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Assessing the Unethical Phenomenon Behind Hollywood's Handshake Agreements

Daniel Rico *

The Hollywood Film Industry has maintained a unique characteristic of allowing substantial capital investments to regularly proceed on the basis of oral (“handshake”) agreements.¹ These handshake agreements result in an uncertain threat of legal enforcement and an increased exposure to contract liability. Nevertheless, handshake contracts have become so prevalent in Hollywood’s entertainment industry that no matter one’s opinion on the merits of using these contracts, attorneys have conformed to this longstanding tradition in order to stay competitive.

As a result, this longstanding practice of conducting business through handshake agreements has contributed to another time-honored Hollywood tradition: contract disputes. Hollywood’s flexible transactional agreements challenge conventional expectations that a written enforceable contract is necessary for any significant financial undertaking. Without a signed contract, disputes can arise over the terms of a deal or whether there is even a deal at all. To make matters worse, Hollywood attorneys in this industry are bound by the California Business & Professions Code and the California Rules of Professional Conduct to make special efforts to protect clients (and themselves) by reasonably limiting situations where clients are subject to liability. Nevertheless, transactional attorneys in Hollywood unethically and blatantly depart from this prudent

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¹ The terms “oral agreement” and “handshake agreement” are used interchangeably throughout this Comment.

approach and instead, support a practice that almost guarantees legal liability when disputes arise.

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I. INTRODUCTION

“Moviemakers do lunch, not contracts.”²

This is how Judge Alex Kozinski of the U.S. Ninth Circuit Court of Appeals summarized Hollywood’s unique way of conducting business in the entertainment industry.³ Judge Terry Green of the Superior Court of California further reiterated his distaste for handshake agreements by emphasizing, “when it comes to oral contracts, there’s not a special rule for entertainment people.”⁴ Indeed, these statements seem to put transactional attorneys on notice of a potential end to the handshake agreements that have become so prevalent in the entertainment industry. Attorneys may argue that oral contracts save time and provide flexibility

² *Effects Assoc., Inc. v. Cohen*, 908 F.2d 555, 556 (9th Cir. 1990).

³ *Id.* at 556.

⁴ Daniel Seigal, *Johnny Depp's Former Attys Can't Enforce Oral Fee Deal*, LAW 360 (Aug. 28, 2018), <https://www.law360.com/articles/1077572/johnny-depp-s-former-attys-can-t-enforce-oral-fee-deal>.

in this fast paced-industry, but the reality is that these same attorneys are bound by the California Business & Professions Code and the California Rules of Professional Conduct to make special efforts to protect their clients (and themselves) by reasonably avoiding situations where clients are subject to legal liability.⁵ Although the industry has established a longstanding practice of relying on handshake contracts and making multimillion-dollar deals on merely a handshake, both Judge Kozinski and Judge Green's comments suggest an increasing shift in abandoning its use in the entertainment industry.

Part II of this Comment provides a synopsis of the legal history surrounding the industry's reliance upon handshake deals by discussing how California courts have decided this issue. Part III examines the industry's justifications for relying on handshake agreements and rebuts these justifications by emphasizing the unethical misrepresentations by attorneys who rely on handshake agreements and by presenting the rationale behind using formalized written agreements. Part IV explains why the *Depp v. Bloom Hergott Diemer Rosenthal La Viollette Feldman Schenkman & Goldman, LLP*⁶ ruling could be the beginning of a shift toward California judges rendering future handshake agreements invalid, thus requiring lawyers to change the way in which actors and attorneys formalize contracts in the future. Lastly, Part V concludes this Comment by advocating for an end to the blatant and unethical culture of doing business by handshake agreements.

II. HOW HOLLYWOOD GOT TO THIS POINT: THE LEGAL HISTORY SURROUNDING HANDSHAKE AGREEMENTS IN THE ENTERTAINMENT INDUSTRY

A. No Written Contract, No Problem

Over the last few decades, a number of high-profile disputes have arisen over the terms of handshake agreements between attorneys and actors.⁷ Handshake agreements in the entertainment industry have long

⁵ See CAL. BUS. & PROF. CODE § 6147 (West 2000) ("An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client . . . [t]he contract shall be in writing . . ."); see also CAL. RULE OF PROF'L CONDUCT r. 1.3 (2018) (stating that reasonable diligence means that a lawyer acts with commitment and dedication to the interests of the client).

⁶ No. BC680066, 2018 WL 4344241 (Cal. Super. Aug. 28, 2018).

⁷ See generally David J. Fox, *Kim Basinger Court Case Shines Light on Deal-Making: Trial: The Boxing Helena lawsuit is the second recent high-profile dispute involving a star's defection from a project. The way the industry does business is what is on trial*

been the subject of litigation, and actor Johnny Depp's recent predicament merely illustrates that making, breaking, and suing over a handshake deal is a practice that dates back to the inception of the modern film industry in the early 1920s.⁸

Because these agreements have become a customary practice since the advent of production films in Hollywood, courts initially revised their decision-making policies to accommodate the growing number of deals made by handshake agreements.⁹ For instance, in *Johnston v. Twentieth Century-Fox Film Corp.*, Stanley Johnston entered into an oral agreement with Fox for the rights to use the title of his book, *Queen of the Flattops*, for an unfinished motion picture based on the sea battles in the Pacific.¹⁰ Johnston's attorney and the studio negotiated a mutually acceptable price for the book title, and Johnston's attorney verbally accepted the studio's offer by a handshake agreement.¹¹ After the handshake deal was made, the studio asked Johnston to waive certain rights in an additional written contract containing a provision to which he had not previously agreed.¹² When Johnston refused to agree to the waiver, Fox claimed the handshake agreement was unenforceable and therefore no agreement to purchase the book rights was made.¹³ Johnston sued the studio for breach of contract.¹⁴

The California District Court of Appeals agreed with Johnston that the oral contract consummated between the parties did, in fact, exist and held that the parties' mutual intention to reduce the agreement to writing did not obviate that binding agreement.¹⁵ Moreover, the Court rejected Twentieth Century-Fox's argument that the parties had otherwise contemplated that the agreement was not to become obligatory until it was reduced to writing and emphasized:

here, L.A. TIMES (Mar. 1, 1993), <https://www.latimes.com/archives/la-xpm-1993-03-01-ca-150-story.html>; see also Marla Matzer, *\$80-million Verdict for Coppola Sets a Record*, L.A. TIMES (July 10, 1998), <https://www.latimes.com/archives/la-xpm-1998-jul-10-mn-2474-story.html>.

⁸ Jay M. Spillane, *Lawsuits over "Handshake Deals" Are as Old as the Entertainment Industry (and Can Be Easily Avoided)*, 11 ENT. & SPORTS LAW, 15, 15 (1993).

⁹ Shuangjun Wang, *Let's Do Something New for Lunch: Re-evaluating Hollywood Handshake Deals*, UNIV. OF CAL. BERKELEY (2013), at 6-7.

¹⁰ 187 P.2d 474, 477 (Cal. Dist. Ct. App. 1947).

¹¹ *Id.* at 478.

¹² *Id.* at 479.

¹³ *See id.*

¹⁴ *Id.* at 480, 488.

¹⁵ *Id.* at 488 ("It is essential to the existence of a contract that there should be: 1. Parties capable of contracting; 2. Their consent; 3. A lawful object; and, 4. A sufficient cause or consideration. All of these elements were present.").

