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24 **UNITED STATES DISTRICT COURT**
25 **CENTRAL DISTRICT OF CALIFORNIA**

26 **FRANCES FISHER**

CASE NO. 2:21-cv-5215

27 Plaintiff, on behalf of herself and all other
28 similarly and situated members of the
29 **SCREEN ACTORS GUILD-AMERICAN**
30 **FEDERATION OF TELEVISION AND**
31 **RADIO ARTISTS,**

APPLICATION FOR LEAVE
TO FILE PROPOSED
COMPLAINT PURSUANT TO
29 U.S.C. § 501

32 v.

33 **SCREEN ACTORS GUILD - AMERICAN**
34 **FEDERATION OF TELEVISION AND**

1 RADIO ARTISTS, a labor organization;
2 GABRIELLE CARTERIS, an individual;
3 DAVID P. WHITE, an individual;
4 DUNCAN CRABTREE-IRELAND, an
5 individual; RAY RODRIGUEZ, an
6 individual; MICHAEL PNIEWSKI, an
7 individual; DAVID HARTLEY-
MARGOLIN, an individual; JOHN T.
MCGUIRE, an individual; JOHN CARTER
BROWN, an individual; AND LINDA
POWELL, an individual.

8 Defendants.

9 **APPLICATION FOR LEAVE TO FILE PROPOSED COMPLAINT**
10 **PURSUANT TO 29 U.S.C. § 501(b)**

11 1. Pursuant to Section 501(b) of the Labor-Management Reporting and
12 Disclosure Act of 1959, as amended, 29 U.S.C. § 501(b) (“LMRDA”), Plaintiff
13 Frances Fisher, by and through her counsel, hereby respectfully requests leave to file
14 the attached proposed complaint to pursue claims under the LMRDA against
15 Defendants Gabrielle Carteris, David White, Duncan Crabtree-Ireland, Ray
16 Rodriguez, John T. McGuire, Michael Pniewski, David Hartley-Margolin, John
17 Carter Brown and Linda Powell as officers, agents, shop stewards and/or
18 representatives of The Screen Actors Guild-American Federation of Television and
19 Radio Artists (“SAG-AFTRA” or the “Union”) for violations of the duties provided
20 under 29 U.S.C. § 501(a).

21 2. Plaintiff, Frances Fisher is and has been at all times material hereto a
22 SAG-AFTRA dues-paying member. Plaintiff has been a member of the SAG-
23 AFTRA National Board and First Vice President of the SAG-AFTRA Los Angeles
24 Local since August 29, 2019.

25 3. Section 501(b) of the LMRDA authorizes suit by union members
26 against “any officer, agent, shop steward, or representative of any labor
27 organization” for violations of Section 501(a) “in any district court of the United
28 States or in any State court of competent jurisdiction to recover damages or secure

1 an accounting or other appropriate relief for the benefit of the labor organization”
2 upon a finding of good cause by the court. 29 U.S.C. § 501(b) (“No such proceeding
3 shall be brought except upon leave of the court obtained upon verified application
4 and for good cause shown, which application may be made ex parte.”).

5 4. By this verified application and exhibits attached hereto, Plaintiff
6 demonstrates good cause and justification for prompt filing of Count II of the
7 proposed Complaint for violations of 29 U.S.C. § 501(b).

8 **Procedural Background of Count II**

9 5. SAG and AFTRA merged into SAG-AFTRA in 2012. Proposed
10 Compl. ¶ 3.¹ The health plans of SAG and AFTRA continued thereafter separately,
11 until they were merged, effective January 1, 2017. *Id.* ¶ 35. The Union touted the
12 merger as “strengthen[ing] the overall financial health of the plan while ensuring
13 comprehensive benefits for all participants,” and “provid[ing] a robust foundation of
14 healthcare for our membership, which the [SAG-AFTRA Health Plan] [T]rustees
15 can continue to improve upon, nurture and grow over time.” *Id.* ¶¶ 3, 33, 37.

16 6. On August 12, 2020, the Union and the SAG-AFTRA Health Plan
17 announced dramatic changes to the Union health benefit structure (“Benefit Cuts”)
18 that targeted senior SAG-AFTRA members. *Id.* ¶ 7. The Benefit Cuts effectively
19 eliminated benefits under the SAG-AFTRA Health Plan for thousands of Union
20 members and their families by (i) drastically increasing the eligibility requirements
21 for many members to qualify for SAG-AFTRA Health Plan coverage, (ii)
22 prohibiting members age 65 and older taking a Union pension from using any
23 residual earnings toward the income requirement to qualify for SAG-AFTRA Health
24 Plan coverage, and (iii) modifying the earnings period for Union members age 65

25
26
27 ¹ All paragraph references (“¶ XX”) are to the Proposed Complaint unless otherwise
28 indicated.

1 and older to run from October 1 to September 30, cutting short the time available to
2 these members to obtain the sessional earnings necessary to meet the increased
3 eligibility requirements and retroactively eliminating coverage for which some
4 members had already qualified. Contributions from employers pursuant to the
5 operative CBAs, which are based on *all* (both sessional and residual) earnings of
6 each member, will continue to fund the SAG-AFTRA Health Plan but will be
7 essentially worthless to these members whose SAG-AFTRA Health Plan coverage
8 has been eliminated by the Benefit Cuts. Union dues, likewise, will continue to be
9 assessed based on *all* earnings of the member. *Id.*

10 7. Plaintiff and other SAG-AFTRA members, including those of the
11 SAG-AFTRA Los Angeles Local Union's leadership, scrambled to form
12 SOSHealthPlan.com to assist jilted members with their abrupt loss of SAG-AFTRA
13 Health Plan coverage. *Id.* ¶¶ 62-63. Plaintiff and the SOS Health Plan team also
14 pursued potential legal redress, which culminated in a putative class action under
15 ERISA against the SAG-AFTRA Health Plan Trustees. *Id.* ¶¶ 12-13, 62-64 (citing
16 *Edward Asner et al v. The SAG-AFTRA Health Fund et al*, No. 2:20-cv-10914 (C.D.
17 Cal. Dec. 1, 2020)).

18 8. In response to the SOS Health Plan team's efforts and the resulting
19 *Asner* action, the Union, through Union Officers and Executive Staff, stridently
20 defended the Benefit Cuts and the actions of the Health Plan Trustees, many of
21 whom are highly compensated Union staff who are subject to potential personal
22 liability in the *Asner* action. *Id.* ¶¶ 13-16, 65-76.

23 9. In announcing the Benefit Cuts in August 2020, the Trustees of the
24 SAG-AFTRA Health Plan, many of whom served dually as Union Officers or
25 Executive Staff, informed the members that they had known for two-years that the
26 SAG-AFTRA Health Plan's benefit structure was unsustainable and that they had
27 worked nearly every day on how to save it. *Id.* ¶¶ 8, 48. The primary funding source
28 of the SAG-AFTRA Health Plan is derived from contributions to the Health Plan

1 pursuant to the Union’s collective bargaining agreements (“CBAs”). *Id.* ¶¶ 5, 8, 37.
2 In those two years, three major Union CBAs were negotiated and approved under
3 the process established by the SAG-AFTRA Constitution. *Id.* ¶ 8, 39, 50-53.
4 Defendants White, Rodriguez, McGuire, Hartley-Margolin, Pniewski and Powell
5 undertook to represent the Union and its members in the Union’s collective
6 bargaining process and accepted and approved the Union’s proposal packages
7 without disclosing to other Union representatives or the membership the dire
8 funding peril facing the SAG-AFTRA Health Plan or that the proposal packages and
9 negotiated terms were insufficient to sustain the SAG-AFTRA Health Plan’s
10 benefits. *Id.* ¶¶ 10, 48, 51-56. Defendants Powell and Brown voted as members of
11 the National Board without disclosing the same to their fellow National Board
12 members or the membership. *Id.*

13 10. On December 18, 2020, Plaintiff sent the Demand under the LMRDA
14 to the Union and the National Board to sue to recover damages for breaches of
15 fiduciary duty and the duty of fair representation against: (1) the members of Union
16 leadership who are SAG-AFTRA Health Plan Trustees; (2) the members of Union
17 leadership who participated in the CBA negotiations and approvals with knowledge
18 of the ongoing activity by the SAG-AFTRA Health Plan Trustees to change the
19 benefit structure; and (3) the members of Union leadership who approved the
20 Benefit Cuts changes or who have used their Union positions and the Union to
21 support the Benefit Cuts and oppose the claims by Union members challenging the
22 Benefit Cuts. *Id.* ¶ 71. The Demand is attached as Exhibit A to the Proposed
23 Complaint.

24 11. The Demand was placed on the agenda for the SAG-AFTRA National
25 Board’s regularly scheduled meeting on February 6, 2021. *Id.* ¶ 72. The Union staff
26 retained the same counsel defending the SAG-AFTRA Health Plan Trustees in the
27 *Asner* action, and representing the SAG-AFTRA Health Plan in opposing Union
28 members’ EEOC claims, to address the Demand. *Id.* ¶ 73. Counsel not surprisingly

1 recommended the National Board to vote against proceeding with claims. *Id.* ¶ 74.
2 The National Board was not provided with any materials concerning the Demand or
3 work or recommendation of Counsel, prior to the meeting. *Id.* The National Board
4 voted not to proceed on the Demand. *Id.*

5 12. After the SAG-AFTRA National Board's vote, Jeffrey Bennett, SAG-
6 AFTRA Deputy Counsel, requested Plaintiff advise the Court of SAG-AFTRA's
7 request to have notice of any filing and an opportunity to appear and file responsive
8 papers. Plaintiff provided a copy of this application and exhibits by email to SAG-
9 AFTRA c/o Mr. Bennett.

10 **Count II Defendants**

11 13. Count II of the Proposed Complaint seeks relief from the following
12 individuals within the scope of Section 501(a), 29 U.S.C. 501(a).

13 14. At all times relevant to Count II, Defendant Gabrielle Carteris served as
14 an officer to the Union as SAG-AFTRA President, as a member of the SAG-
15 AFTRA National Board and as a member of the SAG-AFTRA Executive
16 Committee. As SAG-AFTRA President, Carteris served as the chair of the
17 negotiating committees for each of the three CBAs at issue in the Proposed
18 Complaint. Carteris has used her position as President of SAG-AFTRA to support
19 and defend the Benefit Cuts and to challenge claims by Union members directed at
20 the Benefit Cuts, including the Demand.

21 15. At all times relevant to Count II, Defendant David P. White served as
22 Union Executive Staff as SAG-AFTRA National Executive Director and Chief
23 Negotiator, and as a Union-appointed SAG-AFTRA Health Plan Trustee. White has
24 used his position as SAG-AFTRA's National Executive Director to support and
25 defend the Benefit Cuts and to challenge claims by Union members directed at the
26 Benefit Cuts, including the Demand.

27 16. At all times relevant to Count II, Defendant Ray Rodriguez served as
28 Union Executive Staff as SAG-AFTRA Chief Contracts Officer and as a Union-

1 appointed SAG-AFTRA Health Plan Trustee. Rodriguez has used his position as
2 SAG-AFTRA's Chief Contracts Officer to support and defend the Benefit Cuts and
3 to challenge claims by Union members directed at the Benefit Cuts, including the
4 Demand.

5 17. At all times relevant to Count II, Defendant Duncan Crabtree-Ireland
6 served as Union Executive Staff as SAG-AFTRA Chief Operating Officer and
7 General Counsel of SAG-AFTRA and as a Union-appointed SAG-AFTRA Health
8 Plan Trustee. Crabtree-Ireland has used his position as SAG-AFTRA's Chief
9 Operating Officer and General Counsel to support and defend the Benefit Cuts and
10 to challenge claims by Union members directed at the Benefit Cuts, including the
11 Demand.

12 18. At all times relevant to Count II, Defendant John T. McGuire served as
13 Union Executive Staff as SAG-AFTRA Senior Counsel and as a Union-appointed
14 SAG-AFTRA Health Plan Trustee. As SAG-AFTRA National Senior Advisor,
15 McGuire has used his position to support and defend the Benefit Cuts and to
16 challenge claims by Union members directed at the Benefit Cuts, including the
17 Demand.

18 19. At all times relevant to Count II, Defendant Linda Powell served as a
19 Union-appointed SAG-AFTRA Health Plan Trustee and as a member of the SAG-
20 AFTRA National Board. Powell has used her position as a SAG-AFTRA National
21 Board member to support and defend the Benefit Cuts and to challenge claims by
22 Union members directed at the Benefit Cuts, including the Demand.

23 20. At all times relevant to Count II, Defendant John Carter Brown served
24 as a Union-appointed SAG-AFTRA Health Plan Trustee and as a member of the
25 SAG-AFTRA National Board. Brown has used his position as a SAG-AFTRA
26 National Board member to support and defend the Benefit Cuts and to challenge
27 claims by Union members directed at the Benefit Cuts, including the Demand.

28 **Count II of the Proposed Complaint**

1 21. Count I of the Proposed Complaint asserts that collective bargaining
2 Defendants White, Rodriguez, McGuire, Hartley-Margolin, Pniewski, Powell and
3 Brown (“CB Defendants”) acted adversely to SAG-AFTRA and subverted the SAG-
4 AFTRA collective bargaining mechanism established by the Union Constitution, in
5 breach of their fiduciary duties to the Union under Section 501(a) of the LMRDA.

