

SEP 21 2018

NOTICE OF ASSIGNMENT AND

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Assigned to THOMAS S. CLARK for all purposes.

Hearing Date: 3-25-19

Time: 8:15 AM

Department: 17

Attorney for Plaintiff, ICON Entertainment, Inc.,  
DBA ICON Concerts

See CRC Rule 3.720 Et. Seq.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF KERN, METROPOLITAN DIVISION**

ICON ENTERTAINMENT GROUP, INC., a  
California Corporation, doing business as  
ICON Concerts,

Plaintiff,

vs.

BENDER ENTERTAINMENT GROUP,  
INC., a California Corporation; BOB  
BENDER PROMOTIONS, a Business,  
Form Unknown; THE FOX THEATER  
FOUNDATION, INC., a California Nonprofit  
Corporation; and DOES 1 through 50,  
inclusive

Defendants.

Case No. BCV - 18 - 102382 - TSC

**COMPLAINT FOR:**

- 1) BREACH OF CONTRACT
- 2) COMMON COUNTS- MONEY HAD AND RECEIVED
- 3) CONVERSION
- 4) FRAUDULENT CONCEALMENT
- 5) BREACH OF FIDUCIARY DUTY
- 6) BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
- 7) CONSTRUCTIVE TRUST/ UNJUST ENRICHMENT/ RESTITUTION
- 8) TRESPASS TO CHATTELS
- 9) NEGLIGENCE

COMES NOW Complainant ICON ENTERTAINMENT GROUP, INC., a California Corporation, doing business as ICON Concerts, ("ICON") for itself and no one else, and alleges as follows:

1. ICON is and at all times relevant herein was a corporation duly formed, existing and doing business in the State of California. At the times relevant herein,

SCANNED

1 ICON was doing business as ICON Concerts, with its principal place of business in  
2 Bakersfield, within Kern County, California.

3 2. Defendant BENDER ENTERTAINMENT GROUP, INC, (hereafter "BEG")  
4 at times relative to the actions within this Complaint, is believed to be a California  
5 Corporation conducting business in California, with its principal office located in  
6 Bakersfield, California.

7 3. On information and belief, Defendant BOB BENDER PROMOTIONS,  
8 (hereafter "BENDER PROMOTIONS") at times relative to the actions within this  
9 Complaint, is believed to be a business entity, form and domicile unknown, conducting  
10 business in California, with its principal office located in Bakersfield, California.

11 4. On information and belief, BOB EARL BENDER (hereafter "BOB  
12 BENDER") was, and is believed to be an officer and/or director of BEG, with the position  
13 of Chief Executive Officer and President of BEG. BOB BENDER also was, and is  
14 believed to be an officer and/or director of BENDER PROMOTIONS.

15 5. On information and belief, DEBBIE JEAN HALLE (hereafter "HALLE")  
16 was, and is believed to still be an officer and/or director of BEG, with the position of  
17 Secretary of BEG. HALLE was, and is believed to still be an officer and/or director of  
18 BENDER PROMOTIONS.

19 6. Defendants BEG, BENDER PROMOTIONS, and DOES 1-20, inclusive,  
20 may at times be collectively referenced herein as "BENDER DEFENDANTS".

21 7. Defendant THE FOX FOUNDATION, INC, (hereafter "FOX") at times  
22 relative to the actions within this Complaint, is believed to be a California Non-Profit  
23 Corporation conducting business in California, with its principal office located in  
24 Bakersfield, California. FOX is believed to be the owner and operator of the Fox Theater  
25 in Bakersfield, California ("FOX THEATER" or " FOX venue").

26 8. ICON is ignorant of the true names and capacities of the Defendants sued  
27 herein as "DOES 1 through 50, inclusive", and therefore sues DOES 1 through 50,  
28 inclusive, by these fictitious names. ICON is informed and believes, and thereon alleges

1 that DOES 1 through 50, inclusive, are responsible in some manner for the occurrences  
2 and acts complained of and that the damages as alleged herein may have been, in  
3 whole or in part, directly and proximately caused by these DOE Defendants. ICON will  
4 seek leave to amend this Complaint when the true names and capacities of the DOE  
5 Defendants have been ascertained.

6 9. ICON is informed and believes, and based thereon allege that at all  
7 relevant times the Defendants herein, and each of them, were the agents, servants,  
8 representatives, subsidiaries, "alter ego's", or employees of each of the other  
9 Defendants, and that such acts as alleged were performed within the course and scope  
10 of their authority, employment, representation or agency.

11 10. ICON is in the business of promoting and producing live entertainment  
12 shows, including among other things comedy shows and live concerts worldwide, with a  
13 significant number of shows occurring in the Bakersfield, California area, which is where  
14 ICON is principled and located.

