

SUPREME COURT OF THE STATE OF NEW YORK  
KINGS COUNTY

<p>JUAN CARLOS NUNEZ,</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>-against-</i></p> <p>ATHLETES' CAREERS ENHANCED AND SECURED, INC., SAM LEVINSON, and SETH LEVINSON,</p> <p style="text-align: right;"><i>Defendants.</i></p>
--

Index No.

**SUMMONS**

To Defendants:      ATHLETES' CAREERS ENHANCED AND SECURED, INC.  
                                  188 Montague Street  
                                  Brooklyn, New York 11201

                                 SAM LEVINSON  
                                  188 Montague Street  
                                  Brooklyn, New York 11201

                                 SETH LEVINSON  
                                  188 Montague Street  
                                  Brooklyn, New York 11201

**YOU ARE HEREBY SUMMONED** and required to serve upon Plaintiff's attorney an answer to the Complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint. The basis of venue is Defendants' principal office, and the parties' agreement.

Dated: New York, New York  
February 12, 2018

**SCHLAM STONE & DOLAN LLP**

By: \_\_\_\_\_/s

Jeffrey M. Eilender  
Erik S. Groothuis  
26 Broadway  
New York, New York 10004  
Telephone: (212) 344-5400

*Attorneys for Plaintiff*

SUPREME COURT OF THE STATE OF NEW YORK  
KINGS COUNTY

<p>JUAN CARLOS NUNEZ,</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>-against-</i></p> <p>ATHLETES’ CAREERS ENHANCED AND SECURED, INC., SAM LEVINSON, and SETH LEVINSON,</p> <p style="text-align: right;"><i>Defendants.</i></p>
--

Index No.

**COMPLAINT**

Plaintiff Juan Carlos Nunez, for his complaint against Defendants Athletes’ Careers Enhanced and Secured, Inc. (“ACES”), Sam Levinson, and Seth Levinson (collectively, “Defendants”), alleges as follows:

**NATURE OF THE ACTION**

1. This is an action to obtain millions of dollars in commissions and other unpaid fees wrongfully retained by Defendants, in plain breach of the parties’ contract and as a result of their tortious conduct. Plaintiff was retained by Defendant ACES, one of the country’s most prominent and successful sports agencies, to help ACES identify and sign promising baseball players from the Dominican Republic, in exchange for a portion of the commissions received by ACES.

2. When Plaintiff signed his contract with Defendant ACES in 2006, he expected to use his work ethic, connections, and charisma to succeed. Unbeknownst to Plaintiff when he signed the agreement, ACES would demand far more than that. After he was hired, Plaintiff was told that he had to do “whatever it took” to recruit and retain players as ACES clients. Plaintiff came to learn that doing “whatever it took” meant violating criminal law in addition to the rules of Major League Baseball (“MLB”) as well as its Players’ Union, including by making under-

the-table payments to players and their friends and family, helping players obtain and use performance-enhancing drugs (“PEDs”) to get bigger contracts, and ultimately engaging in an elaborate coverup to hide the misconduct from MLB and its Players’ Union. All of this was done at the direction and under the close supervision of Defendants, who formulated the scheme and at all relevant times controlled Plaintiff’s participation in it.

3. Defendants directed Plaintiff to engage in this misconduct every step of the way, with each act by Plaintiff requiring Defendants’ approval. Defendants benefited handsomely from their scheme by collecting agency fees from the contracts of the players described below, and in many cases, continue to do so. But when their machinations to cover up the use of PEDs by ACES client Melky Cabrera failed, Defendants threw Plaintiff under the proverbial bus to protect their own reputation and minimize their own liability by forcing Plaintiff to take sole responsibility for their misconduct.

4. By their actions, ACES knowingly waived any provision of the parties’ written agreement holding Plaintiff to certain standards of conduct. In fact, as a condition of Plaintiff’s continued employment, Defendants required him to violate those standards. As a result, it is inequitable, and a material breach of their agreement, for Defendant ACES to have received millions in commissions from Plaintiff’s work, without paying him the portion to which he was entitled under the agreement.

5. Plaintiff, who pleaded guilty to his role in Defendants’ scheme and has already paid his debt to society, can no longer stand silent while Defendants continue to reap the benefits while evading responsibility for their misconduct. Through this action, Plaintiff will hold Defendants accountable for the controlling role they played in their illegal scheme, as well as

their failure to meet their contractual obligations to pay Plaintiff his fair share of the agency fees Defendants kept for themselves.

6. It should be noted that this is by no means the first time that Defendants have been connected to PEDs in baseball. Numerous press reports have linked Defendants to MLB players mentioned in the infamous 2007 Mitchell Report<sup>1</sup> as having used PEDs, including former ACES clients catcher Paul Lo Duca and left-handed pitcher William Michael Stanton.

7. Further, former New York Mets clubhouse attendant Kirk Radomski has confirmed in an affidavit that he regularly provided ACES clients with PEDs, with the Defendants' knowledge and approval. Radomski would pick up sealed white envelopes containing cash from Defendant ACES at ACES's offices as compensation for giving PEDs to ACES clients.

8. Thus, the fact that Defendants directed Plaintiff to provide their clients with PEDs was part of a larger pattern and practice at ACES, a rogue agency that reaped millions of dollars in fees by cheating the game of baseball.

### **PARTIES, JURISDICTION AND VENUE**

9. Plaintiff Juan Carlos Nunez is a natural person who resides in Florida. Defendant ACES engaged Plaintiff to help identify and recruit professional baseball players as ACES clients.