6 22. Count II of the Proposed Complaint asserts that Defendants Carteris,
7 White, Crabtree-Ireland, Rodriguez, McGuire, Brown and Powell disloyally
8 misused the Union’s assets and machinery to defend the Benefit Cuts and protect the
9 SAG-AFTRA Health Plan Trustees’ personal interests in a manner adverse to the
10 interests of SAG-AFTRA and its members.

11 23. As alleged more particularly in the Proposed Complaint, between 2019
12 and 2020, CB Defendants White, Rodriguez, McGuire, Hartley-Margolin, Pniewski
13 and Powell undertook to represent the Union and its members in the Union’s
14 collective bargaining mechanism established by the Union Constitution for the 2019
15 Commercials, the 2019 Netflix and the 2020 TV/Theatrical CBAs. These CB
16 Defendants knew the dire funding issues facing the SAG-AFTRA Health Plan
17 through their service as SAG-AFTRA Health Plan Trustees yet did not disclose this
18 information to any of the other Union representatives in the bargaining process. *Id.*
19 ¶¶ 10, 48, 51-60. They undertook primary positions to represent the Union and the
20 membership in the Union’s collective bargaining processes for the CBAs. *Id.* These
21 CB Defendants accepted and approved the proposal packages and terms knowing
22 that they included inadequate funding provisions to sustain the SAG-AFTRA Health
23 Plan’s benefit structure. *Id.*

24 24. CB Defendants Brown and Powell knew the material health plan
25 funding information and inadequacy of the contract terms to sustain the health
26 benefit structure, participated as National Board members in the National Board’s
27 consideration and approval of the CBA terms, approved the CBAs and submitted to
28 the membership for ratification the 2020 TV/Theatrical and 2019 Commercials

1 CBAs. *Id.* In doing so, CB Defendants Brown and Powell, as National Board
2 members, failed to disclose the known funding information and that the contracts
3 were inadequate to sustain the health benefit structure.

4 25. After the Benefit Cuts were announced on August 12, 2020, Plaintiff
5 and other Union members formed the SOS Health Plan team. The team launched
6 SOSHealthPlan.com as a means of providing clarity to Union members affected by
7 the Benefit Cuts by, among other things: offering comprehensive information on the
8 Benefit Cuts, educating participants on secondary health insurance options apart
9 from Via Benefits (SAG-AFTRA Health Plan’s promoted provider), providing
10 Union members with periodic email updates, and fostering member communication
11 by way of a platform for rank-and-file and high-profile Union members alike to
12 speak out about the Benefit Cuts via videos and testimonials. The SOS Health Plan
13 website and social media pages on Twitter, Instagram and Facebook allowed Union
14 members to have their questions answered, interact socially and express their views
15 on the Benefit Cuts. SOS Health Plan also partnered with social media powerhouse
16 Eleven Films to make a social media video featuring over 20 high-profile rank-and-
17 file Union members speaking out about the draconian changes to the SAG-AFTRA
18 Health Plan. *Id.* ¶¶ 13 n.2, 62.

19 26. SOS Health Plan also held two nationwide virtual “town hall” meetings
20 advertised via word-of-mouth that were open to all Union members and the public.
21 The virtual town halls were co-led by Plaintiff (First Vice President of the SAG-
22 AFTRA Los Angeles Local), Patricia Richardson (President of the Los Angeles
23 Local), and David Jolliffe (Second Vice President of the Los Angeles Local) and run
24 by Shaan Sharma (Los Angeles Local Board Member), their purpose being to hear
25 from the Union members and listen to their concerns. The Los Angeles Local is the
26 Union’s largest local, representing approximately 80,000 members, or 50% of the
27 Union. The first town hall took place on August 14, 2020 - just two days after the
28 Benefit Cuts were announced - garnered approximately 600 members and lasted

1 eight hours. The second, held August 21, 2020, garnered approximately 500
2 members and lasted seven hours. Each of the meetings continued until every single
3 question was asked and answered. *Id.* ¶ 63.

4 27. After compiling the suggestions from members and hearing their
5 heartbreaking stories and feelings of betrayal by their Union, the Los Angeles
6 leadership undertook to explore potential legal redress. Consequently, Union
7 members filed an action in this Court on December 1, 2020 under the Employee
8 Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001 *et seq*, for
9 breaches of fiduciary duty by the Health Plan Trustees in connection with the 2017
10 Health Plan Merger and thereafter, ultimately leading to the Benefit Cuts. *See*
11 *Edward Asner et al v. The SAG-AFTRA Health Fund et al*, No. 2:20-cv-10914 (C.D.
12 Cal. Dec. 1, 2020). The CB Defendants are represented in the *Asner* action by long-
13 time counsel to AFTRA, the AFTRA Health Fund and the SAG-AFTRA Health
14 Plan, Cohen, Weiss & Simon LLP (“CWS”). CWS has provided legal services to
15 SAG-AFTRA since approximately 2016. *Id.* ¶ 12.

16 28. On December 4, 2020, the Union disseminated an email to participants
17 which stated that members were being “misled” by “a deliberate public and social
18 media campaign spreading misinformation and fear.” *Id.* ¶ 65. The Union’s loyalty
19 was immediately aligned with the SAG-AFTRA Health Plan and its Trustees,
20 supporting and defending the Benefit Cuts in a manner adverse to the Union
21 members’ allegations against the CB Defendants as alleged herein. Defendants
22 White, Crabtree-Ireland, Rodriguez and McGuire are compensated by the Union for
23 their role as National Executive Staff members and owe a duty of loyalty to the
24 Union and its members, not to the SAG-AFTRA Health Plan Trustees or to
25 themselves. Union members had a substantial interest in knowing the SAG-AFTRA
26 Health Plan’s needs, including its funding issues and any structural changes it faced,
27 in order to formulate rational proposal packages and bargain in the best interests of
28 the members.

1 29. On December 6, 2020, SOS Health Plan released a response to the
2 December 4, 2020 Union message that outlined incontrovertible facts in order to
3 expand and clarify the alleged concerns of spreading “misinformation.” *Id.* ¶ 67.

4 30. On December 14, 2020, at the direction of Defendants Carteris and
5 White, Union staff called a special meeting of the National Board to launch a thinly
6 veiled attack on the SOS Health Plan initiative and its supporters by passing a
7 “RESOLUTION RE[GARDING] [THE] ACCURACY OF INFORMATION
8 ABOUT HEALTH PLAN CHANGES.” *Id.* ¶ 68. In the press release announcing
9 the resolution, SAG-AFTRA President Defendant Carteris was quoted as follows:
10 “We have grown increasingly concerned about the flood of misleading information
11 being spread by certain websites and social media accounts about our Health Plan. .
12 . . Like many scams that target the elderly, the misinformation being spread is
13 endangering our most vulnerable members.” *Id.* ¶ 69. The release further provided
14 that “numerous board members from across the country expressed their
15 disappointment with those individuals who are leading the misinformation campaign
16 and outrage with their actions, and urged the board to direct the union to protect its
17 membership by ensuring accuracy around the changes.” *Id.* Also on December 14,
18 2020, the SAG-AFTRA Health Plan released a video of a SAG-AFTRA member
19 “discussing Five Facts about the Health Plan change” with links to the
20 aforementioned December 4, 2020 Union message and the Union December 14,
21 2020 press release. *Id.* ¶ 70.

22 **Plaintiff Has Fulfilled All Pre-Suit Requirements**

23 31. On December 18, 2020, Plaintiff sent the Demand under the LMRDA
24 to the Union and the National Board to sue to recover damages for breaches of
25 fiduciary duty and the duty of fair representation against: (1) the members of Union
26 leadership who are SAG-AFTRA Health Plan Trustees; (2) the members of Union
27 leadership who participated in the CBA negotiations and approvals with knowledge
28 of the ongoing activity by the SAG-AFTRA Health Plan Trustees to change the

1 benefit structure; and (3) the members of Union leadership who approved the
2 Benefit Cuts or who have used their Union positions and the Union to support the
3 Benefit Cuts and oppose the claims by Union members challenging the Benefit
4 Cuts. *Id.* ¶ 71.

5 32. In response, on December 28, Jeffrey Bennett, SAG-AFTRA Chief
6 Deputy General Counsel, wrote to Plaintiff that the Union had received Plaintiff's
7 "demand that the Union initiate litigation under Section 501 of the LMRDA" and
8 that the request would be addressed by the National Board at its next meeting on
9 February 6, 2021. *Id.* ¶ 72.

10 33. On February 5, 2021, Susan Davis of CWS contacted Plaintiff to
11 discuss the February 6, 2021 meeting. CWS is representing the CB Defendants and
12 others in the *Asner* action, and is opposing members' EEOC claims relating to the
13 Benefit Cuts. Davis informed Plaintiff that Plaintiff would be requested at the
14 National Board meeting to present the Demand and would then be directed to recuse
15 herself from the meeting during Davis's "presentation" to the National Board, of
16 which Plaintiff is a member. Plaintiff requested Davis to provide the basis and
17 authority supporting recusal. Davis did not respond. *Id.* ¶ 73.

18 34. At the meeting, Plaintiff stated that although she believed the Demand
19 did not impair her capacity or duty as a member of the National Board to impartially
20 evaluate and consider the Demand and related information, she would comply with
21 the recusal directive on only an involuntary basis, reserving all rights. *Id.* ¶ 74.

22 **Plaintiff Possesses Good Cause to File Proposed Complaint**

23 35. Section 501(a) of the LMRDA, 29 U.S.C. § 501(a), holds officers of
24 labor unions "to the highest standards of responsibility and ethical conduct in
25 administering the affairs of the union." *SEIU v. Nat'l Union of Healthcare Workers*,
26 718 F.3d 1036, 1044 (9th Cir. 2013). "The officers, agents, shop stewards, and other
27 representatives of a labor organization occupy positions of trust in relation to such
28

1 organization and its members as a group.” 29 U.S.C. § 501(a). The statute further
2 provides:

3 It is, therefore, the duty of each such person, taking into account the
4 special problems and functions of a labor organization, to hold its
5 money and property solely for the benefit of the organization and its
6 members and to manage, invest, and expend the same in accordance
7 with its constitution and bylaws and any resolutions of the governing
8 bodies adopted thereunder, to refrain from dealing with such
9 organization as an adverse party or in behalf of an adverse party in any
10 matter connected with his duties and from holding or acquiring any
11 pecuniary or personal interest which conflicts with the interests of such
12 organization, and to account to the organization for any profit received
13 by him in whatever capacity in connection with transactions conducted
14 by him or under his direction on behalf of the organization.

15 29 U.S.C. § 501(a).

16 36. The good cause requirement “is intended as a safeguard to the affected
17 union against harassing and vexatious litigation brought without merit or good
18 faith.” *Horner v. Ferron*, 362 F.2d 224, 228 (9th Cir. 1966). For that reason, the
19 court considers, “to a certain extent, the merits of a case in determining whether
20 there is good cause to support a § 501(a) claim.” *Pimentel v. Aloise*, 2018 U.S. Dist.
21 LEXIS 196122, *43-44 (N.D. Cal. Nov. 16, 2018).

22 37. “Under the current Ninth Circuit approach, review is limited and
23 designed simply to ensure that a suit is not frivolous or undertaken for the purpose
24 of harassment.” *Id.* at 45 (rejecting approach to good cause that construed the term
25 to mean that plaintiff “must show a reasonable likelihood of success and, with
26 regard to any material facts he alleges, . . . a reasonable ground for belief in their
27 existence.”). *See Saunders v. Hankerson*, 312 F. Supp. 2d 46, 65 (D.D.C. 2004)
28 (determining that plaintiff alleged “at least a colorable claim” under § 501 upon
“taking all facts and circumstances into consideration, including plaintiff’s efforts to
invoke internal remedies, his demands on the union, refusal of the union to act in
accordance with those demands, plaintiff’s reasonable likelihood of success, and his

1 reasonable ground for belief in his claims”) (internal citations omitted); *Horner v.*
2 *Ferron*, 362 F.2d 224, 228-29 (9th Cir. 1966) (“limited scope” of inquiry at “good
3 cause” determination juncture confined to defenses that do not require resolution of
4 complex questions of law going to substance of case).

5 38. As detailed herein, Plaintiff alleges that Defendants disloyally misused
6 their fiduciary positions and the assets and machinery of SAG-AFTRA to defend the
7 Benefit Cuts and themselves, adversely to the interests and claims of the Union and
8 its membership arising from the breaches of fiduciary duty and breach of the
9 Union’s duty of fair representation relating to the Union’s 2019 Commercials, 2019
10 Netflix and 2020 TV/Theatricals collective bargaining process and approvals under
11 the Union Constitution.

12 39. Accordingly, Plaintiff has brought this action on behalf of SAG-
13 AFTRA.

14 40. Based on the foregoing, the exhibits attached hereto, and the Proposed
15 Complaint filed herewith, Plaintiff respectfully requests the Court grant leave to file
16 a claim under LMRDA Section 501, denominated as Count II to obtain damages and
17 such other relief as the Court may deem appropriate.