15 11. As part of the standard business practices for ICON, ICON directly  
16 contracts with various artists, agencies and other performers ("Artists") to perform and  
17 produce shows at various locations and venues. As part of this process, ICON then  
18 contracts with various locations and/or "venues" within California, the United States,  
19 and/or internationally to arrange, promote and present the shows.

20 12. Within the industry and trade, it is customary for the venue to designate a  
21 ticketing agency/service provider for the purpose of selling tickets, including any  
22 agents/locations for box office based sales, websites and other electronic transaction  
23 points, and then collecting and holding the funds from the proceeds of the show sales in  
24 trust for the producer/promoter. As part of the customary procedures, the venue  
25 undertakes this task to assure that they will receive payment for the rental of the venue,  
26 as well as to cover costs associated with staffing of the venue for the event, including  
27 but not limited to security, concessions, concierge, and other similar facility controlled  
28 portions of the event. At the conclusion of the show, during the "settlement meeting"

1 phase, the venue then normally presents the producer/promoter with all expense  
2 records, costs of services for the venue, rent due, etc. and the venue and  
3 producer/promoter thereupon agree to the proper distribution of the show revenue,  
4 which has been held "in trust" by the ticketing agency/service provider. At the  
5 "settlement meeting", or shortly thereafter, based upon the "settlement documents" from  
6 the "settlement meeting", the ticketing agency/service provider which has been holding  
7 the funds in trust for the venue and producer/promoter then disperses the funds, first to  
8 the venue for amounts owed and agreed to, and then distributes the remaining funds to  
9 the producer/promoter of the show.

10 13. In or about 2004, ICON began conducting business with FOX and their  
11 employees, representatives and assigns for the purpose of booking and renting the Fox  
12 Theater in Bakersfield, California (the "venue") in order to produce and promote live  
13 entertainment shows at that location.

14 14. From in or about 2004, through in or about 2010, ICON would often  
15 negotiate and contract with FOX through their "general manager" for use of the Fox  
16 Theater venue. Pursuant to industry standards and past practices, ICON would deal  
17 directly with this person for the purposes of reserving and booking of the venue,  
18 executing all necessary documents and contracts, and upon the completion of the  
19 show, the settlement and distribution of funds. Similarly, the FOX would routinely  
20 designate and require Vallitix as the ticketing agency for the shows being  
21 produced/promoted at their Fox Theater venue.

22 15. In or about 2010, FOX had an agreement with DBL Entertainment, Inc.  
23 (hereafter "DBL") to provide services as the "general manager" of the Fox Theater on  
24 behalf of FOX. As such, FOX informed ICON that DBL would thereafter be their  
25 "general manager" for the purposes of booking and/or renting the Fox Theater venue  
26 and facility.

27 16. During the time that DBL managed the Fox Theater on behalf of FOX,  
28 FOX board members, officers, directors, and/or other employees would remain involved

1 in the process and arrangements for ICON, and others, to rent and/or otherwise use the  
2 facility and venue. In this regards, FOX informed ICON that DBL would manage all  
3 negotiations and terms on their behalf, but FOX still often remained involved and/or  
4 present for such negotiations and events.

5 17. In or about 2012, Danny Lipco, the lead for DBL, passed away. Although  
6 DBL continued to manage and run the Fox Theater for FOX, in or about March, 2015,  
7 FOX elected to present a Request for Proposals (hereafter "RFP", attached hereto as  
8 Exhibit 1) to the industry and public to seek a new manager and/or management agency  
9 for the Fox Theater.

10 18. At the time that FOX elected to present the RFP, BOB BENDER and the  
11 BENDER DEFENDANTS were friends, acquaintances, and/or business partners with  
12 several members of the FOX Board of Directors.

13 19. On information and belief, it is asserted that in response to the RFP,  
14 numerous large and medium agencies reviewed the terms of the proposal and the  
15 requirements presented by FOX, and determined that such a contract was not possible  
16 to successfully enter into, and that it was "set up to fail" and/or be economically  
17 unfeasible for anyone that submitted a response or entered into such a contract.

18 20. On information and belief, it is asserted that FOX intentionally presented  
19 such a RFP with the intent to preclude, prevent, or otherwise discourage the submission  
20 of responses from otherwise established, successful, reputable, knowledgeable and/or  
21 capable agencies, such that the contract and agreement could then be awarded to the  
22 BENDER DEFENDANTS, whom did not have such reputation, knowledge, financial  
23 stability, insurance, and/or capacity to so manage as required within the RFP.

24 21. On information and belief, it is asserted that FOX entered into an  
25 agreement with the BENDER DEFENDANTS in or about September, 2016, knowing  
26 that BOB BENDER and/or the BENDER DEFENDANTS did not meet the qualifications,  
27 nor had the financial capacity, bonding, insurance, and/or support pursuant to the RFP  
28 requirements, or as otherwise reasonable within the industry for such a position.

1           22.    In or about August, 2015, ICON representatives met and spoke with FOX  
2 and/or its representatives in regards to problems they had encountered during a recent  
3 show at the Fox Theater.

