a customer, or for headshots,
18 photographs, acting, singing, modeling, or dancing lessons, and a
Defendant had a direct or indirect financial interest in the third party, or
accepted any compensation from the third party for the referral;
- 19 (g) any of Defendants' conduct violated Cal. Lab. Code § 1701.12;
- 20 (h) any of Defendants aided and abetted violations of Cal. Lab. Code §
21 1701.12 by the other Defendants;
- 22 (i) the Defendants entered into a civil conspiracy to violate of Cal. Lab.
Code §§ 1701.4 or 1701.12;
- 23 (j) Defendants' conduct violated Cal. Bus. & Prof. Code § 17200; and
- 24 (k) Plaintiffs and other members of the Class are entitled to damages, costs,
25 injunctive relief, and attorneys' fees.

26 36. **Subclass Commonality:** In addition to the common questions of fact and
27 law pertaining to the Class, common questions of fact and law exist as to all members of the
28 Subclass and predominate over the questions affecting only individual members of the

Subclass. Identification of the individuals who qualify as a member of the Subclass will be sufficient to establish liability to the Subclass member. These common questions include whether:

- (a) Monterey knew or should have known that Be Productions' contracts were not enforceable;
- (b) Monterey communicated to Subclass members without sending written notice consistent with 15 U.S.C. § 1692g(a);
- (c) Monterey has threatened or implied that it would report unpaid sums on Be Productions' contracts as valid debts to the CRAs, so that the Be Productions contracts would impact Subclass members' credit reports;
- (d) Monterey's conduct violated 15 U.S.C. § 1692g(a);
- (e) Monterey's conduct violated 15 U.S.C. § 1692e(8);
- (f) Monterey's conduct violated Cal. Civ. Code § 1788.17;
- (g) Monterey's conduct violated or threatened to violate Cal. Civ. Code § 1785.25(a);
- (h) Monterey failed to maintain and follow procedures reasonably adapted to avoid any unintentional violation of 15 U.S.C. § 1692e; and
- (i) Plaintiff and other members of the Subclass are entitled to damages, costs, injunctive relief, and attorneys' fees.

37. **Typicality:** Plaintiffs' claims are typical of the claims of the other members of the Class and Subclass, respectively. Plaintiffs are not different in any relevant way from any other member of the Class or Subclass, and the relief they seek is common to the Class and Subclass.

38. **Adequate Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the other members of the Class and Subclass: their interests do not conflict with their respective interests. Plaintiffs have retained counsel competent and experienced in complex class actions, and they intend to prosecute this action vigorously.

39. **Predominance and Superiority:** The Class and Subclass alleged in this Complaint is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. The damages suffered by each individual member of the Class and

Subclass will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' actions. It would be virtually impossible for members of the Class and Subclass individually to obtain effective relief from Defendant's misconduct. Even if members of the Class and Subclass themselves could sustain such individual litigation, it would still not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, class actions present far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

40. **Generally Applicable Policies:** This class action is also appropriate for certification because Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole, and to the Subclass as a whole. The policies of the Defendants challenged herein apply and affect members of the Class and Subclass uniformly, and Plaintiff's challenge of these policies hinges on Defendants' conduct, not on facts or law applicable only to Plaintiff.

Allegations as to Class Claims

41. On information and belief, the Contracts signed by the Plaintiffs are the same as the contracts signed by all of the other Class members in all material respects. On information and belief, Be Productions' representations (in its promotional pamphlet and other written material, Gonnabe.com, and its agents' statements) about its services to Plaintiffs are the same as the representations made to the other Class members in all material respects. Plaintiff's children and the other Class members' children sought to become actors, models, or other professional entertainers through Be Productions. Class members paid Be Productions fees of thousands of dollars prior to earning any income in the entertainment industry.

42. **AFTSA Applies to the Class Members:** AFTSA defines an artist to

1 include any person who seeks to become an actor (on stage or in motion pictures), musical
2 artists, models, and other artists or persons rendering professional services in motion picture,
3 theatrical, radio, television, and other entertainment enterprises. Cal. Lab. Code § 1701(c)
4 (2009). Plaintiffs' children and the children of other Class members are artists under AFTSA.

5 43. **AFTSA Applies to the Fees Paid By Class Members:** AFTSA defines an
6 "advance fee" as any fee due from an artist prior to the artist obtaining actual employment as
7 an artist or that exceeds the actual earnings received by the artist as an artist. Cal. Lab. Code §
8 1701(a) (2009). Plaintiffs and the other Class members paid an advance fee under AFTSA.

9 44. **AFTSA Applies to Be Productions:** AFTSA defines an "advance fee talent
10 service" is any person who

11 charges, attempts to charge, or receives an advance fee from an artist for . . . the
12 following . . . or for the purchase of any other product or service . . . in order to
13 obtain from or through the service one or more of the following: [p]rocur[ing],
14 offering, promising, or attempting to procure employment, *engagements, or*
15 *auditions* for the artist, *[m]anaging or directing the development or*
16 *advancement of the artist's career as an artist . . . [or] [c]areer counseling,*
17 *career consulting,* vocational guidance, aptitude testing, *evaluation,* or
18 *planning,* in each case relating to the preparation of the artist for employment
19 as an artist.

