



May 12, 2015

Kevin Kish
Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758

Dear Mr. Kish,

We write to call to your attention to the widespread exclusion of women directors from employment in directing episodic television and feature films. We request that the California Department of Fair Employment (“Department”) develop and file Director’s complaints and initiate an investigation into systemic failure to hire women directors at all levels of the California-based film and television industry. Specifically, the Department should develop and file Director’s complaints and initiate an investigation into employers that have a pattern of discriminating against women directors, entities that aid or participate in employment discrimination, and talent agencies that have a pattern of failing to represent women directors, in violation of the Fair Employment and Housing Act (“FEHA”) and the Unruh Civil Rights Act.¹

A large body of statistical evidence reveals dramatic disparities in the hiring of women directors in film and television; women are effectively excluded from directing big-budget studio films and seriously under-represented in television directing. The ACLU has interviewed or collected information from 50 women directors.² We have learned that women are systematically excluded from or underemployed in directing jobs as a result of:

- studios’, networks’, and producers’ intentional and discriminatory failure to recruit, consider, and hire qualified women directors;
- use of discriminatory recruiting and screening practices that have the effect of shutting women out, such as word-of-mouth recruiting and use of short lists on which women are under-represented;
- reliance on, and perpetuation of, sex stereotyping in hiring and evaluation of women;
- ineffective programs within the industry to increase hiring of women and people of color that do not lead to women getting directing jobs;
- lack of enforcement of internal industry agreements to increase the hiring of women and people of color;

¹ Cal. Gov’t Code § 12940(a) (employment discrimination prohibition); Cal. Gov’t Code § 12940(b) (union discrimination prohibition) Cal. Gov’t Code § 12940(i) (aiding and abetting discrimination prohibition); Cal. Civ. Code § 51 (public accommodation discrimination prohibition).

² The majority of these women currently prefer to remain anonymous and are not identified in this letter. However, many of the women have stated to us that if a civil rights enforcement agency were to open an investigation, they would likely speak with investigators.

- under-representation of women by the talent agencies that refer women for jobs.

Published statements by women directors bolster the statistics and anecdotal evidence we have gathered that point to systemic discrimination.

In the 1960s and 1970s, federal civil rights agencies and the California Advisory Committee to the U.S. Commission on Civil Rights took action to address employment discrimination in Hollywood. Despite these efforts, gender disparities in hiring directors have become worse over time. Initiating Director's charges to investigate systemic discrimination against women directors is necessary, well within the agency's authority, and consistent with the Department's enforcement goals. The entertainment industry employs a large number of people in California and makes products that profoundly shape our culture and the perception of women and girls. Such statistically severe gender bias in this important industry is a civil rights problem worthy of the Department's serious attention.

Qualified Women Directors Face a Systemic Pattern and Practice of Discrimination and Exclusion from Directing Film and Television.

Women directors are subjected to discriminatory practices, including recruiting practices that exclude them, failure to hire qualified women directors based on overt sex stereotyping and implicit bias, and the use of screening mechanisms that have the effect of shutting women out. The available statistics paint a picture of stark disparities that are "a telltale sign of purposeful discrimination."³ These "gross, statistically significant disparit[ies]" are of the magnitude that courts have held "alone may [establish a] *prima facie*... pattern or practice of discrimination."⁴

When it comes to film, the large studios have virtually shut women out of directing big-budget movies for years, and the problem is not improving with time:

- Only 1.9% of directors of the top-grossing 100 films of 2013 and of 2014 were women.⁵ Of the 1,300 top-grossing films from 2002-2014, only 4.1% of all directors were women.⁶
- In 2014, women were only 7% of directors on the top 250 grossing films. This number is 2 percentage points lower than it was in 1998.⁷

Women are also excluded from directing episodic television.

³ *Teamsters v. United States*, 431 U.S. 324, 342 n.20 (1977); *Guz v. Bechtel Nat'l*, 24 Cal. 4th 317, 354 (2000) ("Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes.").

⁴ *Alch v. Superior Court*, 165 Cal. App. 4th 1412, 1437 n.23 (2008); *see also Alch v. Superior Court*, 122 Cal. App. 4th 339, 381 n.35 (2d Dist. 2004); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-08 (1977) ("gross statistical disparities" may "alone" prove discrimination).

⁵ Stacy L. Smith et al, *Gender Inequality in Popular Films*; USC Annenberg, 1, 4, 7-8 (2014); Stacy L. Smith et al., *Exploring the Careers of Female Directors: Phase III 4* (Sundance Institute & Women in Film's Female Filmmakers Initiative 2015), <http://www.sundance.org/pdf/artist-programs/wfi/phase-iii-research---female-filmmakers-initiative.pdf> (hereinafter *Careers of Female Directors Phase III*).

⁶ *Careers of Female Directors Phase III 4*.

⁷ Martha M. Lauzen, *The Celluloid Ceiling: Behind-the-Scenes Employment of Women on the Top 250 Films of 2014*, San Diego State Uni. Center for the Study of Women in Television & Film 2015, 1-2 (2014); *see also* Brent Lang, *Number of Female Directors Falls Over 17 Year Period, Study Finds* (Jan. 13, 2015), <http://variety.com/2015/film/news/number-of-female-directors-falls-over-17-year-period-study-finds-1201402686/>.

