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**Awaiting Results from June 2010*
California Bar Exam

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

CAITLIN SANCHEZ, performing as
"DORA THE EXPLORER,"

Plaintiff,

-against-

MTV NETWORKS, a division of
Viacom, International, Inc., d/b/a
NICKELODEON,
NICKELODEON/VIACOM CONSUMER
PRODUCTS, INC.,

Defendants.

Index No.: _____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Caitlin Sanchez ("Caitlin"), a minor, through her mother, Hilda Sanchez ("Hilda"), upon information and belief, upon personal knowledge as to her experiences, and based on the investigation conducted by and through her attorneys, Balestriere Fariello, respectfully alleges as follows:

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EXHIBITS

- Exhibit A Nickelodeon Contract signed April 6, 2007
- Exhibit B Amendment signed January 8, 2009 (back dated to October 22, 2008)
- Exhibit C First CESD Contract signed October 18, 2006
- Exhibit D Second CESD Contract signed April 10, 2007
- Exhibit E Third CESD Contract signed June 20, 2008
- Exhibit F 2:53 PM Email from Keah Larsen sent on April 6, 2007
- Exhibit G 4:00 PM Email from Jason Bercy sent on April 6, 2007
- Exhibit H 4:30 PM Email from Jason Bercy sent on April 6, 2007
- Exhibit I 5:08 PM Email from Jason Bercy sent on April 6, 2007
- Exhibit J 5:21 PM Fax Confirmation sent by Hilda Sanchez on April 6, 2007
- Exhibit K AFTRA Rule 12-C
- Exhibit L AFTRA Computer Generated Animation and Television Agreement
- Exhibit M Amendment Email from Jason Bercy sent on January 8, 2009

PRELIMINARY STATEMENT

1. MTV Networks, a division of Viacom International, Inc. ("Viacom"), doing business as Nickelodeon ("Nickelodeon"), through its production company, Uptown Productions, Inc. ("Uptown") and its merchandise licensing company Nickelodeon/Viacom Consumer Products, Inc. ("Nickelodeon Consumer Products" together with Nickelodeon "Defendants"), has swindled the young girl, Caitlin Sanchez ("Caitlin"), who provides one of the most recognized voices in children's entertainment, that of Dora the Explorer ("Dora"). Caitlin is due millions of promised compensation for merchandizing, re-runs (also known as "residuals"), promotional work, and recordings.

2. Through an unconscionable contract ("the Initial Nickelodeon Contract" or "the Initial Contract," signed April 6, 2007, attached hereto as Exhibit A, and the "Nickelodeon Amendment" or "the Amendment," signed January 8, 2009, attached hereto as Exhibit B, collectively, "the Nickelodeon Contract" or "the Contract") with convoluted, vague, incomplete, and misrepresented terms, Nickelodeon and Nickelodeon Consumer Products, through Caitlin's talent agency, Cunningham-Escott-Slevin-Doherty Talent Agency, Inc. ("CESD"), and her agent at CESD, Jason Bercy ("Bercy"), deceived a young girl and her family, and in so doing, received enormous value from Caitlin without adequate compensation.

3. Since April 6, 2007, when Caitlin and her family signed the Initial Nickelodeon Contract, CESD and Defendants have either perpetrated a series of

purposeful misrepresentations or refused to provide Caitlin and her family essential information. Defendants did this, at first, to induce Caitlin to sign the Nickelodeon Contract. But, Defendants continue to force her to work for Nickelodeon under their own unconscionable contract without adequate compensation. Nickelodeon and Nickelodeon Consumer Products, colluding with CESD, and/or Bercy, never intended to actually fulfill the promises they or their agents made to Caitlin, and instead, purposefully presented her a bizarre, impenetrable, unconscionable Contract which relies on undefined terms and references other agreements Caitlin never saw, pressured her to sign the Contract, hid information relevant to Caitlin's compensation, contorted the terms of the Contract, and made material misstatements and omissions to mislead Caitlin and her family for three and a half years. Defendants used Caitlin, unjustly enriching themselves with millions of dollars in profits from the series and branded products ("the Dora Brand") which Caitlin performed and promoted.

4. Working together, Defendants and CESD continually, maliciously, and purposefully misrepresented or omitted material facts, including but not limited to the following:

- a. the compensation Caitlin would receive for residuals;
- b. the compensation Caitlin would receive for merchandise products which she voiced;
- c. the compensation Caitlin would receive from recordings associated with initial series records;

- d. the compensation Caitlin would receive from marketing the entire Dora Brand;
- e. the number of seasons Caitlin would record;
- f. the type of services Caitlin must provide;
- g. the amount of services Caitlin must provide;
- h. the competitiveness of her compensation;
- i. the number of additional recordings for which Caitlin would be paid;
- j. the rate of compensation for additional recordings;
- k. the number of songs or musical recordings;
- l. the rate of compensation for songs or musical recordings;
- m. the number of hours and frequency of promotional events and interviews;
- n. the compensation for promotional events and interviews;

5. Defendants failed to adequately compensate Caitlin for all of these products and services, by either refusing to pay her for her services, or providing minimal misrepresented payments, which in no way reflect the value of her work nor even the compensation Defendants promised under Nickelodeon's own unconscionable contract.