20 Cal. Lab. Code § 1701(b) (2009). As alleged in more detail below, Be Productions charged
21 Class members advance fees and, in exchange, provided services that were expressly and
22 implicitly marketed as improving a child's opportunities for professional success in the
23 entertainment industry. Each of the Defendants played a distinct role in the conduct of the Be
24 Productions enterprise. Each of the Defendants' participation in the Be Productions enterprise
25 has brought them within AFTSA's scope. Each of the Defendants' role in the enterprise is
26 described in turn below.

27 45. **Be LLC:** On information and belief, Be LLC is the counterparty to Class
28 members' contracts. Every class members' contract contains the disclaimer "that none of the
offerings of Be. include any promise or guarantee of employment in the entertainment industry
. . ." (Exs. 2 and 3.) This disclaimer would be an unnecessary *non sequitur*, unless Be LLC
expressly marketed its services as facilitating career advancement in the entertainment

1 industry. In exchange for these services, Be LLC received advance fees from Class members.

2 46. Be LLC charges Class members advance fees for procuring auditions for
3 their children. Be LLC provided Talent Directors which administered Class members' use of
4 Be Productions service providers and arranged for Class members' children to qualify for the
5 Talent Showcases. On information and belief, Be LLC used some of the advance fees it
6 received to pay these Talent Directors for these services.

7 47. Be LLC charges Class members advance fees for its services, which are paid
8 in order to obtain, through Be LLC, the offer and/or promise that other Defendants would
9 procure auditions for them. Be LLC's marketing materials clearly describe the showcases as
10 auditions, aimed at advancing Class members' careers in the entertainment industry:
11

12 We have sped up the *process of auditioning for agents and managers* by doing
13 live showcases via high definition videoconferencing. . . . You may not be
14 related to the top entertainment industry insiders by birth, but through
membership in Be, you can enjoy access to the industry's best agents,
managers, celebrities as well as easy entry into our own locally produced TV
shows.

15 Be LLC's instruction manual also expressly and unambiguously describes the showcases as
16 auditions:

17 Talent showcases are your opportunity to interview with several of these
18 professionals at once with the goal of gaining representation. *Showcases give
you a chance to experience a real audition.*

19 (A true and correct excerpt of Be LLC's instruction manual is attached as Exhibit 4) (emphasis
20 added).

21 48. Be LLC explicitly uses the Gonnabe.com website to market its services (on,
22 for instance, its contracts). Gonnabe.com explicitly and implicitly marketed Be LLC's services
23 as providing access to agents and managers who could provide Class members with
24 employment in the entertainment industry:

25 Be. Provide's [sic] a proven game plan in which *the artist gets to work with top*
26 *entertainment pros that who will prepare them to be evaluated by top agents,*
27 *managers and casting directors* in San Francisco and Hollywood. If you've
28 been told your child has talent, and *you want to get their career launched in the*
entertainment industry, you've come to THE right place. Remember there are a
lot of things you will need to prepare before you can get started in TV, film and
commercials! Here at BE, we'll help you with the details of everything you'll

1 need to know.

2 (A true and correct copy of Gonnabe.com's foregoing statement is attached as Exhibit 5)
3 (emphasis added). In the same breath as it disclaims responsibility for obtaining employment
4 for Be Productions members, Gonnabe.com touts Be Productions' role in providing access to
5 agents and managers who can provide employment in the entertainment industry:

6 Are you an Agency?
7 NO, we are not an agency nor do we procure jobs for our members. *However,*
8 *we are the source for meeting 100's of agents, managers, casting directors, and*
9 *producers that are responsible for signing and helping our members work each*
10 *year.*

11 49. Moreover, Be LLC charges Class members advance fees for its services,
12 which are paid in order to obtain, through Be LLC, management or direction of Class
13 members' careers in the entertainment industry, and/or evaluation or consulting on those
14 careers. Be LLC's promotional pamphlet indicates "Head to Toe EVALUATION" was one of
15 Be Productions' services (whose value was listed "PRICELESS.") Be LLC's instruction
16 manual expressly described :

17 [Agents attending the Talent Showcases] complete a thorough evaluation of
18 your child's talent and email it to you, stating you child's strengths and the
19 actions that need to be taken in order to be represented by a manager or agent. .
20 . You will gain access to and benefit from the opinions of top industry
21 professionals.

22 (Ex. 4.) Also, Gonnabe.com also describes Be Productions as

23 a multifaceted organization designed to give young artists the resources,
24 services, experience and exposure that they need *in order to succeed in the*
25 *entertainment industry. . . .* Be's management team is headed by entertainment
26 industry veterans with deep knowledge and expertise in casting, production and
27 talent management, *giving the company an insider's perspective on Hollywood.*

28 50. As part of these services, Be Productions purports to conduct "screentests"
prior to enrolling its members. Gonnabe.com represents that Be Productions' screentests are
selective:

Are all the children selected from the screentest?
Unfortunately no. Only a small percentage of the children screened, meet the
industry profile that top agents, talent managers and casting directors are
looking for.

Be Productions' purported selectivity contributes to its customers' belief that they may be

1 successful in the entertainment industry, and prompts them to invest more in their potential
 2 career (and specifically to spend more on Be Productions). On information and belief,
 3 however, Be Productions' screentests were not determined by a customer's likelihood of
 4 professional success, but financial ability to pay. One disgruntled Be Productions ex-employee
 5 has stated in a public Internet forum that:

6
 7 They conduct at several 'callbacks' a day and break them down into small
 8 groups to make you feel like there was a cut and they conduct screen tests
 9 EVERY week! They call EVERYONE back as long as when you filled out the
 10 form at the screen test your income level fit the bill.