- In an analysis of more than 220 television shows, representing about 3500 total episodes, women were only 14% of directors in 2013-2014.⁸

In an alarming number of cases, employers shut women out of television work entirely:

- A whopping 70 television shows (31%) had *no* women directing even a single episode in the 2013-2014 season. 20% of shows had women directing no more than 10% of episodes.⁹
- In 2013-2014, more than 30% of networks (31 networks) had no women directing any episodes in any of their shows. The same is true at the production-company level – approximately 31% of production companies (47 companies) had no women directing a single episode in any of their shows.¹⁰

These statistics reveal what the Supreme Court has called “the inexorable zero” – a figure, representing “the glaring absence” of women that is highly indicative of systemic employment discrimination.¹¹ But even beyond “zero,” the numbers of women in television directing are low.

- Only 13% of directors in 2013-14 in prime-time network TV were women.¹² When combining network, cable, and Netflix, women still comprised only 13% of directors.¹³
- In the 2013-2014 season, only ten shows had women directing 50% or more of episodes – an exceedingly rare phenomenon.¹⁴
- For more than half of broadcast comedies and dramas, in an assessment of more than 1000 television shows in 2011-2012, women directed 10% or fewer episodes.¹⁵

The employment opportunity outlook for women directors of color is even more dire.

⁸ Directors Guild of America, *DGA Report: Employers Make No Improvement in Diversity Hiring in Episodic Television* (Sept. 17, 2014), <http://www.dga.org/News/PressReleases/2014/140917-Episodic-Director-Diversity-Report.aspx>.

⁹ Directors Guild of America, 2014 DGA Episodic Director Diversity Report (by % of Episodes Directed by Women) (Sept. 17, 2014), <http://www.dga.org/~media/Files/Press%20Releases/2014/DiversityReportCOMBFEMALE917.aspx>. The Directors’ Guild of America collected data that it used in this report, which included relevant percentages of women directors. The ACLU used this data to calculate additional statistics and percentages of women directors. We can share our spreadsheets and calculations with the Department upon request. The links to several spreadsheets created by the Directors’ Guild of America, including this one, can be found at the bottom of this page: <http://www.dga.org/News/PressReleases/2014/140917-Episodic-Director-Diversity-Report.aspx>.

¹⁰ *Id.*

¹¹ *See Teamsters*, 431 U.S. at 342 n.23.

¹² Martha M. Lauzen, *Boxed In: Employment of Behind-the-Scenes and On-Screen Women in 2013-2014 Prime-time Television*, San Diego State Uni. Center for the Study of Women in Television & Film 2014 at http://womenintvfilm.sdsu.edu/files/2013-14_Boxed_In_Report.pdf.

¹³ *Id.*

¹⁴ DGA, *supra* note 9.

¹⁵ Darnell Hunt & Ana-Cristina Ramon, *2014 Hollywood Diversity Report: Flipping the Script* (UCLA Bunche Center 2014), 16. Our independent analyses of the DGA report referenced in note 10 also found this to be true of the 2013-2014 shows included in that data set.

- From 2007–2012 the 500 top-grossing movies employed 565 directors – only 2 of whom were African-American women.¹⁶
- Women of color directed only 2% (73 of 3,558) of episodes in 2013-14.¹⁷

Hiring disparities in television start at the entry level. A recent study of first-time directors over five years revealed that only 18% of those given a chance to direct their first episode are women.¹⁸

These statistics are even more concerning than they appear, because a problem oft-cited by women directors is that only a small handful of women is hired over and over again. One landmark study of the top 600 grossing films between 2007 and 2013 found only 22 unique female directors of those films.¹⁹ One filmmaker and director with nearly 30 television credits elaborated: “Though it is documented that 12% of episodic television is directed by women, when credits are examined by name, this number does not seem to represent how many different woman are directing, only the total number of episodes. By name analysis, it appears as if only about the same 15 to 20 women directors are hired again and again.”²⁰

The failure to hire women directors in film and television cannot be attributed to a lack of qualified or interested women. Women are well represented in prominent film schools such as USC, NYU, and UCLA; while hard numbers are hard to come by, estimates place the number of women students focusing on directing as roughly equal to the number of men.²¹ As one woman who runs a program promoting women’s films said, women have had “some equality in the film school area, but once they get out of film school and finish their short films, that’s when they’re reaching some barriers.”²² Despite substantial numbers of women in the filmmaking pipeline, the perception remains strong among industry executives and employers that there are “not enough” women directors and that women lack ambition or interest in directing.²³

Women who break in to the industry and get hired for their first job, or make a first independent film, are systematically underemployed thereafter: they find it harder to obtain steady

¹⁶ Jonathan Handel, *Women Still Underrepresented in Film and TV, Study Says* (Feb. 19, 2014), <http://www.hollywoodreporter.com/news/women-still-underrepresented-film-tv-681485>.

¹⁷ DGA, *supra*, note 8.

¹⁸ DGA *Five-Year Study of First-Time Directors in Episodic Television Shows Women and Minority Directors Face Significant Hiring Disadvantage at Entry Level* (Jan. 8, 2015), <http://www.dga.org/News/PressReleases/2015/150108-DGA-Five-Year-Study-of-First-Time-Directors-in-Episodic-Television.aspx>.

¹⁹ Smith et al., *supra*, note 5 at 4-7.

²⁰ Rachel Feldman, *An Open Letter to TV Showrunners: There Are Over 1200 Experienced, Accomplished Women Directors Waiting to Be Hired*, *Women and Hollywood*, (July 17, 2014).