6. Defendants have been unjustly enriched in the tens of millions of dollars through withheld residual payments, merchandising revenue, hundreds of hours of

uncompensated work promoting the enormously valuable Dora Brand, and hundreds of hours of undercompensated recordings. With no other recourse, after three and a half years of exploitation and lies, Caitlin and her family are forced to sue Nickelodeon and Nickelodeon Consumer Products to recover the compensation Caitlin is rightly owed, and to obtain relief from the damages incurred from Defendants' misconduct.

JURISDICTION AND VENUE

7. This Court has personal jurisdiction over the parties pursuant to CPLR § 301 and CPLR § 302(a)(1). The parties have all transacted business in the state of New York, many of the services in question took place in New York, and Nickelodeon and Nickelodeon Consumer Products have places of business in the state.

8. Venue is properly laid in New York County, New York pursuant to CPLR § 503 and CPLR § 509 because the parties transact business in New York County, and Defendants have offices located in New York County.

PARTIES

9. Caitlin Sanchez resides in the state of New Jersey. Her parents, Kevin Sanchez ("Kevin") and Hilda Sanchez ("Hilda") live with her in the state of New Jersey.

10. MTV Networks, a division of Viacom International, Inc., is a television network located at 1515 Broadway, New York, New York.

11. Viacom is a media company located at 1515 Broadway, New York, New York.

12. Nickelodeon/Viacom Consumer Products, Inc., is a media licensing subsidiary of Paramount Pictures, a wholly owned subsidiary of Viacom, and has offices at 1515 Broadway, New York, New York.

13. Uptown Productions, Inc. is a wholly owned subsidiary of Viacom and is a production company located at 1515 Broadway, New York, New York.

STATEMENT OF FACTS

Caitlin Becomes a Client of CESD and Bercy

14. Caitlin Sanchez is a fourteen year old talented actress, singer, musician, and marketing professional who embarked on her career in entertainment when she was eight years old.

15. As a young actress, Caitlin made several on screen appearances, including the roles of: Lupe Rojas on Law and Order: SVU in 2006; Monica and the White Queen in the independent film "Phoebe in Wonderland," released March 6, 2009; and Celia Vega, on NBC's Lipstick Jungle in 2008.

16. On October 18, 2006, Caitlin signed a contract with CESD ("the First CESD Contract," attached hereto as Exhibit C) with the expectation that their agents and support staff would help Caitlin not only land auditions for some of the most competitive roles, but also uphold their fiduciary duty to promote her career and to negotiate any contracts and advocate on her behalf with any potential employers.

17. Caitlin subsequently signed the Second CESD Contract on April 10, 2007 ("Second CESD Contract," attached hereto as Exhibit D), and the Third CESD Contract on June 20, 2008 ("Third CESD Contract," attached hereto as Exhibit E). These contracts

specify that the Agent agrees to the certain responsibilities, including but not limited, to the following:

- a. "to counsel and advise the Actor in matters which concern the Actor's professional interest in the legitimate theatre industry" (*see* Exhibit C, at 2, Section 8; Exhibit D, at 2, Section 8; Exhibit E, at 2, Section 8);
- b. "to be truthful in his/her statements to the Actor" (*see* Exhibit C, at 2, Section 8; Exhibit D, at 2, Section 8; Exhibit E, at 2, Section 8);
- c. "not to conceal facts from the Actor" (*see* Exhibit C, at 2, Section 8; Exhibit D, at 2, Section 8; Exhibit E, at 2, Section 8);
- d. "to maintain the relationship of a fiduciary to the Actor" (*see* Exhibit C, at 2, Section 8; Exhibit D, at 2, Section 8; Exhibit E, at 2, Section 8);
- e. "to not engage in dishonest or fraudulent practices in making or entering into this contract or the performance thereof" (*see* Exhibit C, at 2, Section 8; Exhibit D, at 2, Section 8; Exhibit E, at 2, Section 8);
- f. "to consider only the interest of the Actor in any dealings for the Actor pursuant to this contract, and never to consider or act in the interest of the Agent or any producer when such interest are

opposed to the interests of the Actor” (see Exhibit C, at 2, Section 8; Exhibit D, at 2, Section 8; Exhibit E, at 2, Section 8);

- g. “to make no biding engagement of other commitments on behalf of the Actor without the approval of the Actor and without first informing the Actor of the terms and conditions of such engagement or commitment” (see Exhibit C, at 3, Section 8; Exhibit D, at 3, Section 8; Exhibit E, at 3, Section 8);
- h. “as to the payment of compensation the agent shall be obligated to serve the Actor and perform obligations as required herein with respect to any employment contract or to any employment requiring the services of the Actor on which such compensation is based” (see Exhibit C, at 3, Section 8; Exhibit D, at 3, Section 8; Exhibit E, at 3, Section 8).

Caitlin Auditions For the Voice-Over Part of Dora for the Popular and High Grossing Show “Dora the Explorer”

18. On January 16, 2007, CESD set up an audition at CESD’s offices in New York for Caitlin for the role of Dora as a voice-over artist in the animated children’s show, Dora the Explorer.

19. Caitlin performed with CESD agent Bercy, who would eventually become her agent, and briefly sang for Nickelodeon’s Associate Casting Director, Michelle Levitt (“Levitt”).