It has been held repeatedly that when the respective parties orally agree upon all the terms and conditions of an agreement with the mutual intention that it shall thereupon become binding, the mere fact that a formal written agreement to the same effect is to be prepared and signed does not alter the binding validity of the original oral agreement.¹⁶

Thus, the Court found that the handshake agreement between Johnston and the studio was enough to render the contract valid and binding to its original terms.¹⁷

Another major case involving handshake agreements was decided one year later, *Columbia Pictures Corp. v. De Toth*.¹⁸ Director Andre De Toth hired an attorney to negotiate an oral contract with Columbia Pictures in which Colombia would acquire the exclusive rights to his directing services for one year with an option for Colombia to renew the contract annually for six years.¹⁹ De Toth's attorney verbally agreed to this deal, the men shook hands, and one of the parties indicated, "This is a deal."²⁰ The parties deferred reducing this handshake agreement into writing for a later time in the future.²¹ In the meantime, the defendant gained significant notoriety from several films he directed under the deal and expressed reservations about entering into a contract that tied him up for seven years.²² De Toth then ordered his agent to negotiate a salary increase, and when the parties could not agree upon higher terms, De Toth ceased working for Colombia.²³ Thereafter, De Toth left Colombia Pictures to pursue a more lucrative contract with another film studio, where he earned nearly twelve times more than he was making under his original contract with Colombia.²⁴

Following the alleged breach, Colombia Pictures sued De Toth to enforce their handshake agreement.²⁵ The California Second District Court of Appeals held that the oral agreement was binding, and ordered De Toth to honor the contract's terms.²⁶ The Court found that it was the intention of each party to be bound by the agreement and that, even

¹⁶ 187 P.2d at 489.

¹⁷ *Id.*

¹⁸ 197 P.2d 580 (Cal. Dist. Ct. App. 1948).

¹⁹ *Id.* at 623.

²⁰ *Id.* at 625.

²¹ *Id.*

²² *Id.* at 627.

²³ *Id.* at 628.

²⁴ *See* 197 P.2d at 628.

²⁵ *Id.*

²⁶ *Id.*

though the parties anticipated the contract would be reduced to writing, such writing was not a condition precedent to the existence of the binding contract.²⁷ Moreover, the Court reasoned that it is not necessary that an oral contract cover every term of a deal to be binding and if an agreement is reached on essential terms, others may be left open for future resolution.²⁸ Thus, the key issue with enforcing an oral contract is not the fact that it is oral, but rather that there is actually an agreement.²⁹ As a result, the California Second District Court of Appeals upheld the adverse judgment against De Toth, finding the handshake agreement to be valid.³⁰

Perhaps the most notorious case involving a Hollywood handshake agreement is the unpublished case, *Main Line Pictures, Inc. v. Basinger*.³¹ Actress Kim Basinger orally agreed with Main Line Pictures, Inc., a small production company, to star in the film *Boxing Helena*.³² Main Line and Basinger's attorneys then met in person and made a handshake agreement upon the compensation and credit Basinger would receive for her services.³³ Shortly before filming was to begin, Basinger refused to perform in the film for reasons that were in dispute.³⁴ Main Line then filed suit against Basinger, alleging that she had breached her oral agreement to star in the film.³⁵ In addition, Main Line contended that Basinger's attorney-handshake agreement further obligated her to appear in the film and therefore she was responsible for the monetary damage caused by her departure from the project.³⁶ Nevertheless, Basinger claimed that she never made a binding agreement because she had not agreed to the final script and the lack of a signed written contract further indicated she was free to leave.³⁷

At the conclusion of the trial, the jury found that there was indeed a handshake agreement, and awarded Main Line damages of \$8.92

²⁷ *Id.*

²⁸ *Id.* at 629 (noting that the mere fact that a formal written agreement to the same effect is to be prepared and signed does not alter the binding validity of the oral agreement).

²⁹ *Id.* (stating that whether it was the mutual intention of the parties that the oral agreement should be binding is to be determined by the surrounding facts and circumstances of a particular case).

³⁰ 197 P.2d at 632.

³¹ No. B077509, 1994 WL 814244 (Cal. Ct. App. Sept. 22, 1994).

³² *Id.* at *1.

³³ *Id.*

³⁴ *See id.* at *3.

³⁵ *Id.* at *4.

³⁶ *See id.*

³⁷ No. B077509, 1994 WL 814244 at *4 (noting that Basinger claimed she never made a binding agreement because she had not agreed to the final script and disapproved of scenes calling for gratuitous nudity).

million.³⁸ This included \$7.4 million for breach of an oral contract and an additional \$1.5 million for bad faith denial of a contract.³⁹ Although the California Second District Court of Appeals reversed this decision on a technicality in the language of the jury's verdict,⁴⁰ the reversal had nothing to do with the question as to whether there was a binding contract between the parties.⁴¹

B. *The Shift Begins*

Interestingly, California courts are shifting towards a movement of no longer validating oral contracts, ruling that no contract exists because it is based on a handshake agreement.⁴² This paradigmatic shift towards ending the enforceability of handshake agreements began when a federal court rejected the argument that moviemakers are unique and should therefore be exempt from written requirements.⁴³ Moreover, several other judges and juries have made their disfavor for handshake agreements quite apparent throughout the years.⁴⁴ For example, when Warner Brothers sued Rodney Dangerfield over an alleged breach of an oral contract to appear in *Caddyshack II*, Los Angeles Superior Court Judge Zebroski blatantly rebuked Warner Brother's attorneys' reliance on a handshake agreement by exclaiming from the bench: "Aren't you people ever going to come in front of me with a signed contract?"⁴⁵

Furthermore, in *Effects Assoc., Inc. v. Cohen*, the Ninth Circuit showed its reluctance in finding handshake agreements valid.⁴⁶ A movie producer, Cohen, entered into a handshake agreement with Effects Associates to create special effects footage for action sequences in a horror film titled *The Stuff*.⁴⁷ Cohen claimed he was completely dissatisfied with the work produced by Effects Associates and therefore refused to pay the full price, even though he included the footage in his

³⁸ *Id.* at *5.

³⁹ *Id.*

⁴⁰ *Id.* at *4; Superior Court Judge Judith Chirlin failed to separate Basinger from her personal services company, Mighty Wind Inc.

⁴¹ See *id.* at *4-5; see also Carol Marie Cropper, *The Basinger Bankruptcy Bomb*, THE N.Y. TIMES (Jan. 1, 1995), <https://www.nytimes.com/1995/01/01/business/the-basinger-bankruptcy-bomb.html> (stating that the California Court of Appeal reversed Main Line's victory because of the way the jury's decision was worded).

⁴² *Effects Assoc., Inc. v. Cohen*, 908 F.2d 555, 556 (9th Cir. 1990); see also *Coppola v. Warner Bros.*, No. B154280, 2003 WL 463611 (Cal. Ct. App. Feb. 25, 2003).

⁴³ *Cohen*, 908 F.2d at 556-57.

⁴⁴ *Id.* at 555; see also *Coppola*, 2003 WL 463611, at *3.

⁴⁵ Gary M. McLaughlin, *Oral Contracts in the Entertainment Industry*, 1 VA. SPORTS & ENT. L.J. 110 (2001).

⁴⁶ *Cohen*, 908 F.2d at 555.

⁴⁷ *Id.* at 556.

finished film.⁴⁸ As a result, Effects Associates sued Cohen for breaching the handshake agreement and claimed that Cohen's use of the footage constituted copyright infringement because there was no written transfer of copyright as required by federal law.⁴⁹ Cohen objected to this claim by arguing that it was customary in Hollywood to rely on handshake agreements, rather than written agreements.⁵⁰ Cohen further argued that previous courts have followed this notion because "moviemakers are too involved in developing joint creative endeavors to focus upon the legal niceties of [written agreements]."⁵¹

Nevertheless, in an Opinion written by Circuit Judge Kozinski, the Ninth Circuit took a firm stance against the film industry's reluctance to put handshake agreements into writing.⁵² Although recognizing the practice of relying on handshake agreements in the industry, the Court refused to allow moviemakers to "sidestep the writing requirement."⁵³ First, Judge Kozinski indirectly scolded the entire film industry:

Common sense tells us that agreements should routinely be put in writing. This simple practice prevents misunderstandings by spelling out the terms of a deal in black and white, forces parties to clarify their thinking and consider problems that could potentially arise, and encourages them to take their promises seriously because it's harder to backtrack on a written contract than an oral one.⁵⁴

Judge Kozinski further rejected Cohen's argument that moviemakers and attorneys are "too involved" to use written contracts and stated that the "writing requirement is not unduly burdensome; it necessitates neither protracted negotiations nor substantial expense."⁵⁵ Moreover, Judge Kozinski further reiterated his distaste for attorneys in Hollywood who feel as though contract law does not apply to them by indicating, "[written contracts] do not have to be the Magna Charta; a one-line pro forma statement will do."⁵⁶ Thus, as evidenced by Judge Kozinski's ruling in *Cohen*, the Ninth Circuit flatly rejected the argument that

⁴⁸ *Id.*

⁴⁹ *See id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Cohen*, 908 F.2d at 557.