10. Defendant ACES is a New York corporation headquartered at 188 Montague Street in Kings County.

11. Defendant Seth Levinson is the chief executive officer of ACES, who works out of its offices in Kings County and resides in Richmond County.

---

<sup>1</sup> This report resulted from an investigation into the use of PEDs in baseball by former U.S. Senator George Mitchell.

12. Defendant Sam Levinson is the president of ACES, who works out of its offices in Kings County and resides in Richmond County.

13. The Defendants maintain offices and conduct business in New York on a systematic and continuous basis.

14. Venue is appropriate pursuant to § 503 of the CPLR because Defendant ACES resides in, and its principal office is located in, Kings County. Further, the parties' contract provides that actions against Defendants must be filed in Kings County.

### **BACKGROUND**

#### **A. Plaintiff's Contract And Work For Defendants**

15. Plaintiff was introduced to Defendants by a mutual contact. When he first met Defendants, he had no experience with the business side of baseball or working as an agent.

16. Pursuant to an agreement executed on or about May 30, 2006 (the "Contract"), Plaintiff was hired by Defendant ACES to represent the agency in signing baseball players from the Dominican Republic. Under section 2 of the agreement, Plaintiff would receive 25% of any fees ACES collected from the major league baseball contracts of the players Plaintiff signed for ACES. The Contract provides that Defendant ACES remains responsible for paying Plaintiff his share of ACES's fees even after the Contract is terminated.

17. While working at ACES, Plaintiff developed a close relationship with Defendant Sam Levinson. Plaintiff and Defendant Sam Levinson traveled together frequently and spoke almost every day, and frequently multiple times each day, during Plaintiff's employ at ACES.

18. Plaintiff was required to report regularly to Defendant Sam Levinson on all matters pertaining to the players for whom Plaintiff was responsible, including how they were performing on the field, how they were feeling off the field, what ailments they were suffering, and the treatments they were receiving.

19. Plaintiff had no authority to take any action with respect to his work for Defendants without getting advance approval from Defendants Sam and Seth Levinson. In fact, Defendants micro-managed Plaintiff: everything Plaintiff did vis-à-vis the ACES clients he serviced had to be run by Defendants for approval. Plaintiff sought and received authorization from Defendants every step of the way when interacting with ACES players.

20. Plaintiff took no actions in respect of his work for Defendant ACES without advance approval, including the actions described below. If he did not receive advance approval for his actions, Defendants would have terminated him. He did not exercise discretion while working for Defendants.

21. Defendant Sam Levinson would frequently say that he and his brother Seth would do “whatever it took” to get and keep players. Plaintiff came to understand that doing “whatever it took” included violating the rules of MLB and its Players’ Association, as the examples in the next section demonstrate. Defendants forced Plaintiff to allocate a substantial amount of his time spent handling ACES clients to the improper activities described below.

22. While the Contract provided (at section 1(a)(ii)) that Plaintiff “shall not make any promises or provide anything of value for the purpose of inducing any professional baseball player to become a client of ACES,” that provision was merely a fig leaf that Defendants inserted in the hope that it might give them some cover. In fact, as the following examples demonstrate, Defendants insisted that Plaintiff make promises to and/or otherwise compensate players to become clients of ACES as a requirement of his work for Defendants.

### **B. Fernando Rodney**

23. For example, in 2009, ACES fought to keep pitcher Fernando Rodney as one of the players it represented. Plaintiff had originally signed Rodney as an ACES client, but Rodney

later left ACES for a competing agency. The two agencies became embroiled in a dispute over who represented Rodney.

24. Defendant Sam Levinson directed Plaintiff to fly to the Dominican Republic so that he could talk to Rodney, as well as Rodney's friends and family, to convince Rodney to come back to ACES. When Plaintiff arrived there, he checked his email and saw a memo that ACES had forwarded from the MLB Players' Association.

25. The Players' Association memo instructed ACES and the competing agency to avoid contact with Rodney until the Players' Association could conduct its own investigation and resolve the dispute between the agencies.

26. After reviewing the memo, Plaintiff called Defendant Sam Levinson and asked whether he should refrain from contacting Rodney in light of the contents of the memo. Defendant Sam Levinson instructed Plaintiff to disregard the memo, and stated that he sent it solely to cover ACES on paper. Defendant Sam Levinson told Plaintiff to "do whatever it takes" to regain Rodney as an ACES client so that ACES could continue to earn commissions.

27. When Plaintiff told Defendant Sam Levinson that it would take money to keep Rodney as an ACES client, Defendant Sam Levinson instructed Plaintiff to "do it" (meaning, to make payments to Rodney), even though such payments were improper kickbacks under the rules of the MLB Players' Union.

28. Acting upon Defendant Sam Levinson's instructions, Plaintiff met with Rodney's family and friends. At Defendants' direction, Plaintiff made financial arrangements with them and with Rodney to keep Rodney signed with ACES. Under the arrangement, Defendant ACES would make regular payments to Rodney's family and friends out of the agency's commissions. The first payment was for \$12,000 and the payments would continue until they would total 10%



of the fees ACES received from Rodney's MLB contracts. Once the arrangement was made, Plaintiff called Defendant Sam Levinson and told him.

29. Happy with the financial arrangement, Rodney agreed to return to ACES. Plaintiff, acting at Defendants' direction, made these improper "under the table" payments to Rodney, his family and friends. Plaintiff would never have made these payments without being directed by Defendants. In part, Plaintiff received Defendants' advance authorization because he wanted to be sure he would be reimbursed for the payments he made, as he could not afford to pay them himself.