20. Caitlin received two “call-backs,” second and third round auditions, in February 2007 and March 2007.

Caitlin Is Pressured Into Signing the Unconscionable Nickelodeon Contract

21. On or about April 4, 2007, Hilda received a call from Bercy stating Caitlin was in the running for the Dora role and that Nickelodeon would require her to do a “test record” on April 9, 2007, and require her to change her name from professional name of Rory J. Tyner to her given Hispanic name, Caitlin Sanchez, for promotional and marketing purposes.

22. On April 6, 2007, at 2:53 PM, three days before the “test record,” and without warning, Hilda received an email with the attached contract from CESD’s Keah Larsen (“Larsen”), assistant to Jason Bercy, with the instructions to “sign and fax right away ASAP” to Nickelodeon Legal Department (“the 2:53 PM Email,” attached hereto as Exhibit F). Immediately, at 3:05 PM, Hilda replied to the email because Caitlin’s name and address were incorrect.

23. At 4:00 PM, Jason Bercy sent via email a new updated contract (“the 4:00 PM Email,” attached hereto as Exhibit G). Soon after Hilda received a call from Larsen, who told her not to sign the contract she just received in the 4:00 PM Email because “something was missing,” which Larsen did not specify. At 4:30 PM, Bercy sent Hilda another email with a contract attached – this time the same exact incorrect contract that was emailed in the 2:53 PM Email – but with the email chain from Nickelodeon including directions from Catherine T. Katona, Esq. (“Katona”) at Nickelodeon that the

contract must be signed by 5:00 PM, and that Caitlin and Kevin, Hilda's husband, had to also sign as well ("the 4:30 PM Email," attached hereto as Exhibit H).

24. Hilda, at work, immediately called her husband Kevin, who brought Caitlin over to Hilda's office. Kevin and Caitlin arrived shortly after 5:00 PM. Hilda received the final draft of the contract from Bercy in an email he sent at 5:08 PM ("the 5:08 PM Email," attached hereto as Exhibit I), which was another forward from Katona, in which, she stated that the deadline to sign had been extended to 5:30 PM.

25. Bercy immediately called Hilda right after Hilda received the 5:08 PM Email. This was the first non-email contact Bercy had made with Hilda all day. Bercy informed Hilda that, pursuant to the contract, Nickelodeon would pay Caitlin \$5,115 per episode, which would be for up to four hours of recording, plus far more substantial compensation in the form of residuals and merchandising. The key compensation to Caitlin would be in residuals and merchandise, since the Dora Brand re-runs episodes at least two dozen times a week and has made in the billions of dollars, a percentage of which, albeit a small one, would be compensation to Caitlin because of her product recordings and promotion of the Dora Brand.

26. Bercy further told Hilda that the Contract "had to be signed that day" otherwise Nickelodeon would "pass on Caitlin for the part of Dora."

27. Despite high pressure that Nickelodeon, Bercy, and CESD were putting on the family, Hilda began to question some of the provisions of the Contract that she only had an opportunity to briefly skim, and asked if the family could have more time

to review it. Bercy told Hilda that the contract was “fine,” and that she and her family should “just sign it.” When she asked about seeking the advice of an attorney, he further advised her that there was “no time” to have a lawyer review the Contract because Nickelodeon “wanted everything signed right away.” Bercy said that there was no need to have anyone look it over because he “regularly negotiates contracts just like this” with Nickelodeon.

28. Pressuring the family further, Bercy informed Hilda that the contract was supposed to be signed at 5:00 PM (despite being sent in final form to the Sanchez family *after* 5:00 PM), and that Nickelodeon had “extended” the time for her family to sign to 5:30 PM. He reiterated the time pressure and threats, saying that if Nickelodeon did not receive the contract by 5:30 PM, they could not go forward with the promised “test record” scheduled for three days later on Monday, April 9, 2007, and Caitlin would be passed on the part.

29. Under extreme pressure, without counsel, and in reliance on the promises and advice of their agent, Hilda, Kevin, and Caitlin were forced to sign the fourteen page convoluted and complicated Initial Nickelodeon Contract in less than twenty-two minutes. Hilda had no legal background and no college degree, and was the only one of Kevin and Hilda who actually had an opportunity to barely skim the Initial Nickelodeon Contract. Kevin, who arrived only minutes before they faxed the Initial Contract back to Nickelodeon, also had no legal background, and a bachelor’s degree in health sciences and a certificate in physical therapy. Caitlin was twelve years old.

30. Nickelodeon received the Initial Nickelodeon Contract at 5:21 PM, only 13 minutes after Bercy sent Hilda the finalized contract (“Fax Confirmation Page,” attached hereto as Exhibit J).

31. Caitlin and her family were denied their right to counsel when signing the Nickelodeon contract and were forced to do so without even having time to read it themselves. The family had no advocate who could explain the convoluted, complicated, and, at times, even contradictory or completely undefined terms in the Initial Contract. Fearful of the consequences of pushing back on the harsh conditions and pressure imposed by Nickelodeon, Caitlin and her family were forced to agree to the whole Initial Nickelodeon Contract in its entirety without even reading, let alone understanding, its terms.

Nickelodeon, CESD, and Bercy Continue Their Pattern of Deceit While Caitlin Begins Work in Good Faith under the Unconscionable Contract

32. On April 9, 2007, Caitlin reported for her first day of work. There Caitlin recorded her first double episode, the first in Season 5, “Dora Saves the Snow Princess.”

33. The following day, Caitlin signed the Second CESD Contract extending her terms with CESD for three years and CESD’s and Bercy’s contractual commission from Caitlin’s work. (See Exhibit D).