⁵³ *Id.* at 558.

⁵⁴ *Id.* at 557.

⁵⁵ *Id.*

⁵⁶ *Id.*

Hollywood's uniqueness exempts attorneys and filmmakers from using written contracts.⁵⁷

Another indication of California courts shifting towards abandoning handshake agreements was apparent in the unreported case of *Coppola v. Warner Bros.*⁵⁸ In 1991, director Francis Ford Coppola entered into negotiations with Warner Brothers to produce and direct a film titled, *Pinocchio*.⁵⁹ The parties' attorneys agreed to terms by a handshake agreement, but did not sign any written, long-form documents.⁶⁰ Following a later disagreement between the parties, Coppola decided to look for another studio to produce the film.⁶¹ When Coppola entered discussions with another studio to produce the film, Warner Brothers threatened to commence litigation for breach of contract, claiming it had an enforceable handshake deal with Coppola.⁶² Fearing litigation, the other studio dropped out of the picture, and Coppola lost a lucrative contract.⁶³ Coppola then sued Warner Brothers, claiming tortious interference and asserting that no valid contract existed between the parties that would give Warner Brothers exclusive rights to the project.⁶⁴

Thereafter, the Court granted summary judgment that no contract existed between Coppola and Warner Brothers, finding that crucial terms had not been agreed upon, and no long-form written agreement had been signed.⁶⁵ The Court entered a judgment on jury verdict awarding \$20 million in compensatory damages to Coppola, including \$60 million in punitive damages.⁶⁶ One juror explained that the jury awarded the punitive damages because "the message we want to send is that Hollywood has to revise the way it does business."⁶⁷ However, the punitive damages were overturned for an unrelated technicality

⁵⁷ *Id.* at 558 ("[t]he Supreme Court and this circuit, while recognizing the custom and practice in the industry, have refused to permit moviemakers to sidestep... the writing requirement.").

⁵⁸ No. B154280, 2003 WL 463611 (Cal. Ct. App. Feb. 25, 2003).

⁵⁹ *Id.* at *1.

⁶⁰ *See id.*

⁶¹ *Id.* at *2.

⁶² *See generally id.*

⁶³ No. B154280, 2003 WL at *2.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Harrison J. Dossick, *Resolving Disputes over Oral and Unsigned Film Agreements*, L.A. LAW., Apr. 1999, at 18; *see also* Matzer, *supra* note 7, at 4 (quoting Coppola's attorney Robert Chapman: "I think the jury was clearly sending a message that large studios can't treat individuals this way. It sends a message that executives can't act unethically.").

pertaining to litigation preparation.⁶⁸ Nevertheless, Coppola still obtained a declaratory judgment against Warner Brothers that the handshake agreement was not an enforceable contract.⁶⁹

C. *Where Hollywood is Today*

In the aforementioned cases,⁷⁰ the oral contracts were related to performance of the agreement—appearing in a movie, producing content, and the exclusivity of a working relationship for a duration of time. Moreover, the performance at issue was between actors/producers/directors and the studio film-related companies. However, handshake agreements have also been an issue regarding the services rendered between an attorney and the client and the payment for those services.⁷¹ Nevertheless, no matter what parties are involved in the handshake agreement, one common factor among all these lawsuits are the transactional attorneys who fail to put these agreements in writing. Furthermore, these attorneys are violating the California Rules of Professional Conduct by not only failing to protect their clients from contractual liability, but also themselves.⁷² Unlike the previous cases,⁷³ where the client is suffering the consequences of not having an agreement in writing, we see in the *Depp* ruling below⁷⁴ that transactional attorneys can also suffer similar consequences when not putting their own representation agreements in writing.⁷⁵ Thus, the

⁶⁸ *Coppola*, 2003 WL 463611, at *1; see also Joseph D. Schleimer, *California Court of Appeal Reverses \$20,000,000 Verdict: Understanding the Coppola v Warner Bros. Decision*, ENT. LAW & FINANCE (Apr. 2001), <http://www.schleimerlaw.com/CoppolaII.htm> (“The Court of Appeal also affirmed the Los Angeles Superior Court’s reversal of the jury award of \$60,000,000 in punitive damages for Coppola.”).

⁶⁹ *Coppola*, 2003 WL 463611, at *6.

⁷⁰ *Effects Assoc., Inc. v. Cohen*, 908 F.2d 555, 556 (9th Cir. 1990); *Coppola*, 2003 WL 463611, at *1; *Main Line Pictures, Inc. v. Basinger*, No. B077509, 1994 WL 814244 (Cal. Ct. App. Sept. 22, 1994).

⁷¹ See generally Ashley Cullins, *After Johnny Depp’s Court Win, Showbiz Lawyers Question “Handshake” Contracts*, HOLLYWOOD REPORTER (Sept. 6, 2018), <https://www.hollywoodreporter.com/thr-esq/johnny-depps-court-win-lawyers-question-handshake-contracts-1139459> (“Depp sued Bloom not long after declaring legal war with his ex-business managers, claiming, among other allegations, that he represented him without a proper contract.”).

⁷² See CAL. RULE OF PROF’L CONDUCT r. 1.3 (2018).

⁷³ *Cohen*, 908 F.2d at 555; *Coppola*, 2003 WL 463611, at *1.

⁷⁴ *Depp v. Bloom Hergott Diemer Rosenthal La Viollette Feldman Schenkman & Goldman, LLP*, No. BC680066, 2018 WL 4344241 (Cal. Super. Aug. 28, 2018).

⁷⁵ See generally Sara Randazzo, *Ruling in Johnny Depp Lawsuit Threatens Hollywood Lawyers’ Handshake Culture*, THE WALL STREET JOURNAL, (Aug. 29, 2018), <https://www.wsj.com/articles/ruling-in-johnny-depp-lawsuit-threatens-hollywood-lawyers-handshake-culture-1535547603?ns=prod/accounts-wsj> (noting that without a

contractual liability that clients obtain as a result of their attorneys not exercising written agreements is the same contractual liability that attorneys are now experiencing from not putting their own representation agreements in writing.

A prime example of an attorney suffering the consequences of not putting an agreement in writing is demonstrated in the *Depp* ruling.⁷⁶ On October 17, 2018, actor Johnny Depp sued his longtime personal attorney, Jacob Bloom, alleging Bloom had wrongfully collected \$30 million in fees over roughly 18 years under a handshake deal in which Bloom provided a range of legal services in exchange for a cut of the actor's earnings.⁷⁷ Bloom and his firm filed a counterclaim alleging that Depp had breached the oral contract and sought unpaid legal fees and declaratory relief.⁷⁸ Following the counterclaim, Depp then filed a motion for judgment on the pleadings as to the contract claim only.⁷⁹ Bloom argued that the agreement was not a contingency fee agreement and that ruling such handshake deal—common in the entertainment industry—voidable would have "huge ramifications on the industry."⁸⁰

Nevertheless, Los Angeles Superior Court Judge Terry Green was not convinced, and found that the oral agreement appeared to be a contingency fee agreement, which, under California's Business & Professions Code, is voidable by the client if there is no written agreement.⁸¹ As a result, Judge Green stated that a verbal agreement entitling Mr. Depp's lawyer to a percentage of his client's earnings was not a valid contract because it was not put in writing.⁸² Judge Green cited his own family's deep roots in the entertainment industry and noted his sympathy to the unique nature of Hollywood handshake agreements.⁸³ Nevertheless, Judge Green concluded that although entertainment deals in Hollywood may be unique, attorneys still must comply with state law.⁸⁴ "I grew up in a showbiz family," Judge Green said.⁸⁵ "I am aware that showbiz people think they live in a different universe, but they don't.

written record of the contract, the judge said Mr. Depp has the right to invalidate the deal with his attorney).