30. Defendant ACES reimbursed Plaintiff for the Rodney payments, although in one instance, ACES made the payment directly instead of using Plaintiff as the intermediary. In that instance, Defendant Sam Levinson instructed Anna Domenech, a secretary at Defendant ACES, to send a check directly to one of Rodney's family members in the Dominican Republic.

31. This arrangement continued for the next few years. When Rodney signed new contracts, ACES continued to secretly pay his friends and family approximately 10% of its commissions. The payments were typically made by Plaintiff paying Rodney as well as his friends and family from moneys Defendant ACES provided to Plaintiff.

32. Defendants' payments violated the Major League Players' Association Regulations Governing Player Agents ("MLBPA Regulations") § 5(B)(5).

### **C. Defendants become involved with Anthony Bosch and the Biogenesis clinic**

33. Anthony Bosch ran a clinic in Florida called Biogenesis. While he called himself a doctor, he was not licensed to practice medicine. Bosch gave MLB players PEDs to improve their performance.

34. Plaintiff first met Anthony Bosch in Miami in November of 2011. Bosch explained to Plaintiff that he helped players perform at a higher level, to “see the ball bigger and heal faster.” He also said that he could help players avoid fatigue when playing double-headers if they followed his protocol, which included “peptides.”

35. Defendants became well aware of who Anthony Bosch was and what he did for MLB players. During the relevant time period, Defendant Sam Levinson directed Plaintiff to introduce certain ACES clients to Bosch and Biogenesis.

#### **D. Melky Cabrera**

36. Between 2006 and 2010, Plaintiff had several conversations with Defendant Sam Levinson regarding major league baseball players and their use of PEDs. For example, in 2010 Defendant Sam Levinson went to see outfielder and ACES client Melky Cabrera at his hotel room in the Grand Hyatt Hotel when the player was in New York.

37. When Defendant Sam Levinson returned to the office, he told Plaintiff that Cabrera had his shirt off in the room and that he was “ripped.” Defendant Sam Levinson remarked, “he must be taking something to look like that.” By “taking something,” Defendant Sam Levinson meant that Cabrera was taking PEDs.

38. In 2011, when Cabrera had turned around his baseball career and was performing at a higher level than he had before, Defendant Sam Levinson again told Plaintiff, “Melky must be taking something” to be doing that well. Defendant Sam Levinson knew that Cabrera was taking PEDs.

#### **E. Nelson Cruz**

39. Major league baseball outfielder Nelson Cruz was another ACES client for whom Plaintiff was responsible.

40. In the Fall of 2011, Cruz became extremely ill with stomach bacteria called H-Pylori. Plaintiff helped Cruz find a doctor in Miami and arranged for his medical treatment.

41. By the middle of January 2012, Cruz was recovering but still appeared to be very weak. Plaintiff, concerned about whether Cruz would be ready to play by spring training, told Cruz about Anthony Bosch. Cruz asked Plaintiff to make arrangements for Bosch to treat him.

42. Plaintiff then made those arrangements, after discussing with Defendant Sam Levinson and getting his approval to do so.

43. Bosch came to visit Cruz, who agreed to try Bosch's program if Plaintiff handled the logistics. Plaintiff, under the Defendant Sam Levinson's supervision and with his approval, picked up supplies for Cruz at Biogenesis.

44. At Biogenesis, Plaintiff was given three or four dark blue Zip-lock bags that had instructions written on the outside with a Sharpie marker.

45. The bags contained syringes with small needles filled with a clear substance, gelatinous chews called "gummies," one or two larger needled-syringes containing a red substance, a bottle of liquid proteins, and zinc pills. Bosch described the larger needles with the red substance as his "cocktail." Plaintiff recognized the syringes with the clear substance to be HGH.

46. Plaintiff picked up the first set of bags from Biogenesis and brought them to Cruz in Bal Harbor, Florida. Cruz followed the instructions and began the program.

47. Plaintiff kept the Defendants apprised of all the developments with Cruz and the Biogenesis clinic. Defendant Sam Levinson was pleased to hear that Cruz would receive PEDs from Bosch, because Levinson knew that it would improve Cruz's performance, and therefore increase ACES's commissions.

48. At the beginning of February 2012, Defendant Sam Levinson flew down to Florida to see Cruz. Sam Levinson stayed at the Diplomat Hotel in Hollywood, Florida. Plaintiff picked up Levinson there and they had dinner at Morton's Steak House, where they discussed Cruz's upcoming contract. The next day, Sam Levinson and Plaintiff went to see Cruz work out in Miami.

49. Although Cruz looked much better, he had lost weight and was not in the condition he needed to be to perform at his best. Defendant Sam Levinson said he was concerned about Cruz's condition because Cruz had a new contract that needed to be signed, and which required Cruz to pass a physical examination prior thereto. Based on this, Defendant Sam Levinson called Thad Levine, the assistant general manager of the Texas Rangers, the team for which Cruz played, and obtained an extension of several days to take the medical exam. Plaintiff told Defendant Sam Levinson that he did not have to worry because Cruz was seeing and receiving treatment from Melky Cabrera's doctor (i.e., Anthony Bosch), and would be ready for spring training. That seemed to put Levinson at ease.