18

19 DATED: June 25, 2021

JOHNSON & JOHNSON LLP

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By: /s/ Neville L. Johnson

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VERIFICATION

1
2 I, Frances Fisher, declare that I am the Plaintiff in the above-captioned action.
3 I am familiar with the contents of the foregoing: (1) Plaintiff's Verified Application
4 for Leave to File Proposed Complaint and (2) the [Proposed] Complaint. Furthermore,
5 information contained in the foregoing documents is true, based on my personal
6 knowledge, except as to those matters which are based on information and belief or
7 which were provided by my attorney, as to those matters, I am informed and believe
8 that they are true.
9
10

11 I am making this Verification under the penalty of perjury under the laws of the
12 State of California. Executed 21 June, 2021, in Los Angeles California.
13
14

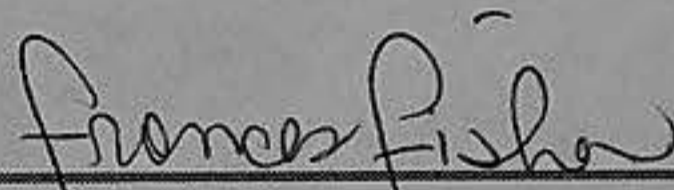
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16 Frances Fisher
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EXHIBIT 1
[PROPOSED] CLASS
ACTION COMPLAINT

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21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 **FRANCES FISHER**

24 Plaintiff, on behalf of herself and all
25 other similarly and situated members
26 of the SCREEN ACTORS GUILD-
27 AMERICAN FEDERATION OF
28 TELEVISION AND RADIO
ARTISTS,

CASE NO. 2:21-cv-5215

**[PROPOSED] CLASS ACTION
COMPLAINT FOR RELIEF FOR
(1) BREACH OF FIDUCIARY DUTY
OF FAIR REPRESENTATION IN
VIOLATION OF 29 U.S.C. § 159(a)**

1 v.

2 SCREEN ACTORS GUILD -
3 AMERICAN FEDERATION OF
4 TELEVISION AND RADIO ARTISTS,
5 a labor organization; GABRIELLE
6 CARTERIS, an individual; DAVID P.
7 WHITE, an individual; DUNCAN
8 CRABTREE-IRELAND, an individual;
9 RAY RODRIGUEZ, an individual;
10 JOHN T. MCGUIRE, an individual;
11 MICHAEL PNIEWSKI, an individual;
12 DAVID HARTLEY-MARGOLIN, an
13 individual; JOHN CARTER BROWN, an
14 individual, AND LINDA POWELL, an
15 individual.

16 Defendants.

**(2) BREACH OF FIDUCIARY
DUTIES IN VIOLATION OF 29
U.S.C. § 501(a)**

(3) DEMAND FOR JURY TRIAL

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1 **CLASS ACTION COMPLAINT**

2 1. Plaintiff, Frances Fisher (“Fisher” or “Plaintiff”), by and through her
3 attorneys, brings this action under the National Labor Relations Act, 29 U.S.C. §§
4 151-169 (“NLRA”) and the Labor-Management Reporting and Disclosure Act of
5 1959, as amended, 29 U.S.C. §§ 401-531 (“LMRDA”), against the Screen Actors
6 Guild - American Federation of Television and Radio Artists (“SAG-AFTRA” or
7 “Union”) and certain individual Union officials, including Gabrielle Carteris, David
8 P. White, Duncan Crabtree-Ireland, Ray Rodriguez, Michael Pniewski, David
9 Hartley-Margolin, John T. McGuire, John Carter Brown and Linda Powell
10 (collectively, “Defendants”).

11 **I. NATURE OF ACTION**

12 2. This action asserts claims on behalf of the members of SAG-AFTRA
13 (excluding Defendants) (the “Members”) and on behalf of SAG-AFTRA, for
14 injuries to SAG-AFTRA and the SAG-AFTRA Members resulting from
15 Defendants’ breaches of the Union’s duty of fair representation under the NLRA, 29
16 U.S.C. § 159(a), and breaches of the fiduciary duties of Union officials imposed by
17 Section 501(a) of the LMRDA, 29 U.S.C. § 501(a). Under Section 9(a) of the
18 NLRA, the Union has a duty “to serve the interests of all members without hostility
19 or discrimination toward any, to exercise its discretion with complete good faith and
20 honesty, and to avoid arbitrary conduct.” *Vaca v. Sipes*, 386 U.S. 171, 177 (1967).
21 Section 501(a) of the LMRDA establishes that union officials have fiduciary duties
22 in any area of their union authority, and holds Union “officers, agents, shop
23 stewards, and other representatives” to the highest standards of ethical conduct in
24 administering the affairs of the Union, which they must do solely for the benefit of
25 the Union and its Members in accordance with the Union Constitution and bylaws,
26 requiring the officials to refrain from dealing with the Union as an adverse party or
27 on behalf of an adverse party in any matter connected with their duties. 29 U.S.C. §
28 501(a).

1 3. SAG-AFTRA resulted from the 2012 merger of the respective SAG
2 and AFTRA unions. The SAG-AFTRA Health Plan resulted from the 2017 merger
3 of the respective health plans of SAG and AFTRA (“2017 Health Plan Merger”). In
4 announcing the agreement for the 2017 Health Plan Merger, Defendant White
5 publicly stated to Union members that the merger would “strengthen the overall
6 financial health of the plan,” “ensur[e] comprehensive benefits for all participants,”
7 and “provide[] a robust foundation of healthcare for our membership, which the
8 [Health Plan] [T]rustees can continue to improve upon, nurture and grow over
9 time.”

10 4. The SAG-AFTRA Health Plan is a collectively-bargained, joint-
11 trustee labor-management trust that provides health benefits to Union members.
12 Collective bargaining Defendants White, Rodriguez, Pniewski, Hartley-Margolin,
13 McGuire, Brown and Powell (collectively “CB Defendants”), are Union officials
14 and are and have been Union-appointed Trustees of the SAG-AFTRA Health Plan
15 since the 2017 Health Plan Merger.¹

16 5. The SAG-AFTRA Health Plan is funded primarily by employer
17 contributions thereto based on total compensation paid to the employed Union
18 members under the terms of the Union’s operative collective bargaining agreements
19 (the “CBAs”). Employer contributions to the SAG-AFTRA Health Plan are a
20 material part of the value to Union members provided by the CBAs. The employer
21 contributions based on a Union member’s earnings are made to the SAG-AFTRA
22 Health Plan pursuant to the terms of the CBAs, regardless of the member’s age or
23 whether the member is taking a Union pension. Ensuring comprehensive benefits for
24 all participants and improving, nurturing and growing over time the foundation of
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26
27 ¹ The “SAG-AFTRA Health Plan Trustees” hereinafter include, but are not limited
28 to, the CB Defendants.

1 healthcare for the membership thus depends vitally on the Union's effective and
2 zealous collective bargaining.

3 6. The Union's objectives as set forth in the Union Constitution include
4 increasing the bargaining power of the Union members in collective bargaining with
5 employers, as well as protecting the rights of the Union members in all respects
6 consistent with Union objectives and doing all things necessary and proper to
7 advance and promote Union members' welfare and interests. Under the Union
8 Constitution, the mechanism for collective bargaining includes the appointment by
9 the National Board of Wages and Working Conditions ("W&W") Committees to
10 develop proposals for negotiations with employers, the appointment of Negotiations
11 Committees by the Union National Board to conduct the negotiations, the approval
12 of all CBAs by the National Board, and the ratification by the Union members of
13 CBAs national in scope with widespread or industry-wide application affecting a
14 substantial portion of the membership. The Union Constitution also empowers the
15 Union to call a strike over collective bargaining.

16 7. On August 12, 2020, the SAG-AFTRA Health Plan suddenly
17 announced dramatic changes to its health benefit structure, targeting participants age
18 65 and older ("Benefit Cuts"). The Benefit Cuts increased the SAG-AFTRA Health
19 Plan's eligibility requirements for many Union members and disqualified residuals
20 earnings toward earnings-based eligibility for Union members age 65 and older
21 taking a Union pension.² The Benefit Cuts also eliminated Senior Performer
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23 ² "Residuals are compensation paid to [member] performers for use of a theatrical
24 motion picture or television program beyond the use covered by initial
25 compensation. For TV work, residuals begin once a show starts re-airing or is
26 released to video/DVD, pay television, broadcast TV, basic cable, or new media
27 [such as Netflix or Hulu]. For film work, residuals begin once the movie appears on
28 video/DVD, basic cable and free or pay television, or new media." *Residuals FAQ*,
SAG-AFTRA (archived from
Apr. 16, 2018), available at <https://web.archive.org/web/20180416224029/https://w>

1 Coverage and Age and Service Eligibility (for members 40 and older with 10 years
2 vested and \$13,000 in earnings) and negatively affected those members who
3 previously earned coverage under the lower Plan II \$1840 earnings threshold.

4 8. Additionally, the Benefit Cuts modified the earnings period for all
5 Union members age 65 and older to run from October 1 to September 30, cutting
6 short the time available to these members to obtain the sessional earnings necessary
7 to meet the increased eligibility requirements and retroactively eliminating coverage
8 for which some members had already qualified.

9 9. The Benefit Cuts effectively eliminated benefits under the SAG-
10 AFTRA Health Plan for thousands of Union members and their families who are
11 now unable to qualify based on earnings where residual earnings are no longer
12 credited toward SAG-AFTRA Health Plan eligibility, and many members face the
13 dramatically increased hurdles for eligibility under the Health Plan in the future. The
14 employer contributions to the SAG-AFTRA Health Plan bargained for members
15 under the operative CBAs are based on a percentage of *all* earnings of each member
16 and will continue to fund the Health Plan. Thus, the residuals of members age 65
17 and older receiving a Union pension are being credited as earnings for contributions
18 to the Health Plan and will continue to fund the Health Plan but are and will be
19 effectively worthless to the member to qualify for coverage under the Health Plan.
20 Union dues, likewise, will continue to be assessed based on *both* sessional and
21 residual earnings of each member.

22 10. One week after the Benefit Cuts' announcement, on August 19, 2020,
23 SAG-AFTRA Health Plan Trustee Richard Masur admitted that the Benefit Cuts
24 had been in the works for two years, and SAG-AFTRA Health Plan Trustee Barry
25 Gordon highlighted that the Trustees had worked nearly every day for those two
26 years to figure out how they could preserve the SAG-AFTRA Health Plan's

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www.sagaftra.org/content/residuals-faq.

1 benefits. Funding to the SAG-AFTRA Health Plan is largely provided by employer
2 contributions set by the terms of the Union's operative CBAs. In the two years
3 leading up to the Benefit Cuts, the 2019 Commercials, 2019 Netflix and 2020
4 TV/Theatrical CBAs that were operative on August 12, 2020 were negotiated and
5 approved by the Union.

6 11. The CB Defendants represented the Union and membership as primary
7 participants in the Union's collective bargaining and approval processes. CB
8 Defendants White, Rodriguez and McGuire participated in the negotiations for all
9 three CBAs, with White and Rodriguez serving as lead negotiators. CB Defendant
10 Hartley-Margolin participated in the negotiations concerning the 2019 Commercials
11 CBA. CB Defendants Powell and Pniewski participated in the negotiation of the
12 2019 Netflix and 2020 TV/Theatrical CBAs. CB Defendants Powell and Brown
13 voted as Union National Board members to approve the 2019 Commercials, 2019
14 Netflix and 2020 TV/Theatrical CBAs.

15 12. The process for the 2020 TV/Theatrical and 2019 Commercials CBAs
16 were essentially the same and in line with past CBAs. The Union National Board
17 appointed a W&W Committee for each CBA in order to gather proposals from the
18 national membership and formulate the Union's proposal package to exchange with
19 the employers. The proposal packages included employer contributions to the SAG-
20 AFTRA Health Plan based on all earnings of all Union members. The W&W
21 Committees also valued the proposal package for Union members. The National
22 Board appointed the Negotiating Committees to conduct the Union's bargaining.
23 The bargained terms were submitted to the National Board for approval. The
24 approved CBAs were submitted to the membership for ratification. The 2019 Netflix
25 CBA, however, was negotiated entirely by Union staff led by CB Defendants White
26 and Rodriguez, and was submitted to the TV/Theatrical Negotiating Committee as a
27 take-it-or-leave-it matter. The 2019 Netflix CBA was approved by the National
28 Board but was not submitted to the membership for ratification.

1 13. Defendants White, Rodriguez, McGuire, Pniewski and Powell
2 undertook to represent the Union and its membership in the 2019 Netflix and 2020
3 TV/Theatrical collective bargaining processes. Defendants White, Rodriguez,
4 McGuire and Hartley-Margolin undertook to represent the Union and its
5 membership in the 2019 Commercials collective bargaining process. Defendant
6 Brown did not participate as a negotiator on any of the three contracts but, along
7 with Defendant Powell, voted as a National Board member to approve each one.
8 These Defendants were primary participants in the determination of the Union's
9 negotiating objectives, the valuations of the proposal packages for Union members,
10 and the bargaining for the rights of Union members. Through their service as SAG-
11 AFTRA Health Plan Trustees, CB Defendants knew the urgent funding issues facing
12 the SAG-AFTRA Health Plan, the level of funding required to sustain its health
13 benefit structure, that the Union proposals and bargained terms were inadequate to
14 sustain that health benefit structure, and that massive cuts were coming to
15 effectively eliminate the SAG-AFTRA Health Plan's benefits for thousands of
16 Union members and their families under the terms of the Union proposal packages
17 and the terms of the negotiated CBAs. CB Defendants nonetheless accepted these
18 fundamentally unfair and harmful negotiating objectives and proposal packages,
19 bargained for and approved terms that CB Defendants knew were inadequate to
20 sustain the SAG-AFTRA Health Plan's benefit structure for the Union and its
21 members, and failed to disclose this vital information to the other participants in the
22 Union's collective bargaining process. In doing so and acting as designated agents
23 of the Union, CB Defendants and the Union violated the Union's duty of fair
24 representation under the NLRA, breached their fiduciary duties to the Union and its
25 members as Union officials under Section 501(a) of the LMRDA, and exposed the
26 Union to liability for their breaches and breaches of the Union's duty of fair
27 representation.