4           23.    On or about September 1, 2015, Scott Fieber, a member of the Board of  
5 Directors for FOX, and whom ICON had met with in August, 2015 to discuss the  
6 problems and issues they had in recent shows at the FOX, provided ICON with BOB  
7 BENDER and/or the BENDER DEFENDANTS contact information, informing ICON that  
8 moving forward the BENDER DEFENDANTS would be the "GM" and contact on behalf  
9 of FOX to discuss such issues and/or concerns, and that BOB BENDER was the person  
10 in control of the decisions for the BENDER DEFENDANTS and FOX.

11          24.    Although on or about September 1, 2015, FOX informed ICON that BOB  
12 BENDER and/or the BENDER DEFENDANTS would thereafter be the contact person  
13 for all purposes on behalf of FOX as General Manager for FOX, FOX indicated that  
14 BOB BENDER and/or the BENDER DEFENDANTS would not begin under contract until  
15 January 1, 2016. As such, ICON was still in contact with FOX representatives and/or  
16 employees, DBL/Avenutek, and BOB BENDER and/or the BENDER DEFENDANTS in  
17 regards to shows they had already been working on arrangements for, as well as  
18 arrangements for new and/or additional shows at the Fox Theater into the 2016 year.

19          25.    On information and belief, it is asserted that FOX and/or the BENDER  
20 DEFENDANTS entered into a contract for the purpose of managing the Fox Theater  
21 facility as General Manager, or another similar title and/or capacity, effective January 1,  
22 2016.

23          26.    Subsequent to being informed by FOX that the BENDER DEFENDANTS  
24 would be managing the FOX facility on behalf of FOX, ICON often contacted and  
25 contracted through the BENDER DEFENDANTS for use of the Fox facility during the  
26 2016 year, as well as preparations for shows during 2017.

27          27.    Throughout the time working with the BENDER DEFENDANTS, ICON  
28 would often work with Dawn Wright, a representative of the BENDER DEFENDANTS,

1 whom would often be involved in the final end of show "settlement meeting" and  
2 process on behalf of the BENDER DEFENDANTS.

3 28. During the time that ICON was negotiating through the BENDER  
4 DEFENDANTS for use of the FOX facility, ICON would also frequently have direct  
5 communications with FOX and/or its other representatives as to the use and rental  
6 terms for the facility.

7 29. During the course of 2016, ICON booked and held multiple live  
8 entertainment productions at the FOX facility.

9 30. In working with the BENDER DEFENDANTS, BOB BENDER and/or the  
10 BENDER DEFENDANTS informed ICON that the operational policy was to be changed  
11 from requiring use of ValliTix as the venue sales and/or box office service company to  
12 use of a different company-- eTix.

13 31. During 2016, ICON asked FOX and/or the BENDER DEFENDANTS to  
14 change the policy back to use of ValliTix as opposed to eTix as mandated by BOB  
15 BENDER and/or the BENDER DEFENDANTS due to concerns of fiscal management  
16 and policy for security of the funds held in escrow for ICON. FOX informed ICON that no  
17 change could be made and that the BENDER DEFENDANTS were in control of the  
18 policy, although ICON is informed and believes, and thereupon alleges that such  
19 changes were in fact made by FOX for other companies/agencies during this time  
20 period.

21 32. In or about December, 2016, ICON began hearing rumors that FOX was  
22 going to terminate its relationship with the BENDER DEFENDANTS due to various  
23 issues, involving possibly financial misdealings, misdealing, and/or other fiscal concerns  
24 and problems, including substantial unpaid debt owed by BOB BENDER and/or the  
25 BENDER DEFENDANTS to FOX and others on behalf of FOX.

26 33. In or about late December, 2016 to January, 2017, ICON heard rumors  
27 that FOX had terminated the contract with BOB BENDER and/or the BENDER  
28 DEFENDANTS, effective January 1, 2017.

1           34. In or about January, 2017, ICON was informed during a phone discussion  
2 by Gilbert LaRoque, whom had previously been working for the BENDER  
3 DEFENDANTS during 2016, that "I Don't know if you've heard from Bob, but he is no  
4 longer going to be manager. I am taking over as G.M. [General Manager], working for  
5 the Fox Foundation [FOX]".

6           35. On or about January 9, 2017, Gilbert LaRoque, by and through his  
7 position with FOX, emailed ICON confirming that he would now be taking over the  
8 position from the BENDER DEFENDANTS on behalf of FOX as General Manager of the  
9 Fox Theater facility.

10           36. During communications with LaRoque, ICON asked what would happen  
11 with the shows already contracted, booked and scheduled to occur in the coming  
12 months. In response, ICON was informed that FOX had decided that the BENDER  
13 DEFENDANTS "will settle those shows", and thus continue with the management  
14 aspects and details for FOX through those events.