**F. Defendants Knew That Their Clients Were Using PEDs In Violation Of MLB And Players' Association Rules**

50. In March 2012, during spring training in Arizona, Plaintiff explained Bosch's protocol in detail to Defendant Sam Levinson, including a description of the HGH injections in the stomach, the testosterone injections, and the "gummies." These conversations took place while Plaintiff and Defendant Sam Levinson ate together two or three times a day. During these conversations, Defendant Sam Levinson told Plaintiff to introduce arbitration-eligible players, free agents, and prospects to Bosch so they could be on his programs and perform better.

51. Plaintiff then introduced several other major league baseball players to Bosch at Biogenesis to receive the Biogenesis regimen of PEDs, each with Defendants' knowledge and approval.

52. Plaintiff told Defendant Sam Levinson about each of the players Plaintiff had introduced to the "doctor" at Defendants' direction and who were on Bosch's program at that time.

53. Specifically, Plaintiff told Defendant Sam Levinson that Cruz was on the same program that Cabrera's "doctor," Anthony Bosch, had prescribed. Plaintiff also told Defendant Sam Levinson about the importance of following the right schedule and the need to take the drugs at the right time of day to avoid testing positive. Defendant Sam Levinson did not seem too concerned because he said Cabrera appeared to have followed the program for a while and had not gotten caught.

54. Plaintiff kept Defendant Sam Levinson informed as Plaintiff introduced more baseball players to Bosch, as per Defendant Sam Levinson's instructions, over the next few months. Sometimes Plaintiff and Defendant Sam Levinson talked about specific issues that came up for certain players. For example, Plaintiff told Defendant Sam Levinson that when catcher Jesus Montero met Bosch, Montero commented that this was not the first time he took something like this, and that he had taken a steroid called "deca" when he was 16 years' old.

55. Plaintiff's conversations with Defendant Sam Levinson about players "seeing the doctor" were fairly frequent and continued into the 2012 baseball season. These discussions usually took place in the ACES office or during games when Plaintiff sat with Defendant Sam Levinson in his seats at Citi Field. All told, during 2012, Plaintiff brought at least ten ACES clients to Bosch, each time with Defendants' knowledge and approval.

56. During these conversations, Plaintiff and Defendant Sam Levinson discussed some of the specifics of Bosch's program. They talked about the testosterone and HGH injections the players were taking. They also discussed the fact that players had to take some of these items early enough so that they would not get caught when tested during games. For example, they discussed how players had to take the "gummies" ten to fifteen minutes before the national anthem so that it would not show up in their urine when they were tested after the game.

57. At times, Defendant Sam Levinson joked around about ACES clients receiving PEDs. Once, Sam Levinson asked Plaintiff if he should get the injections himself so that he could get into shape and "get rid of [his] gut." Defendant Sam Levinson joked that the injections might "help [him] grow."

58. Defendants' scheme to supply their clients with PEDs violated MLBPA Regulations §§ 5(B)(15) and 5(B)(20).

#### **G. Cabrera's positive test and Defendants' attempted coverup**

59. In June 2012, Plaintiff received a call from Defendant Sam Levinson, who told him that Melky Cabrera tested positive for the use of PEDs. Sam Levinson instructed Plaintiff to call Cabrera, break the news to him, and to reassure Cabrera that he was in good hands and that ACES was going to work this out for him. Plaintiff did as he was instructed by Defendant Sam Levinson.

60. After discussing Cabrera's positive test with Anthony Bosch, Plaintiff flew to New York and met with Defendant Sam Levinson in the ACES office. Sam Levinson told Plaintiff that they had to remedy the situation with Cabrera's test. Defendant Sam Levinson said, "we will get crushed if he's suspended. This can't be." In part, this was because Defendant Sam Levinson had spoken to Philadelphia Phillies general manager Ruben Amaro, who said the Phillies were willing to pay Cabrera \$75 million over 5 years. ACES did not want to lose its

commissions on that prospective contract, and the Phillies did not yet know about the possible suspension.

61. Plaintiff told Defendant Sam Levinson that he had discussed the test with Anthony Bosch, who recommended that Cabrera should say that he took a pill called Extenze, which caused the positive test. Sam Levinson thought it was a good plan, despite knowing that it was a lie, and decided to employ it as part of Cabrera's defense.

62. Over the next few weeks, Defendants decided to fight Cabrera's positive test using the Extenze excuse. Defendant Sam Levinson was eventually notified that the Players Union wanted to meet with Cabrera in San Francisco to discuss the positive test.

63. Defendant Sam Levinson told Plaintiff to fly to San Francisco so that he could attend the meeting with Cabrera and help Cabrera with the Extenze ruse. Defendant Sam Levinson further instructed Plaintiff to buy a package of Extenze before he went to San Francisco. Plaintiff did, so that Cabrera would have it available if the Players' Union asked him about it at the meeting.

64. At Defendants' direction, Plaintiff flew to San Francisco and arrived the day of the meeting between Cabrera and the Players' Union. Plaintiff first went to Cabrera's home to go over the Extenze story that Cabrera was going to tell the Union. Plaintiff also gave Cabrera some samples of Extenze in case the Union asked him for them.

65. Plaintiff accompanied Cabrera to the meeting with the Player's Union, during which the Union's representatives explained that the testosterone level that Cabrera tested positive for wouldn't have been caused by Extenze. They then asked Cabrera if he was using any homeopathic remedies that his family may have brought him, since this practice was common among Latin players.

66. Cabrera responded that he used a substance akin to a “Dominican Ben Gay.” The Union asked for a sample and Cabrera agreed to provide one.

67. After the meeting, Cabrera gave Plaintiff a jar of a product called “Friccilicont” in a pouch. Cabrera told Plaintiff to take it to Bosch, who would “know what to do, he’ll put the stuff in it.”