11 (A true and correct excerpt containing the foregoing statement is attached as Exhibit 6.)

12 51. **DeSando:** DeSando is listed on Gonnabe.com as Be Production's CEO. The
 13 Better Business Bureau's entry on Be Productions indicates that Be Productions is a part of a
 14 pattern of dubious business practices: "Our past experience with Mr. Desando's [previous]
 15 companies has been that the companies failed to obtain and maintain licenses required by the
 16 State, and some developed complaint patterns alleging misrepresentation of services." On
 17 information and belief, DeSando is a manager and/or member of Be LLC.

18 52. **Falck:** Falck is listed on Gonnabe.com as Be Productions' COO. On
 19 information and belief, Falck is a manager and/or member of Be LLC.

20 53. **Dynamic Showcases:** Dynamic Showcases charges Class members advance
 21 fees for procuring auditions for Class members. Be LLC refers Class members to Dynamic
 22 Showcases for auditions with casting agents, talent agents, and other entertainment industry
 23 professionals. (See Ex. 4.) Dynamic Showcases charges Class members a fee for registering in
 24 each showcase. (See *id.*) Be LLC's instructions manual unambiguously and express describes
 25 the showcases as auditions, and indicates that Dynamic Showcases charged for these auditions:

26 Talent showcases are your opportunity to interview with several [agents, casting
 27 directors, and/or managers] at once with the goal of gaining representation.
 28 **Showcases give you a chance to experience a real audition.** You will gain
 access to and benefit from the opinions of top industry professionals. Each
 showcase has a \$25 registration fee. . . . DYNAMIC SHOWCASES wants every
 member to have a chance to acquire an agent! . . . DYNAMIC SHOWCASES
 works with top agents and managers, helping in the showcase process of
 thousands of kids in the industry.

1 (Ex. 4.) Both the contract and the promotional pamphlet also discuss the fees for the talent
2 showcases. (See Exs. 2, 3.)

3 54. **Be UK:** Be UK charges or attempted to charge Class members monthly
4 advance fees for registering or listing the artist for employment in the entertainment industry
5 or as a customer of Be UK, in order to procure or to attempt to procure employment from
6 talent agents. Be UK purports to own and operate the Gonnabe.com website. Be UK contracts
7 with Class members inside and outside of California through the Gonnabe.com.

8 55. **Be UK** solicits and charges Be Productions customers for a monthly fee for
9 maintaining an account on Gonnabe.com, in order to market themselves to talent agents.
10 Gonnabe.com explicitly solicits talent agents to browse its member profiles for potential
11 actors: "Are You an AGENT Looking for Talent? Looking for talent for your next big
12 production? CLICK HERE." This link leads to a webpage on Gonnabe.com that solicits
13 entertainment industry professionals to provide employment for Be Productions members:
14

15 Looking for Talent?

16 Browse Our Talent

17 Would you like to look through all of our Talent to find just the perfect fit?

18 CLICK HERE

19 Talent Search

20 Looking for a specific criteria to meet your production needs? CLICK HERE

21 AGENT / CASTING AGENT Registration

22 Are you interested in using our talent for an upcoming role in a Movie,
23 Television Show, or Commercial? Do you think one of our kids would be great
24 for your professional print catalog or advertisement? Do you have a need for
25 some incredible dancers in your next production? Are you an Agent and you are
26 interested in representing one or more of our kids? CLICK HERE.

27 (A true and correct copy of Gonnabe.com's foregoing statement is attached as Exhibit 7.) The
28 foregoing weblink leads to Gonnabe.com's database of Be Productions customers.

56. **Monterey:** Monterey receives advance fees Class members purportedly owe
Be LLC (i.e., Be LLC's receivables). Where Class members have not paid Be Productions'
fees in full, Monterey has acted to collect the fees from the Class members.

57. **Steinbeck and 1901 Co.:** Steinbeck and 1901 Co. have registered with the
California Secretary of State security interests in "[a]ll of [Be LLC's] right, title and interest
(whether presently existing or hereafter arising and wherever located) in and to all of the

1 personal property of [Be LLC.]” On this information and belief, Steinbeck and 1901 Co. have
2 loaned significant sums of money to Be LLC.

3 58. **MTS:** Since Be Production’s “consolidation,” MTS has begun to arrange
4 auditions and talent showcases for Be Productions’ customers, and refer them to Be
5 Productions service providers. Gonnabe’s main webpage explains MTS’s involvement in Be
6 Productions:

7 Due to the difficult economic conditions which have touched all of us, and the
8 need to improve and enhance the services and communications between Be.
9 LLC and its members we have restructured our operations. We have decided to
10 ask for assistance from “My Talent Services” (MTS) which is an independent
11 company that was contracted by Be LLC to provide the services to which our
members are entitled. . . . MTS will assist you with any questions regarding
showcasing, scheduling, event participation, talent improvement and lessons . . .

12 On information and belief, MTS refers Be Productions’ remaining customers to various service
13 providers and receives income from Be LLC through its arrangement with Be LLC.

14 59. **Rashkovan:** Rashkovan has registered “My Talent Services” as a fictitious
15 business name for MTS with the County of Los Angeles. This registration also lists Rashkovan
16 as the owner of MTS. On information and belief, Rashkovan is an owner and officer of MTS,
17 personally participated in or planned the conduct alleged herein, and receives income from Be
18 Productions in the form of distributions or salary from MTS. Rashkovan’s involvement with
19 Be Productions is not his first exposure to dubious business practices, either. In 1996,
20 Rashkovan was indicted in the Central District of California for conspiracy, multiple counts of
21 wire fraud and money laundering, under a criminal action titled *United States v. Adoniev*, No.
22 96-00977 (C.D. Cal.). Rashkovan pled guilty to the conspiracy charge and was sentenced to
three years in prison in 1998.