15           37. In response to the directive by FOX that the BENDER DEFENDANTS  
16 would "settle the shows" then currently scheduled but yet to occur, ICON  
17 representatives stated that they were uncomfortable with such requirements at that  
18 point.

19           38. In conjunction with expressing their concerns, ICON asked LaRoque, as  
20 the new General Manger for FOX if they could switch from using eTix back to using  
21 ValliTix for the remaining shows booked through the BENDER DEFENDANTS.

22           39. In response to ICON'S request to change from using eTix to ValliTix,  
23 LaRoque told ICON "let me check on that". Subsequently, LaRoque informed ICON,  
24 "the Board [of directors for FOX] said No."

25           40. During the time in 2016 that ICON was working with the BENDER  
26 DEFENDANTS, BOB BENDER and/or the BENDER DEFENDANTS would present  
27 ICON with a contract nearly identical to that previously used by FOX in dealing directly  
28



1 with ICON on previous shows, but which was modified to identify the BENDER  
2 DEFENDANTS as the new representative for the Fox Venue.

3 41. During the end of 2016, ICON had arranged shows at the FOX facility for  
4 Brian Regan on or about February 9, 2017, Kevin Smith on or about April 22, 2017, and  
5 Jeff Dunham for 2 shows on or about May 11 and May 12, 2017.

6 42. In preparation for the Brian Regan show in February, 2017, the BENDER  
7 DEFENDANTS sent ICON the contract as anticipated.

8 43. In preparation for the Smith and Dunham shows, in early 2017, ICON  
9 repeatedly attempted to contact BOB BENDER and/or the BENDER DEFENDANTS to  
10 obtain the written contracts for those shows, as such was needed for the purposes of  
11 obtaining required insurance coverage. However, BOB BENDER and/or the BENDER  
12 DEFENDANTS did not timely respond and/or provide the necessary documents and  
13 information as requested and required.

14 44. In or about March, 2017, ICON discussed the lack of communication from  
15 BOB BENDER and/or the BENDER DEFENDANTS issue with FOX representatives. As  
16 a result, FOX sent ICON contracts for the Smith and Dunham shows on March 11 and  
17 March 22, 2017, respectively. ICON executed and returned the documents to FOX on or  
18 about March 15, 2017 and April 28, 2017, respectively. True and Correct copies of  
19 these documents are attached hereto as Exhibits 2 and 3, respectively.

20 45. Although having difficulty in making direct contact with BOB BENDER in or  
21 about March, 2017 and thereafter, ICON was able to make sufficient contact with the  
22 BENDER DEFENDANTS employees, agents or other representatives, as well as those  
23 of FOX to make the necessary accommodations and arrangements to proceed with the  
24 Smith and Dunham shows.

25 46. After the conclusion of the Kevin Smith show, and as customary in the  
26 industry as well as all previous shows with FOX and/or the BENDER DEFENDANTS,  
27 ICON completed the shows and attended the after show "settlement" meeting.  
28

1 However, BOB BENDER was not present, but the regular designated employee of the  
2 BENDER DEFENDANTS was present, as well as various FOX employees.

3 47. At the time of the "settlement meeting" for the Kevin Smith show, it was  
4 determined that, from the ticket sales and revenue collected, after deductions and  
5 payments were made to FOX and all other interested parties having valid and approved  
6 claims, ICON was due the remaining balance of \$19,791.25 then held by the BENDER  
7 DEFENDANTS.

8 48. During this "settlement meeting" for the Kevin Smith show, all actions and  
9 procedures as usual occurred, with the exception of FOX the BENDER DEFENDANTS  
10 tendering to ICON the funds then due. At this time ICON was informed by FOX and/or  
11 the BENDER DEFENDANTS representatives that BOB BENDER was ill or otherwise  
12 predisposed and unable to attend, but that the funds would be made available  
13 immediately thereafter via wire transfer and/or other electronic transfer.

14 49. Subsequent to the conclusion of the Kevin Smith show, ICON made  
15 numerous attempts to contact BOB BENDER and/or the BENDER DEFENDANTS, and  
16 made demand both verbally and electronically for payment of the outstanding funds.  
17 However, the BENDER DEFENDANTS did not respond to ICON, although their  
18 remaining employees informed ICON that they "would get back" to them, and that the  
19 funds would be "wired" to them promptly.

20 50. As was customary in preparation for upcoming shows, ICON made  
21 numerous attempts to contact BOB BENDER and/or the BENDER DEFENDANTS to  
22 discuss the pending Jeff Dunham shows, and to discuss venue expenses, sales, day of  
23 show logistics, and other issues, as was typical and customary for such events.

24 51. After nearly 2 weeks of not receiving a response from BOB BENDER  
25 and/or the BENDER DEFENDANTS, and no tendering of the outstanding funds from the  
26 Kevin Smith show, ICON contacted FOX General Manager Gilbert LaRoque to discuss  
27 the problems, and insisted upon a meeting with FOX to discuss the financial issue, as  
28 well as the pending Jeff Dunham shows set to occur within a couple days thereof.