⁷⁶ *Depp*, 2018 WL 4344241, at *1.

⁷⁷ Seigal, *supra* note 4, at 4.

⁷⁸ Seigal, *supra* note 4, at 4.

⁷⁹ *Depp*, 2018 WL 4344241, at *1-2.

⁸⁰ Seigal, *supra* note 4, at 2.

⁸¹ Randazzo, *supra* note 75, at 2.

⁸² *See id.* (noting that California law requires attorneys who represent clients on a contingency-fee basis to put their contracts in writing).

⁸³ Seigal, *supra* note 4, at 2.

⁸⁴ Seigal, *supra* note 4, at 2.

⁸⁵ Gene Maddaus, *Johnny Depp Scores Court Win Against Former Lawyer as Judge Rejects Unwritten Contract*, VARIETY (Aug. 28, 2018).

They're not a different universe.”⁸⁶ Furthermore, Judge Green reiterated his desire for Hollywood to begin formulating their agreements in writing:

There's not a special rule for entertainment people. Until or unless you get the state legislature to carve out a subsection that says in show business you're allowed to do whatever you want, there is no exception to the writing requirement.⁸⁷

This ruling further emphasizes the shift of importance in having attorneys resort to written contracts in the entertainment industry no matter who the parties are to a contract. Whether it is an actor or a director contracting with a film studio or an attorney contracting with a client to provide representational services, these recent cases and rulings provide justification that written agreements are becoming more of a requirement amongst the California judiciary. As such, the attorneys in the entertainment industry are on notice and the *Depp* ruling further prompts a reassessment of the handshake-deal culture that is still pervasive in some corners of Hollywood.⁸⁸

III. WHETHER JUSTIFIED OR UNIQUE IN THE INDUSTRY, HANDSHAKE AGREEMENTS DO NOT PRECLUDE ATTORNEYS FROM PROTECTING THEIR CLIENTS

A. Why the Entertainment Industry Relies on Handshake Agreements

In light of the many problems that arise from relying on handshake agreements, as well as the many benefits served by putting such agreements in writing, oral contracts in the entertainment industry have functioned for many years with reasonable success based on various justifications. First, oral contracts are legally enforceable in California.⁸⁹ Second, another reason most often given to justify Hollywood's reliance on handshake agreements are that the business is fast-paced and

⁸⁶ *Id.*

⁸⁷ Seigal, *supra* note 4, at 2.

⁸⁸ Randazzo, *supra* note 75, at 1.

⁸⁹ California Code, Civil Code § 1622 (“All contracts may be oral, except such as are specially required by statute to be in writing.”).

complex.⁹⁰ Specifically, one argument advanced to explain the complexity and uniqueness of the entertainment industry revolves around the high costs associated with negotiating and drafting written agreements.⁹¹

For instance, in *Main Line Pictures Inc. v. Basinger*, where the Court upheld a valid oral contract, Judge Grignon noted that handshake agreements are prevalent because “timing is critical” in the entertainment industry.⁹² Such assertion by Judge Grignon suggests that reducing handshake agreements into writing is too costly because it would slow down a project and cause time-sensitive opportunities to be missed.⁹³ Furthermore, other commentators have argued that “the entertainment industry exists on ideas turned into deals.”⁹⁴ When an idea is ‘hot,’ immediate action is desired and parties rush to agree on the details to get the project going.⁹⁵

Additionally, another commentator asserted that it is common practice to start filming as soon as called for in the creative process, regardless of whether all details have been documented.⁹⁶ Producer Larry Brezner articulated that a creative industry would fail if it focuses too closely on formal business transactions: “If everything had to be done purely on written contracts, nothing would get done in this town. If we depended strictly on business affairs and lawyers, we’d all be staring at blank movie screens.”⁹⁷ These comments suggest a widespread perception in the industry that stopping to haggle the details of every relationship and formulate it into writing will essentially cause a project to lose steam.⁹⁸ Moreover, others have justified utilizing handshake agreements by arguing that in a fast-paced business like the entertainment industry, projects are often under tight deadlines and require the parties to move rapidly in order to accommodate the schedule

⁹⁰ Rick Smith, *Here's Why Hollywood Should Kiss the Handshake Deal Goodbye*, 23 LOY. L.A. ENT. L. REV. 503 (2003); see also Michael T. Giordano, *Boxing Basinger: Oral Contracts and the Manager's Privilege on the Ropes in Hollywood*, 9 UCLA ENT. L. REV. 285 (2002) (noting that moviemaking business is set up in such a way that oral agreements have an instrumental value, helping to minimize drag time in an especially fast-paced industry).

⁹¹ McLaughlin, *supra* note 45, at 126.

⁹² No. B077509, 1994 WL 814244 (Cal. Ct. App. Sept. 22, 1994), at *2.

⁹³ McLaughlin, *supra* note 45, at 126.

⁹⁴ Donald E. Biederman et al., *Law and Business of the Entertainment Industries* 289 (3d ed. 1996); see also McLaughlin, *supra* note 45, at 119.

⁹⁵ McLaughlin, *supra* note 45, at 118.

⁹⁶ Douglas Kari, *Basinger in a Box: Verbal Contracts in the Film Industry*, 15 No. 2 ENT. L. REP. 4 (1993).

⁹⁷ Giordano, *supra* note 90, at 297.

⁹⁸ See *id.*

of a sought-after director and high-end actor, or accommodate the studio's insistence on a specific release date.⁹⁹

Another key argument in favor of relying on handshake agreements in Hollywood is that there is a unique honor code amongst attorneys, actors, and studios that binds the various parties to their oral agreements.¹⁰⁰ These film industry participants regularly conduct business with one another and observe an unwritten code of behavior where dishonesty is not respected.¹⁰¹ One commentator asserted: "Just as one could destroy another's career by taking her to court for breaching a contract, one could destroy another's professional reputation by spreading word around the industry that she is unreliable and dishonest."¹⁰² Thus, once a studio agrees to a deal with a star actor or director's agent/attorney, Hollywood's unwritten code means that it is too late to turn back.¹⁰³ The rationale suggested from this notion stems from the fact that millions of dollars are at stake once a handshake agreement is in place, and if that money is lost because of a contractual dispute, it will be remembered throughout the industry.¹⁰⁴

B. Justified or Not, Handshake Agreements are an Unethical Means of Doing Business

Although handshake agreements may ultimately be enforceable, relying on an oral agreement is difficult because the party seeking to enforce the contract lacks a clear written document and must resort to other evidence, such as oral testimony.¹⁰⁵ Given that people often have different recollections about what was agreed to or simply cannot remember every aspect of a contract, oral agreements often end up in a

⁹⁹ Kari, *supra* note 96, at 3; *see also* McLaughlin, *supra* note 45, at 127.

¹⁰⁰ Giordano, *supra* note 90, at 297 (noting that practice of relying on oral agreements seems to have developed because filmmaking is a unique creative venture that requires participation from so many disparate players: producers, directors, actors, writers, financiers, cinematographers, editors, wardrobe personnel, and production designers); *see also* Smith, *supra* note 90, at 521.

¹⁰¹ MARK LITWAK, DEAL MAKING IN THE FILM & TELEVISION INDUSTRY, 251 (2d ed. 2002).