²¹ Lang, *NYU Students Celebrate Women in Film at Fusion Festival*, *Variety* (Feb. 26, 2015), <http://variety.com/2015/film/news/nyu-students-celebrate-women-in-film-at-fusion-festival-1201442164/>; Elizabeth M. Daley, Dean, USC School of Cinematic Arts, *Women in Hollywood: Are the Numbers Changing?* Huffington Post Blog (July 12, 2010) available at http://www.huffingtonpost.com/elizabeth-m-daley/women-in-hollywood---are_b_639786.html.

²² Shaunna Murphy, *Want to See More Women at the Oscars? It Starts at Sundance*, *MTV News* (quoting LunaFest program manager Suzy Stark German) (Jan. 24, 2015), <http://on.mtv.com/1CPbrfu>.

²³ *Careers of Female Directors Phase III* 17-18.

employment compared to similarly qualified male directors. Women do relatively better in lower-dollar sub-sectors, such as independent film and documentary film: nearly a quarter of directors at Sundance independent film festival have been women,²⁴ and women direct about a third of documentary films.²⁵ Yet their success in these feeder sectors does not translate into studio opportunities as it does for male directors; women directed under 5% of box office hits from 2002 to 2014.²⁶ Even when their work earns critical acclaim and festival awards, women report that their success does not as easily parlay into additional work or studio jobs. Women's statements have been confirmed by research demonstrating a 25% gap between the percentage of women directors at the Sundance Film Festival (26.9%) in 2014 and the percentage of women directors on the year's top 100 films (under 1.9%).²⁷ Women report being treated as tokens²⁸ and being judged more harshly than their male peers.

Women Identified Numerous Barriers to Getting Hired

Women Directors Face Overt Disparate Treatment and Sex Stereotyping.

Overt sexism remains a real, concrete barrier. When employers fail to recruit, consider, or hire for particular types of projects based on stereotypes about women's abilities, the traits a man or woman typically has, or assumptions about the types of projects for which they are best suited, these employers are engaging in sex discrimination in violation of the FEHA.²⁹

It is widely known that some employers do not hire women directors. Women have publicly reported being told "we don't hire women," or "we tried [hiring a woman] once."³⁰ More than one award-winning film director reported to us she was told in a meeting that a particular showrunner "doesn't hire women." Another director said that producers and studio executives repeatedly told her agent "not to send women" for consideration for particular jobs. A third director was told by a network executive to avoid a show that was not "woman friendly."

Employers steer and pigeonhole women to particular types of projects and exclude them from others, based on sex stereotypes. Nearly every woman with whom we spoke had either experienced directly or was aware of the widespread perception that women are better suited to and typically only

²⁴ Stacy L. Smith et al., *Exploring the Barriers and Opportunities for Independent Women Filmmakers Phase I and II*, 11, 17 (Sundance Institute & Women in Film's Women Filmmakers Initiative 2014).

²⁵ Martha M. Lauzen, *Independent Women: Behind-the-Scenes Employment on Festival Films in 2013-14*, San Diego State Uni. Center for the Study of Women in Television & Film 2015, 1 (2014).

²⁶ V Renée, *Why Are Women Directors Having (Relative) Success in Independent Film, But not in Hollywood?* No Film (May 6, 2013), <http://nofilmschool.com/2013/05/female-directors-indie-film-hollywood>; *Careers of Female Directors Phase III* 4.

²⁷ *Careers of Female Directors Phase III* 4.

²⁸ A "token" is someone whose group – here, women – represents a small proportion (under 15%) of a workforce where that group has historically been excluded. Tokens experience discrimination as a result of heightened visibility, having their competence disregarded, and being judged by a double standard. See generally Dana Kabat-Farr & Lilia M. Cortina, *Sex-Based Harassment in Employment: New Insights into Gender and Context*, 38 *Law & Hum. Behav.* 58, 59 (2014).

²⁹ See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989); *Koire v. Metro Car Wash*, 40 Cal. 3d 24, 34 (Cal. 1985).

³⁰ See, e.g. *What's it Like to be a Black, Female Director in Hollywood? Take 2* (Feb. 19, 2014), <http://www.scpr.org/programs/take-two/2014/02/19/36114/whats-it-like-to-be-a-black-female-director-in-hol/> (interview with director Angela Robinson) [Robinson interview].

considered for projects that are “women-oriented,” such as romantic comedies, women-centered shows, or, commercials for “girl” products. This perception was recently confirmed in a study interviewing industry executives and sales agents, nearly half of whom stated that films directed by women were limited to particular genres and market segments, but believed the more profitable market segments, such as action and comic-book films, were male-driven and -created.³¹ Women are often not considered or passed over for films or TV shows in the action, superhero, and horror genres, or that require special effects, in favor of men with less experience. A report published by the Sundance Institute and Women in Film’s Women Filmmakers Initiative described this bias, finding that half of decisionmakers interviewed said some genres like action and horror “may not appeal” to women directors.³²

These stereotypes affect women throughout their career, even for women who get the rare chance to prove their ability to direct action and special effects. One successful television director told us that the only jobs offered to her were “stereotypically women’s films.” Even after making a rare successful leap to television and getting hired to work on two prominent action-oriented television shows, people still told her agent that she wasn’t being considered for action jobs because “she [couldn’t] really do action.” Others reported being told, inaccurately, that they lacked enough special effects experience. Two commercial directors told us that they only get work on “girls” or “feminine” products and are not considered for work for “boys” or “men’s” products. One working director put it this way:

“When it comes to who’s hiring. . . I think it starts with ‘we just feel more confident that the guys are going to be able to do this stuff.’ I happen to be doing an episode that’s all about cars. They thought guys would know more about cars, but I happen to know a lot about cars. . . . There are these biases that you hear about and you feel. I know half a dozen women directors that are great with action and love it like I do, but they think you won’t be in there and get that testosterone feel, or won’t be able to hit the male marketplace.”