68. Plaintiff then called Defendant Sam Levinson to keep him informed, and told him that the Extenze explanation didn’t work. Plaintiff also told Sam Levinson about Cabrera’s new plan involving the cream, and that Plaintiff was going to bring it to Bosch. Defendant Sam Levinson approved this plan and instructed Plaintiff to go to Miami.

69. Plaintiff flew back to Miami the next day, but could not find Bosch. Bosch did not respond to Plaintiff’s repeated calls and texts, and was not present at his office for five to six days.

70. During that time, Plaintiff spoke to Defendants Sam and Seth Levinson by phone. They were upset, and told Plaintiff that he had to find Bosch because the Union was pressuring them to turn in the sample of the cream. During calls with Plaintiff over next few days, Defendants Sam and Seth Levinson implored Plaintiff to “find the doctor - we need you to come up here with the cream.”

71. Bosch was not responding to Cabrera’s calls, either. Finally, Cabrera sent Bosch a text in Spanish that said in essence, “if I go down, you’ll go down.” That prompted Bosch to call back. Plaintiff informed Defendant Sam Levinson of this development.

72. Bosch agreed to meet Plaintiff on Key Biscayne. Plaintiff handed Bosch the pouch with the Friccilicont cream, and Bosch told Plaintiff to pick up the pouch at his office the



next day. Bosch wanted \$5,000 to prepare the bottle, which Plaintiff paid with approval from Defendants and with money provided to him by Cabrera.

73. The following day, Plaintiff went to Biogenesis to pick up the cream. Bosch was there with an attorney, who explained that MLB would likely want to buy the cream itself in the open market to test the veracity of Cabrera's story. The attorney further explained that when baseball discovered that the jars they bought did not have testosterone, they would know that the jar Cabrera gave them had been tampered with.

74. Bosch suggested that Plaintiff go to the Container Store and get a clear jar (without the Friccilicont label). Plaintiff did so, and gave Bosch the empty jar he purchased at the Container Store. Bosch wrote Plaintiff a prescription for testosterone and told him to pick it up at a pharmacy in Hialeah Gardens. When Plaintiff returned with the testosterone, Bosch emptied the contents from the Friccilicont jar into the new jar and mixed in the testosterone. Bosch said that the mixture would trigger the same result for which Cabrera had tested positive. After he left Bosch's office, Plaintiff called Defendant Sam Levinson and told him that Plaintiff had what he needed from Bosch and that Plaintiff would bring it to Levinson the next day.

75. The next day, Plaintiff flew to New York and met Defendant Sam Levinson at a place called Victor's Café, where Levinson was meeting with a client. After that client left, Plaintiff and Defendant Sam Levinson went to Levinson's car, where Plaintiff showed him the jar. They drove together to the offices of the Players' Union, where someone from the Union came down to the car and picked up the jar.

76. Defendant Sam Levinson and Plaintiff then went to ACES' offices, where they met with Defendant Seth Levinson. Plaintiff informed Sam and Seth Levinson about Plaintiff's meeting with Bosch and Bosch's attorney.

77. When Plaintiff told them what Bosch's attorney had said—namely that if MLB bought Fricillicont cream in the Dominican Republic, the league would discover that Cabrera's sample had been tampered with—Defendant Seth Levinson became angry. Defendant Seth Levinson said, "I'm handling this, not [Bosch's attorney]. No one on the outside is handling this."

78. Within the next few days, the Union contacted ACES and asked for a jar that included a Fricillicont label (since the jar ACES had given them didn't have one). Defendant Seth Levinson instructed Plaintiff to have Cabrera falsely state, if asked why the jar submitted to the Union had no label, that Cabrera had accidentally peeled off the Fricillicont label. This was false because the jar ACES provided never had a label.

79. Plaintiff then met with Defendants Sam Levinson and Seth Levinson at the ACES office about the Cabrera situation. The Defendants told Plaintiff that they needed to come up with a name for the company that supposedly distributed the Fricillicont cream to Cabrera, along with a website for the company to make it seem legitimate. Plaintiff told the Defendants that Plaintiff knew someone who could help set up the website, Hamlet Batista.

80. At the direction of the Defendants, Plaintiff spoke with Batista about the website, and told Batista that ACES wanted to use the name "Crema Milagrosa," a name chosen because Defendant Seth Levinson had suggested calling it the "Miracle Cream."

81. Batista decided that the name "Crema Milagrosa" was too common a term on the internet, and that they needed to pick a different name. Plaintiff and Hamlet Batista came up with a new name, "Crema Santiaguera," and Defendants Sam and Seth Levinson approved the change.

82. Plaintiff kept Defendants up to date regarding the progress of the website while Batista worked on getting it up and running. The Defendants were intimately involved in the construction of the website, and both directed and reviewed changes to the website from an office computer at ACES.

83. Defendant Seth Levinson told Plaintiff that it was important to get a phone number to list on the website, so that MLB would know who to contact and where to buy the cream when they visited the website.

84. Amid intense pressure from Defendant Seth Levinson, Plaintiff spoke to someone he knew, Felipe Inoa, who agreed to permit his phone number be used for the website. At Defendant Seth Levinson's direction, Plaintiff arranged for Inoa to answer the phone and provide information about the cream, if anyone from MLB called to ask about it.