34. Only a week after Caitlin started work as Dora, Defendants began exercising the misrepresented, convoluted, and unconscionable provisions in the Initial Nickelodeon Contract, which included references to the “collective bargaining agreement between AFTRA and UPI,” a contract which neither Caitlin nor her family

has ever received, nor even seen a copy. Caitlin was called in for additional recording for hours and Caitlin and/or her family were forced by Nickelodeon staff to sign timesheets which listed her rate at \$0.00. This was not only specifically in violation of the AFTRA Rules under which Caitlin works (including “Rule 12-C,” attached hereto as Exhibit K, and the “AFTRA Computer Generated Animation and Television Agreement,” attached hereto as Exhibit L), but marked the beginning of pattern of direct exploitation of the convoluted and misrepresented terms of the Initial Contract through which Nickelodeon and Nickelodeon Consumer Products avoided justly compensating Caitlin for her services.

35. Rather than fulfill their own promises and obligations in their own unconscionable Initial Contract and those directly promised by Bercy, Nickelodeon, along with Nickelodeon Consumer Products, used convoluted payment deduction clauses and additional free services provisions to under pay Caitlin for her acting and recordings, force her to work hundreds of hours marketing the Dora Brand for free—including interviews and other promotional events—and withhold her residual payments and merchandise percentages, all contrary to what she was originally promised.

36. Nickelodeon, and Nickelodeon Consumer Products’, misconduct includes, but is not limited to:

- a. Failing to fully compensate Caitlin for products she voiced, for which she is due a percentage of the products.

- b. Forcing Caitlin to complete, to date, 103 promotional events, constituting at least 500 hours of work, including on-camera interviews, signings and performances for free in successful promotions of the Dora Brand. For this work, Caitlin should have been compensated, at a minimum, her implied, average hourly rate for episodes of \$1,310.72, yielding, at least, \$650,000 in underpayment.
- c. Failing to pay Caitlin residuals for at least 325 re-runs of episodes she recorded, for each of which she should have been compensated at least her minimum exclusive fee of \$5,115, or per industry standard, as much as 5%-20% of Nickelodeon's gross income from re-airing of episodes in which Caitlin performed. The underpayment is at least \$1.6 million, and could be many multiple of that, but Defendants have refused to provide Caitlin information so that she can determine what she is due.
- d. Intentionally "stacking" Caitlin's recording sessions, and falsifying its records as sole-pick up sessions, when, in reality, these sessions included ADR, singing, and even full, new episodes sessions, swindling Caitlin out of her rightful salary for those sessions. For each of these sessions and as represented by Bercy, Caitlin should

have been paid her full session fee of \$5,115.00. This represents at least over \$100,000 in under compensation.

- e. Withholding paychecks that Defendants and/or CESD did issue for, at times, up to eight months after the services were rendered.
- f. Forcing Caitlin to perform for third party merchandise recordings without first signing a valid contract, and then after the fact, forcing her to retroactively sign contracts and agree to lower compensation for those services.

37. In taking advantage of a talented young girl and her family, Nickelodeon along with Nickelodeon Consumer Products, have profited at least hundreds of millions dollars: one third of Dora episodes have been voiced by Caitlin and Caitlin has recorded an untold number of highly profitable consumer products for the Dora Brand, all without just compensation. Through their misrepresentation and fraud, Nickelodeon and Nickelodeon Consumer Products have succeeded in paying Caitlin for only a small percentage of her time and a tiny fraction of her overall compensation, given she has been paid nearly nothing for merchandise, and absolutely nothing for residuals .

38. Despite the fact that this under compensation has continued almost since the beginning of the relationship, Caitlin and her family did not understand for a long time that she was being underpaid, and thus Caitlin began and continued to work for Nickelodeon from April 9, 2007 through the final recording of the Fifth Season (“the

Fifth Cycle,” or “the Fifth Season,” Caitlin’s first season voicing Dora) on October 3, 2007.

39. At the conclusion of recording, Nickelodeon had six months to exercise its contractual option to hire Caitlin for the Sixth Season (“the Sixth Cycle,” or “the Sixth Season,” Caitlin’s second and last season voicing Dora). However, April 3, 2008 came and went, with Nickelodeon failing to exercise the option, and Bercy failing to ensure that Nickelodeon fulfilled its end of the bargain. Meanwhile, and throughout 2008, it quickly became clear the Nickelodeon and Nickelodeon Consumer Products had no intention of fulfilling its contractual obligations and promises regarding Caitlin’s work. Instead of exercising the option and allowing her to continue to voice Dora, or terminating the exclusive Initial Nickelodeon Contract and allowing her to seek employment options elsewhere, Defendants and Bercy, in breach of the Initial Nickelodeon Contract, delayed with smoke and mirrors tactics every time Caitlin or her family asked about the renewal. However, it soon was clear what Defendants’ actual intent was: instead of using Caitlin to record a new series, they wanted to exploit Caitlin and use her – almost completely for free – for the promotion and branding of the extremely profitable Dora Brand.

Nickelodeon Exploits Caitlin for Promotions and Marketing

40. Starting in July, 2008, Defendants began to take advantage of Caitlin, not only for her direct performance time, but also for promotional work. Although for the first nine months Caitlin had performed nearly exclusively as a voice over artist, suddenly Nickelodeon began requiring Caitlin to work hundreds of hours promoting the Dora Brand without compensation.