¹⁰² Smith, *supra* note 90, at 523 (citing Michael T. Giordano, *Boxing Basinger: Oral Contracts and the Manager's Privilege on the Ropes in Hollywood*, 9 UCLA ENT. L. REV. 298 (2002)).

¹⁰³ ART LINSON, A POUND OF FLESH: PERILOUS TALES OF HOW TO PRODUCE MOVIES IN HOLLYWOOD 92 (1993).

¹⁰⁴ *See id.*

¹⁰⁵ *Breach of Verbal Contract: Everything You Need to Know*, UPCOUNSEL, <https://www.upcounsel.com/breach-of-verbal-contract> (noting that the party that wants the agreement to be enforced has the difficult task of proving the terms of the agreement as well as the existence of a verbal agreement) [hereinafter Upcounsel].

“he said, she said” battle.¹⁰⁶ By not putting these handshake agreements into writing, attorneys are breaching their duty to act in the best interests of their client and unethically representing these clients in a manner that will only enhance potential liability in the future if a dispute were to arise.¹⁰⁷

In order to satisfy their ethical obligation of reducing potential liability for themselves and their clients, the best advice an attorney can give a client regarding any type of a business agreement is to “get it in writing.”¹⁰⁸ This is because when a dispute arises, the existence and terms of oral contracts are much more difficult to prove than with traditional written contracts.¹⁰⁹ Further, oral contracts based on handshake agreements may be more easily broken when there are few or no witnesses.¹¹⁰ For example, oral contracts must be proven by oral testimony and people often have different recollections about what was agreed to.¹¹¹ Moreover, if the agreement is based entirely on a handshake, both parties may find it difficult to recall some of the terms down the road.¹¹² Because a handshake cannot clearly define the expectations of both parties, many times one party has different expectations regarding the subject matter of the contract or the obligations of the other party.¹¹³ If there is a mutual misunderstanding regarding the basic premise of the contract, the courts may hold the contract unenforceable.¹¹⁴ An oral contract may also fail because it is missing some necessary terms.¹¹⁵ As such, advising clients to resort to

¹⁰⁶ *Id.*

¹⁰⁷ See CAL. RULE OF PROF'L CONDUCT r. 1.3 (2018).

¹⁰⁸ See *Contracts 101: Make a Legally Valid Contract*, NOLO, <https://www.nolo.com/legal-encyclopedia/contracts-101-make-legally-valid-30247.html> (indicating that it's always a good idea to put business agreements in writing, because oral contracts can be difficult or impossible to prove).

¹⁰⁹ Donald Older, *What California Business Owners Need To Know About Oral Contracts*, SAN DIEGO BUSINESS LAWYER BLOG (July 13, 2013), <https://www.sandiegobusinesslawyerblog.com/what-california-business-owner/>.

¹¹⁰ *Why Just a Handshake Is Not Enough in Business Contracts*, HG LEGAL RESOURCES, <https://www.hg.org/legal-articles/why-just-a-handshake-is-not-enough-in-business-contracts-43135>; see also Upcounsel, *supra* note 105, at 1 (“An issue that arises with proving an oral contract is the lack of tangible evidence.”).

¹¹¹ Law Offices of Stimmel, Stimmel, & Smith, *Verbal Contracts-Enforceable?*, <https://www.stimmel-law.com/en/articles/verbal-contracts-enforceable>.

¹¹² Arina Shulga, *Handshake Agreements: Still a Good Idea?*, LEXIS NEXIS (May 21, 2015), <https://www.lexisnexis.com/legalnewsroom/corporate/b/business/posts/handshake-agreements-still-a-good-idea>.

¹¹³ Louis Zambrio, *Oral Contracts*, OLENDER FELDMAN, <https://www.olenderfeldman.com/articles/oral-contracts/>.

¹¹⁴ *Id.* at 2.

¹¹⁵ *Id.*

written contracts would serve to avoid undue confusion or surprise by clarifying or specifying contractual terms, particularly where what is agreed to in the beginning changes drastically over the course of the production.¹¹⁶

On another note, attorneys in the entertainment business control many aspects of the industry.¹¹⁷ They handle various facets of their clients' careers, and clients rely on their legal judgment.¹¹⁸ For instance, transactional attorneys understand that individual words or phrases made during a negotiation may carry different meanings to each party.¹¹⁹ The terms may also be vague or unclear at the beginning of the agreement.¹²⁰ This means that changes that occur later may not be objected to or could occur due to no clear clauses specifying what the contract does or does not permit.¹²¹

Additionally, a speaker's use of inarticulate language or a listener's inattention can result in an imperfect understanding of the terms.¹²² If such negotiations run over the course of several hours in order to cover the numerous aspects of an agreement, it is possible that the parties' minds will become fatigued and cause them to lose focus at certain times during these discussions.¹²³ There is also the possibility of a lapse of memory during a negotiation that took place months before the project is set to come to fruition.¹²⁴ As such, by advocating to use handshake agreements, these attorneys are violating a strict rule that regulates their behavior and therefore are not doing for their clients, essentially, what the attorney truly believes to be in their clients' best interests.¹²⁵

¹¹⁶ Smith, *supra* note 90, at 516.

¹¹⁷ Will Kenton, *Power Brokers in the Entertainment Industry*, INVESTOPEDIA (Jan. 11, 2018) ("The entertainment industry is noted for its power brokers, who may arrange contracts that bring prominent directors, screenwriters, and performers together for projects that are expected to generate substantial box office returns.").

¹¹⁸ Stephen P. Clark, *Main Line v. Basinger and the Mixed Motive Manager: Reexamining the Agent's Privilege to Induce Breach of Contract*, 46 HASTINGS L.J. 628.

¹¹⁹ Legal Resources, *supra* note 110, at 2 ("It is also possible to misinterpret the spoken words as there are inflections, tones and moods attached to what is said. This may cause an oral agreement to mean something vastly different than taking the word said at face value.").

¹²⁰ *See id.*

¹²¹ *Id.*

¹²² Morris G. Shanker, *In Defense of the Sales Statute of Frauds and Parol Evidence Rule: A Fair Price of Admission to the Courts*, 100 COM. L.J. 259, 261 (1995); *see also* McLaughlin, *supra* note 45, at 105.

¹²³ *See generally* Legal Resources, *supra* note 110, at 3 (noting that there are misinterpretations later when the oral agreement is only a memory in many instances of these contracts being only spoken).

¹²⁴ *See id.*

¹²⁵ *See* MODEL RULES OF PROF'L CONDUCT r. 1.4 (AM. BAR ASS'N, 1983).

Furthermore, business attorneys in any industry generally strive to avoid any of these “he said, she said”¹²⁶ encounters by drafting the circumstances under which the parties will or will not have an agreement.¹²⁷ Most business industries do not commit services, goods, or substantial sums of money to a transaction without taking this minimal precautionary measure; however, the entertainment industry is the exception.¹²⁸ Attorneys in this entertainment industry commit their services without taking the minimal precautions of getting their representational agreements in writing.¹²⁹ Moreover, these same attorneys allow their clients (e.g. actors, studios, directors) to commit substantial amounts time and money in producing films without putting their clients’ contractual obligations in writing. With all the risk associated in making a film, it is quite shocking to learn that such a sophisticated and complicated business would so widely rely on handshake agreements for significant financial transactions;¹³⁰ but what is even more shocking is how these attorneys have gotten away with advising clients to resort to such an fraught and outdated way of doing business.

Given the enormous budgets, the potential profits, and the vast amount of labor and resources involved in making a film,¹³¹ Hollywood attorneys need to abandon the use of handshake agreements and adopt the practice of using clear, written contracts that almost all professions hold.¹³² One Commentator made a compelling argument that projects in the entertainment industry develop rapidly and therefore may be too costly to stop and negotiate, draft, and execute all the details before the project can move forward.¹³³ Such costs, however, do not justify an attorney’s unethical behavior in failing to act in the best interest of the client and protecting the client from potential contract liability. The Commentator is correct in asserting that the entertainment business is

¹²⁶ Upcounsel, *supra* note 105, at 2.