23 **FIRST CAUSE OF ACTION:**
24 **Declaratory Judgment Under 27 U.S.C. § 2201 Against All Defendants,**
25 **by Plaintiffs Individually and on Behalf of the Class**

26 60. Plaintiffs incorporate by reference and reallege all paragraphs previously
alleged herein.

27 61. Be LLC is an advance-fee talent service, which charged and received
28 advance fees from Class members under the definitions of AFTSA.

1 62. Subsection 1701.4(a) of the California Labor Code requires contracts
2 between advance-fee talent services and their customers to be in writing and to contain various
3 elements. These elements include statements describing the services to be performed, when
4 those services will be performed, and detailed, statutorily-mandated provisions regarding
5 refunds and cancellation options. *Cf.* Cal. Lab. Code § 1701.4(a) (2009). Be LLC's contracts
6 with the Class members do not contain the elements required by subsection 1701.4(a) above.

7 63. Where an advance-fee talent service's contract with its customer does not
8 comply with subsection 1701.4(a), the contract is "voidable at the election of the artist and, in
9 that case, shall not be enforceable by the advance-fee talent service." Cal. Lab. Code §
10 1701.4(d) (2009).

11 64. Be Productions' contracts' violations of subsection 1701.4(a) have caused
12 Plaintiffs and the other Class members concrete, actual harm. Defendants and the Class have
13 adverse legal interests, and there is a substantial controversy between the Class and Defendants
14 of sufficient immediacy and reality to warrant the issuance of a declaratory judgment as to
15 whether Be Productions' contracts are voidable at the Class members' options.

16 65. Plaintiffs, on their own behalf, and behalf of the other Class members, seek
17 a declaratory judgment under 27 U.S.C. § 2201 that Be Productions' contracts violate
18 subsection 1701.4(a) of the California Labor Code and are therefore unenforceable. Plaintiffs,
19 on their own behalf, and behalf of the other Class members, seek to recover the costs of the
20 action (including attorneys' fees) under Cal. Code Civ. Proc. § 1021.5.

21
22 **SECOND CAUSE OF ACTION:**
23 **Violations of AFTSA Against All Defendants**
24 **by Plaintiffs Individually and on Behalf of the Class**

25 66. Plaintiffs incorporate by reference and reallege all paragraphs previously
26 alleged herein.

27 67. **Dynamic Showcases:** Dynamic Showcases is an advance-fee talent service
28 under Subsection 1701(b)(1) of the California Labor Code, because it charges Class members
advance fees for procuring auditions. Subsection 1701.12(i) prohibits advance-fee talent

1 services from charging or attempting to charge an artist for providing auditions for the artist.
2 Dynamic Showcases violates subsection 1701.12(i).

3 68. **Be UK:** Be UK is an advance-fee talent service under Subsection 1701(b)(1)
4 of the California Labor Code, because it charges or attempts to charge Class members advance
5 fees for listing Class member's children for employment in the entertainment industry or
6 registering them as Be UK's customers, in order to procure or to attempt to procure
7 employment from talent agents. Subsection 1701.12(e) prohibits advance-fee talent services
8 from charging or attempting to charge an artist for registering or listing the artist for
9 employment in the entertainment industry or as a customer of the advance-fee talent service.
10 Be UK violates subsection 1701.12(e).

11 69. **Be LLC:** Be LLC is an advance-fee talent service under Subsection 1701(b)
12 of the California Labor Code, because it charges Class members advance fees for procuring
13 auditions. Be LLC performed a significant portion of the work arranging Dynamic Showcases'
14 auditions (including screening Class members for eligibility to participate in the auditions),
15 and some portion of the fee it charged was attributable to that work.

16 70. Be LLC is an advance-fee talent service under Subsection 1701(b) of the
17 California Labor Code, because it charges Class members advance fees for its services, which
18 are paid in order to obtain, through Be LLC, the offer or promise that Dynamic Showcases will
19 procure auditions. Class members pay Be LLC in order to participate in Dynamic Showcases'
20 auditions through Be LLC. On information and belief, Dynamic Showcases did not provide
21 showcases to anyone but Be Productions customers.

22 71. Be LLC is an advance-fee talent service under Subsection 1701(b) of the
23 California Labor Code, because it charges Class members advance fees for its services, which
24 are paid in order to obtain management or direction of Class members' careers in the
25 entertainment industry, and/or evaluation or consulting on those careers, through Be LLC. As
26 alleged above, Be LLC's marketing is replete with representations that it will facilitate the
27 careers of its customers in the entertainment industry.
28

1
2 72. Subsection 1701.12(i) of the California Labor Code prohibits advance-fee
3 talent services from charging or attempt to charge, directly or indirectly, an artist for providing
4 auditions for the artist. Some portion of Be LLC's fees is attributable to arranging Dynamic
5 Showcases' auditions (including screening Class members for eligibility to participate in the
6 auditions). That portion of Be LLC's fees which is attributable to arranging Dynamic
7 Showcases' auditions violates subsection 1701.12(i) of the California Labor Code.