41. Caitlin traveled around the U.S., promoting the Dora Brand, and making over one hundred interview personal appearances from July 9, 2008 to the present. For those appearances which required significant travel, Caitlin was compensated a mere \$40 “stipend” per diem. For telephone, in person, and on camera interviews, Caitlin received virtually no compensation. In fact, to date, she has only been compensated for four of these promotional events – for each of which she signed a separate contract with a third party, and was paid directly by that third party. Defendants have never compensated her for her promotional work.

42. What’s worse, numerous times Caitlin and her family questioned Defendants about their failure to adequately compensate her for her work. Defendants’ representatives and CESD refused to answer their questions, and Bercy, rather than advocate on her behalf, pushed Caitlin and Hilda away, telling them that he could not negotiate anything, and threatening that Defendants will fire her if she pushes too much.

Nickelodeon Forces Caitlin to Sign a Second Unconscionable Contract

43. Through the end of 2008, Caitlin and her family were frustrated and unhappy with Defendants. Not only were they sending Caitlin, a young girl who thought most of her work would be done in New York, all over the country to make hundreds of appearances and promote the Dora Brand, Defendants also employed, at best, questionable and unfair accounting practices to pay her as little as possible. In addition, Defendants still have not exercised the option for the Sixth Season, for which the long past deadline was April 3, 2008.

44. After numerous phone calls, emails, and attempts to rectify the situation with both Bercy and Defendants, on January 8, 2009, Hilda finally received an amended contract, which seemed like an answer to her pleas so Caitlin could do what she was hired for: voice Dora on television. (“January 8, 2009 Amendment Email,” attached hereto as Exhibit M.)

45. However, once again, employing the same tactics of misrepresentation, Defendants included just a single backdated page, dated ten weeks before execution to October 22, 2008, and, without supplying the original contract, extended the time for Nickelodeon to exercise its option. In typical convoluted language, Defendants stated that if they exercised their option, Caitlin would be able to perform in at least 75% of the episodes in any cycle where the option was exercised: “Notwithstanding anything to the contrary herein, the parties hereby agree that UPI’s Sixth Cycle option shall be extended through and including April 30, 2009 . . . Artist is therefore guaranteed 75% of

episodes per series cycle exercised.” Finally, in an attempt to paper over their previous unconscionable agreement, Defendants swindled Caitlin and her family into further ratifying the entire original contract: “Except as set forth above, all other terms and conditions of the Agreement shall remain unchanged and are hereby ratified.” (See Exhibit B.)

46. Bercy vaguely told Hilda, that “Nickelodeon had offered an extension,” and implied that Defendants have requested an extension for the time *to begin* recording, not the time for Defendants *to decide* whether it would begin recording with Caitlin at all. In reality, this new backdated, misrepresented Amendment simply gave Defendants more time to string Caitlin and her family along.

47. Hilda immediately thought that this contract signified that Caitlin would be Dora for the next season. Unsure if including an amendment like this was standard practice and not wanting to upset what looked like a good sign for Caitlin—a seeming indication that Defendants would finally renew Caitlin’s contract—Caitlin, Hilda, and Kevin signed the Amendment. Never did Bercy, or anyone from CESD, or Defendants explain the provisions to which Caitlin and her family were agreeing. Bercy simply emailed this contract to Hilda, and included an email from lawyer Katona stating the family must immediately sign three copies and return to Katona at Nickelodeon. (See Exhibit M.)

Caitlin Makes Millions for Nickelodeon in Dora Brand Merchandise Sales

48. On April 17, 2009, Caitlin was finally notified that Nickelodeon would be exercising its option for the Sixth Season. However, Caitlin did not begin recording the season until October 6, 2009. Instead, throughout 2009, Caitlin continued to work for Defendants for free, completing hundreds of hours of unpaid marketing services, including performances or appearances in interviews on dozens of radio, news, and television shows, and traveling all over the country, on the meager travel stipend of \$40/day.

49. Caitlin has recorded, at least, eighty-two products for the Dora Brand and has not been adequately compensated for the successes of these products, despite promises made by Bercy and the terms of her unconscionable Nickelodeon Contract that she would receive 5% of all merchandise profits. (See Exhibit A at 2, Part 6 and 9 Section G.)

50. From 2007 to the present, Caitlin has recorded consumer products for the Dora Brand, including DVDs, audio CDs, video games, computer software, internet streaming videos, interactive online games, iPhone and iPad applications, toys, educational games, books, and dolls for *each of which* she is entitled to a percentage of sales profits. Defendants have also “lifted” or otherwise used her voice and recordings for additional products. Caitlin is further due compensation of 5% of the profits from those products. Defendants have failed to compensate Caitlin for these products. (See Exhibit A at 2, Part 6 and 9 Section G.)

51. What's worse, Defendants have actually admitted that it must pay her these percentages, but still fails to do so. After intense pressure from Hilda, Defendants, on July 21, 2010, cut a check for a meager \$9,636.39, which was supposedly for seven of the products she promoted from September 2008 through December 2009. However, it is clear, even from publicly available gross profit numbers that Defendants have reaped much more in revenue from these products, but are withholding payments rightfully earned by Caitlin. It is further clear, that Defendants omitted in that invoice, at least, forty merchandise-licensing products voiced by Caitlin that were available for sale because Caitlin actually recorded, at least, forty-seven products during that time period. Moreover, Caitlin has never received another merchandise check since that one, despite the fact that, Caitlin has recorded at least thirty-four more consumer projects since December 2009.