¹²⁷ Spillane, *supra* note 8, at 16.

¹²⁸ *Id.*

¹²⁹ *See generally id.*

¹³⁰ Jonathan M. Barnett, *Hollywood Deals: Soft Contracts for Hard Markets*, 64 DUKE L.J. 658 (2015) (indicating that sophisticated parties in high-stakes transactions regularly select intermediate levels of contractual formality that leave the enforceability of the parties’ commitments unclear).

¹³¹ Litwak, *supra* note 101, at 2 (noting that the price tag of expenses is even higher for the typical studio film, at about \$50 million to produce and another \$31 million to market).

¹³² Smith, *supra* note 90, at 521.

¹³³ McLaughlin, *supra* note 45, at 111 (stating that in fast-paced and time-sensitive deals, reducing all agreements to writing could be costly in terms of lost time or missed opportunities).

unique, complicated, and full of expensive transactions.¹³⁴ For example, the average cost of marketing a studio film alone exceeds \$40 million.¹³⁵ These costs do not even account for production of the film, which includes hiring crewmembers, building sets, renting sound stages, manufacturing wardrobes, and casting actors.¹³⁶ Nevertheless, along with the substantial amount of capital in producing a film comes the substantial amount of risk and potential loss that correlates with not having a contract in writing.¹³⁷ For instance, if an actor decides in the middle of filming to terminate the handshake agreement and walk away from the project, the studio's cost of \$40 million could easily result in a \$40 million dollar loss right on the spot. Such risks associated with doing business this way stands against everything an attorney vouches to be doing for his or her client's interests.

Instead of avoiding unnecessary risk for its clients, attorneys in Hollywood are essentially promoting and encouraging risk by not putting these contracts in writing.¹³⁸ Moreover, as seen in the *Depp* ruling, if a high-paid actor decides to walk away from the service "agreement" with his attorney, the \$30 million in services rendered by the attorney can essentially turn into a \$30 million loss.¹³⁹ In essence, enforceable contracts are a precondition for any significant financial undertaking.¹⁴⁰ Thus, these same attorneys must protect their clients through written agreements, which contain implicit termination and negotiation options

¹³⁴ See generally *id.*

¹³⁵ Pamela McClintock, *\$200 Million and Rising: Hollywood Struggles With Soaring Marketing Costs*, HOLLYWOOD REPORTER (Jul. 31, 2014), <https://www.hollywoodreporter.com/news/200-million-rising-hollywood-struggles-721818>.

¹³⁶ Litwak, *supra* note 101, at 2 (stating that the cost of producing a film includes the hiring of crews, the building of sets, the expenses for locations, the renting of sound stages, the manufacturing of wardrobe, the casting of actors).

¹³⁷ Jean-Marc Pettigrew, *Contracts: verbal vs written*, THE INDEPENDENT (Feb. 1, 2012), <https://www.independent.co.uk/student/young-entrepreneurs/contracts-verbal-vs-written-6297966.html> (stating that businesses should be aware of the risk posed by beginning to perform their part of a contract before signature and the risk of an inference being made that the contract has been formed).

¹³⁸ Jack Matthews, *How Blind is Hollywood to Ethics? The enormous temptations of power, fame and greed are hard to resist and lead to some creative interpretations of ethical behavior in the movie business*, L.A. TIMES (Apr. 22, 1990), <https://www.latimes.com/archives/la-xpm-1990-04-22-ca-221-story.html> ("There are no ethics. It's a total jungle, a barroom brawl. A gentlemanly code used to exist, but that's gone. There's a whole new set of rules that says there are no rules. You do whatever you have to do.").

¹³⁹ See Randazzo, *supra* note 75, at 1.

¹⁴⁰ Barnett, *supra* note 130, at 607 (indicating that Hollywood's loose transactional practices challenge conventional expectations that an enforceable contract is a precondition for any significant financial undertaking).

that provides flexibility to amend the agreement when appropriate, while also maintaining transactional security for all parties.¹⁴¹

C. *Why Use Written Contracts Over Handshake Agreements?*

Written contracts provide proof to the existence of an agreement where no such proof might otherwise be available.¹⁴² Where there is a final draft evidencing a written and signed contract by both parties, it is less likely there will be a dispute over whether a contract exists.¹⁴³ Such written contracts can prevent possible conflicts in the future, reduce complications, and ensure that all parties included in the deal are kept to the terms agreed upon when it was first created.¹⁴⁴ One Commentator justified the use of oral contracts in Hollywood because the entertainment industry is more complex than any other business industry.¹⁴⁵ However, deal-making itself is extremely complex.¹⁴⁶ For instance, initiating a motion picture production can consume countless days of negotiation between directors, actors, studios, and producers.¹⁴⁷ Director Bill Wilder indicated that he spent on average nearly “80% of his time making deals for movies, and only 20% of his time actually directing films.”¹⁴⁸ Because of the dauntingly large costs and risks in producing films in Hollywood, it is unethical business practice for transactional attorneys involved not to draft a written contract after the countless hours spent by actors, directors, and producers in the negotiation process. This is because there are many causes of misunderstanding that can result from oral communication occurring through a handshake agreement.¹⁴⁹ Parties to an agreement are generally optimistic about the future of their relationships and their ventures.¹⁵⁰

¹⁴¹ *See id.* at 605.

¹⁴² Smith, *supra* note 90, at 515.

¹⁴³ Spillane, *supra* note 8, at 16 (noting that “[f]orm agreements can go a long way toward injecting clarity into a Hollywood transaction and thus avoid litigation”).

¹⁴⁴ Legal Resources, *supra* note 110, at 1.

¹⁴⁵ Michael S. Bogner, Note, *The Problem with Handshakes: An Evaluation of Oral Agreements in the United States Film Industry*, 28 COLUM. J.L. & ARTS 359, 363 (2004) (“To negotiate out such complex points would require vast amounts of time that could potentially delay or derail the start of preproduction or production on a film.”).

¹⁴⁶ Katie Shonk, *Deal Design: Strategies for Complex Dealmaking*, HARVARD PROGRAM ON NEGOTIATION (Jun. 18, 2018), <https://www.pon.harvard.edu/daily/dealmaking-daily/deal-design-strategies-for-complex-dealmaking/> (noting that the more parties involved in a negotiation, the more difficult it often is to come to agreement, due in part to the logistical challenge of making sure each voice is heard).

¹⁴⁷ Smith, *supra* note 90, at 522.

¹⁴⁸ Litwak, *supra* note 101, at 11.

¹⁴⁹ *See generally* Nina B. Riles, *Put that Handshake Deal in Writing*, THE HUFFPOST (Dec. 8, 2014), https://www.huffpost.com/entry/put-that-handshake-deal-i_b_6272432.

¹⁵⁰ Shulga, *supra* note 112, at 2.

Unfortunately, problems can arise and that is why attorneys must do their job and act in the client's best interest by reducing their client's exposure to legal liability.¹⁵¹

Many other situations validate the importance of obligating transactional attorneys to put their client in situations where potential liability is unlikely to occur, yet attorneys fail to oblige. For example, without even realizing it, the parties may also fail to agree on all aspects of their business deal.¹⁵² They may face a situation in which they discussed the essentials, but perhaps failed to think through all of the steps.¹⁵³ Furthermore, one's biases and prejudices tend to motivate individuals to seek meanings from oral discussions that tend to be more favorable for themselves.¹⁵⁴ As a result, by not advising their clients to put these agreements into writing, attorneys are allowing a result in which each respective party is able to expand, shade, diminish, or outright lie as to what was said during a negotiation.¹⁵⁵ Subsequent misrepresentations or alterations where the parties expand or diminish what was "agreed" to in oral discourse, whether deliberate or not, can be very difficult to challenge or disprove in court.¹⁵⁶ As a result, attorneys are essentially promoting lawsuits to occur and incentivizing their clients to breach oral contracts knowing that these agreements may not be enforceable. Although oral agreements are legal in California,¹⁵⁷ these agreements present more difficulties than written contracts because they are not clearly presented. A court cannot read specific items related to the contract because the verbal agreement is essentially hearsay and depends on the testimony of the contractual parties involved.¹⁵⁸ In essence, using written agreements with clear terms spelling out each party's rights, obligations and liabilities can reduce the need for litigation.¹⁵⁹ In the long run, this approach is an easier and more cost-

¹⁵¹ See CAL. RULE OF PROF'L CONDUCT r. 1.3 (2018) (stating that reasonable diligence means that a lawyer acts with commitment and dedication to the interests of the client).