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1 14. Further, the looming peril to Union members' health coverage was vital
2 information for Union members to have in the spring of 2020, amidst the global
3 COVID-19 crisis. In early April 2020, responding to the impact of COVID-19 on
4 Union members and the industry, Union President Carteris and National Executive
5 Director White announced a three-month suspension of Union health premiums until
6 July 2020 and an extension of members' Union dues, but stated nothing whatsoever
7 concerning the coming SAG-AFTRA Health Plan eligibility crisis for thousands of
8 Union members and their families. At least Defendant White knew the changes were
9 coming yet failed to disclose this information to Union members. In doing so,
10 Defendant White violated his fiduciary duty as a Union official in communicating
11 with Union members concerning the members' rights and benefits.

12 15. Following the August 12, 2020 announcement of the Benefit Cuts,
13 Defendants also misused their fiduciary positions and Union assets to advocate in
14 support of and defend the Benefit Cuts and the SAG-AFTRA Health Plan Trustees,
15 and to protect their personal interests. In response to the Benefit Cuts, Union
16 members filed an action under 29 U.S.C. §§ 1104 and 1105 ("ERISA") in this Court
17 on December 1, 2020, alleging breaches of fiduciary duty by the SAG-AFTRA
18 Health Plan Trustees in connection with the 2017 Health Plan Merger, ultimately
19 leading to the Benefit Cuts. *Asner et al v. The SAG-AFTRA Health Fund et al*, No.
20 2:20-cv-10914 (C.D. Cal.).

21 16. The defendants subject to personal liability in the *Asner* action are the
22 SAG-AFTRA Health Plan Trustees, including the CB Defendants. The misconduct
23 alleged in *Asner* includes the failure of the CB Defendants, as SAG-AFTRA Health
24 Plan Trustees, to disclose the material funding information in connection with the
25 2019-2020 Union contract negotiations and approvals. The CB Defendants are
26 represented in *Asner* by Cohen, Weiss & Simon LLP ("CWS"), long-time counsel to
27 AFTRA, the AFTRA Health Fund and the SAG-AFTRA Health Plan. CWS has
28 provided legal services to SAG-AFTRA since approximately 2016, including

1 negotiating the contract for the Union’s newly-appointed National Executive
2 Director, Defendant Crabtree-Ireland.

3 17. Also in response to the Benefit Cuts, Plaintiff and other SAG-AFTRA
4 members launched SOSHealthPlan.com to assist Union members affected by the
5 sudden elimination of their union health benefits by, among other things, offering
6 comprehensive information on the Benefit Cuts, educating participants on secondary
7 health insurance options apart from Via Benefits (SAG-AFTRA Health Plan’s
8 promoted provider), providing Union members with periodic email updates,
9 fostering member communication by way of a platform for rank-and-file and high-
10 profile Union members alike to speak out about the Benefit Cuts via videos and
11 testimonials,³ and holding 15 hours of nationwide virtual “town hall” meetings that
12 were open to all Union members and the public.

13 18. Defendants herein, most of whom face claims for personal liability in
14 the *Asner* action, used their fiduciary positions as Union officials and Union assets
15 to support and defend the Benefit Cuts and the SAG-AFTRA Health Plan Trustees,
16 and to protect themselves from personal liability. A December 4, 2020, letter from
17 the Union to its members in support of the Benefit Cuts stated that Union members
18 are being “misled” by a “deliberate public and social media campaign spreading
19 misinformation and fear,” and defended the propriety and necessity of the Benefit
20 Cuts approved and implemented by the CB Defendants. Similarly, on December 14,

21 _____
22 ³ On December 1, 2020, SOS Health Plan, together with Eleven Films, released a
23 video featuring union members relating to the Benefit Cuts. Members in the video
24 include Clancy Brown, Elaine Hendrix, Lisa Ann Walker, Morgan Freeman,
25 Vincent D’Onofrio, Amy Schumer, Martin Sheen, Elliott Gould, Connie Stevens,
26 Jack Kehler, Mark Hamill, Ed Asner, Matthew Modine, Kirk Acevedo, Leslie Ann
27 Warren, Jodi Long, Lea Thompson, Frances Fisher, Shirley Jones, Whoopi
28 Goldberg, Rick Overton, Barbara Niven, and Carol Kane. *See SOS Healthplan
Eleven Films*,
YOUTUBE (Dec. 1, 2020), available at [https://www.youtube.com/watch?v=4LgRxJn
xI8o](https://www.youtube.com/watch?v=4LgRxJn xI8o).

1 2020, Union officials including Defendants Carteris and White, convened a special
2 meeting of the National Board to pass a staff-drafted “RESOLUTION RE:
3 ACCURACY OF INFORMATION ABOUT HEALTH PLAN CHANGES,” which
4 asserted that a “substantial amount of misinformation has been circulated...
5 [regarding the Benefit Cuts],” and that “some have sought to generate fear in...
6 members through salacious and inaccurate communications.” Union staff also
7 distributed a press release regarding the resolution, quoting Defendant Carteris as
8 follows: “We have grown increasingly concerned about the flood of misleading
9 information being spread . . . about our Health Plan. . . . [and,] [l]ike many scams
10 that target the elderly, the misinformation being spread is endangering our most
11 vulnerable members.” In acting as Union officials to defend the Benefit Cuts and the
12 conduct of the SAG-AFTRA Health Plan Trustees, including the CB Defendants,
13 Defendants Carteris, White, Rodriguez, Crabtree-Ireland, McGuire, Powell and
14 Brown acted disloyally and adversely to the Union’s and membership’s interest and
15 claims against the CB Defendants relating to their fiduciary misconduct as Union
16 officials and representatives in the Union’s collective bargaining processes under the
17 Union Constitution.

18 19. On December 18, 2020, Plaintiff demanded pursuant to the LMRDA
19 that the Union and National Board assert claims against the Union officials who
20 represented the Union and its members in connection with the Union’s CBA
21 negotiations and approvals, as well as those officials who used their Union positions
22 and Union assets to support and defend the Benefit Cuts and protect themselves
23 from personal liability (the “Demand”). The Demand is attached hereto as Exhibit
24 A.

25 20. Union leadership responded to the Demand by engaging CWS, the very
26 same counsel defending the CB Defendants in *Asner*, to address the Demand.
27 CWS’s work and conclusion were adverse to the Demand. The December 18, 2020
28 Demand was on the agenda for the Union’s February 6, 2021 regularly scheduled

1 National Board meeting. Neither the Demand itself, information reflecting CWS's
2 efforts in investigating the Demand, nor any other information relating to the
3 Demand were provided to Plaintiff or the other National Board members prior to the
4 February 6 meeting. At the meeting, following a presentation by CWS, the National
5 Board voted to reject the Demand.

6 21. As stated in Plaintiff's Application to Proceed, Plaintiff has
7 demonstrated good cause for Count II herein to proceed.

8 **II. JURISDICTION AND VENUE**

9 22. This Court has jurisdiction over this action under the NLRA, 29 U.S.C.
10 § 159(a), 28 U.S.C. § 1337, and the LMRDA, 29 U.S.C. § 501(b), 28 U.S.C. § 1331.

11 23. This District is the proper venue for this action under 29 U.S.C. §
12 501(b) and 28 U.S.C. § 1391 because Plaintiff is domiciled in this District,
13 Defendants transact substantial business in this District including the administration
14 of the SAG-AFTRA Health Plan, and because a substantial part of the events or
15 omissions giving rise to this action occurred in this District, where the office of
16 SAG-AFTRA is headquartered and the office of the SAG-AFTRA Health Plan is
17 located.

18 **III. THE PARTIES**

19 24. Plaintiff Frances Fisher is and has been at all times relevant hereto a
20 member of SAG-AFTRA. Plaintiff has served as First Vice President of the SAG-
21 AFTRA Los Angeles Local and as a member of the SAG-AFTRA National Board
22 since August 29, 2019. Plaintiff was a member of both SAG and AFTRA from 1976
23 until the 2012 Union Merger. Plaintiff also served as a member of the SAG National
24 Board beginning in 2000 and the AFTRA National Board beginning in 2008 until
25 the 2012 Union Merger. Pursuant to 29 U.S.C. § 501(b), Plaintiff issued a Demand
26 to the Union and the National Board on December 18, 2020.

27 25. SAG-AFTRA is a labor organization as defined under 29 U.S.C. § 402.
28 Under the authority established in Article III of the SAG-AFTRA Health Plan Trust

1 Agreement, SAG-AFTRA is charged with appointing and removing the Union
2 trustees of the SAG-AFTRA Health Plan. Specifically, the SAG-AFTRA National
3 Board appoints and can remove the Union trustees of the SAG-AFTRA Health Plan.

4 26. Defendant Gabrielle Carteris has at all times relevant hereto served as
5 President of SAG-AFTRA, as a SAG-AFTRA National Board member and as a
6 SAG-AFTRA Executive Committee member. As SAG-AFTRA President, Carteris
7 served as the chair of the negotiating committees for each of the three CBAs at issue
8 herein. Prior to her appointment as Union President, Carteris served as SAG-
9 AFTRA's Executive Vice President from 2013-2016. Carteris has used her position
10 as President of SAG-AFTRA to support and defend the Benefit Cuts and to
11 challenge claims by Union members directed at the Benefit Cuts, including the
12 Demand.

13 27. Defendant David P. White has at all times relevant hereto served as
14 SAG-AFTRA's National Executive Director and chief negotiator and as a Union-
15 appointed SAG-AFTRA Health Plan Trustee. White previously served as SAG's
16 Executive Director from 2009 until the 2012 Union merger, as a Union-appointed
17 trustee of the SAG Health Plan from 2009 until the 2017 Health Plan Merger, and as
18 a Union-appointed trustee of the AFTRA Health Plan from 2013 until the 2017
19 Health Plan Merger. White is also a Union-appointed trustee of the SAG-Producers
20 Pension Plan and the AFTRA Retirement Fund. As SAG-AFTRA's National
21 Executive Director and chief negotiator, White participated in the process for each
22 of the three collective bargaining agreements at issue herein. According to SAG-
23 AFTRA's LM-2 Report, White's total compensation paid by the Union for the May
24 1, 2019-April 30, 2020 period was \$789,669. On May 14, 2021, SAG-AFTRA
25 announced White's departure from his National Executive Director position to
26 transition to a "strategic advisor" position. He has planned to step down from his
27 role as National Executive Director on June 21, 2021.

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1 28. Defendant Duncan Crabtree-Ireland at all times relevant hereto served
2 as Chief Operating Officer and General Counsel of SAG-AFTRA. Crabtree-Ireland
3 served as a Union-appointed SAG Health Plan Trustee from 2008 until the 2017
4 Health Plan Merger, at which time he transitioned to a trustee of the SAG-AFTRA
5 Health Plan. He also serves as a trustee of the SAG Producers Pension Plan. As
6 General Counsel and Chief Operating Officer, Crabtree-Ireland oversees the legal
7 aspects of collective bargaining and contract enforcement for all SAG-AFTRA
8 CBAs, as well as SAG-AFTRA's legal, government affairs, professional
9 representatives, governance, diversity and information technology departments.
10 According to SAG-AFTRA's LM-2 Report, Crabtree-Ireland's total compensation
11 paid by the Union for the May 1, 2019 – April 30, 2020 period was \$435,835.
12 Crabtree-Ireland has used his position as a Union official to support and defend the
13 Benefit Cuts and to challenge claims by Union members directed at the Benefit
14 Cuts, including the Demand. On May 26, 2021, the National Board voted to approve
15 Crabtree-Ireland (by a vote of nearly 65% to 35%) to succeed Defendant White as
16 SAG-AFTRA's National Executive Director. Crabtree-Ireland is also a defendant in
17 *Risto v. Screen Actors Guild - American Federation of Television and Radio Artists*
18 *et al*, No. 2:18-cv-07241 (C.D. Cal. Aug 17, 2018).

19 29. Defendant Ray Rodriguez at all times relevant hereto served as SAG-
20 AFTRA's Chief Contracts Officer and Union-appointed SAG-AFTRA Health Plan
21 Trustee. Rodriguez served as a trustee of the SAG Health Plan from 2014 until the
22 2017 Health Plan Merger. Rodriguez is also a trustee of the SAG Producers Pension
23 Plan. Prior to his position as Chief Contracts Officer, Rodriguez served as Deputy
24 National Executive Director of Contracts for SAG and, after the 2017 Health Plan
25 Merger, for SAG-AFTRA. According to SAG-AFTRA's LM-2 Report, Rodriguez's
26 total compensation paid by the Union for the May 1, 2019 – April 30, 2020 period
27 was \$419,806. As Chief Contracts Officer, Rodriguez has served as either lead
28 negotiator or second chair at all major negotiations (other than broadcast news),

1 including those for the 2019 Commercials, 2019 Netflix and 2020 TV/Theatrical
2 CBAs.