Every woman we interviewed who mentioned gender stereotyping pointed out that the stereotypes only operate against women: plenty of men are hired to direct romantic comedies and commercials for “feminine” products.

Implicit Bias Pervades the Hiring Process at Many Levels.

Unconscious bias pervades the hiring process and continues once women are on set. Illegal disparate treatment can occur not only where an “employer consciously intended to base [its actions on an employee’s gender]” but also where the employer “simply did so because of unthinking stereotypes or bias.”³³ The risk of unconscious bias discrimination is particularly high where employers use the kinds of highly subjective hiring and evaluation practices or networking/relationship-based hiring practices that predominate in the entertainment industry.³⁴

Women often reported the pervasive perception that hiring women directors is viewed as more “risky” than hiring men; even men with less experience. This perception is particularly harmful where multiple decisionmakers must agree each time a director is hired, and each decisionmaker is

³¹ *Careers of Female Directors Phase III* 15-16.

³² Smith et al., *supra* note 24, at 31.

³³ *Thomas v. Eastman Kodak Co.*, 183 F.3d 38, 58 (1st Cir. 1999).

³⁴ See, e.g., *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 990 (1988) (finding “subjective” hiring practices can be discriminatory because of “subconscious stereotypes and prejudices”).

wary of hiring outside the standard (male) norm. The former head of a major studio summed it up this way:

“For a woman to direct a movie in Hollywood, she has to go through so many layers of rejection by the powers that be – I suppose including myself – that it is harder to get to that point. So you can’t just create something. And I think there is a whole unconscious mountain. . . I think the whole system is geared for [women] to fail.”³⁵

As a longtime producer recently said, “There’s a great deal of reticence giving a woman [director] a chance. And the statistics support that fact.”³⁶

Many women reported that even after some initial success, they are not hired consistently, their careers do not take off or stall quickly, and they are not trusted with bigger-budget projects at the same rate as their male peers. Research confirms that a significant percentage of industry executives believe women “can’t handle” big films with large crews.³⁷ In film, women who win prestigious awards at film festivals for their independent work are nonetheless denied opportunities to direct big-budget films (told they lack “experience”) that their male peers are given. We spoke with at least a dozen women who won prestigious awards for their first films, but then their careers immediately stalled, whereas their male colleagues who had won those awards got big-budget film work or commercial work right away. One working director explained to us:

“You have meetings about potential projects where studio executives say things like ‘well, it’s hard to have you direct it because it’s such a big budget film. You don’t have the experience.’ Instead of seeing that I’ve done five feature films. But a guy can be hired off of one feature film that’s low budget. . . . Women are ghettoized into doing these smaller films and then people think that’s all we want to do.”

Another Oscar-nominated woman who has had some success in the film world told us:

“After my film won multiple awards at the South by Southwest film festival, one reviewer said, essentially, ‘[t]his is the kind of movie that gets a director every studio knocking on her door.’ But the truth was, studios were not knocking. I was going into meetings Somehow I ended up for two years interviewing for things and not getting them or being attached to something that didn’t end up going to production.”

³⁵ Dorothy Pomerantz, *Sony’s Amy Pascal On Closing The Money Gap Between Men And Women In Hollywood*, Forbes Magazine (May 22, 2013),

<http://www.forbes.com/sites/dorothypomerantz/2013/05/22/sonys-amy-pascal-on-closing-the-money-gap-between-men-and-women-in-hollywood/>.

³⁶ Inkoo Kang, Producer Gale Anne Hurd: Sexism Against Women Directors Hasn’t Changed Since the ‘80’s, *Women and Hollywood*, Indiewire (Feb. 17, 2015),

<http://blogs.indiewire.com/womenandhollywood/producer-gale-anne-hurd-sexism-against-women-directors-hasnt-changed-since-the-80s-20150217>.

³⁷ *Careers of Female Directors Phase III 21-22*.

A number of other women directors have spoken out publicly about this particular form of discrimination.³⁸ Both research and the anecdotal evidence we gathered show serious gender disparities in opportunities, even for women whose films debut at prestigious festivals.³⁹

Women also have a more difficult time finding film financing. As one director who won recognition for a film this year put it: “women have to convince men to trust [them] with [their] money.”⁴⁰ This form of discrimination results in women being disproportionately represented in and pigeonholed into doing only smaller, independent or documentary films.⁴¹ Women who do make independent films “are relegated to less financially lucrative platforms” by distributors and are less likely to have their films distributed by the Studio Specialty / Mini Major companies, which are associated with the major studios and have the broadest reach.⁴² Researchers have documented “the fiscal cliff women face as they move from independent to more commercial fare.”⁴³

In television, many women reported that when they are hired for directing work they are treated as though they are filling the one slot begrudgingly reserved for a woman, and that they consistently get fewer episodes and jobs overall than their equally qualified male peers. At least three women reported that they believe they get only one episode a season on a show, where often men get more, because showrunners, production companies and studios know they should at least hire one woman because hiring none at all looks bad. One successful woman director with nearly 60 television credits summed it up to us this way:

“If I go onto a series, there will be one job for a woman, and they’ll feel like, oh, we filled our quota. One job out of 13 or 22. And I’ll be the one woman. And you’re competing for this one slot that they feel they have to offer. Yet, with the guys, I hear, ‘oh, they’re never prepared.’ The crew says: ‘It’s such a relief to have you here.’ You turn around next season, and the guys will be doing three episodes and you won’t be asked back. And that’s what you live with all the time.”