Caitlin Has Not Been Adequately Compensated for Her Merchandize, Residuals, and Promotional Work

52. At the time of signing, and throughout Caitlin's three years of services, Defendants misrepresented over and over again the pay Caitlin would and should receive. During the brief phone call with Bercy at 5:08 PM on April 6, 2007, as well as many times later, Caitlin and her family were told by Defendants that Caitlin would be paid for not only her recording time, but merchandising, residuals, and promotional work.

53. Furthermore, in the Contract, Defendants actually confirm these statements, and in some instances, details a pay schedule.

54. According to Caitlin's contract, and the representations made to Caitlin and her family, Caitlin is due at least 5%-2.5% of the profits from all merchandise for which she recorded any dialogue or lines, including those products which have lines "lifted" from other recordings. (See Exhibit A at 2, Part 6 and 9 Section G.)

55. Caitlin is due payment for residuals. Although only discovery will tell what the actual number of episodes re-aired has been, upon information and belief, Caitlin believes that at least 325 episodes in which she appeared have aired as "re-runs."

56. In addition, and also in accordance with the Contract and the representations made, Caitlin is due her exclusive minimum fee—the \$5,115—for all promotional events. (See Exhibit A at 3, Section 10.b and at 9, Section E.) Caitlin has appeared, interviewed, or otherwise participated in, at least, 103 promotional events.

57. Finally, Defendants have failed to adequately compensate Caitlin for her recording sessions by fraudulently classifying full sessions for which she should be paid her full fee as unpaid "pick-up sessions" or underpaid her using what seems to be the non-exclusive minimum AFTRA rate.

58. Through all of these unpaid or underpaid services, Caitlin has added substantial value to the Dora brand, allowing Defendants to make millions, while not only failing to pay her for her services, but also obscuring what Caitlin is due and misleading the Sanchez family. Caitlin is due full compensation for her work.

Caitlin's Valuable Services are Essential to the Continued Success of the Entire Dora Brand

59. Through these hundreds of hours of unpaid promotional work, hundred of rerun episodes for which she has yet receive residuals, and over eighty consumer products for such she has never seen her profit share, Defendants have reaped millions of dollars in sales, and built and promoted a brand which relies on the image and talents of Caitlin. In fact, staff at Nickelodeon and Uptown have admitted numerous times how essential and valuable Caitlin is to promoting the Dora Brand including:

- a. "There has never been another . . . a more high-profile face to a voice though, than *you*, Caitlin. You've done more than . . . I've been here for eight years, and you as a voice-over actor have done more than any other actor that we've worked with for [voice over] for preschool. Yeah, you're such a big part of Dora and you're such a big part of the 10th [anniversary of the Dora Brand]." Michelle Levitt, Associate Casting Director, Nickelodeon.
- b. "You know, we're hoping for one of the highest ratings ever for that birthday special that *you* voiced. You know, that *you're* Dora for and . . . it's a fantastic special, . . . and you know, that song that you sing in it is going to be playing in all the promos. . . . You know, this is one of those moments in Nickelodeon history that doesn't come around very often. We have not had many shows that have hit ten years, and you're a big part of it." Terri Weiss,

Senior Vice President of Production and Development, Nickelodeon.

- c. “We’re still gonna promote her as Dora, like, the voice of Dora. Which is pretty big, ‘cause most animation . . . kids don’t connect. . . . Most of the time, it’s really behind the scenes. So, the fact that they were able to pull Caitlin out is only because Caitlin is who she is. You know what I mean? Like Caitlin has kind of like a big package about her. She, you know, she’s sweet, she knows how to talk with press, she’s kind of got the whole package which is why we’re able to pull her out. If we would’ve casted somebody else who just had the voice, they would probably have kept them behind the scenes. So the only reason why Caitlin is in the public is because she has got the whole package and we try to explain that when we pitch her, we’re like, well she can read books in her *voice*. And then she is, you know, behind the character. So, because she’s got such a great presence, *that’s* why. That’s why, I don’t even know if that could happen with anybody else to be honest with you.” Christina Marano, Manager of Talent Relations, Nickelodeon.

- d. “But yeah, Dora’s huge. And you know, this year I think she’s probably working the most we’ve ever had someone work . . .

because it's the 10th and because we've got so much going on. But it's, you know, totally we love her." Jill Greenberg-Sands, Vice President of Talent and Casting, Nickelodeon

- e. "We love what you're doing and we think that you have risen to the challenge every time we ask you to do something." Chris Gifford, Executive Producer and Creator of "Dora the Explorer" Nickelodeon.

60. Thus, it is not just that Defendants have made hundreds of millions off their talented employee, Caitlin, through, reruns, merchandising, and her promotional work, very specifically, numerous times, including but not limited to the above cited conversations, Defendants have admitted that Caitlin's skills and services are essential to the success of not only the show, but the entire billion-dollar Dora Brand.

61. Defendants continue to be unjustly enriched by Caitlin's work for which it fails to pay her. Caitlin and her family are forced to sue Defendants to obtain the reasonable value of her services and free her from a misrepresented, and one-sided contract which Defendants have used to exploit and abuse Caitlin and her family for four years.