3 30. Defendant John T. McGuire at all times relevant hereto served as SAG-
4 AFTRA’s National Senior Advisor and a Union-appointed SAG-AFTRA Health
5 Plan Trustee. McGuire began with the Union in 1969 and has served as a trustee of
6 the SAG and/or the SAG-AFTRA Health Plan for decades. He is also a trustee of
7 the SAG Producers Pension Plan. As National Senior Advisor, McGuire has been
8 “instrumental” in negotiating SAG-AFTRA’s CBAs, including each of the three
9 collective bargaining agreements at issue herein. Prior to his role as SAG-AFTRA’s
10 National Senior Advisor, McGuire served from 2001-2012 as SAG’s Senior
11 Advisor, and from 1982 to 2001 as SAG’s Associate National Executive Director.
12 According to SAG-AFTRA’s LM-2 Report, McGuire’s total compensation paid by
13 the Union for the May 1, 2019 – April 30, 2020 period was \$240,726.

14 31. Defendant David Hartley-Margolin at all times relevant hereto served
15 as a Union-appointed SAG-AFTRA Health Plan Trustee since the 2017 Health Plan
16 Merger. Hartley-Margolin has served on local and/or national boards of both SAG
17 and AFTRA since 1987. He also serves as a trustee of the AFTRA Retirement Fund.
18 Hartley-Margolin was a member of the 2019 Commercials CBA Negotiating
19 Committee.

20 32. Defendant Michael Pniewski at all times relevant hereto served as a
21 Union-appointed SAG-AFTRA Health Plan Trustee. Pniewski previously served as
22 a trustee of the SAG Health Plan from 2014 until the 2017 Health Plan Merger.
23 Pniewski is also a trustee of the SAG Producers Pension Plan. Pniewski was a
24 member of the 2020 TV/Theatrical CBA Negotiating Committee, which was the
25 same Negotiating Committee presented with the 2019 Netflix CBA.

26 33. Defendant Linda Powell at all times relevant hereto served as a member
27 of the SAG-AFTRA National Board and as a Union-appointed SAG-AFTRA Health
28 Plan Trustee. She is also a trustee of the SAG Producers Pension Plan. Powell was a

1 member of the 2020 TV/Theatrical CBA Negotiating Committee, which was the
2 same Negotiating Committee presented with the 2019 Netflix CBA. Upon
3 information and belief, Powell also voted as a member of the National Board to
4 approve the 2019 Commercials, 2019 Netflix and 2020 TV/Theatrical CBAs.

5 34. Defendant John Carter Brown at all times relevant hereto served as a
6 Union-appointed SAG-AFTRA Health Plan Trustee and as a member of the SAG-
7 AFTRA National Board. Brown served as a trustee of the SAG Health Plan from
8 2006 until the 2017 Health Plan Merger, at which time he began his service as a
9 SAG-AFTRA Health Plan Trustee. He is also a trustee of the SAG Producers
10 Pension Plan. Upon information and belief, Brown voted as a member of the
11 National Board to approve the 2019 Commercials, 2019 Netflix and 2020
12 TV/Theatrical CBAs.

13 35. Defendants Carteris, White, Crabtree-Ireland, Rodriguez, McGuire,
14 Hartley-Margolin, Pniewski, Powell and Brown at all times relevant hereto served
15 as either officers, agents, shop stewards, or other representatives of SAG-AFTRA as
16 defined under 29 U.S.C. § 402.

17 **IV. SUBSTANTIVE ALLEGATIONS**

18 **A. Mergers of the Unions and the Health Plans**

19 36. The SAG and AFTRA governing boards agreed in January 2012 to
20 merge the two unions. The merger proposal was ratified by SAG members and by
21 AFTRA members. In January 2012, pension and health benefits were provided to
22 the respective members of SAG and AFTRA by separate pension and welfare
23 (health) plans, which were collectively bargained, joint-trusted labor-management
24 trusts subject to ERISA. At the time of the unions' merger, merging the SAG and
25 AFTRA benefit plans in the near future was a promoted objective. According to
26 Defendant Carteris, "during the movement to merge SAG and AFTRA, [the late
27 then-SAG President] Ken Howard and [herself], along with members from around
28

1 the country, made a promise that we would work tirelessly toward a merged health
2 plan,” described as a “critical goal.”⁴

3 37. In early June 2016, the respective trustees of the SAG and AFTRA
4 health plans agreed to merge the plans. A *Variety* report stated that the unified
5 health plan would “allow SAG-AFTRA members to combine covered earnings from
6 all SAG-AFTRA contracts toward eligibility for coverage in a single health plan.”
7 *Id.* Defendant Carteris was quoted as saying: “Our members deserve one
8 outstanding health plan and this historic agreement ensures that all earnings under
9 our contracts now credit to a single health plan. . . . [W]e have positioned our health
10 plan to be financially sustainable for all members for years to come.” Defendant
11 White was quoted as follows: “The new health plan is both comprehensive and
12 forward-looking. Merging these plans was a complex undertaking and I am proud
13 that the trustees worked together to arrive at solutions that strengthen the overall
14 financial health of the plan while ensuring comprehensive benefits for all
15 participants.”

16 38. Similarly, in a letter distributed to Union members in the Summer of
17 2016, Defendant White stated the following:

18 It was with extreme satisfaction that I first reported to our elected
19 leadership in June that the respective boards of trustees for the SAG
20 Health Plan and AFTRA Health Fund voted to merge into a single health
21 plan effective Jan. 1, 2017. This is tremendous news for our membership
22 on many fronts. Fully 65,000 souls who depend on these plans will
23 become beneficiaries of a single, financially strengthened plan that
24 offers automatic family coverage for all participants. The merger will
25 immediately help thousands of our members seeking eligibility next year
26 who currently contend with the scourge of split earnings when working
under our television agreements. The new plan will offer first-class
service for participants, provided by staff who are being trained – right
now, as I write this letter – in the various features of the new plan, many

27 ⁴ *SAG and AFTRA Health Care Plans to Merge*, VARIETY (June 8, 2016), available
28 at <https://variety.com/2016/tv/news/sag-aftra-health-care-merge-1201791269/>.

1 of which are similar to the current SAG Health Plan model. I hope that
2 all of you who are interested in the details of the new plan were able to
3 attend one of the many educational sessions we offered in partnership
4 with plan staff, or that you have taken a moment to peruse the
5 comprehensive website dedicated to the merged plan, sagaftahealth.org.
6 The establishment of this single, unified plan represents the achievement
7 of a major goal asserted by our membership even before our unions
8 merged. It provides a robust foundation of healthcare for our
9 membership, which the trustees can continue to improve upon, nurture
10 and grow over time.⁵

11 39. Effective January 1, 2017, the health plans were merged. The benefits
12 provided under the merged plan continued Senior Performer Coverage for SAG and
13 AFTRA members who qualified. Senior Performer Coverage provided the Union
14 health benefit to all Union members (and their qualified dependents and surviving
15 spouses) who were receiving a pension from either the SAG-Producers Pension Plan
16 or the AFTRA Retirement Fund (if eligible for a pension from both, only needed
17 pension from SAG to qualify), and had a certain number of Union “Retiree Health
18 Credits” from years of qualifying for active coverage under the health plans.⁶ Senior
19 Performer Coverage was secondary to Medicare unless the member regained
20 coverage through “Earned Active Eligibility,” which could be achieved by meeting
21 the “Covered Earnings” threshold based on the member’s total compensation for
22 work covered by the operative CBAs as long as the member’s earnings included at
23 least \$1 in sessional earnings. This previous method of obtaining “Earned *Active*
24 Eligibility” considered *both* sessional and residual earnings toward qualifying for

25 ⁵ Leading the Charge, SAG-AFTRA Magazine Vol. 5, No. 2 (Summer 2016) at 12,
26 available at <http://digital.copcomm.com/i/716514-summer-2016/0?>

27 ⁶ Pursuant to the 2017 SAG-AFTRA Health Plan, pensioners age 65 and older
28 qualified for Senior Performer Coverage with 20 years of Retiree Health Credits.
Pensioners with at least 15 Credits who were at least age 55 as of January 1, 2017
were eligible upon reaching age 65. Qualified pensioners with fewer than 15 Credits
were also eligible for Senior Performer Coverage subject to certain conditions. The
accrual of these Credits was a tremendous accomplishment.

1 SAG-AFTRA Health Plan primary coverage, with Medicare as the secondary
2 coverage provider.⁷

3 40. Under the operative CBAs at the time of the 2017 Health Plan Merger,
4 the SAG-AFTRA Health Plan was funded by employer contributions to the Health
5 Plan that were calculated based on *all* earnings of *all* members, regardless of the
6 members' age or whether the member was taking a pension from the SAG or
7 AFTRA pension plans. Likewise, Union dues for all Union members were assessed
8 based on *all* earnings of *all* members.

9 **B. Without Informing the Union's Governing Bodies, CB Defendants**
10 **Accepted and Approved Inadequate Funding Terms in Representing**
11 **the Union and its Members in Collective Bargaining**

12 41. As Defendant White told the Union members in September 2016,
13 “[f]ully 65,000 souls ... depend[ed]” on the Union’s health plans, and the merged
14 health plan “provide[d] a robust foundation of healthcare for our membership, which
15 the trustees can continue to improve upon, nurture and grow over time.” This could
16 not have rationally been expected or effected without adequate funding. By far the
17 primary funding source for the SAG-AFTRA Health Plan is the employer
18 contributions thereto which are obtained in the Union’s collective bargaining.
19 Maintaining, nurturing and growing the SAG-AFTRA Health Plan over time for the
20 Union membership, as Defendant White promoted, is vitally dependent on
21 communicating and coordinating the funding needs of the health plan with the
22 Union’s constitutionally-established collective bargaining process.

23 42. The Union’s objectives, as set forth in Article II of the Union
24 Constitution, includes, among other things, “[i]ncreasing the power and leverage of
25 our members in their bargaining relationships with the employers in our industries,”
26 [o]rganizing workers in the entertainment and media industries in order to

27 ⁷ Although Plaintiff is not challenging the aforementioned \$1 requirement
28 previously in place, she does not concede it was legally permissible.

1 maximize our bargaining strength,” and “[w]ithout limitation, *protecting*, the rights
2 of entertainment and media artists in all other respects consistent with the overall
3 objectives of the Union and doing all other things necessary and proper to advance
4 and promote their welfare and interests.” Art. II. §§ A-B, I (emphasis in original).

5 43. The Union Constitution also establishes the Union’s mechanism to
6 represent and advance the interests of its members as Union members’ exclusive
7 agent in collective bargaining with employers. Under the Union Constitution, the
8 SAG-AFTRA National Board (a) determines the Union’s collective bargaining
9 negotiation objectives and proposal packages, (b) appoints W&W Committees to
10 determine the Union’s proposal package and Negotiating Committees to bargain
11 with employers, and (c) votes whether to approve the CBAs. The Union
12 Constitution also requires the National Board submit CBAs to the Union members
13 for ratification that are national in scope with widespread or industry-wide
14 application affecting a substantial portion of the membership and which the National
15 Board has approved. The Union Constitution also authorizes the National Board
16 and, in some circumstances, the SAG-AFTRA Local Unions with National Board
17 approval, to call a strike over collective bargaining.

18 44. Article V, Section A of the Union Constitution provides:

19 The general management, direction and control of the affairs,
20 funds and properties of the Union, the determination of the
21 relations and obligations of the members, the Union and the
22 Locals, and the carrying out of the objectives of the Union,
23 except as they are controlled or limited by this Constitution, shall
24 be vested in the National Board.

25 45. Article V, Section C of the Union Constitution provides:

26 General and Specific Authority

27 1. The National Board shall have the following general powers:

28 a. To interpret and enforce this Constitution;

- 1 b. To be responsible for the general management, direction
2 and control of the activities, funds and properties of the
3 Union;
- 4 c. To establish Union policy and adopt Union Bylaws and
5 rules;
- 6 d. To review any actions or decisions of a Local and to set
7 aside any action or decision that is inconsistent with this
8 Constitution or the policies and procedures of the Union;
- 9 e. To determine the obligations of the members and Locals
10 within the limits set by this Constitution; and
- 11 f. To cause the Union to enter into mutual assistance and
12 cooperation agreements with other organizations whose
13 objectives and purposes are harmonious with the
14 objectives of the Union.

15 46. Union Constitution Article V, Sections (C)(2)(c) and (d) provide the
16 National Board “the [] specific power[]” to “approve collective bargaining
17 agreements, amendments thereto and waivers[,] [and] [t]o call a strike of the
18 membership, subject to Article XI(E), Article X(B)(5) and Article X(C)(2)[.]”

19 47. Article XI, Sections A and B of the Union Constitution provides:

20 A. Conduct of Bargaining

- 21 1. With respect to multi-employer collective bargaining
22 agreements that are national in scope, or any other
23 agreements designated by the National Board, the National
24 Board shall appoint a Wages and Working Conditions
25 Committee to develop proposals, and a Negotiations
26 Committee to conduct negotiations, under policies and
27 procedures determined by the National Board.
- 28 2. The National Board shall approve all proposals developed
by the Wages and Working Conditions Committee.

B. Approval of Collective Bargaining Agreements

1. All multi-employer collective bargaining agreements that
are national in scope shall be approved by the National
Board and submitted for ratification by the members
affected thereby. Such ratification may be made either (a)
by majority vote of the members voting in a referendum

1 conducted by mail or electronic means under policies and
2 procedures established by the National Board, or (b) by
3 majority vote of the members voting in meetings held in
4 accordance with policies and procedures established by the
National Board.