One director with nearly 50 television credits explained the phenomenon this way:

“Decisions [about hiring] are made by the showrunner. And the showrunner is not always but most often a man, and they hire their friends. Their friends, not surprisingly, are men. . . . And so the networks and the studios will pressure these guys to hire a woman, and they will hire *one* woman, because they have to, or they’ll hire two women, out of 22 episodes, because they have to, and then maybe they’ll hire one back. And then they’ll hire none. There are

³⁸ See, e.g., Craig Lindsey, *Julie Dash and the Ongoing Struggle of Black Women Filmmakers*, *Indy Week* (Sept. 7, 2011), <http://www.indyweek.com/indyweek/julie-dash-and-the-ongoing-struggle-of-black-women-filmmakers/Content?oid=2650131>.

³⁹ Manohla Dargis, *Making History*, *The New York Times* (Dec. 3, 2014), <http://www.nytimes.com/2014/12/07/movies/ava-duvernay-makes-a-mark-with-selma.html>; Manohla Dargis, *In Hollywood, It’s a Men’s, Men’s, Men’s World*, *The New York Times* (Dec. 24, 2014), http://www.nytimes.com/2014/12/28/movies/in-hollywood-its-a-mens-mens-mens-world.html?_r=0; *Careers of Female Directors Phase III* 13-14.

⁴⁰ Nsenga Burton, *Black Women and the Hollywood Shuffle*, *The Root* (Aug. 6, 2010), http://www.theroot.com/articles/culture/2010/08/black_women_filmmakers_struggle_in_hollywood.html?page=0,0, (quoting Ava Duverney, who subsequently directed *Selma*).

⁴¹ Manohla Dargis, *In Hollywood, It’s a Men’s, Men’s, Men’s World*, *supra* note 39.

⁴² *Careers of Female Directors Phase III* 10-13.

⁴³ *Id.* at 4.

plenty of shows that I have been up for and had good meetings on, where I don't get hired and I think, 'Why? I'm capable, I'm qualified, I did my homework. I check all the boxes – I can work with actors. I can work with difficult people. I can do action. So what box is missing?' There really isn't one. Then statistics come out and you see that particular show hasn't hired a woman. There's only one conclusion."

Another director was told at a meeting for a television directing job, "We already hired a woman this season." The statistics largely support this perception. As noted above, the pool of women who get hired repeatedly for more than one or two episodes on a show is quite small.

Numerous women reported that women are judged more harshly by employers, often getting only one chance to succeed whereas their male peers may still find success after some failure. This is a difficult barrier to overcome in an industry in which many more projects will fail than succeed. One successful TV director said: "You just have to do better, with less complaining. And experience and survive three times as much judgment" as male directors. One award-winning and Oscar-nominated director who has made multiple films and has one TV credit noted: "You can't ask of every woman in the profession to be such an outstanding pioneer that she just has to be 20 or 30 times better and never have a failed movie, which is something she can't control in the first place. It's unfair to ask women to be like J.K. Rowling is in the writing world to have success. Why can't we be judged in the way the guys are judged?" Another director stated that "often women will get a shot, but they won't get a second shot. Whereas men often will.... men often get a lot more chances to 'fail' than women do."⁴⁴

Practices Used in Hiring and Recruitment Have a Discriminatory Effect on Women.

Ostensibly neutral employment practices have the effect of keeping women out of the workforce. The FEHA, like Title VII, prohibits employment practice[s] that cause a disparate impact on the basis of sex.⁴⁵ The law thus bans "'not only overt discrimination but also practices that are fair in form, but discriminatory in operation.'"⁴⁶

One such practice is employers' widespread reliance upon "lists" of directors when deciding whom to hire or seriously consider for directing jobs. These lists, which are widely used in the industry, disproportionately exclude women; in a recent study, industry executives and agents asked to name who appear on such lists most frequently named zero women directors.⁴⁷ The chair of one major studio described this problem to *The New York Times*: the hiring team starts with a list of candidates, but women aren't on the list in numbers. "When we start our interview process what I find is, more often than not, that the majority of candidates are male."⁴⁸ Numerous institutions within the chain of employment are culpable in utilizing these lists that result in the exclusion of women directors – lists come from talent agencies, production companies, and studios. The Directors Guild (DGA or Guild) itself reportedly uses short lists to recommend directors for particular projects, but the lists are not transparent or publicly available.

One successful TV director explained how women directors can be dropped from these lists:

⁴⁴ Robinson Interview, *supra*, note 32.

⁴⁵ See, e.g., *City v. Fair Emp't & Hous. Com.*, 191 Cal. App. 3d 976, 985 (1987).

⁴⁶ *Lewis v. City of Chi.*, 560 U.S. 205, 211 (2010) (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971)).

⁴⁷ *Careers of Female Directors Phase III* 17-18.

⁴⁸ Dargis, *supra*, note 41.

“When I stopped directing television for a year, the percentage of women directing television dropped by a third. There are that few of us. I can name the women who work, and I can also name the women who came up with me, dropped off the list and never got back on.”