8 73. Subsection 1701.12(b) of the California Labor Code prohibits advance-fee
9 talent services from publishing or causing to be published any false, fraudulent, or misleading
10 information, representation, notice, or advertisement.

11 74. Be LLC's representations regarding the Talent Showcases provided by
12 Dynamic Showcases were misleading. Be LLC's affirmative representations about the value of
13 those showcases were false, because Dynamic Showcases violated AFTSA charging an
14 advance fee for auditions and could not legally charge any money for those auditions. Be
15 LLC's other representations about the showcases were materially misleading, because they
16 omitted this information. If the legality of Dynamic Showcases' fees and Dynamic Showcases'
17 relationship with the other Defendants were accurately disclosed to Plaintiffs and the other
18 Class members, they would not have paid Be LLC's fees.

19 75. Be LLC's representations regarding Be UK and its fees were misleading. Be
20 LLC's affirmative representations about the value of an account on Gonnabe.com were false,
21 because Be UK violated AFTSA charging an advance fee for registering as Be UK's customer
22 or listing Class members' children for employment in the entertainment industry. Be LLC's
23 other representations about the showcases were materially misleading, because they omitted
24 this information. If the legality of Be UK's fees and Be UK's relationship with the other
25 Defendants were accurately disclosed to Plaintiffs and the other Class members, they would
26 not have paid Be LLC's fees.

27 76. Be LLC's representations about the exclusivity of its screentests were
28 misleading. The success of a screentest was not determined by a customer's likelihood of

1 professional success, but financial ability to pay. If the criteria for success in the screentests
2 were accurately disclosed to Plaintiffs and the other Class members, they would not have paid
3 Be LLC's fees.

4 77. Subsections 1701.12(j) and (k) of the California Labor Code prohibit
5 advance-fee talent services from referring customers to a third party who charges for providing
6 auditions, if the advance-fee talent service has a direct or indirect financial interest in the third
7 party, or accepts compensation for the referral from the third party. Be LLC refers Class
8 members to Dynamic Showcases for auditions. On information and belief, Be LLC receives
9 compensation from Dynamic Showcases for these referrals, or maintains a direct or indirect
10 financial interest in Dynamic Showcases. The KGO-TV newscast describes Dynamic
11 Showcases relationship with Be LLC's principals:

12
13 "[If] you want to meet an agent through us, you can't meet an agent through us.
14 You have to meet an agent through the showcase company we contract with,"
15 says Desando. . . . 7 On Your Side investigated and found the showcase
16 company that Be contracts with is Dynamic Showcases. State records show
17 ***Desando is the chief executive officer of Dynamic Showcases and Be co-***
18 ***owner Barry Falck is a principal executive.*** We reached Desando by phone. He
19 told us ***he did own Dynamic Showcases***, but in order to comply with Section
20 1701 he sold it to Barry Falck's son, Ryan Falck. "When we discovered we
21 couldn't own it, we sold it to Ryan, but he didn't follow through with the correct
22 state documents. We never made any money on the company, but we made a
23 deal," said Desando. Desando said he did not recall when the sale was made.
24 We checked and found ***Ryan Falck's name was added to the corporate***
25 ***documents in June after 7 On Your Side began asking questions.***

26 (Ex. 1) (emphasis added). These referrals violate subsections 1701.12(j) and/or (k) of the
27 California Labor Code.

28 78. Subsections 1701.12(j) and (k) of the California Labor Code prohibit
advance-fee talent services from referring customers to a third party who charges a registration
or listing fee, if the advance-fee talent service has a direct or indirect financial interest in the
third party, or accepts compensation for the referral from the third party. Be LLC refers Class
members to Be UK for listing for employment on Gonnabe.com. On information and belief,
Be LLC receives compensation from Be UK for these referrals, or maintains a direct or
indirect financial interest in Be UK. These referrals violate subsections 1701.12(j) and/or (k)

1 of the California Labor Code.

2 79. Subsection 1701.12(h) of the California Labor Code prohibits advance-fee
3 talent services from charging or attempting to charge, directly or indirectly, an artist for
4 providing lessons, coaching, or similar training for the artist. Subsections 1701.12(j) and (k) of
5 the California Labor Code prohibit advance-fee talent services from referring customers to a
6 third party who charges for such lessons, if the advance-fee talent service has a direct or
7 indirect financial interest in the third party, or accepts compensation for the referral from the
8 third party.

9 80. Be LLC referred Class members to Rising Stars and Blue Sky Studios for
10 acting lessons and photography, respectively. On information and belief, Be LLC receives
11 compensation for these referrals from Rising Stars and Blue Sky Studios. These referrals
12 violate subsections 1701.12(j) and/or (k) of the California Labor Code.

13 81. **DeSando, Falck and Steinbeck:** On information and belief, DeSando,
14 Falck, and Steinbeck control and have caused the conduct of Be LLC alleged in this
15 Complaint, and receive income from Be LLC in the form of distributions. On information and
16 belief, they also control and have caused the conduct of Be UK and Dynamic Showcases
17 alleged in this Complaint, and receive income from Be UK and Dynamic Showcases directly
18 or indirectly.

19 82. On information and belief, DeSando, Falck, and/or Steinbeck violate
20 subsections 1701.12(j) and (k) of the California Labor Code causing Be LLC to refer Class
21 members to Dynamic Showcases and Be UK as alleged above, and by having a direct or
22 indirect financial interest in Dynamic Showcases and Be UK, or accepting compensation for
23 the referrals.