1           52.    On or about May 10, 2017, ICON met with FOX representatives and board  
2 members to discuss the non-payment of the Kevin Smith funds and the inability to make  
3 contact with BOB BENDER and/or the BENDER DEFENDANTS, as well as the impact  
4 on the pending Jeff Dunham shows set to be performed on May 11 and 12, 2017.

5           53.    During the meeting, FOX informed ICON that they were aware BOB  
6 BENDER and/or the BENDER DEFENDANTS had, for some time, been having financial  
7 issues and/or difficulties, and that they were previously aware that the BENDER  
8 DEFENDANTS had not been paying bills, paying other promoters their due funds,  
9 and/or otherwise not paying outstanding obligations.

10          54.    During discussions at this meeting, it was noted by FOX personnel that  
11 they had been in contact with BOB BENDER and/or the BENDER DEFENDANTS, and  
12 had become aware that there was "no money" to tender to ICON for the Kevin Smith  
13 show.

14          55.    After being informed that FOX was previously aware that the BENDER  
15 DEFENDANTS did not have ICON'S revenues from the Kevin Smith show, ICON  
16 inquired about the revenues for ticket sales for the pending Jeff Dunham shows, to  
17 which FOX informed ICON that the funds and revenues from sales of those shows were  
18 also "gone".

19          56.    At that time FOX begged of ICON not to cancel the pending Jeff Dunham  
20 shows set to start the following day as there was "no money to refund the tickets" if the  
21 shows did not occur.

22          57.    During the discussion on May 10, 2017, in an effort to convince ICON not  
23 to cancel the pending Jeff Dunham shows, FOX agreed to waive any facility or other  
24 charges due them (and usually paid at the "settlement" phase after the shows from the  
25 revenues being held in trust) if ICON would proceed with the shows as scheduled.

26          58.    Based upon the representations by FOX, and in order to attempt to  
27 preserve their professional reputation and integrity both in the industry and with the  
28 contracted Artist, ICON agreed to proceed with the Jeff Dunham shows set for May 11

1 and 12, 2017 at the Fox venue, and proceed with the expectation that the BENDER  
2 DEFENDANTS and/or FOX would tender the funds due at the "Settlement Meeting" at  
3 the conclusion of those shows.

4 59. After conclusion of the second Jeff Dunham show on or about May 12,  
5 2017, ICON attended the after show "settlement meeting" pursuant to standard industry  
6 practice as well as previous events with FOX and/or the BENDER DEFENDANTS to  
7 "settle" any debts and distribute the funds held in trust from the sales and revenues of  
8 the show.

9 60. As with the Kevin Smith show, at the conclusion of the Jeff Dunham  
10 shows, a representative for the BENDER DEFENDANTS was present at the show and  
11 attended the "settlement meeting" at the conclusion of the event, and there at  
12 acknowledged and executed the "settlement" terms. As with the Kevin Smith show, the  
13 BENDER DEFENDANTS did not tender ICON the money they held in trust on their  
14 behalf, nor did they tender the funds to FOX and/or other vendors which were normally  
15 to be paid from the proceeds.

16 61. At the time of the "settlement meeting" for the Jeff Dunham shows, it was  
17 determined that, from the ticket sales and revenue collected, after deductions and  
18 payments were withheld to pay to FOX and all other interested parties for all  
19 outstanding debts, ICON was due the remaining balance of \$134,235.00. These funds  
20 were then being held in trust by the BENDER DEFENDANTS, in and for the benefit of  
21 their employer, supervisor, master and/or agency, FOX. During this "settlement  
22 meeting", all actions and procedures as usual occurred, with the exception of the  
23 BENDER DEFENDANTS tendering to ICON the funds then due.

24 62. Subsequent to the Jeff Dunham and Kevin Smith shows, ICON has made  
25 repeated demands for payment and attempts to contact the BENDER DEFENDANTS to  
26 ascertain the whereabouts of the funds they were holding for ICON, but have received  
27 no response from BOB BENDER and/or the BENDER DEFENDANTS. However, BOB  
28

1 the BENDER DEFENDANTS have refused, and continue to refuse to respond to ICON  
2 or otherwise account for the funds.

3 63. Subsequent to the Jeff Dunham and Kevin Smith shows, ICON has made  
4 demand for payment upon FOX to ascertain the whereabouts of the funds that their  
5 agents, employees, and/or assigns, the BENDER DEFENDANTS were in possession of  
6 for ICON, but FOX has refused, and continues to refuse to tender said funds to ICON or  
7 otherwise account for their whereabouts or disposition.

8 64. FOX has made demand upon ICON for payment of the funds alleged due  
9 unto them, but which were held for payment to them by their agent, employee, and/or  
10 assign BENDER DEFENDANTS. Further, said demands are for funds which FOX  
11 verbally agreed to forgo from ICON if they would not cancel the shows, which would  
12 require FOX and/or their agent, employee and/or assign the BENDER DEFENDANTS  
13 to reimburse all ticket purchasers, vendors and others.