Another practice that disadvantages women is reliance on who-you-know or “word-of-mouth” recruiting for directing jobs, which can have an unlawful disparate impact on women seeking jobs.⁴⁹ This practice limits women’s job opportunities in Hollywood, because “individual stakeholders in the industry (typically white and male) look to surround themselves with other individuals with whom they feel comfortable, ... [who] tend to think and look like the former, thereby reproducing an industry culture that routinely devalues the talents of minorities and women.”⁵⁰ Both lists and reliance on “who you know” exclude women directors, because industry leaders under-estimate eligible women directors when they rely solely on memory.⁵¹

The Talent Agencies that Represent and Refer Directors for Jobs Under-Represent Women.

Successful directors are, by and large, represented by a small number of talent agencies, which refer their clients for television and film jobs. California’s civil rights laws recognize the harmful ways that third party gatekeepers such as employment agencies can engage in and perpetuate discrimination. For this reason, both the FEHA and the Unruh Civil Rights Act prohibit agencies from discriminating based on sex in the services they provide and how they represent and refer clients for jobs.⁵² The FEHA also prohibits entities from aiding others’ illegal discrimination.⁵³

Women report that many of the leading agencies, from whom studios and networks do the bulk of hiring, are reluctant to represent women, represent fewer women than men, and often do not include women directors on many of their lists when they refer directors to employers. One woman director was told by an employer that his studio only hires directors through these agencies– in this way, employers seek to pass the buck for the discriminatory outcome to the agencies. One woman director with whom we spoke relayed how an agent admitted to her that agents often don’t want to represent women because women do not get as much work. Another director was told by an agent that it’s common knowledge that agents don’t like to represent women because they don’t make as much money as male directors. A recent report by UCLA confirms the important gatekeeping role of the top agencies in contributing to the diversity problem in Hollywood, including for directors.⁵⁴ Another recent report found that nearly a fifth of sellers, including agents and managers mentioned doubt concerning women directors’ abilities as a barrier, perhaps explaining their reluctance to put women forward for jobs.⁵⁵

The talent agencies play a gatekeeping function, and also provide cover to studios and networks who can blame the lack of women directors on the fact that the agencies do not supply them

⁴⁹ See, e.g., *United States v. Brennan*, 650 F.3d 65, 126 (2d Cir. 2011) (“recruiting practices [such as] word-of-mouth recruiting, and limited advertising” may be “prohibited by Title VII”).

⁵⁰ Darnell Hunt & Ana-Cristina Ramon, *2015 Hollywood Diversity Report: Flipping the Script* (UCLA Bunche Center 2015) (hereinafter “2015 Bunche Center Report”) (describing the phenomenon and reporting that women are underrepresented 8 to 1 among film directors and that film studio senior management remains 83% male), 54.

⁵¹ *Careers of Female Directors Phase III* 18.

⁵² Cal. Gov’t Code § 12940(a); Cal. Civ. Code § 51.

⁵³ Cal. Gov’t Code § 12940(i).

⁵⁴ 2015 Bunche Center Report, *supra* note 50, at 35-41.

⁵⁵ *Careers of Female Directors Phase III* 22.

with a list. At least one court has held that this kind of systemic discrimination by Hollywood talent agencies is cognizable under the Unruh Act – specifically, systematically refusing to represent groups of people protected by our state’s discrimination statutes.⁵⁶

Internal Industry Efforts to Increase Hiring of Women are Ineffective and Some Practices May Perpetuate Discrimination.

The California-based Directors Guild of America (DGA or Guild) represents directors and it has a number of diversity committees, including a Women’s Steering Committee.⁵⁷ The DGA has made some efforts to increase the hiring of women and people of color for directing jobs. The DGA and the Association of Motion Picture and Television Producers (AMPTP) have agreements concerning diversity that require those who employ directors (1) to “make good faith efforts to increase the number of working ethnic minority and women Directors,” and other members of the directorial team, (2) to report to the DGA on compliance, (3) to comply with antidiscrimination laws, and (4) to give the DGA various mechanisms of enforcement power.⁵⁸ The DGA has used the data it obtains from employers to produce an annual report on the number of women and people of color hired to direct television each year. The DGA also reportedly meets with employers to discuss matters of diversity and discrimination.

These industry agreements have not proved effective in appreciably increasing the number of women directors who actually get work, as the DGA’s own statistical reports reveal. Information about the DGA’s actual enforcement of the diversity agreements is not publicly available. However, women reported a widespread perception that the DGA leadership did not prioritize increasing the number of women directors hired and at times has expressed hostility or blocked efforts of female members to make the issue a higher priority.

The DGA has also worked with studios to create fellowship or “shadowing” programs aimed at increasing diversity, but these programs have been, at best, ineffective at reducing gender disparities in hiring of directors and, at worst, perceived by women directors as patronizing and a double-standard. The programs are described as providing women and people of color who have not yet broken into directing with opportunities to shadow experienced directors on set, with networking and

⁵⁶ *Alch*, 122 Cal. App. 4th at 351 (“[a]llegations that the talent agencies systematically refuse to represent older writers seeking television writing opportunities are cognizable” under Unruh).

⁵⁷ A director must have a job with a DGA signatory employer to be eligible for Guild membership. DGA Website, Membership Department, *available at* <http://www.dga.org/The-Guild/Departments/Membership/Joining-the-DGA.aspx>; <http://www.dga.org/The-Guild/Diversity.aspx>.