5 2. Membership ratification shall not be required for any
6 collective bargaining agreement that the National Board
7 determines is not to be used in widespread or industry-wide
8 application affecting a substantial portion of the
9 membership and interim contracts that are of short duration
10 or that reflect the Union’s last, best and final offer to an
11 existing employer or employer group. Such agreements
12 shall require approval by either sixty percent (60%) of the
13 votes of the National Board present and voting or sixty
14 percent (60%) of the votes of the Executive Committee
15 present and voting. This provision shall not affect Local
16 collective bargaining agreements that are subject to
17 ratification by the affected members of the Local pursuant to
18 the Local Constitution.

19 48. Article XI(E) provides:

20 With respect to any multi-employer or national agreement, the National
21 Board may declare a strike against any employer upon a vote of
22 seventy-five percent (75%) of the members affected thereby voting on
the question. Such vote shall be conducted either (a) by a membership
23 referendum conducted by mail or electronic means, under policies and
24 procedures established by the National Board; or (b) in membership
25 meetings, under policies and procedures established by the National
26 Board. Where an employer is seeking to impose a final offer or to
27 terminate an agreement, the National Board shall have emergency
28 authority to authorize and declare a strike.

49. The Union, by law, is its members’ exclusive agent in collective
bargaining and is bound by the duty of fair representation under the NLRA. The
Union therefore is required to exercise rational discretion on behalf of all Union
members in determining the Union’s negotiation objectives and proposal packages,
and in bargaining for the rights, welfare and best interests of all members. The only
rational way to maintain the “robust foundation of health care for [the] membership,

1 which the [health plan] trustees can continue to improve upon, nurture and grow
2 over time,” is to obtain adequate funding and terms for the SAG-AFTRA Health
3 Plan through the Union’s collective bargaining processes.

4 50. The CB Defendants, through their service as SAG-AFTRA Health Plan
5 Trustees, are fully informed concerning the funding issues facing the SAG-AFTRA
6 Health Plan and matters under consideration for possible change. The SAG-AFTRA
7 Health Plan Trust Agreement requires the SAG-AFTRA Health Plan Trustees to
8 receive and evaluate projections concerning the sustainability of the benefit structure
9 at every Trustee board meeting. Article XIII of the SAG-AFTRA Health Plan Trust
10 Agreement required the Trustees to engage a Benefit Consultant and to “at all times
11 endeavor to maintain twelve (12) months” of benefit and administrative expenses, as
12 projected by the Benefit Consultant, that the plan’s reserves will fund the plan of
13 benefits and its operations, and to receive and evaluate projections at every Trustee
14 board meeting. Art. XIII § 1; Art. I § 13. This information concerning the SAG-
15 AFTRA Health Plan is indisputably vital to the interests of Union members in the
16 collective bargaining process, and to achieving, maintaining and improving the
17 “robust foundation of healthcare for the membership.” The participants of the SAG-
18 AFTRA Health Plan are primarily the members of the Union.

19 51. The CBAs between the Union and the employers determine the
20 elements of compensation and value provided to Union members for their work as
21 performers, including the amount of new money, the amount of contributions by
22 employers to the benefit plans (including the SAG-AFTRA Health Plan) based on
23 members’ earnings, and potential diversions of wage increases to other funding such
24 as the SAG-AFTRA Health Plan. In the Union’s role as the exclusive bargaining
25 agent for its members, the Union owes the duty to represent the Union members
26 fairly, adequately, honestly and in good faith in the Union’s collective bargaining
27 activities, including the rational determination of negotiation objectives and the
28 Union’s proposal packages, the valuation of the proposal packages and negotiated

1 benefits, the designation of persons to formulate proposals and bargain with
2 employers, the approval of the bargaining terms and the submission of CBAs to
3 Union members for ratification. Union members are entitled to rely on the Union
4 and its designated agents and representatives as fiduciaries to use all available
5 relevant information to inform their actions and decisions and to advance and
6 protect the interests and welfare of the Union members in representing the Union
7 and the members in collective bargaining according to the Union Constitution.

8 52. The Union designated the CB Defendants as its agents and the CB
9 Defendants undertook principal roles to represent the members and the Union in the
10 Union's 2019 Commercials, 2019 Netflix and 2020 TV/Theatrical collective
11 bargaining processes. CB Defendants White, Rodriguez, McGuire, Hartley-
12 Margolin, Pniewski and Powell accepted the Union's proposal packages and
13 bargained the CBAs' terms. Defendants Powell and Brown accepted the CBAs'
14 terms and voted to approve the CBAs. At the time of this conduct, each of the CB
15 Defendants *knew but did not disclose* that the terms were inadequate to sustain the
16 health benefit structure for Union members and massive cuts were coming
17 effectively to eliminate the health benefit for thousands of Union members and
18 rendering the employer contributions to the SAG-AFTRA Health Plan based on
19 their residual earnings under the CBAs effectively worthless to them. The CB
20 Defendants, through their service as SAG-AFTRA Health Plan Trustees, knew by at
21 least mid-2018 that the merged health plan's benefit structure was not sustainable
22 under the operative CBAs, that a potentially fatal structural funding gap was
23 widening, and that massive benefit cuts to eliminate the SAG-AFTRA Health Plan's
24 benefit for thousands of Union members and their families loomed without
25 increased funding. Shortly after the announcement of the Benefit Cuts, SAG-
26 AFTRA Health Plan Trustee Richard Masur stated during the SAG-AFTRA Health
27 Plan webinars that the Benefit Cuts had been in the works for two years, and SAG-
28 AFTRA Health Plan Trustee Barry Gordon stated that the Trustees had worked

1 nearly every day for those two years to figure out how they could preserve the SAG-
2 AFTRA Health Plan's benefits.

3 53. The 2019 Commercials and 2020 TV/Theatrical collective bargaining
4 processes were generally similar and followed past practice. The National Board
5 appointed a W&W Committee to formulate and value the Union's proposal package.
6 The W&W Committee formulated and valued the Union's proposal package for
7 members. The National Board appointed the Negotiating Committee, which
8 presented the proposal package to the employers and bargained the terms that
9 determined Union members' wages, working conditions and, most importantly,
10 benefits. The Negotiating Committee valued the negotiated terms for Union
11 members. The bargained terms were submitted to the National Board for approval.
12 The CBAs were approved by the National Board and were submitted to the Union
13 members for ratification.

14 54. The 2019 Netflix CBA proposal was negotiated entirely by Union staff
15 and was submitted to the 2020 TV/Theatrical Negotiating Committee as a take-it-or-
16 leave-it proposition. The 2019 Netflix CBA was submitted to and approved by the
17 National Board on July 20, 2019. The 2019 Netflix CBA was not submitted to the
18 membership for ratification.

19 55. The 2019 Commercials CBA was negotiated from February 20 to April
20 2, 2019, presented to the SAG-AFTRA National Board for approval on April 13,
21 2019, and ratified by members on May 8, 2019. The 2019 Commercials CBA is
22 effective from April 1, 2019 to March 31, 2022. CB Defendants White and
23 Rodriguez, in their respective Union roles as National Executive Director and Chief
24 Contracts Officer, participated in the 2019 Commercials W&W Committee's
25 determination of valuation of the Union's proposal package. CB Defendant Hartley-
26 Margolin participated as a voting member on both the 2019 Commercials W&W
27 Committee and the 2019 Commercials Negotiating Committee. CB Defendants
28 White and Rodriguez participated as lead negotiators in bargaining the 2019

1 Commercials CBA with the employers. CB Defendants Powell and Brown voted as
2 National Board members to approve the 2019 Commercials CBA.

3 56. The 2019 Netflix CBA, contrary to all past practice, was covertly
4 negotiated by SAG-AFTRA staff (unbeknownst to the negotiating teams), led by
5 Defendants White and Rodriguez and presented to the full 2020 TV/Theatrical
6 Negotiating Team as a take-it-or-leave-it proposition. The 2019 Netflix CBA was
7 approved by the National Board on July 20, 2019 and not put to a membership vote.
8 The 2019 Netflix CBA is effective from August 1, 2019 to June 30, 2022.

9 57. The 2020 TV/Theatrical CBA was negotiated from April 27 to June 11,
10 2020, during the COVID-19 pandemic. The 2020 TV/Theatrical proposal package
11 was approved by the National Board on July 21, 2019. The 2020 TV/Theatrical
12 CBA was approved by the National Board on June 29, 2020 and submitted it to the
13 members for ratification where it was approved on July 22, 2020. Three weeks after
14 the 2020 TV/Theatrical CBA was ratified, on August 12, 2020, Union members
15 learned the Health Plan was in distress. The 2020 TV/Theatrical CBA is effective
16 from July 1, 2020 to June 30, 2023.

17 58. The CB Defendants represented the Union and membership as primary
18 participants in the Union's collective bargaining and approval processes. CB
19 Defendants White, Rodriguez and McGuire participated in the negotiations for all
20 three CBAs, with White and Rodriguez serving as lead negotiators. CB Defendant
21 Hartley-Margolin participated in the negotiations concerning the 2019 Commercials
22 CBA. CB Defendants Powell and Pniewski participated in the negotiation of the
23 2019 Netflix and 2020 TV/Theatrical CBAs. CB Defendants Powell and Brown
24 voted as Union National Board members to approve the 2019 Commercials, 2019
25 Netflix and 2020 TV/Theatrical CBAs.

26 59. None of the CB Defendants disclosed the funding needed to sustain the
27 SAG-AFTRA Health Plan's benefit structure, the inadequacy of the proposal
28 packages and the ultimately negotiated CBA terms to sustain this benefit structure,

1 or the fundamental changes to the benefit structure all Union members would soon
2 face under the terms of the proposal packages and ultimately negotiated terms which
3 would eliminate the SAG-AFTRA Health Plan’s benefit for thousands of Union
4 members and their families. CB Defendants White, Rodriguez, McGuire, Hartley-
5 Margolin, Pniewski and Powell, in their fiduciary roles as primary representatives of
6 the Union and its members in the collective bargaining process, misleadingly
7 accepted and approved the inadequate proposal packages and ultimately negotiated
8 terms without disclosing the material information to others in the Union’s collective
9 bargaining process. Defendants Powell and Brown voted as National Board
10 members to approve the 2019 Commercials, 2019 Netflix and 2020 TV/Theatrical
11 CBAs without disclosing the material information alleged above, which they knew
12 from their service as SAG-AFTRA Health Plan Trustees. In doing so, these
13 Defendants breached their fiduciary duties to the Union and its members.

14 60. Further, the Union sent postcards to its members urging Union
15 members to “Vote Yes,” to approve the 2020 TV/Theatrical CBA. The post cards
16 touted the 2020 TV/Theatrical CBA as providing “transformative gains,” increases
17 of “up to \$54 million” to the SAG-AFTRA Health Plan and “26% increase in fixed
18 streaming residuals.” The membership was not informed that the “up to \$54
19 million” was insufficient to sustain the SAG-AFTRA Health Plan’s benefits or that
20 residual earnings would no longer count toward earnings eligibility for Union
21 members age 65 and older taking a Union pension. Notably, the theme of the 2020
22 TV/Theatrical negotiations was “Do no harm.”

23 61. Similarly, an April 2, 2019 report by *SHOOTonline* quoted several of
24 the CB Defendants on the 2019 Commercials CBA as follows:

25 SAG-AFTRA president and Negotiating Committee chair Gabrielle
26 Carteris said the tentative agreement delivers essential gains while
27 positioning performers and the industry for growth in a rapidly
28 changing environment.

...

1 SAG-AFTRA national executive director and chief negotiator David
2 White said, “President Carteris and this member negotiating committee
3 worked diligently for more than two years to prepare and negotiate this
4 transformative agreement. Representing members from across the
5 country, they worked relentlessly to design real solutions to the
6 challenges facing the advertising industry. I also want to recognize the
7 extraordinary work of the negotiations staff, in particular chief
8 contracts officer Ray Rodriguez, chief economist David Viviano,
9 associate national executive director Mathis Dunn, sr. advisor John
10 McGuire and executive director of commercials contracts Lori Hunt.
Working alongside dozens of our exceptional colleagues, this team
brought passion, diligence and an aggressive pursuit of members’
interests to this negotiation, and their efforts will benefit our
membership for generations to come.”⁸

11 62. SAG-AFTRA members were notified of the Benefit Cuts on August
12 12, 2020. The SAG-AFTRA National Board was informed on August 11, 2020. In
13 Zoom webinars for Union members following the August 2020 announcement of
14 the Benefit Cuts, SAG-AFTRA Health Plan CEO Michael Estrada, CB Defendant
15 White and SAG-AFTRA Health Plan Trustees Masur and Gordon confirmed the
16 material importance of the information that Plaintiff alleges the CB Defendants
17 withheld in the collective bargaining processes. According to an August 18, 2020
18 *Deadline* report, Estrada, White, Masur and Gordon told Union members that
19 employer contributions set by SAG-AFTRA’s CBAs had not kept up with the cost
20 of health coverage to the 33,000 participants and their 32,000 family members.⁹

21 63. The CB Defendants’ failure to disclose the vital information concerning
22 the SAG-AFTRA Health Plan, acceptance and approval of the inadequate proposal

23 ⁸ *SAG-AFTRA, JPC Reach Tentative Deal on Commercials Contracts*,
24 SHOOTONLINE (Apr. 2, 2019), available at <https://www.shootonline.com/news/sag-aftra-jpc-reach-tentative-deal-commercials-contracts>.