THE NICKELODEON CONTRACTS ARE UNENFORCEABLE

62. Twice, Defendants forced Caitlin and her family to enter into contracts which were procedurally and substantively unconscionable in order to exploit Caitlin for their own benefit.

The Contract is Procedurally Unconscionable

63. The Contract lacks a meaningful choice on the part of Caitlin and her family in its execution. For this Contract, there was no meeting of the minds. There was no meaningful negotiation or choice in the signing of the Contract.

64. Rather, under time pressure and duress, CESD and Defendants tried to force both the Contract upon Caitlin and her family with threats.

65. Moreover, Hilda and her family did not understand what they were signing, nor were they given the opportunity to find out what the provisions of the Contract meant. They were presented with both the Contract in high pressure, no-questions-asked environments where Defendants threatened Caitlin's future at Nickelodeon if the family did not sign immediately.

66. Defendants further knew that they were dealing with a family with no legal background, whom they tried—successfully—to swindle and mislead. Through misrepresentation and omission, Defendants were able to fraudulently induce the family into signing the Nickelodeon Contract.

67. There was a complete disparity of bargaining power at the time of signing. Caitlin, who wanted to receive the Dora part, was unable to negotiate at all with Defendants, and her agent, in collusion with Nickelodeon, failed to exercise even a basic advocacy and his fiduciary duty to his client.

The Contract is Substantively Unconscionable

68. Unquestionably, the terms in the Contract favor Defendants, at Caitlin's expense. The Contract is completely one-sided and allows for both Defendants to reap the benefits of Caitlin's work without adequate pay.

69. The Contract is further unconscionable because it contains undefined, unclear terms and complicated formulas designed to confuse and misrepresent. Even on close reading, it is not possible to understand to what the contract purport to agree.

70. For example, the Contract contains numerous undefined or interchangeably used terms, including, for example, "applicable minimum under the collective bargaining agreement" (*see, for example*, Exhibit A at 2, Section 5), versus, "applicable minimum compensation" (*see, for example*, Exhibit A at 2, Section 6).

71. The Nickelodeon Contract is additionally substantively unconscionable because Caitlin and her family were forced to agree to provisions of a separate contract, the so-called AFTRA Agreement, which they never saw or read. The AFTRA Agreement is referenced numerous times, and the Contract even states: "This Agreement is subject to the AFTRA Agreement." (Exhibit A at 8, Section 8.) Hilda has asked both CESD and Defendants many times for a copy of this undisclosed, but supposedly agreed to contract. But CESD and Defendants have refused to provide a copy. Clearly, neither Caitlin nor her parents agreed to the terms of the Agreement if they never even saw it.

72. The Contract contains vague and misleading language, which appears to state the artist's compensation for certain services, and then vaguely includes statements such as:

- a. "artist shall receive no less than the applicable minimum" (*see* Exhibit A at 2, Section 5),
- b. "artist shall be paid, where payment is owing," (*see* Exhibit A at 2, Section 6)
- c. "artist shall be paid (or credited, if and as applicable)," (*see, for example,* Exhibit A at 3, Section 8 and Section 10b),
- d. "all over-scale amounts paid to you hereunder will be credited against any required payments to the maximum extent not prohibited by the [UPI-]AFTRA Agreement," (*see* Exhibit A at 3, Section 8).

73. Further, the Contract contains clear misstatements and misrepresentations which are, at face value, also unconscionable, including, most egregiously: "all parties were assisted by their counsel in reviewing and agreeing thereto" (*see* Exhibit A at 6, Section 21).

74. The Nickelodeon Contract is so unreasonable, unfair, and disproportionate that they are procedurally and substantively unconscionable.

In the Alternative, Caitlin's Contract Should Be Rescinded

75. Even if the Nickelodeon Contract was not unconscionable – and it is – the Nickelodeon Contract should be declared rescinded because it was entered into by Caitlin and her family as a result of Defendants' failed material and willful consideration, through which Caitlin has been left in a situation substantially different from what was contracted.

76. Caitlin and her family signed the Nickelodeon Contract with the understanding that they would receive certain compensation, as detailed above, as consideration for Caitlin's services.

77. Defendants have failed to provide such compensation.

78. This failure, supported and assisted by CESD and Bercy, is material and willful. Defendants not only misrepresented material aspects of the contract—the compensation of Caitlin for her services—but have continued to willfully mislead and misinform the family about Caitlin's compensation for three and a half years.

79. Because of this willful and material failure of consideration, Caitlin has been left in a substantially different position than that to which the Contract agreed. Defendants' material breach is so fundamental to the purpose of the contract that it has defeated the purpose of the contract in almost every respect.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Against Defendant Nickelodeon and Nickelodeon Consumer Products)

QUANTUM MERUIT

80. Plaintiff repeats and realleges all allegations previously made above as if fully set forth herein.

81. For three years, Caitlin has performed not only the voice of Dora, but comprised an essential part of the Dora Brand, promoting a billion dollar marketing campaign, for which, since 2008, Caitlin has been the exclusive performer.

82. Caitlin provided these services with the understanding that she would be justly compensated for the reasonable value of her services, including, at a bare minimum, her time by an hourly rate and/or additional per-product or per-airing payments.

83. For the hundreds of hours of marketing and performance, Defendants have failed to adequately compensate Caitlin. Caitlin has performed at least 160 hours of uncompensated performance time, and at least 400 hours of uncompensated promotions, marketing and interviews.