⁵⁸ Basic Agreement, Article 15 (non-discrimination terms covering directors and directorial team in film and television.), *available at* <http://www.dga.org/~media/Files/Contracts/Agreements/2011%20BA%20sc/2011%20BA%20full.pdf>; Freelance Live and Tape Television Agreement, Article 19, *available at* <http://www.dga.org/Contracts/Agreements/FLTTA2011.aspx> (non-discrimination terms covering directors and directorial team in live productions and projects shot on videotape). These agreements were made after the DGA sued two studios for failing to hire women and people of color. The district court judge denied the plaintiffs’ class certification motion and dismissed the DGA as a class representative, finding the DGA had conflicting interests and evidence indicated that the DGA was partially responsible for any alleged discrimination at issue, given its own practices. *See Dirs. Guild of Am., Inc. v. Warner Bros.*, Nos. CV 83-4764-PAR; CV 83-8311-PAR, 1985 U.S. Dist. LEXIS 16325 (C.D. Cal. Aug. 30, 1985). It is our understanding that the parties then reached a settlement which led to the diversity agreements.

mentoring opportunities and training.⁵⁹ However, we spoke with at least 10 women who had participated in these highly selective programs and every one told us that the programs were too small, too hard to get into, and, most importantly, did not lead to employment opportunities for most women – instead, as one woman put it, these programs are “window-dressing.” The programs, most of which are unpaid, do not guarantee a job for those who complete them and do not translate into jobs for most participants. One woman told us that of her cohort of 15 at one of the programs, only two women parlayed the experience into work opportunity.

Many women, particularly experienced directors, view these programs as condescending to women, especially where women directors are required to participate as an express or implied condition of getting work, while comparably experienced men are not. We learned of directors with significant directing experience being put through the programs. One director put it this way:

For those of us who have been in the business for a while, who have managed against tremendously difficult odds to make movies or find employment in TV, even accumulate long lists of awards along the way . . . these [programs] are a slap in the face and just another way to humiliate a group of people who are already being marginalized by a flawed and bias[ed] establishment. Imagine having to watch filmmaker peers with an equal or often inferior list of credits simply being handed an episode of TV to direct while you are being told to go back to film school first, which may or may not enhance your chances of landing the same exact job. All because you are the wrong gender and/or skin color.

The sentiment that the shadowing programs are disrespectful to women and just another unnecessary and biased “hoop” women directors have to jump through is widely held.⁶⁰ Many men get their first television directing jobs without going through this extra hoop.

Some described the programs as futile. One woman relayed a particularly troubling experience: This director, who had previous experience directing a film and a TV movie, during her time shadowing a TV director, was pulled aside by two female crew members and warned that the Directing Producer didn’t like women, didn’t hire women directors, and the one time he had hired a woman director in the history of the show, he made her work environment miserable and set her up to fail. After completing the program, she met with the Directing Producer to pitch herself for directing a future episode. While the conversation was friendly, at the end, the Directing Producer informed her that this particular show was “too hard” for women directors, that the crew was hard on women directors, and that the one time he had tried a woman director “she had done a poor job and . . . he felt sorry for her.”

A number of women pointed to ways in which the DGA perpetuates discriminatory hiring practices. The FEHA prohibits labor organizations from discriminating “in any way against any of its members” on the basis of sex.⁶¹ Labor organizations, like talent agencies, are also prohibited from aiding an employer’s discriminatory actions.⁶² The most common complaint was that the DGA did not actively advocate enough for the hiring of women directors and, when it did, promoted or referred only a small handful of women members. The DGA maintains a list of “experienced women and

⁵⁹ Directors Guild of America, <http://www.dga.org/The-Guild/Diversity.aspx>.

⁶⁰ Rachel Feldman, *Me and My Shadow*, Women Directors in Hollywood (Dec. 6, 2012), <http://www.womendirectorsinhollywood.com/me-my-shadow/>.

⁶¹ Cal. Gov’t Code § 12940(b).

⁶² Cal. Gov’t Code § 12940(i).

minority directors” that it provides to production companies⁶³, but a number of the women we spoke with believe that the DGA under-cludes women when it provides short-lists of recommended directors to prospective employers, and that this undercuts its claim that it is attempting to get more women hired. A related complaint is that the DGA refers a small number of women repeatedly to employers, excluding most women.

The Department Should Initiate Director’s Complaints Against Entities that Have a Pattern of Discriminating or Aiding Discrimination Against Women Directors.

Statistical and anecdotal evidence shows that women directors face discriminatory barriers to employment. Some employers have particularly dismal records with regard to hiring women: not just when looking at one show for one season, or films in one year, but consistently over time and across many projects. The directors we interviewed reported that women routinely encounter discriminatory recruiting and hiring practices, sex stereotyping, and neutral screening practices that have a discriminatory effect. Internal industry mechanisms for addressing the problems have not proved successful. Third parties may systemically aid employers’ discrimination. Real change is needed to address this entrenched and long-running problem of discrimination against women directors. External investigation and oversight by government entities tasked with enforcing civil rights laws is necessary to effectuate this change.⁶⁴

The Department has authority to investigate industries with systemic bias in order to develop and initiate charges against entities such as employers, unions, or public accommodations that engage in a pattern of discrimination, as well as those who aid and abet discrimination by employers.⁶⁵ The Department is empowered to investigate and take action to remedy systemic sex discrimination that affects a group of women and to do so by filing Director’s complaints or bringing class litigation.⁶⁶

Investigating systemic sex discrimination against women directors in order to develop a Director’s complaint is consistent with the Department’s enforcement goals. According to the Department’s 2011-2014 Annual Report, the Department has not only formed a new systemic litigation unit which “focuses on systemic complaints” alleging a “pattern or practice of discrimination impacting a large number of complainants statewide,” but has also “redirected more resources to its systemic team . . . to increase the number of high impact, systemic discrimination cases” the

⁶³ DGA Report Assesses Director Diversity in Hiring Practices for Episodic Television (Sept. 27, 2012), <http://www.dga.org/News/PressReleases/2012/092712-DGA-Report-Assesses-Director-Diversity-in-Hiring-Practices.aspx>.