14 65. Subsequent to the Jeff Dunham show, and not being paid at the  
15 "settlement meeting", ICON contacted eTix to inquire of the disposition of the funds, and  
16 thereupon learned that the BENDER DEFENDANTS had arranged terms with eTix that  
17 eTix would, on an ongoing basis upon receipt of any funds from sales of tickets,  
18 immediately disperse the funds collected from sales and/or other revenue sources, to  
19 the BOB BENDER and/or the BENDER DEFENDANTS.

20 66. Based upon the information obtained from speaking with eTix, ICON then  
21 learned that the contractual arrangements made between eTix and BOB BENDER  
22 and/or the BENDER DEFENDANTS circumvented the industry standards in place to  
23 protect promoters such as ICON by having the ticketing company hold the funds in  
24 escrow and in trust for the venue and producer/promoters, and instead delivering the  
25 funds directly to BOB BENDER and/or the BENDER DEFENDANTS prior to the  
26 "settlement" procedures normal within the industry and as routinely completed between  
27 ICON and FOX and/or the BENDER DEFENDANTS, which the industry standard held  
28 to prevent carrying off, conversion, and/or loss of the funds.

1 67. Based upon information and belief, it is thereupon alleged that during  
2 January, 2017, the BENDER DEFENDANTS made a payment in excess of \$80,000.00  
3 to FOX to settle and/or otherwise pay debts or claims owed by the BENDER  
4 DEFENDANTS to FOX and other creditors contracted with through FOX. It is also  
5 believed and asserted that part of this "settlement" was to either explicitly or implicitly  
6 allow BENDER to continue to collect the funds from the sales of tickets for the ICON  
7 shows, with the knowledge, understanding, and/or reasonable belief by FOX that the  
8 BENDER DEFENDANTS would not tender to ICON the funds then due subsequent to  
9 those shows.

10 68. Inclusive with the contracts issued by BOB BENDER and/or the BENDER  
11 DEFENDANTS, and by FOX is language providing for an award of attorney's fees.

12  
13 **FIRST CAUSE OF ACTION**

14 **(Breach of Contract- written)**

15 **(As against FOX, the BENDER DEFENDANTS, and does 1-50, inclusive)**

16 69. ICON hereby re-alleges and incorporates the allegations set forth above in  
17 paragraphs 1 through 69 above as if set forth fully herein.

18 70. As set forth above, ICON had a contractual history with FOX for the use  
19 and rental of their facility, the FOX Theater.

20 71. During the end of 2015 through the beginning of 2017, FOX contracted  
21 with the BENDER DEFENDANTS to act as their agent, representative and/or manager  
22 to handle the transactions on their behalf as to the rental of the FOX Theater.

23 72. In the course of business, ICON, by direction of FOX, negotiated and  
24 contracted with the BENDER DEFENDANTS for use of the FOX Theater.

25 73. Although FOX elected to terminate its contractual relationship with the  
26 BENDER DEFENDANTS effective January 1, 2017, they nevertheless mandated that  
27 ICON continue to work with, through and at the direction of the BENDER  
28 DEFENDANTS for use of the FOX Theater for shows which had been planned during

1 the 2016 year, but were to occur after the January 1, 2017 termination of the agreement  
2 between FOX and the BENDER DEFENDANTS.

3 74. Although in the course and scope of the relationship with the BENDER  
4 DEFENDANTS, it was customary for the BENDER DEFENDANTS to present ICON with  
5 the written agreement on behalf of FOX, upon demand for the written contracts for the  
6 Kevin Smith and Jeff Dunham events, the BENDER DEFENDANTS did not reply.  
7 Subsequently, ICON was presented with a proposed written agreement by FOX relating  
8 to the Kevin Smith and Jeff Dunham shows, which ICON timely executed and returned  
9 to FOX. Attached hereto as Exhibits 2 and 3.

10 75. Inclusive in the terms of the contracts issues by FOX was that the service  
11 provider for managing sales and receipts of revenue was to be ValliTix.

12 76. Despite the terms in the contract, and the requests by ICON to return to  
13 the use of ValliTix, FOX, thru their agent, employee, representative, and/or assign, the  
14 BENDER DEFENDANTS, ICON was required to utilize the services of the eTix service  
15 provider previously mandated by BENDER DEFENDANTS and FOX, which allowed the  
16 revenues from ticket sales to be placed directly into the custody and control of the  
17 BENDER DEFENDANTS.