24 83. **MTS and Rashkovan:** MTS and Rashkovan refer Be Productions'
25 remaining customers to various service providers. On information and belief, MTS and
26 Rashkovan violate subsections 1701.12(j) and (k) of the California Labor Code by referring
27 Class members to Dynamic Showcases and Be UK and by accepting compensation for the
28

1 referrals. On information and belief, Rashkovan is an owner and officer of MTS, and receives
2 this compensation from distributions or salary from MTS, which are derived from Be LLC's
3 payments to MTS.

4 84. **Aiding and Abetting:** In addition to the foregoing, each of the Defendants
5 provides substantial and material assistance to the AFTSA violations alleged above. Be LLC
6 markets its services alleged herein, solicits and contracts with Class members, and refers
7 customers to Dynamic Showcases and Be UK. Be LLC also assisted Dynamic Showcases and
8 Be UK by referring its customers to them. When it was in Emeryville, Be LLC also maintained
9 an Easy Bay-area code fax number ((510) 899-6797) which it shared with Be UK. Be UK used
10 the number for its agent for service of copyright-related complaints. (See Ex. 14.) Be LLC and
11 Be UK also share a domain name, web hosting for Gonnabe.com, and an email server.

12 85. Dynamic Showcases arranges, schedules, and conducts auditions for Class
13 members. Be UK contributes to Be LLC's marketing efforts by operating Gonnabe.com.
14 DeSando, Falck, and Steinbeck planned and personally participated in the conduct alleged in
15 this paragraph through their control over Be LLC, Dynamic Showcases, and/or Be UK.

16 86. **Monterey:** Monterey receives and collects advance fees purportedly due to
17 Be LLC from Class members (i.e., Be LLC's receivables). Where Class members have not
18 paid Be Productions' fees in full, Monterey has acted to collect the fees from the Class
19 members. On information and belief, Be LLC has assigned its receivables to Monterey in
20 exchange for a substantial loan. On information and belief, Monterey obtained very detailed
21 information about the Be Productions operations alleged in this Complaint in the process of
22 making this loan. On information and belief, this loan enabled Be LLC to continue and expand
23 its operations.

24 87. **Steinbeck and 1901 Co.:** On information and belief, Steinbeck and 1901
25 Co. made a substantial loan to Be LLC in exchange for a security interest in Be LLC. On
26 information and belief, Steinbeck and 1901 Co. obtained very detailed information about the
27 Be Productions operations alleged in this Complaint in the process of making this loan. On
28

1 information and belief, this loan enabled Be LLC to continue and expand its operations. On
2 information and belief, Steinbeck and 1901 Co. receive income from Be LLC distributions or
3 interest payments.

4 88. In the addition or alternative to the foregoing, each of the Defendant is
5 jointly and severally liable to Plaintiffs and the other Class members for the other Defendants'
6 AFTSA violations, because it aided and abetted those violations through its own conduct. Each
7 of the Defendants had actual knowledge of the other Defendants' AFTSA violations, and its
8 conduct gave substantial assistance to such violations as alleged above.

9 89. **Civil Conspiracy:** In the addition or alternative, each of the Defendants is
10 jointly and severally liable to Plaintiffs and the other Class members for the other Defendants'
11 AFTSA violations alleged herein, because it entered into a civil conspiracy with the other
12 Defendants to violate AFTSA. Each of the Defendants agreed to a common plan or design to
13 violate AFTSA as alleged herein, and participated through the conduct alleged above. Each of
14 the Defendants had actual knowledge of the other Defendants' AFTSA violations, and
15 intended to aid that conduct. Every violation of AFTSA by the other Defendants was in
16 furtherance of this conspiracy. Each of the Defendants had an independent duty not to violate
17 AFTSA, and each Defendant profited from the other Defendants' AFTSA violations alleged
18 herein.

19 90. The violations of section 1701.12 of the California Labor Code alleged
20 above have caused Plaintiffs and the other members of the Class damages. These damages
21 include fees and charges which Class members would not have paid absent the violations
22 alleged above.

23 91. Plaintiffs, on their own behalf, and behalf of the other Class members, seek
24 to recover statutory damages, which "may be up to three times the damages actually incurred,
25 but not less than the amount paid by the artist to the advance-fee talent service," in an amount
26 to be determined at trial, as well as punitive damages, injunctive and equitable relief, and
27 reasonable attorney's fees and costs under Cal. Lab. Code § 1701.16.
28

**THIRD CAUSE OF ACTION:
Violation of the UCL Against All Defendants
by Plaintiffs Individually and on Behalf of the Class**

92. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

93. Defendants' conduct alleged above is unlawful, and in violation of California Labor Code sections 1701.4 and 1701.12. Defendants' conduct alleged above is also unfair and fraudulent. Defendants' conduct violated Cal. Bus. & Prof. Code § 17200.

94. In the addition or alternative, each of the Defendant is jointly and severally liable to Plaintiffs and the other Class members for the other Defendants' UCL violations, because it aided and abetted those violations through its own conduct. Each of the Defendants had actual knowledge of the other Defendants' UCL violations, and its conduct gave substantial assistance to such violations as alleged above.