⁶⁴ Note that we are simultaneously asking the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs to consider action as well.

⁶⁵ Cal. Gov’t Code § 12940(a), (b) & (i); Cal. Civ. Code § 51.

⁶⁶ Cal. Gov’t Code § 12961 (authorizing class complaints “[w]here an unlawful practice . . . adversely affects, in a similar manner, a group or class of persons”); Cal. Gov’t Code § 12960(b) (“The director or his or her authorized representative may in like manner, on his or her own motion, make, sign, and file a complaint.”); Cal. Code Regs., tit. 2, § 10012(a) (“The director, in his or her discretion, may make, sign, and file a complaint for investigation”); *Id.* § 10012(b) (“The director, in his or her discretion, may file a complaint on behalf and as representative of a group or class of persons adversely affected, in a similar manner, by a practice made unlawful by a law the Department enforces.”); *Id.* §10012(c) (“Receipt of . . . a request or referral from a source outside the department . . . may result in the filing of a director’s complaint.”); *Alch*, 122 Cal. App. 4th at 378 (“[N]othing in FEHA prohibits classwide claims of systemic discrimination, which is the functional equivalent of a ‘pattern or practice’ claim.”).

Department pursues under its new prosecutorial power.⁶⁷ The Department is also reportedly making greater use of its powers to bring Director's complaints and address classwide discrimination.⁶⁸ Addressing the systemic failure to hire women directors meets these goals.

Assessing Hollywood employers' compliance with civil rights statutes would by no means be unprecedented. In *Alch v. Superior Court*, for example, the California Court of Appeal found that studios, networks and talent agencies could be held liable for violations of the FEHA and Unruh Civil Rights Act -- specifically, systemic failure to hire, refer for jobs or represent older writers.⁶⁹ The California Advisory Committee to the United States Commission on Civil Rights, the Equal Employment Opportunity Commission, the Department of Justice, the General Services Administration, and the Office of Federal Contract Compliance Programs all tackled gender and race discrimination in Hollywood in the 1960s and 1970s. These agencies, among other things, held hearings, issued reports, and entered into settlement agreements with the Association of Motion Picture and Television Producers, some major studios, and some unions.⁷⁰ But monitoring and enforcement of these agreements ceased by the mid-1970s.⁷¹ And these enforcement efforts did not specifically address discrimination against women directors, because they were too few in the industry to begin with; nor did they create significant long-term improvement in hiring bias.⁷²

New enforcement efforts are needed to address the serious gender disparities in directing, which remain as stark as they were in the 1970s. The Department should turn its attention, investigatory powers, and enforcement resources to this task. The Department should examine the publicly available statistics and other information about hiring in the possession of the major studios, networks, and DGA to identify employers with the most stark pattern and practice of failing to hire women for directing work. The Department should gather further evidence of the barriers – both intentionally discriminatory and practices with a discriminatory effect on women – that women directors systemically experience. Further, the Department should examine the use of “lists” for hiring directors, and investigate any disparities as to who is required (formally or informally) to go through shadowing programs in getting episodes. The Department should examine the roles of entities such as talent agencies and the DGA which may engage in discriminatory practices or aid discriminatory practices. Based on available statistics and our own investigation, it is likely the agency will find systemic conduct that violates the FEHA and Unruh.

⁶⁷ Report to the Joint Legislative Budget Committee, Department of Fair Employment and Housing (March 2015), at 3-4, available at [http://www.dfeh.ca.gov/res/docs/Statistics/2015/DFEH%20Report%20to%20the%20Legislature%20\(2\).pdf](http://www.dfeh.ca.gov/res/docs/Statistics/2015/DFEH%20Report%20to%20the%20Legislature%20(2).pdf).

⁶⁸ Erin Coe, *More Class Suits Ahead, Says Calif. Employment Agency Chief*, Law360.com, (Mar. 25, 2013) (former Director Phyllis Cheng discussing the Department's increasing use of class action litigation and director complaints), <http://www.law360.com/articles/427149/more-class-suits-ahead-says-calif-employment-agency-chief>.

⁶⁹ *Alch*, 122 Cal. App. 4th at 389 n.48.

⁷⁰ California Advisory Committee to the United States Commission on Civil Rights, *Behind the Scenes: Equal Employment Opportunity in the Motion Picture Industry* (Sept. 1978) at 11-14, 37-39 (summarizing early history of efforts by anti-discrimination agencies to enforce civil rights mandates in Hollywood).

⁷¹ *Id.* at 13, 36-37.

⁷² *Id.* at 15, 32.

We would be happy to meet with you to discuss these problems further. There are women directors who would like to meet with you as well.

Sincerely

A handwritten signature in cursive script that reads "Melissa Goodman".

Melissa Goodman
Director
LGBTQ, Gender & Reproductive Justice Project
American Civil Liberties Union of Southern California

A handwritten signature in cursive script that reads "Ariela Migdal".

Ariela Migdal
Senior Staff Attorney
Women's Rights Project
American Civil Liberties Union