18 77. Unbeknownst to ICON, the FOX's agent, employee, representative and/or  
19 assign, the BENDER DEFENDANTS had a contractual relationship with eTix which  
20 permitted the revenues from the sales of tickets for scheduled performances which  
21 would normally be held in trust by the service provider until the conclusion of the shows,  
22 to be promptly and routinely tendered and delivered directly to BOB BENDER and/or  
23 the BENDER DEFENDANTS before the "settlement" of the show, as would normally be  
24 performed by ValliTix or other similar service providers in the industry.

25 78. At no time did the BENDER DEFENDANTS have any contractual rights or  
26 interests in the funds from the Kevin Smith show or the Jeff Dunham shows by way of  
27 any contracts with ICON. (Exhibits 2 and 3).

28

1           79. At no time did FOX have any contractual rights or interests in the funds  
2 from the Kevin Smith show or the Jeff Dunham shows other than the portion to be  
3 distributed to them for facility rental or otherwise specified within the "settlement  
4 Agreement" from the end of those events, or the Contracts in general, and which were  
5 agreed to be "waived" by way of verbal representations. (Exhibits 2 and 3).

6           80. Contrary to the terms of the Contracts and pursuant to industry standard,  
7 FOX, in conjunction with the BENDER DEFENDANTS, failed to remit the funds due to  
8 ICON for the revenues generated by the Kevin Smith and Jeff Dunham shows.

9           81. Despite demand, FOX and/or their agent, employee, representative, or  
10 assign, the BENDER DEFENDANTS, have failed and continue to fail to remit the funds  
11 to ICON pursuant to the terms of the contract.

12           82. Based upon the foregoing, FOX, and/or the BENDER DEFENDANTS  
13 have breached the terms of the contracts between them.

14           83. As a direct and proximate result of the breaches of the contracts, ICON  
15 has been injured in an amount in excess of \$154,026.25.

16           84. Based upon the terms of the contracts, ICON is entitled to an award of  
17 their legal costs, including attorney's fees.

18   **SECOND CAUSE OF ACTION**

19   **(COMMON COUNTS-MONEY HAD AND RECEIVED)**

20   **As Against All Defendants**

21           85. ICON hereby re-alleges and incorporates the allegations set forth above in  
22 paragraphs 1 through 84 above as if set forth fully herein.

23           86. Within the past 2 years, FOX, and their agent, the BENDER  
24 DEFENDANTS have become indebted to ICON in the sum of \$154,026.25 for money  
25 had and received by them for the use and benefit of ICON.

26           87. The funds received by FOX and/or the BENDER DEFENDANTS and took  
27 into their possession were in equity and in good conscious the property of ICON.  
28





1           96.    ICON hereby re-alleges and incorporates the allegations set forth above in  
2 paragraphs 1 through 95 above as if set forth fully herein.

3           97.    At the time that FOX contracted with the BENDER DEFENDANTS, they  
4 knew or reasonably should have known that the BENDER DEFENDANTS did not  
5 possess the skills, qualifications, financial stability, or general ability to properly and  
6 adequately perform the duties, and maintain the trusts and integrity expected of a  
7 person/entity in such a position.

8           98.    During the course and scope of the relationship between FOX and the  
9 BENDER DEFENDANTS, with the BENDER DEFENDANTS working as their agent,  
10 employee, representative and/or assign, FOX knew or reasonably should have known  
11 that the BENDER DEFENDANTS had, or were likely to, planning to, or otherwise  
12 intended to convert, abscond with, misappropriate, embezzle, and/or otherwise take the  
13 funds of clients, such as but not limited to ICON.

14           99.    During the course of the business relationship with ICON, FOX became  
15 aware of and in possession of knowledge regarding the BENDER DEFENDANTS in that  
16 they were experiencing extreme financial problems and difficulties, and failing to make  
17 payments to FOX and others.

18           100.   In conjunction with discussions with the BENDER DEFENDANTS, and  
19 their other clients, FOX became aware of the actual and/or potential fraud,  
20 embezzlement, conversion and/or theft of funds from people and/or businesses such as  
21 ICON by the BENDER DEFENDANTS through the use of the eTix service as opposed  
22 to the use of ValliTix or another provider.

23           101.   On or after April 22, 2017, FOX was aware that the BENDER  
24 DEFENDANTS had taken, converted, or otherwise absconded with the ticket sales  
25 revenue rightfully belonging to ICON, and that with the pending Jeff Dunham shows and  
26 the continued sales of said show tickets, the BENDER DEFENDANTS were taking,  
27 and/or likely to similarly take, convert or otherwise abscond with the revenues for the  
28 Jeff Dunham shows.



1 the funds raised by the sales of tickets and other proceeds from the shows created,  
2 promoted, arranged, and produced by ICON.

3 109. Based upon the contractual terms and industry standard practices, FOX  
4 and their agent, employee, representative and/or assign the BENDER DEFENDANTS  
5 held the funds collected from the sales of the tickets and other revenue sources in trust  
6 for ICON.

7 110. As set forth above, neither FOX nor the BENDER DEFENDANTS hold any  
8 legal, contractual, equitable or existing claims to the funds which they held in trust for  
9 ICON, other than those agreed upon and accounted for at the closing of the shows.