¹⁵² *Id.*

¹⁵³ See *id.*

¹⁵⁴ Shanker, *supra* note 122, at 261 (indicating that biases and prejudices motivate attorneys to seek meanings from the oral discussion which are favorable to themselves, which may result in expanding, shading, diminishing or outright lying as to what was said).

¹⁵⁵ *Id.*

¹⁵⁶ McLaughlin, *supra* note 45, at 105.

¹⁵⁷ California Code, Civil Code § 1622 ("All contracts may be oral, except such as are specially required by statute to be in writing.").

¹⁵⁸ *Are Oral Agreements Legally Binding?*, UPCOUNSEL, <https://www.upcounsel.com/oral-agreements-legally-binding>.

¹⁵⁹ Alexandra Suchman, *Ask a Lawyer: What's Wrong with Handshake Deals?*, AISCOLLABORATIONS 3 (Feb. 5, 2018), <https://www.aiscollaborations.com/process-this-blog/2018/2/5/ask-a-lawyer-whats-wrong-with-handshake-deals>.

effective strategy for clients than relying on the fallible memory of the witnesses to a handshake agreement.¹⁶⁰ Written contracts also make it easier for the judge to determine whether the agreement is enforceable or not, and thus likely saves judicial resources and expense resolving a dispute.¹⁶¹

D. Not So Fast

More problematic is the fact that transactional attorneys in Hollywood's entertainment industry are under the impression that contract law does not apply to them. Diane Karpman, an expert on legal ethics, notes that "we're special" is a refrain she has often heard from Hollywood lawyers over the years when she gave presentations on ethical duties: "They'll say, that's the rule, but that doesn't apply to us."¹⁶² Such comments suggest that Hollywood attorneys do not lack the sophistication or experience to know the importance of putting agreements into writing, but instead feel as though there is no legal need to do so.¹⁶³ Although Hollywood undoubtedly consists of many individuals partaking in the deal-making process (i.e. actors, studios, producers, directors),¹⁶⁴ the industry is not too fast or unique to use written agreements. One may argue that the fast-paced and dynamic business transactions in the industry call for contracts to be more versatile, fast, and flexible than the traditional written ones that travel at snail-mail pace through lawyers.¹⁶⁵ However, the industry may not be as fast and versatile as some claim it to be. For example, in *Main Line Pictures Inc. v. Basinger*, actress Kim Basinger first read the *Boxing Helena* script and indicated her interest in doing the film in January of 1991.¹⁶⁶ Basinger's attorney then confirmed the actress's intention to appear in the film and devised a handshake agreement with Main Line Pictures in February 1991.¹⁶⁷ Nevertheless, it was not until June 10th of that year that actress Kim Basinger expressly reneged on her oral agreement to star in the

¹⁶⁰ *Id.*

¹⁶¹ Smith, *supra* note 90, at 518 (citing Charles L. Knapp et al., *Problems in Contract Law* 110-11, 4 ed. 1999); *see also* Suchman, *supra* note 159, at 3 ("All of this is a recipe for destroying a working relationship, even friendship, and ending up in court with a stressful, time-consuming and expensive fight to have a judge determine what was agreed to.").

¹⁶² Randazzo, *supra* note 75, at 4.

¹⁶³ *See generally id.*

¹⁶⁴ Smith, *supra* note 90, at 521.

¹⁶⁵ McLaughlin, *supra* note 45, at 127 (noting that often a project finds itself under a tight deadline, such as the need to accommodate the schedule of a sought-after director, or the studio's insistence on a Christmas release date).

¹⁶⁶ No. B077509, 1994 WL 814244, at *1 (Cal. Ct. App. Sept. 22, 1994).

¹⁶⁷ *Id.* at *2.

film.¹⁶⁸ Why a period of over five months is considered “too fast” and not enough time for an attorney to generate a written contract is not clear. If Hollywood had required written contracts and transactional attorneys carried out their duties in protecting their clients, Main Line Pictures may have had leverage over Kim Basinger in carrying out her obligations of the agreement, which could have essentially prevented her from renegeing on the agreement. Likewise, a span of eighteen years between Johnny Depp and Jacob Bloom certainly could not have been argued as “too fast” of a time period for Depp’s attorney to devise a written agreement at some point in between that time span.¹⁶⁹ Although Depp’s case pertained to an agreement between an attorney and his client, devising a writing contract could have probably given Jacob Bloom leverage in having Depp carry out his obligation in paying for the representational services rendered over the years.

IV. THE SHIFT MAY FINALLY BE HERE

Handshake agreements in Hollywood have been an integral part of the entertainment industry’s tradition, despite its incongruency with most other contracting transactions in other business industries.¹⁷⁰ Although the entertainment industry has established an unethical time-honored practice of making multimillion-dollar deals based merely on a handshake, an inevitable shift toward written contracts appears to be in sight. After years of relying on this unsound way of conducting business, cases like *Cohen*, *Coppolla*, and *Depp* urge a reassessment of the handshake culture and perhaps promote a shift toward requiring attorneys to change the way in which they formalize contracts in the future.¹⁷¹ Although these rulings and cases are not binding throughout California courts and may not necessarily be death-knell¹⁷² for the handshake deal, one thing is certain: transactional attorneys in Hollywood are on notice.¹⁷³ Thus, Judge Green’s view about the

¹⁶⁸ *Id.* at *4.

¹⁶⁹ See generally Randazzo, *supra* note 75, at 1.

¹⁷⁰ Wang, *supra* note 9, at 65.

¹⁷¹ See generally *Effects Assoc., Inc. v. Cohen*, 908 F.2d 555, 556 (9th Cir. 1990); *Coppola v. Warner Bros.*, No. B154280, 2003 WL 463611 (Cal. Ct. App. Feb. 25, 2003); *Depp v. Bloom Hergott Diemer Rosenthal La Viollette Feldman Schenkman & Goldman, LLP*, No. BC680066, 2018 WL 4344241 (Cal. Super. Aug. 28, 2018).

¹⁷² Spillane, *supra* note 8, at 15 (“The Basinger decision will not necessarily disrupt business in Hollywood or be the death-knell for the handshake deal, a practice which has persisted for decades in spite of these previous cases.”).

¹⁷³ See Cullins, *supra* note 71, at 4 (“Given the proclivity for verbal agreements, Judge Terry Green’s ruling that Depp can void his deal with Bloom is raising eyebrows across the industry.”).

importance of having a signed contract must be duly noted by transactional attorneys in the entertainment industry, because his opinion is becoming more commonly held amongst the California judiciary.¹⁷⁴

The California judiciary is increasingly noticing the amount of time, expenses and undue burden handshake agreements are generating in the entertainment industry.¹⁷⁵ While the benefits afforded by handshake deals are quite necessary for the industry's projects and business to function, these deals also contribute to a significant number of disputes and lawsuits within the industry, often costing involved parties millions of dollars in damages.¹⁷⁶ With continuous lawsuits being brought forth revolving around handshake agreements, the unethical methods of conducting business by transactional attorneys in Hollywood are gradually being exposed.¹⁷⁷ Such justification is based on the fact that attorneys are negotiating on behalf of their clients solely through handshake agreements and even negotiating their own representational service agreements with clients through handshake agreements. Nevertheless, things don't always pan out the way the parties hope, which is why having each parties' obligations in writing becomes essential in holding each side accountable for their actions and further carrying out what is ultimately in the best interest of the client.