25 ⁹ *SAG-AFTRA Health Plan Trustees Say Employer Contributions Haven’t Kept Up*
26 *With Soaring Health Care Costs*, DEADLINE (Aug. 18, 2020),
27 <https://deadline.com/2020/08/sag-aftra-health-plan-trustees-say-employer-contributions-havent-kept-up-with-soaring-health-care-costs-1203016867/>.

1 packages and the ultimate CBA terms while representing the Union and its members
2 in the Union's bargaining process to fund the SAG-AFTRA Health Plan constituted
3 a breach of their fiduciary duties to the Union and its members and a breach of the
4 Union's duty of fair representation to its members.

5 64. The CB Defendants withheld the information from the Union members
6 in connection with the 2020 TV/Theatrical and 2019 Commercials CBA
7 membership ratification vote. The CBAs would not maintain or improve upon the
8 "robust foundation of healthcare for the membership," as Defendant White had set
9 out to be the objective. Withholding this information constituted a breach of the CB
10 Defendants' fiduciary duty to the Union and the membership, and a violation of the
11 Union's duty of fair representation to the members.

12 65. On April 1, 2020, Defendants Carteris and White announced to the
13 Union's members a three-month reduction in SAG-AFTRA Health Plan premiums
14 and extension of the Union dues deadline, in response to the COVID-19 pandemic.
15 They did not disclose or imply that dramatic changes were coming to the SAG-
16 AFTRA Health Plan benefit structure that would fundamentally change the
17 eligibility rules and effectively drop thousands of mostly older Union members from
18 the SAG-AFTRA Health Plan. In the midst of the COVID-19 pandemic, the coming
19 changes to the SAG-AFTRA Health Plan's eligibility requirements constituted vital
20 information to the Union's members, particularly the thousands of Union members
21 and their families who would fail to qualify for Union health coverage under the
22 new rules without a dramatic change in their earnings profile. At the very least,
23 Defendant White knew this information. This omission constituted a breach of
24 Defendant White's fiduciary duty to communicate honestly and without misleading
25 omissions to Union members concerning their rights and benefits.

26 **C. Misuse of Fiduciary Positions and Union Assets and Machinery to**
27 **Support and Defend Benefit Cuts and Personal Interests of Union**
28 **Leadership**

1 66. The aftermath of uncertainty and obfuscated information following the
2 August 12, 2020 Benefit Cuts’ announcement prompted Plaintiff and other Union
3 members to form the SOS Health Plan team. The team launched
4 SOSHealthPlan.com as a means of providing clarity to Union members affected by
5 the Benefit Cuts by, among other things: offering comprehensive information on the
6 Benefit Cuts, educating participants on secondary health insurance options apart
7 from Via Benefits (SAG-AFTRA Health Plan’s promoted provider), providing
8 Union members with periodic email updates, and fostering member communication
9 by way of a platform for rank-and-file and high-profile Union members alike to
10 speak out about the Benefit Cuts via videos and testimonials. The SOS Health Plan
11 website and social media pages on Twitter, Instagram and Facebook allowed Union
12 members to have their questions answered, interact socially and express their views
13 on the Benefit Cuts. SOS Health Plan also partnered with social media powerhouse
14 Eleven Films to make a social media video featuring over 20 high-profile rank-and-
15 file Union members speaking out about the draconian changes to the SAG-AFTRA
16 Health Plan.¹⁰

17 67. SOS Health Plan also held two nationwide virtual “town hall” meetings
18 advertised via word-of-mouth that were open to all Union members and the public.
19 The virtual town halls were co-led by Plaintiff (First Vice President of the SAG-
20 AFTRA Los Angeles Local), Patricia Richardson (President of the Los Angeles
21 Local), and David Jolliffe (Second Vice President of the Los Angeles Local) and run
22 by Shaan Sharma (Los Angeles Local Board Member), their purpose being to hear
23 from the Union members and listen to their concerns. The Los Angeles Local is the
24 Union’s largest local, representing approximately 80,000 members, or 50% of the
25 Union. The first town hall took place on August 14, 2020 - just two days after the
26 Benefit Cuts were announced - garnered approximately 600 members and lasted

27 ¹⁰ See *supra*, n.2.
28

1 eight hours. The second, held August 21, 2020, garnered approximately 500
2 members and lasted seven hours. Each of the meetings continued until every single
3 question was asked and answered. After compiling the suggestions from Union
4 members and hearing their heartbreaking stories and feelings of betrayal by their
5 Union, the Los Angeles leadership undertook to explore potential legal redress
6 which ultimately led to the *Asner* action.

7 68. On December 1, 2020, participants in the SAG-AFTRA Health Plan
8 brought the *Asner* action in this Court asserting breaches of fiduciary duty against
9 the SAG-AFTRA Health Plan Trustees relating to the 2017 Health Plan Merger that
10 ultimately led to the August 12, 2020 Benefit Cuts. The CB Defendants are
11 defendants in *Asner*.

12 69. On December 4, 2020, the Union disseminated the following email to
13 participants:

14 Dear [Member],

15 There's no easy way to say this: You are being misled.

16 Since the changes to the SAG-AFTRA Health Plan were announced in
17 August, there has been a deliberate public and social media campaign
18 spreading misinformation and fear.

19 We understand that change, myths and rumors have led to anger and
20 frustration. We also know that truth is the best balm in uncertain times.
21 Here are five facts you need to know about changes to the SAG-
22 AFTRA Health Plan:

- 23 1. Without significant changes, the SAG-AFTRA Health Plan's
24 reserves would have vanished for ALL participants by 2024.
25 Ask yourself this: Why would the Health Plan want to reduce
26 coverage for members if there was any other option?
- 27 2. Senior Performers are not losing their healthcare coverage;
28 they will continue to have Medicare as their primary
insurance, as they do today. Plus, they will receive a stipend
under the new Health Reimbursement Account Plan to use for
supplemental coverage of their choosing through Via
Benefits. For many Senior Performers, this will mean
comparable coverage at a comparable price.

- 1 3. Spouses aren't getting "kicked off" the plan. If you meet
2 eligibility requirements and your spouse DOES NOT have
3 access to their own employer-sponsored health plan, your
4 spouse can still be covered by the SAG-AFTRA Health Plan.
5 If they are covered by their own employer-sponsored health
6 plan, they will also be eligible for secondary coverage under
7 the SAG-AFTRA Health Plan.
- 8 4. There's a new reduced cost COBRA safety net available
9 specifically designed to help ease the transition for many
10 participants. Those who qualify will be eligible to maintain
11 their SAG-AFTRA Health Plan coverage with significantly
12 reduced COBRA premiums — at only 20% of the regular
13 COBRA premium — for 12-18 months after their current
14 eligibility expires. For detailed information, please visit
15 sagafttraplans.org/health.
- 16 5. The idea that premium increases or higher employer
17 contributions alone could have fixed the Health Plan is simply
18 wrong. The root of the problem is the exorbitant cost of
19 healthcare — a problem made worse by our industry's
20 production shutdown due to the pandemic crisis. The cost of
21 healthcare remains a top issue for Americans, and the SAG-
22 AFTRA Health Plan is not immune from this and other
23 economic forces. Structural changes were required to put the
24 Plan on a secure footing now and into the future.

18 We understand that change is not easy, but it's crucial that you have the
19 facts. As we have learned in our country and on social media, not all
20 claims are factual. Always check the credibility of your sources. If you
21 have questions about changes to the SAG-AFTRA Health Plan, please
22 visit the FAQ section at sagafttraplans.org/health for verified, accurate
23 information and updates.

22 In unity,

23 SAG-AFTRA

24 70. SAG-AFTRA's support and defense of the Benefit Cuts advocated in
25 alignment with the SAG-AFTRA Health Plan and its Trustees and adversely to the
26 claims of the Union members against the CB Defendants relating to their fiduciary
27 misconduct in the collective bargaining and approval process for the 2019
28 Commercials, 2019 Netflix and 2020 TV/Theatrical CBAs. Defendants, as Union

1 officials, owe a duty of loyalty to the Union and its members, not to the SAG-
2 AFTRA Health Plan, its Trustees or themselves. The Union and its members had a
3 material interest in knowing the funding issues, and the structural changes facing the
4 SAG-AFTRA Health Plan in order to formulate rational proposal packages and
5 bargain in the best interests of the members, and the Union members have claims in
6 *Asner* against the CB Defendants relating to their participation in the collective
7 bargaining processes implemented by the Union Constitution.

8 71. In response to Defendants' messaging, on December 6, 2020, SOS
9 Health Plan released the following:

10 **Dear Member Participant,**

11 **SAG-AFTRA has stated many times that they are a separate and**
12 **distinct entity from the Health Plan. Yet...**

13 **You've recently received an email from the Union's official SAG-**
14 **AFTRA COMMUNICATIONS' account, deliberately**
15 **misrepresenting the Health Plan Crisis.**

16 **It began, "There's no easy way to say this: You are being misled."**

17 **They insist that the truth is paramount. We agree.**

18 **Let us guide you through the five misleading points put forth.**

19 **1. The Union Says:** *Without significant changes, the SAG-AFTRA*
20 *Health Plan's reserves would have vanished for ALL*
21 *participants by 2024. Ask yourself this: Why would the Health*
22 *Plan want to reduce coverage for members if there was any*
23 *other option?*

24 **We ask the same question.**

25 **There were options:**

- 26 • **Direct more money into the Health Plan through**
27 **recent Contract Negotiations. (2019 Commercials,**
28 **2019 Netflix and 2020 TV/Theatrical)**
- **Change the premium structure.**
- **Add a new option with a higher earnings threshold.**
- **Use our reserves for their intended purpose: To**
mitigate the consequences of an emergency, in this
case, the Pandemic.

1 **2. The Union says:** *Senior Performers are not losing their*
2 *healthcare coverage; they will continue to have Medicare as*
3 *their primary insurance, as they do today.*

4 **Seniors absolutely will be losing their SAG-AFTRA**
5 **Healthcare coverage:**

6 **There was a decades-old legacy SAG benefit and SAG-**
7 **AFTRA benefit upon which seniors based their retirement,**
8 **which assured life-long secondary health coverage for**
9 **participants and their spouses over 65 with 20 or more**
10 **pension credits. That benefit has now been eliminated**
11 **completely.**

- 12 • **Despite being provided with a Health**
13 **Reimbursement Account Stipend, members over 65**
14 **with Medicare as their primary insurance will be**
15 **forced to choose a secondary plan from the**
16 **marketplace that may not be comparable in**
17 **coverage or price to the SAG-AFTRA coverage.**
- 18 • **In addition: Senior performers over 65 taking their**
19 **pension will now be in grave danger of losing their**
20 **SAG-AFTRA primary Health coverage because**
21 **their residuals will no longer count as credited**
22 **earnings. Senior performers will now only be able to**
23 **use their sessional earnings to qualify. That current**
24 **qualifying threshold is \$25,950.**

25 **3. The Union says:** *Spouses aren't getting "kicked off" the plan.*

26 **Spouses are getting "kicked off" the plan.**

- 27 • **If a spouse's employer offers health insurance, that**
28 **spouse must take that plan as primary, even if it's**
29 **more expensive and has inferior benefits.**
- 30 • **Spouses of living participants over 65 with 20 or**
31 **more pension credits will be losing their SAG-**
32 **AFTRA secondary insurance, along with the actual**
33 **participant.**
- 34 • **Members with 20 or more pension credits were**
35 **promised their widowed spouses would have**
36 **lifetime SAG-AFTRA secondary health coverage at**
37 **65, until remarriage or demise. That promise has**
38 **been broken.**

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- Spouses over 65 also are losing their SAG-AFTRA primary coverage when their participant spouse loses coverage because residuals are no longer credited.

4. **The Union says:** *There's a new reduced cost COBRA safety net available specifically designed to help ease the transition for many participants.*

The referenced reduced COBRA rates are still more expensive than the new ACTIVE or Plan 2 rates.

- The reduced cost COVID Relief COBRA coverage costs between 54% (for an individual) and 213% (for a family with 2 or more dependents) more than the previous Plan II coverage.*
- The new Extended Benefits Cobra coverage for members with at least 12 extended career credits and \$20,000 in covered earnings costs between 47% (for an individual) and 79% (for a family with 2 or more dependents) more than the new Active Plan (replacement for Plan I).*

*These percentages are based on the 2020 COBRA and Plan 2 rates and the 2021 COVID COBRA Relief and Active Plan rates.

5. **The Union says:** *The idea that premium increases or higher employer contributions alone could have fixed the Health Plan is simply wrong.*

Of course, premium increases and higher employer contributions alone wouldn't have completely fixed the problem. Adding premium increases and higher employer contributions would absolutely have bolstered the plan, and, along with proper use of the reserves, could have saved thousands of member participants' coverage.

In their email, SAG-AFTRA conflates sound observations with utterly misleading assertions.

They say: *The root of the problem is the exorbitant cost of healthcare, a problem made worse by our industry's shutdown due to the pandemic.*

We agree that healthcare costs and the industry shutdown are massive problems. But, the root of this plan's problems is

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poor management.

They say: The cost of healthcare remains a top issue for Americans, and the SAG-AFTRA Health Plan is not immune from this and other economic forces.

We agree.

They say: Structural changes were required to put the Plan on a secure footing now and into the future.