95. In the addition or alternative, each of the Defendants is jointly and severally liable to Plaintiffs and the other Class members for the other Defendants' UCL violations alleged herein, because it entered into a civil conspiracy with the other Defendants to violate the UCL. Each of the Defendants agreed to a common plan or design to violate the UCL as alleged herein, and participated through the conduct alleged above. Each of the Defendants had actual knowledge of the other Defendants' the UCL violations, and intended to aid that conduct. Every violation of the UCL by the other Defendants was in furtherance of this conspiracy. Each of the Defendants had an independent duty not to violate the UCL, and each Defendant profited from the other Defendants' UCL violations alleged herein.

96. Plaintiffs and the other Class members have been injured and have lost money and property as a result of Defendants' violations of Cal. Bus. & Prof. Code § 17200. These injuries include fees paid towards one or more of the Defendants.

97. Plaintiffs, on their own behalf, and behalf of the other Class members, seek to recover restitution, injunctive and equitable relief including a constructive trust under Cal. Bus. & Prof. Code § 17203, and the costs of the action (including attorneys' fees) under Cal. Code Civ. Proc. § 1021.5.

**FOURTH CAUSE OF ACTION:
Violation of the FDCPA Against Monterey
by Plaintiffs Individually and on Behalf of the Subclass**

98. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

99. Plaintiffs and all the members of the Subclass are natural persons from whom Monterey seeks to collect Be Productions' fees, and are consumers under the meaning of 15 U.S.C. § 1692a(3).

100. Monterey maintains a website marketing its debt collection services to others:

Monterey has created the most effective and professional standards in managing and collecting debt. Our philosophy for recovering delinquent debt stems from customizing our collection procedures to meet our clients' needs, maintaining the most talented and skilled collectors in the industry, and strict quality assurance measures to protect the dignity of our agency and our clients. [] Our procedures are tailored to meet the needs of our clients. Among our collection techniques, we offer skip tracing, letter series, unlimited phone calls, credit reporting, and many other services at no additional cost.

(A true and correct copy of the foregoing webpage is attached as Exhibit 8.) On information and belief, Monterey is acting as a debt collector for Be LLC with respect to unpaid fees purportedly owed by Subclass members. Monterey is a debt collector under the meaning of 15 U.S.C. § 1692a(6) with respect to the Subclass members.

101. Monterey has communicated with DuFour and the other Subclass members, but has failed to provide, within five days of such communication, written notice as required under 15 U.S.C. § 1692g(a). Such written notice must include

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

Monterey's communications to the Subclass members without the above written notice violated 15 U.S.C. § 1692g(a).

102. Monterey knows or should know that all of the purported debts under Be Productions' contracts are invalid and those contracts are unenforceable under subsection 1701.4(d) of the California Labor Code. Monterey has nonetheless threatened to report those purported debts as valid debts to the CRAs. 15 U.S.C. § 1692e(8) prohibits "[c]ommunicating or threatening to communicate to any person credit information which is known or which should be known to be false . . ." 15 U.S.C. § 1692e(8) (2009). Monterey's threats to communicate information it should know to be false to the CRAs regarding the Subclass members is a false, deceptive, and misleading means of debt collection, and violated 15 U.S.C. § 1692e(8).

103. Monterey does not have a reasonable system in place to ensure that it avoids the foregoing FDCPA violations. Monterey's actions were not the result of a bona fide error and it failed to maintain reasonable procedures adapted to avoid such errors.

104. Plaintiffs and the other members of the Subclass have suffered actual injury as a result of Monterey's FDCPA violations. These injuries include declined and reduced credit, forced purchase of credit reports and credit monitoring, postage and private courier costs, mileage, long-distance telephone charges, lost cell phone airtime, emotional distress, increased credit costs, and amounts paid to settle fraudulent debts.

105. Plaintiffs, on their own behalf, and behalf of the other Subclass members, seek to recover from Monterey actual and statutory damages, in an amount to be determined at trial, and the costs of the action (including attorneys' fees) under 15 U.S.C. § 1692k.

**FIFTH CAUSE OF ACTION:
Violation of the RFDCPA Against Monterey
by Plaintiffs Individually and on Behalf of the Subclass**

106. Plaintiffs incorporate by reference and reallege all paragraphs previously

1 alleged herein.

2 107. Monterey is "debt collector" under the definition of the RFDCPA because
3 it, "in the ordinary course of business, regularly, on behalf of [itself] or others, engages in debt
4 collection." Cal. Civ. § 1788.2(c).

5 108. As alleged above, Monterey violated 15 U.S.C. §§ 1692g(a), 1692e(8).
6 Consequently, Monterey also violated Cal. Civ. Code § 1788.17.

7 109. Plaintiffs and the other members of the Subclass have suffered actual
8 injury as a result of Monterey's violation of Cal. Civ. Code § 1788.17. These injuries include
9 declined and reduced credit, forced purchase of credit reports and credit monitoring, postage
10 and private courier costs, mileage, long-distance telephone charges, lost cell phone airtime,
11 emotional distress, increased credit costs, and amounts paid to settle fraudulent debts.

12 110. Plaintiffs, on their own behalf, and behalf of the other Subclass members,
13 seek to recover from Monterey actual or statutory damages, in an amount to be determined at
14 trial, and the costs of the action (including attorneys' fees) under Cal. Civ. Code §§ 1788.17,
15 1788.30.

16
17 **SIXTH CAUSE OF ACTION:**
18 **Violation of the UCL Against Monterey**
19 **by Plaintiffs Individually and on Behalf of the Subclass**

20 111. Plaintiffs incorporate by reference and reallege all paragraphs previously
21 alleged herein.