Although the parties may think having a lawyer create a written agreement will be tedious, expensive, and time-consuming,¹⁷⁸ the fact of the matter is that these handshake agreement are allowing actors, studios, and directors to walk away from their alleged agreements,¹⁷⁹ not to mention, such decisions to resort to these handshake deals often only lead these parties to find themselves spending numerous time and expenses battling lawsuits over these same agreements.¹⁸⁰ As a result, California courts are finding themselves victims to the copious expenses

¹⁷⁴ See generally *Cohen*, 908 F.2d at 556; *Coppola*, 2003 WL 463611, at *1; *Depp*, 2018 WL 4344241, at *1.

¹⁷⁵ See *id.*

¹⁷⁶ Smith, *supra* note 90, at 518 (stating that a written contract makes it much easier for the judge to determine whether the agreement is enforceable or not, and is likely to save judicial resources and costs in the event of a controversy).

¹⁷⁷ See Lindsay R. Edelstein, *Depp v. Bloom: Hollywood Handshake Deals May Be on the Way Out; Belt-and-Suspenders a Possible New Trend in Percentage Fee Arrangements for Legal Services*, COWAN, DEBAETS, ABRAHAMS, & SHEPPARD LLP, (May 6, 2019) ("This decision may encourage talent lawyers to revisit agreements that were not memorialized in writing in the past, and to change the way they do business in the future.").

¹⁷⁸ Suchman, *supra* note 159, at 3.

¹⁷⁹ See generally *Cohen*, 908 F.2d at 556; *Coppola*, 2003 WL 463611 at *1; *Depp*, 2018 WL 4344241 at *1.

¹⁸⁰ See generally Suchman, *supra* note 159, at 3.

and time-consuming battles amongst these parties in the entertainment industry.

Moreover, it seems evident that California judges like Judge Terry Green and former U.S. Circuit Court Judge Kozinski were communicating their distaste for handshake agreements by further reiterating to all transactional attorneys that contract law applies to any lawyer practicing law and no exception applies to those in Hollywood.¹⁸¹ Even if such recent rulings do not completely render handshake agreements invalid, the comments made by several California judges identify a trend that will certainly treat Hollywood handshake deals with caution and contempt in the future. Furthermore, if one thing is certain, clients are falling victim to the unsound decision-making of Hollywood's transactional attorneys and are being led to believe handshake agreements are a form of acting in their respective best interests.

On the other hand, Judge Green's ruling in *Depp* may also prompt other actors dissatisfied with their legal representatives to pursue similar legal claims.¹⁸² As such, transactional attorneys throughout Hollywood are going to be lining up at their clients' doors to get pen to paper.¹⁸³ Although the Depp ruling impacts only the attorney/client relationship and the ability to receive payment for services, broader implications could result from this ruling.¹⁸⁴ For example, industry participants must ensure that they get their contract agreements in writing, or else suffer the consequences of losing their respective time and money in producing a film when the other party walks away from the agreement at any point.¹⁸⁵ Moreover, in a multi-billion dollar industry that has generated near-annual increases in revenue over the last two decades and in which

¹⁸¹ Seigal, *supra* note 4, at 2 (“[W]hen it comes to oral contracts, there’s not a special rule for entertainment people.”); *see also Cohen*, 908 F.2d at 557 (“Common sense tells us that agreements should routinely be put in writing.”).

¹⁸² Randazzo, *supra* note 75, at 1 (“A California judge’s ruling . . . is prompting a reassessment of the handshake-deal culture that is still pervasive in some corners of Hollywood.”).

¹⁸³ *See* Dominic Patten, *Johnny Depp Wins In Oral Contract Battle With Ex-Lawyer; Hollywood Jolted*, DEADLINE (Aug. 28, 2018), <https://deadline.com/2018/08/johnny-depp-lawsuit-win-millions-former-attorneys-malpractice-hearing-1202445633/> (“A lot of people are going to be on the phone today setting a sit-down and a signing.”).

¹⁸⁴ Randazzo, *supra* note 75, at 2-3 (noting that Adam Waldman, one of Mr. Depp’s lawyers in the pending case, said he believes the ruling will create major change in Hollywood).

¹⁸⁵ *See generally* *Effects Assoc., Inc. v. Cohen*, 908 F.2d 555, 556 (9th Cir. 1990); *Coppola v. Warner Bros.*, No. B154280, 2003 WL 463611 (Cal. Ct. App. Feb. 25, 2003); *Depp v. Bloom Hergott Diemer Rosenthal La Viollette Feldman Schenkman & Goldman, LLP*, No. BC680066, 2018 WL 4344241 (Cal. Super. Aug. 28, 2018).

over 868 films were released in 2018,¹⁸⁶ transactional attorneys will be forced to put everything down in writing, because not doing so may result in the million dollar consequences that Jacob Bloom could have faced.¹⁸⁷ The fact of the matter is, whatever an industry participant is asked to spend upfront, can more than pay for the problems avoided on the back end if a lawsuit arises in the future.¹⁸⁸ No matter one's risk tolerance, the relative affordability of advocating a client to get a written contract does not warrant rolling the dice of a potential lawsuit.¹⁸⁹ Thus, it logically follows that the more skeptical judges and juries are about enforcing oral agreements, the more risk the industry parties will assume in relying on them.

V. CONCLUSION

Transactional attorneys are bound to make special efforts to protect their clients by reasonably avoiding situations of being subject to liability in the future. Instead, Hollywood attorneys involved in high-stakes transactions blatantly depart from this prudent approach and regularly select intermediate levels of contractual formality that leave the enforceability of the parties' commitments unclear. Such loose transactional practices challenge conventional expectations that a legally enforceable contract is a precondition for any significant financial undertaking. Although some may see the entertainment industry as complex and unique, a written contract not only allows for easier judicial enforcement if necessary, but also brings a much greater degree of clarity and certainty to dealings for all the parties involved. Because written contracts need not be complicated or burdensome, it is difficult for transactional attorneys in Hollywood to justify not using one. As Judge Kozinski once stated, "a one-line pro forma statement will do."¹⁹⁰

¹⁸⁶ David Robb, *U.S. Film Industry Topped \$43 Billion In Revenue Last Year, Study Finds, But It's Not All Good News*, DEADLINE (July 13 2018), <https://deadline.com/2018/07/film-industry-revenue-2017-ibisworld-report-gloomy-box-office-1202425692/> (stating that the American film industry generated \$43.4 billion in revenue last year, increasing in each of the past five years at an annualized rate of just 2.2%); see also *Number of movies released in the United States and Canada from 2000 to 2018*, STATISTA, <https://www.statista.com/statistics/187122/movie-releases-in-north-america-since-2001/>.

¹⁸⁷ See Cullins, *supra* note 71, at 2 (stating that as Depp seeks a full refund for the estimated \$30 million he paid Bloom, more attorneys are weighing whether to seek a retroactive written agreement from clients).

¹⁸⁸ Riles, *supra* note 149, at 3 ("Either way, what you spend upfront can more than pay for the problems you can avoid on the back end.").

¹⁸⁹ *Id.*

¹⁹⁰ *Cohen*, 908 F.2d at 557.

Moreover, whether Hollywood's transactional attorneys are simply reckless or imprudently believe contract law does not apply in their industry, one thing is certain: continuously resorting to handshake agreements is not only unethical but also unsound business practice where clients are often left in predicaments where they are being exposed to potential liability. Thus, until certain changes by transactional attorneys are made advising their clients to sign written agreements, the wave of resentment by judges over handshake deals in Hollywood will almost certainly grow.