10 111. The defendants, and each of them, breached their fiduciary duties to  
11 ICON by failing to protect, ensure, and deliver the funds they held in trust to ICON as  
12 set forth above.

13 112. The breach of the fiduciary duties owed to ICON has been the proximate  
14 cause of ICON being damaged in the sum of \$154,026.25.

15 113. The aforementioned acts of DEFENDANTS, and each of them, were  
16 willful, wanton, malicious, and oppressive, and done with the intent to defraud and  
17 deprive ICON of their property, and justify the awarding of exemplary and punitive  
18 damages in an amount to be established at trial.

19  
20 **SIXTH CAUSE OF ACTION**

21 **(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)**

22 **As Against All Defendants**

23 114. ICON hereby re-alleges and incorporates the allegations set forth above in  
24 paragraphs 1 through 113 above as if set forth fully herein.

25 115. ICON entered into a contract with FOX, by and through their agent,  
26 employee, representative and/or assign the BENDER DEFENDANTS.

27 116. ICON performed all, or substantially all of the significant terms that the  
28 contracts required of ICON, or was otherwise excused from having to do those things.

1           117. The DEFENDANTS, and each of them, unfairly interfered with ICON'S  
2 right to receive the benefits of the contract.

3           118. As a direct and proximate result of the actions of the DEFENDANTS,  
4 ICON has been harmed in the sum of \$154,026.25.

5           119. The aforementioned acts of DEFENDANTS, and each of them, were  
6 willful, wanton, malicious, and oppressive, and done with the intent to defraud and  
7 deprive ICON of their property, and justify the awarding of exemplary and punitive  
8 damages in an amount to be established at trial.

9

10

### **SEVENTH CAUSE OF ACTION**

11

#### **(CONSTRUCTIVE TRUST/UNJUST ENRICHMENT/RESTITUTION)**

12

#### **As Against All Defendants**

13

120. ICON hereby re-alleges and incorporates the allegations set forth above in  
14 paragraphs 1 through 119 above as if set forth fully herein.

15

121. As set forth above, the Kevin Smith and Jeff Dunham shows were  
16 contracted by, created, promoted, arranged, and produced by ICON at the FOX Theater  
17 in Bakersfield, California.

18

122. Based upon their efforts and actions, in performance of their routine  
19 business practices, ICON became entitled to the proceeds, profits and/or revenues  
20 generated from the creation, promotion, arrangement and/or production of the shows.

21

123. As set forth above, DEFENDANTS became in possession, custody and  
22 control of the funds generated from the sales of tickets and other revenue sources for  
23 the Kevin Smith and Jeff Dunham shows.

24

124. DEFENDANTS hold no contractual, legal, equitable or valid claim to the  
25 funds, which they have themselves kept.

26

125. Based upon the forgoing, and pursuant to California Civil Code §§2223  
27 and 2224, the funds are being held in a constructive trust by the DEFENDANTS for the  
28 benefit of ICON in the amount of \$154,026.25.



1 deprive ICON of their property, and justify the awarding of exemplary and punitive  
2 damages in an amount to be established at trial.

3  
4 **NINTH CAUSE OF ACTION**  
5 **(NEGLIGENCE)**

6 **As Against FOX, Does 21-50.**

7 135. ICON hereby re-alleges and incorporates the allegations set forth above in  
8 paragraphs 1 through 134 above as if set forth fully herein.

9 136. FOX and/or Does 21-50 owed a duty to ICON to act reasonably and  
10 diligently in the performance of their duties owed to ICON by virtue of the contractual  
11 relationship between them, and to prevent harm to ICON by way of FOX's agents,  
12 employees, representatives and/or assigns.

13 137. Based upon information and belief, FOX knew or had reasonable  
14 knowledge that the BENDER DEFENDANTS, by utilizing the eTix provider, were  
15 circumventing the normal and industry standard procedures in place to protect persons  
16 and/or businesses such as ICON.

17 138. Despite requests by ICON to comply with the terms of the contracts and to  
18 utilize the services of ValleyTix, FOX refused and insisted on the use of eTix and the  
19 BENDER DEFENDANTS in the management of the contracts for FOX.

20 139. By mandating that ICON continue working with the BENDER  
21 DEFENDANTS and comply with the BENDER DEFENDANTS demands that eTix be  
22 utilized for the ticketing process despite the terms in the FOX contracts to utilize  
23 ValleyTix, and without providing notice to ICON of the procedures and terms within the  
24 BENDER DEFENDANTS' agreements with eTix, FOX breached its duty to ICON.

25 140. FOX and/or Does 21-50 further breached its duty owed to ICON by failing  
26 to properly supervise, govern, control, monitor and oversee their agent, employee,  
27 representatives and/or assigns, the BENDER DEFENDANTS and/or Does 1-20.

28