22 112. Monterey's conduct alleged above is unlawful, and in violation of 15
23 U.S.C. §§ 1692g(a), 1692e(8) and Cal. Civ. Code § 1788.17. Monterey's conduct alleged
24 above is also unfair and fraudulent. Monterey's conduct violates Cal. Bus. & Prof. Code §
25 17200.

26 113. Plaintiffs and the other Subclass members have been injured and have lost
27 money and property as a result of Monterey's violations of Cal. Bus. & Prof. Code § 17200.
28 These injuries include include declined and reduced credit, forced purchase of credit reports
and credit monitoring, postage and private courier costs, mileage, long-distance telephone

1 charges, lost cell phone airtime, increased credit costs, and amounts paid to settle fraudulent
2 debts.

3 114. Plaintiffs, on their own behalf, and behalf of the other Subclass members,
4 seek to recover restitution, injunctive and equitable relief including a constructive trust under
5 Cal. Bus. & Prof. Code § 17203, and the costs of the action (including attorneys' fees) under
6 Cal. Code Civ. Proc. § 1021.5.

7
8 **SEVENTH CAUSE OF ACTION:**
9 **Violation of the CCRAA Against Monterey**
10 **by Plaintiff Individually and on Behalf of the Subclass**

11 115. Plaintiffs incorporate by reference and reallege all paragraphs previously
12 alleged herein.

13 116. TransUnion, Experian, and Equifax are consumer credit reporting agencies,
14 under the meaning of Cal. Civ. Code § 1785.3(d).

15 117. The CCRAA prohibits persons from furnishing information on specific
16 transactions "to any consumer credit reporting agency if the person knows or should know the
17 information is incomplete or inaccurate." Cal. Civ. Code § 1785.25(a).

18 118. Monterey knows or should know that all of the purported debts under Be
19 Productions' contracts are invalid and those contracts under unenforceable under subsection
20 1701.4(d) of the California Labor Code. Monterey has nonetheless threatened to report those
21 purported debts as valid debts to the CRAs, which it should know to be false information.

22 119. The CCRAA provides that: "[i]njunctive relief shall be available to any
23 consumer aggrieved by . . . a threatened violation of this title whether or not the consumer
24 seeks any other remedy under this section." Cal. Civ. Code § 1785.31(b).

25 120. Monterey's threatened violation of Cal. Civ. Code § 1785.25(a) threatens
26 actual damages to Plaintiffs and the other members of the Subclass, including declined and
27 reduced credit, forced purchase of credit reports and credit monitoring, postage and private
28 courier costs, mileage, long-distance telephone charges, lost cell phone airtime, emotional
distress, increased credit costs, and amounts paid to settle fraudulent debts.

121. Plaintiffs, on their own behalf, and behalf of the other Subclass members, seek to recover injunctive and equitable relief, and the costs of the action (including attorneys' fees) under Cal. Civ. Code § 1785.31.

WHEREFORE, Plaintiffs Timothy DuFour and Kenneth Tanner pray that the Court enter judgment and orders in their favor and against Be., LLC, Be Marketing Ltd., Monterey Financial Services, Inc., 1901 Co., MTS Holdings Group, Inc., Erik DeSando, Barry Falck, Jacob Steinbeck, Vitaly Rashkovan, and Does 1 to 100 as follows:

- (a) An order certifying the Class, directing that this case proceed as a class action, and appointing DuFour and Tanner and their counsel to represent the Class;
- (b) An order certifying the Subclass, and appointing DuFour and Tanner and their counsel to represent the Subclass;
- (c) Damages against Defendants in an amount up to three times the damages actually incurred, but not less than the amount paid by the Class members to Defendants;
- (d) Equitable and injunctive relief providing for a constructive trust and prohibiting Defendants from continuing their violations of the AFTSA and UCL;
- (e) Statutory damages against Monterey pursuant to the FDCPA and the RFDCPA in favor of the Subclass;
- (f) Equitable and injunctive relief enjoining Monterey from future violations of the FDCPA, RFDCPA, and CCRAA in favor of the Subclass;
- (g) An order granting costs and attorneys' fees; and
- (h) Such other and further relief as this Court may deem appropriate.

Dated: August 4, 2009

By: 

Ethan Preston (263295)
PRESTON LAW OFFICES, LLC
1658 North Milwaukee Avenue, No. 253
(312) 492-4070 (phone)
(312) 262-1007 (facsimile)
ep@eplaw.us

David C. Parisi, Esq. (162248)
Suzanne Havens Beckman, Esq. (188814)
PARISI & HAVENS LLP
15233 Valleyheart Drive
Sherman Oaks, California 91403

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

(818) 990-1299 (phone)
(818) 501-7852 (facsimile)
dcparsi@parisihavens.com
shavens@parisihavens.com

*Attorneys for Plaintiffs Timothy DuFour
and Kenneth Tanner*

JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: August ^{IX} 2009

By: 

Ethan Preston (263295)
PRESTON LAW OFFICES, LLC
1658 North Milwaukee Avenue, No. 253
(312) 492-4070 (phone)
(312) 262-1007 (facsimile)
ep@eplaw.us

David C. Parisi, Esq. (162248)
Suzanne Havens Beckman, Esq. (188814)
PARISI & HAVENS LLP
15233 Valleyheart Drive
Sherman Oaks, California 91403
(818) 990-1299 (phone)
(818) 501-7852 (facsimile)
dcparisi@parisihavens.com
shavens@parisihavens.com

*Attorneys for Plaintiffs Timothy DuFour
and Kenneth Tanner*