85. At the same time, MLB was asking for jars of the cream, so Defendant Sam Levinson directed Plaintiff to get additional jars. Plaintiff relayed this message to Cabrera, who arranged for his grandmother to fly in from the Dominican Republic to New York with a few jars of Friccilicont cream. Plaintiff met her at the airport and made arrangements to transport the jars to Biogenesis in Miami, so that Bosch could mix testosterone in them.

86. Plaintiff reported to Defendant Sam Levinson that the jars were being transported to Miami and were going to be delivered to Bosch. Sam Levinson said, "now we need labels for the jars." Plaintiff found a printing shop in the Bronx that would make the labels.

87. At first, the shop had printed up the original "Crema Milagrosa" labels. Plaintiff shared a picture of a jar of the fabricated cream bearing a "Crema Milagrosa" label with Defendant Sam Levinson by phone for his approval.

88. As noted above, at Hamlet Batista's suggestion, the name on the labels was later switched to "Crema Santiaguera." After the new labels were printed, Plaintiff sent them to Miami so that they could be placed on the jars that Bosch was preparing for MLB. Plaintiff kept Defendants Sam and Seth Levinson apprised of these developments.

89. Throughout this time, Defendants Sam and Seth Levinson repeatedly called Plaintiff to make sure that everything was on track with the jars and the labels. Defendants Sam and Seth Levinson directed and orchestrated every aspect of the attempted coverup after Cabrera tested positive for PEDs.

90. When Bosch finished preparing the jars, they were sent to Felipe Inoa so that he could sell them to MLB when they called him. MLB subsequently called, purchased the new jars, and tested them.

91. Defendants Sam and Seth Levinson were told by MLB that the testosterone levels in the new jars did not match the level in the first jar. Defendant Seth Levinson thought that was favorable, because he believed that this discrepancy could hurt MLB's case.

92. Throughout this time, Defendant Seth Levinson was preparing for Cabrera's disciplinary hearing with MLB. Defendant Seth Levinson wrote detailed "scripts" of what he needed Cabrera and others to say. Defendant Seth Levinson was very careful about what he wrote in the script, and in emails, in case anyone would see them. For example, he would write (as cover) that Cabrera "needs to tell the truth" on a draft script, when in reality he was helping Cabrera come up with false answers to keep his invented story straight.

93. During the scriptwriting process, Defendant Seth Levinson would come up with specific points that needed to be covered, typing out both questions and answers for Cabrera.

94. For example, Defendant Seth Levinson's script had Cabrera testify falsely that the significant uptick in Cabrera's baseball performance was attributable to tougher workouts instead of performance-enhancing drugs. The script directed Cabrera to testify that he "COMPLETELY DEDICATED [HIM]SELF TO BEING THE BEST THAT [HE] CAN BE," and that he worked out 5-6 hours per day, 6 days per week.

95. In a section of the script called "NOTES TO MYSELF," Defendant Seth Levinson added a note to "Look for a Christmas photo of [Plaintiff] and Melky in the gym" to give credibility to the false workout story, and also, upon information and belief, to create the appearance that Plaintiff was solely responsible for Cabrera's use of PEDs in the event Defendants ever needed to protect themselves.

96. Further, Defendant Seth Levinson decided that since the jar was supposed to have been from the Dominican Republic, Cabrera's mother, who was a nurse, could help out with that part of the story.

97. To chase down that lead, Defendant Seth Levinson sent Plaintiff to see Cabrera's mother on Long Island in the beginning of July 2012. Defendant Seth Levinson instructed Plaintiff to tell her that she should say she purchased the jars of cream from a flea market in the Dominican Republic. Defendant Seth Levinson also instructed Plaintiff to tell her that she should say she took a jar to a doctor in the Dominican Republic, who tested it and said it was fine to use. Defendant Seth Levinson additionally instructed Plaintiff to ask Cabrera's mother to find a doctor in the Dominican Republic who would confirm this dishonest story.

98. After meeting with Cabrera's mother, Plaintiff reported back to Defendant Seth Levinson that she had agreed to help out and was finding a doctor in the Dominican Republic who would support the story.

99. Cabrera's mother located a doctor in the Dominican Republic, Dr. De Los Santos, who agreed to go along with the story. Defendant Seth Levinson then wrote the script for the doctor and directed Plaintiff to "prep" the doctor for his false testimony. Plaintiff met Dr. De Los Santos at the airport in Miami and went over Defendant Seth Levinson's script with him.

100. At the same time Defendant Seth Levinson continued to work on the script for Cabrera. Defendant Seth Levinson would go over the script with Cabrera (using Plaintiff as an interpreter) and tell Cabrera what his answers should be to the questions. For example, toward the end of July 2012, Defendant Seth Levinson and Plaintiff met with Cabrera in Philadelphia when Cabrera's MLB team, the Giants, were playing the Phillies. Defendant Seth Levinson and Plaintiff met with Cabrera and reviewed all the answers Seth Levinson wanted Cabrera to give at the upcoming arbitration hearing. On other occasions, Defendant Seth Levinson directed Plaintiff to meet with Cabrera alone to make sure that he knew the answers to all the questions.

101. The audacity of the fraudulent scheme got Defendant Sam Levinson nervous. He would occasionally say to Plaintiff, "this is going too far."

102. By contrast, Defendant Seth Levinson was worried that MLB would find out that the cream was not a registered product in the Dominican Republic. To bolster this part of the false narrative, Defendant Seth Levinson wrote a letter to the Ministry of Health in the Dominican Republic, asking first, if the cream was registered there (knowing that it wasn't), and second, whether it was common to sell unregistered products in the country.