84. Caitlin has further worked at least 200 hours of uncompensated travel time. She has completed at least eleven out of state trips for promotions, and stayed at least 30 nights in hotels for the work between May 22, 2008 and September 11, 2010.

She has been compensated an offensive \$40 a day for her out of state work, and has further incurred additional out of pocket expenses for this travel.

85. Further, Caitlin has recorded for, at least, 82 products, for which she is due compensation from the profits of the merchandise, and is due residuals for at least 325 episodes re-runs which have aired since November 20, 2009, plus, at least, residuals from all other reruns of prior in which she performed.

86. The reasonable value of Caitlin's services only begins with the time she has spent working, for which Defendants have failed to pay her, and is also dependent on the value and profits which Defendants have gained from her work.

87. Caitlin demands that Defendants provide her with adequate compensation for the value of the essential services she has provided to Defendants in an amount to be determined at trial, which includes, at a minimum, and which add up to many millions of dollars:

- a. Residuals Compensation;
- b. Merchandising Profits;
- c. Compensation for promotional services, including time spent traveling, preparing, and conducting Dora Brand promotions and interviews;
- d. Compensation for hundreds of hours of rehearsal and preparation time;

- e. Compensation for signing, additional dialogue recording (“ADR”), and other recording skills not included in her voice-over session fee;
- f. Compensation for signing, ADR, and other recording skills fraudulently included in pick-up sessions;
- g. Compensation for lost wages and professional opportunities and experience as a result of Nickelodeon’s abuse of exclusivity and failure to renew or cancel Caitlin’s contract.

88. Caitlin is entitled to remuneration for these services for the amount, to be determined at trial, paid in taxes and fines, with interest, and demand judgment therefore.

SECOND CAUSE OF ACTION
(Against Defendants Nickelodeon and Nickelodeon Consumer Products)

UNJUST ENRICHMENT

89. Plaintiff repeats and realleges all allegations previously made above as if fully set forth herein.

90. Defendants have had a real and tangible benefit conferred upon it by Caitlin, who has provided and continues to provide hundreds of hours of voiceover and related services, marketing hundreds of products, and hundreds of promotional appearances.

91. These services were for the benefit of Defendants and were fully enjoyed, appreciated, accepted, and retained the services performed by Caitlin.

92. Defendants' acceptance and retention of the benefits from the services described above, without fully compensating Caitlin, has unjustly enriched Nickelodeon, CESD, and Bercy, and it would be inequitable for them to retain the value of the benefits of these services without providing just compensation to her.

93. The circumstances surrounding the situation are such that equity and good conscience require Defendants to make restitution to Caitlin for the services she rendered. In particular, Defendants abused its greater power and sophistication, worked, with a putative agent of Caitlin that did not act in her interests, and misrepresented facts, employed an unconscionable agreement.

94. Defendants' Unjust Enrichment has caused Caitlin damages and losses for which she should be compensated in an amount to be determined at of trial.

95. Caitlin has additionally been damaged due to the fact that she has had to incur attorneys' fees and costs in this matter.

THIRD CAUSE OF ACTION
(Against Defendants Nickelodeon and Nickelodeon Consumer Products)

(In the Alternative) BREACH OF CONTRACT

96. Plaintiff repeats and realleges all allegations previously made above as if fully set forth herein.

97. By failing to compensate Caitlin based on the provisions in the Nickelodeon Contract in the light most favorable to Plaintiff, Defendants have clearly

breached its contract with Caitlin by failing to even compensate her based on the provisions.

98. As a result of Defendants' breach, Plaintiff is entitled to declaratory and compensatory relief.

PRAYER FOR RELIEF

WHEREFORE, Caitlin prays for the following relief:

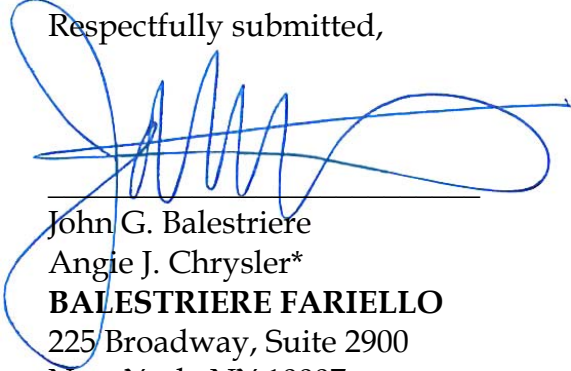
- A. The imposition of a constructive trust upon all monies and assets Defendants have acquired as a result of their unfair practices;
- B. Compensatory damages and full restitution of all funds acquire from Defendants' unfair business practices, including disgorgement of profits;
- C. Declaratory judgment declaring the Nickelodeon Contract unconscionable, or in the alternative rescinding the contract;
- D. Actual damages suffered by Plaintiff;
- E. Punitive damages, to be awarded to Plaintiff;
- F. Cost of suit herein;
- G. Investigation costs;
- H. Payment of reasonable attorneys' fees;
- I. Declaratory relief; and,
- J. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury for all issues so triable.

Dated: New York, New York
October 6, 2010

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'John G. Balestriere', written over a horizontal line. The signature is stylized and somewhat illegible.

John G. Balestriere

Angie J. Chrysler*

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Attorneys for Plaintiff

**Awaiting Results from June 2010*

California Bar Exam