103. Defendant Seth Levinson then sent Plaintiff to the Dominican Republic to obtain an official letter from the Ministry of Health stating that the sale of unregistered products was common in the Dominican Republic. Plaintiff was able to get the letter from someone at the Ministry of Health, and reported back to Defendant Seth Levinson with the letter.

104. A few days later, Defendant Seth Levinson called Plaintiff and said, “it’s all over.” He said that he had received a call from the head of the Players’ Union, Michael Weiner, who informed him that the Union spoke to Hamlet Batista and “got to the bottom of it.” Weiner also told Defendant Seth Levinson that if they kept fighting this, ACES could be liable.

105. Defendant Seth Levinson then capitulated, instructing Plaintiff to tell Cabrera that the ruse had failed. Defendant Seth Levinson said that Cabrera was on the field practicing, but that Plaintiff should pull him off the field to tell him. He also told Plaintiff to let Cabrera know that while he would be suspended, he would be able to come back to play in the post-season.

**H. Defendants protect themselves and make Plaintiff their fall guy by falsely promising him that he would be “well taken care of”**

106. A few days later, Plaintiff received a message from Defendants, passed through Plaintiff’s brother. Defendant Sam Levinson told him, “tell your brother that it would be a good idea for him to disappear and get out of the country for a while. He’ll be well taken care of and he’ll come back when things calm down.” That was a false promise, intended to keep Plaintiff quiet.

107. Plaintiff spoke with Defendant Seth Levinson, who told Plaintiff that everyone involved already had a lawyer, even Felipe Inoa. Seth Levinson recommended that Plaintiff hire a lawyer that Levinson knew in San Francisco.

108. After Plaintiff made relatively small initial payments to the lawyer, upon information and belief the Defendants paid the lawyer, who was supposed to be representing Plaintiff’s interests.

109. In fact, that lawyer attempted to negotiate a settlement with Defendants, who presented a proposal that prohibited Plaintiff from telling the truth if asked about Defendants’ involvement in the misconduct described in this Complaint. Worse still, it would have required

Plaintiff to make the false representation that none of the Defendants were involved in such misconduct, when in fact they had directed it. Plaintiff refused to accede to Defendants' demand that he make this false statement in writing.

110. In addition, Defendant Sam Levinson called Plaintiff and directed him to call Teri Thompson, a writer at the New York *Daily News*. Sam Levinson instructed Plaintiff to dial “\*67” before making the call, so the caller ID would not reveal to Ms. Thompson the number from which Plaintiff was calling.

111. Defendant Sam Levinson said that Plaintiff needed to tell her the following falsehoods: (a) that Defendants Sam and Seth Levinson had no knowledge of Cabrera's use of PEDs, the phony website, or the attempted coverup; (b) that Plaintiff worked alone on the website and the attempted coverup; and (c) that Plaintiff was accepting sole responsibility for all of this misconduct.

112. To induce Plaintiff to say those untrue things to Ms. Thompson, Defendant Sam Levinson told Plaintiff that he would be taken care of financially. Levinson said, “just make the call and everything will be ok.”

113. Defendant Sam Levinson asked Plaintiff to rehearse what Plaintiff was going to say over the phone with him before Plaintiff called Ms. Thompson. Sam Levinson ended the call by repeatedly saying, “we're going to take care of you. Don't worry. Everything will be fine.” That too was a false promise designed to induce Plaintiff to keep quiet.

114. In reliance on Defendants' promises, Plaintiff made the call to Ms. Thompson.

#### **I. Defendants try to cover their tracks**

115. On August 20, 2012, Defendant Seth Levinson sent Plaintiff a letter on behalf of ACES that purported to suspend the Contract pending further investigation, “[a]s a result of your involvement in recent events surrounding the creation of a misleading website and other matters



relating to ACES' client Melky Cabrera, and also at the recommendation of the Major League Players Association.”

116. This purported “suspension” letter was sent as cover, to make it look as if Defendants had no involvement in the misconduct described above, which in fact Defendants had directed at every step.

117. To keep themselves in Plaintiff’s good graces during that critical time, Defendants’ August 20, 2012 letter promised that ACES would continue to make payments to Plaintiff during the pendency of their supposed “investigation”—something Defendants would never have done had they truly believed that Plaintiff was solely responsible for the above-described activities.

#### **J. Plaintiff resigns from ACES**

118. Plaintiff submitted his written resignation to ACES on or about October 30, 2012.

119. After Plaintiff’s resignation, Plaintiff’s brother continued to meet with Defendant Sam Levinson at restaurants in Brooklyn. During those meetings, Defendant Sam Levinson told Plaintiff’s brother, “everything is going to be okay for [Plaintiff]. Don’t worry.” That too was a false assurance designed to keep Plaintiff quiet.

120. In December 2012, Defendant Seth Levinson called Plaintiff and told him that everything would be fine once Defendants cleared the hurdle of the MLB investigation into PEDs.

121. Plaintiff last saw Defendant Sam Levinson in mid-2014 in West Palm Beach. During that meeting, Levinson wanted to know if any of the Plaintiff’s players had contacted Plaintiff. At the end of that meeting, Levinson told Plaintiff not to worry, “the lawyers will take care of everything.”

122. After Plaintiff's resignation, Defendant ACES asked Plaintiff if he would help ACES get MLB pitcher Jeurys Familia back to ACES as a client. Defendants Sam and Seth Levinson knew that it would be a violation of the Players' Union rules for Plaintiff to do so, but nevertheless requested Plaintiff's assistance. Pursuant to this request, Plaintiff contacted Familia and convinced Familia to return to ACES as a client.

### **K. Damages**

123. Under the Contract, Plaintiff is currently owed over \$2 million in unpaid commissions and another \$500,000 in fees Defendant ACES agreed to reimburse but never did.

124. Defendants improperly benefited not just by failing to pay Plaintiff what they owed him, but because they earned far more in improper commissions as a result of their scheme. In other words, Defendants earned and kept multiples of every dollar they still owe to Plaintiff (but never paid him) for carrying out their dirty work, yet they were content to let Plaintiff go to prison to preserve their own reputations.

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **(Breach of Contract) (Against Defendant ACES)**

125. Plaintiff repeats and reiterates the prior paragraphs as though fully set forth herein.

126. As alleged above, the parties entered into the Contract on or about May 30, 2006.

127. Plaintiff performed all his material obligations under the Contract.

128. In the alternative, if Plaintiff did not perform all his material obligations under the Contract, ACES knowingly failed to declare a breach and terminate the contract. Instead, ACES elected to continue accepting the benefits of Plaintiff's performance and is therefore precluded from using Plaintiff's purported breach as an excuse for its own breach of contract.

129. ACES materially breached the Contract by failing to pay millions of dollars of commissions (defined in the Contract as “Finder’s Fees”) in respect of clients Plaintiff introduced to ACES. ACES failed to pay these Finder’s Fees in violation of paragraph 2(a) of the Contract, ignoring Plaintiff’s demand for payment.

130. Plaintiff is entitled to receive his Finder’s Fees (as defined in the Contract) in perpetuity resulting from the agency commissions ACES has received or will receive from all clients Plaintiff introduced to ACES.

131. ACES also failed to reimburse Plaintiff for approximately \$500,000 in expenses fronted by Plaintiff that ACES had agreed to reimburse.

132. Plaintiff also seeks consequential damages stemming from ACES’s breach.

133. As a result of these material breaches, Plaintiff has been injured in an amount to be determined at trial, but which exceeds several million dollars.

134. Plaintiff is entitled to a pre- and post-judgment interest, along with his attorneys’ fees and costs.

**SECOND CAUSE OF ACTION**  
**(Tortious Interference With Contract) (Against Defendants Sam and Seth Levinson)**

135. Plaintiff repeats and reiterates the prior paragraphs as though fully set forth herein.

136. Plaintiff was a party to the Contract with ACES.

137. Plaintiff performed all his obligations under the Contract.

138. Defendants Sam and Seth Levinson were aware of the Contract and its material terms.

139. With malice and without any economic justification, Defendants Sam and Seth Levinson tortiously interfered with the Contract by causing ACES to breach the Contract as

described above. Such actions were in fact against the long-term interests of Defendant ACES, as it amounted to illegal conduct.

140. Defendants Sam and Seth Levinson engaged in wrongful and malicious conduct that caused ACES to breach the Contract.

141. Plaintiff is entitled to damages in an amount to be determined at trial, but which exceeds several million dollars, plus pre- and post-judgment interest and his attorneys' fees and costs plus punitive damages, because the acts here were wanton and malicious.

### **THIRD CAUSE OF ACTION**

#### **(Breach of the Implied Duty of Good Faith and Fair Dealing) (Against Defendant ACES)**

142. Plaintiff repeats and reiterates the prior paragraphs as though fully set forth herein.

143. The malicious and wanton misconduct of ACES constituted a breach of the implied duty of good faith and fair dealing inherent in the Contract because, among other things, these acts were intended to, and did, deprive Plaintiff of the benefits of the Contract.

144. Further, to the extent Defendant ACES will argue that Plaintiff breached the Contract, it was a violation of the implied duty of good faith and fair dealing for Defendant ACES to force Plaintiff to perform certain acts as a condition of his employment, only later to use those acts as a purported basis not to pay Plaintiff what he is owed under the Contract.

145. Plaintiff is entitled to pre- and post-judgment interest, plus attorneys' fees and costs.

### **FOURTH CAUSE OF ACTION**

#### **Conspiracy to defraud (against all Defendants)**

146. Plaintiff repeats and reiterates the prior paragraphs as though fully set forth herein.

147. All of the Defendants conspired with each other to hide their own misconduct and to induce Plaintiff to take sole responsibility for it.

148. As described above, Defendants made false promises to Plaintiff that Plaintiff would be “taken care of” if he did not disclose Defendants’ role in the scheme.

149. Each Defendant committed an overt act in furtherance of the conspiracy.

150. Each of the Defendants is jointly and severally liable for compensatory damages, punitive or enhanced damages, an award of attorneys’ fees and costs, and pre- and post-judgment interest as provided by law.

**FIFTH CAUSE OF ACTION**  
**Unjust enrichment (against all Defendants)**

151. Plaintiff repeats and reiterates the prior paragraphs as though fully set forth herein.

152. Defendants have been unjustly enriched at Plaintiff’s expense, through their retention of funds owed to Plaintiff, through the substantial fees they earned from the clients Plaintiff brought to them, and as a result of their attempts to silence Plaintiff so as to preserve their own reputations.

153. Equity and good conscience demand that that these benefits be returned to Plaintiff.

154. As a direct and proximate result of this unjust enrichment, Plaintiff has sustained damages and will incur further damages in an amount to be proven at trial.

155. Each of the Defendants is jointly and severally liable for compensatory damages, punitive or enhanced damages, an award of attorneys’ fees and costs, and pre- and post-judgment interest as provided by law.