We certainly agree that structural changes are required.

They say: We understand that change, myths and rumors have led to anger and frustration.

What has led to “anger and frustration” are the draconian changes that harmed thousands of Participants. In 2017 SAG and AFTRA Health Plan Participants were assured the new SAG-AFTRA Health Plan would “be financially sustainable for all members for years to come” and merging the Plans would “strengthen the overall financial health of the Plan while ensuring comprehensive benefits for ALL Participants.”

They say: We understand that change is not easy, but it's crucial that you have the facts. As we have learned in our country and on social media, not all claims are factual. Always check the credibility of your sources.

We agree.

**The SOS Health Plan Team
SOSHealthPlan.com**

72. On December 14, 2020, at the direction of Defendants Carteris and White, a special meeting of the National Board was called to pass a “RESOLUTION RE: ACCURACY OF INFORMATION ABOUT HEALTH PLAN CHANGES.”

The resolution, drafted by Union staff, not the National Board, stated:

WHEREAS, the upcoming changes to the SAG-AFTRA Health Plan are of great importance to the members of SAG-AFTRA and the union itself, and

WHEREAS, although the SAG-AFTRA Health Plan is an independent organization that is not controlled by SAG-AFTRA, it is

1 essential that SAG-AFTRA’s members are provided with accurate
2 information about those changes, and

3 WHEREAS, a substantial amount of misinformation has been
4 circulated through social media and other forms of communication,
5 which has left some SAG-AFTRA members with incorrect
6 understandings of the nature of and reasons for the changes, and

7 WHEREAS, some have sought to generate fear in those members
8 through salacious and inaccurate communications;

9 NOW, THEREFORE, BE IT RESOLVED by the SAG-AFTRA
10 National Board that SAG-AFTRA will take all appropriate action to
11 ensure that members are not deceived by misrepresentations, and

12 BE IT FURTHER RESOLVED that SAG-AFTRA condemns those
13 who seek to use the financial challenges to the Health Plan and the
14 related changes to generate fear or anger in furtherance of personal
15 agendas.

16 73. Defendant Carteris and White further directed Union staff to
17 disseminate a press release concerning the resolution. The resolution was included
18 in the release, which stated in pertinent part:

19 The SAG-AFTRA National Board, meeting in a special session
20 conducted via Zoom videoconference, passed a resolution aimed at
21 correcting misrepresentation about SAG-AFTRA Health Plan changes
22 and instituting a rule requiring members to adhere to the COVID-19
23 safety protocols.

24 SAG-AFTRA President Gabrielle Carteris said, “We have grown
25 increasingly concerned about the flood of misleading information
26 being spread by certain websites and social media accounts about our
27 Health Plan,” said SAG-AFTRA President Gabrielle Carteris. “Like
28 many scams that target the elderly, the misinformation being spread is
endangering our most vulnerable members. By directing Plan
participants to unofficial websites rather than the Plan’s official,
vetted and accurate website, they are confusing people who need to
connect with the Plan to ensure they have appropriately transitioned to
their new coverage. Further, efforts to minimize the importance of the
80% COBRA premium discount the Plan is offering for transitioning
participants are preventing eligible participants from reaching out to
benefit from this crucial transition program.”

1 Citing multiple instances in which members, many of them Senior
2 Performers, reached out about misleading information and accusations
3 regarding Health Plan changes, numerous board members from across
4 the country expressed their disappointment with those individuals who
5 are leading the misinformation campaign and outrage with their
6 actions, and urged the board to direct the union to protect its
7 membership by ensuring accuracy around the changes.¹¹

8 74. Also on December 14, 2020, the SAG-AFTRA Communications
9 Department released a video of SAG-AFTRA member Adam Arkin “discussing
10 Five Facts about the Health Plan change” with links to the aforementioned
11 December 4, 2020 Union message and the Union’s December 14, 2020 press
12 release.¹²

13 75. On December 18, 2020, Plaintiff sent the Demand under the LMRDA
14 to the Union and the National Board to sue to recover damages for breaches of
15 fiduciary duty and the duty of fair representation against: (1) the members of Union
16 leadership who are SAG-AFTRA Health Plan Trustees; (2) the members of Union
17 leadership who participated in the CBA negotiations and approvals with knowledge
18 of the ongoing activity by the SAG-AFTRA Health Plan Trustees to change the
19 benefit structure; and (3) the members of Union leadership who approved the
20 Benefit Cuts or who have used their Union positions and the Union to support the
21 Benefit Cuts and oppose the claims by Union members challenging the Benefit
22 Cuts.

23 ¹¹ *SAG-AFTRA National Board Passes Resolutions to Ensure Accuracy of*
24 *Information about Health Plan Changes and Institute New Membership Rule*
25 *Regarding COVID-19 Safety Protocols*, SAG-AFTRA NEWS UPDATES (Dec. 14, 20
26 20) (archived from Feb. 6, 2021), available at [https://web.archive.org/web/20210206
034245/https://www.sagafta.org/sag-aftra-national-board-passes-resolutions-
ensure-accuracy-information-about-health-plan-changes](https://web.archive.org/web/20210206034245/https://www.sagafta.org/sag-aftra-national-board-passes-resolutions-ensure-accuracy-information-about-health-plan-changes).

27 ¹² *Five Facts You Should Know About the SAG-AFTRA Health Plan*, SAG-AFTRA
28 (Dec. 14, 2020), [https://www.sagafta.org/facts-matter-adam-arkin-sag-aftra-health-
plan](https://www.sagafta.org/facts-matter-adam-arkin-sag-aftra-health-plan).

1 76. In response to the Demand, Defendants, as Union officials, disloyally
2 abused their fiduciary positions and the assets and machinery of the Union to protect
3 themselves and obstruct challenges to their conduct. On December 28, 2020, Jeffrey
4 Bennett, SAG-AFTRA Chief Deputy General Counsel, wrote to Plaintiff:

5 We are in receipt of your December 18, 2020 demand that the Union
6 initiate litigation under Section 501 of the LMRDA, 29 U.S.C. 501.

7 Please be advised that your request will be addressed by the National
8 Board at the National Board meeting on February 6, 2021.

9 All questions and communications regarding this matter should be
10 addressed to me.

11 77. On February 5, 2021, Susan Davis of CWS contacted Plaintiff to
12 discuss the February 6, 2021 meeting. CWS is representing the CB Defendants and
13 others in the *Asner* action, and is opposing claims made by Union members to the
14 EEOC relating to the Benefit Cuts. Davis informed Plaintiff that Plaintiff would be
15 requested at the meeting to present the Demand and would then be directed to recuse
16 herself from the meeting during Davis's "presentation" to the National Board, of
17 which Plaintiff is a member. Plaintiff requested Davis to provide the basis and
18 authority supporting recusal. Davis did not respond.

19 78. At the February 6, 2021 SAG-AFTRA National Board meeting,
20 Plaintiff stated she believed the Demand did not impair her capacity or duty
21 impartially to evaluate and consider the Demand and related information as a SAG-
22 AFTRA National Board member and therefore she would comply with the recusal
23 directive but only on an involuntary basis reserving all rights. Following a
24 presentation by CWS and related discussions, during which Plaintiff was recused,
25 the National Board voted to reject the Demand. Neither the Demand, other materials
26 relating to the Demand, nor CWS's work related to the Demand was provided to the
27 National Board prior to or at the February 6 meeting.

28 79. Defendant Carteris was the Chair of all three CBA Negotiating
Committees. If she was aware of the withheld information at the time of her

1 negotiation and approval processes, she should have used her office and authority as
2 Union President to ensure the withheld information was conveyed to all Union
3 representatives and National Board members. If she was unaware of the withheld
4 information at the time of her negotiation and approval processes, she had a duty to
5 hold the CB Defendants accountable to the Union.

6 80. Defendants disloyally misused their fiduciary positions and the assets
7 and machinery of SAG-AFTRA to defend the Benefit Cuts and themselves,
8 adversely to the interests and claims of the Union members arising from the
9 breaches of fiduciary duty and breach of the Union's duty of fair representation
10 relating to the Union's 2019 Commercials, 2019 Netflix and 2020 TV/Theatricals
11 collective bargaining process and approvals under the Union Constitution.

12 **V. CLASS ALLEGATIONS**

13 **A. Count I Class**

14 81. Plaintiff brings Count I, pursuant to Rule 23 of the Federal Rules of
15 Civil Procedure, on behalf of herself as a member of SAG-AFTRA and all other
16 similarly situated Union members of SAG-AFTRA, and on behalf of SAG-AFTRA.

17 82. The Class is defined as all Union members of SAG-AFTRA excluding
18 Defendants and their affiliates ("Count I Class").

19 83. Plaintiff reserves the right to redefine the Count I Class as the facts
20 and/or evidence may warrant.

21 84. This action is properly maintainable as a class action.

22 85. The standing of the named Plaintiff to enjoy and protect her collective
23 bargaining rights established by 29 U.S.C. § 159(a) arises from her status as a SAG-
24 AFTRA member and is, therefore, the same as that for any other SAG-AFTRA
25 member.

26 86. The Count I Class is so numerous that joinder of all such persons is
27 impracticable because the Count I Class has approximately 160,000 members.

28

1 87. There exists common questions of law and fact affecting the members
2 of the putative Count I Class of which the answers are prone to drive resolution of
3 this action, including:

- 4 a. Whether SAG-AFTRA, and the CB Defendants in their capacities as
5 Union members' exclusive bargaining agent, failed to serve the
6 interests of all Union members without hostility or discrimination
7 toward any and to exercise its discretion with complete good faith and
8 honesty, avoiding arbitrary or irrational conduct, in the 2019
9 Commercials, 2019 Netflix, and 2020 TV/Theatrical collective
10 bargaining processes in violation of SAG-AFTRA's duty of fair
11 representation to its members;
- 12 b. Whether Plaintiff and the Count I Class have been damaged by the
13 actions or conduct of SAG-AFTRA, including that of Defendants in
14 their capacity as Union members' exclusive bargaining agent;
- 15 c. The proper measure of damages; and
- 16 d. Whether SAG-AFTRA members are entitled to injunctive relief to
17 prevent further harm to the Union in contravention of the Union
18 Constitution.

19 88. The material questions of law and fact arising from this action
20 predominate over any questions affecting only individual members of the Count I
21 Class.

22 89. Plaintiff's claims are typical of the claims of the Count I Class.
23 Defendants' common course of conduct in violation of law as alleged herein has
24 caused Plaintiff and Count I Class members to sustain the same or similar injuries
25 and damages. Plaintiff's claims are thereby representative of and coextensive with
26 the claims of the Count I Class.

27 90. Plaintiff is a member of the Count I Class, does not have any conflicts
28 of interest with other putative Count I Class members and will prosecute vigorously

1 the case on behalf of the Count I Class. Plaintiff has retained counsel experienced in
2 class action litigation to prosecute these claims. Plaintiff will fairly and adequately
3 represent and protect the interests of Count I Class members.

4 91. A class action is superior to all other available means for the fair and
5 efficient adjudication of this controversy. Individual joinder of all Count I Class
6 members is not practicable, and questions of law and fact common to the Class
7 predominate over any questions affecting only individual members of the Count I
8 Class. Each Count I Class member has been damaged and is entitled to recovery by
9 reason of Defendants' improper conduct. Class action treatment will allow those
10 similarly situated persons to litigate their claims in the manner that is most efficient
11 and economical for the parties and the judicial system. The injury suffered by each
12 Count I Class member, while meaningful on an individual basis, is not of such
13 magnitude as to make the prosecution of individual actions economically feasible.
14 Individualized litigation increases the delay and expense to all parties and the Court.
15 By contrast, class action treatment will allow those similarly situated persons to
16 litigate their claims in the manner that is the most efficient and economical for the
17 parties and the judicial system.

18 92. Defendants have acted and refused to act on grounds generally
19 applicable to the entire Count I Class, thereby making it appropriate to seek judicial
20 intervention for relief with respect to the Count I Class as a whole.

21 93. Plaintiff anticipates no unusual difficulties in the management of this
22 litigation as a class action.

23 94. The nature of notice to the putative Count I Class is contemplated to be
24 by direct postal mail or electronic means based upon Defendants' records or, if such
25 notice is not practicable, by the best notice practicable under the circumstance
26 including publication on the internet or in major newspapers.

27 95. This action merits class action treatment because the factors
28 enumerated herein satisfy the requirements of Rule 23(a) and Rule 23(b)(1)(A).

1 **B. Count II Class**

2 96. Plaintiff brings Count II, pursuant to Rule 23 of the Federal Rules of
3 Civil Procedure, on behalf of herself as a member of SAG-AFTRA and all other
4 similarly situated members of SAG-AFTRA, and on behalf of SAG-AFTRA.

5 97. The Class is defined as all Union members of SAG-AFTRA excluding
6 Defendants and their affiliates (“Count II Class”).

7 98. Plaintiff reserves the right to redefine the Count II Class as the facts
8 and/or evidence may warrant.

9 99. This action is properly maintainable as a class action.

10 100. The standing of the named Plaintiff to sue on behalf of the Union for
11 Union officials’ breach of their fiduciary duties as set forth under 29 U.S.C. § 501
12 arises from her status as a SAG-AFTRA member and is, therefore, the same as that
13 for any other SAG-AFTRA member.

14 101. The Count II Class is so numerous that joinder of all such persons is
15 impracticable because the Count II Class has approximately 160,000 members.

16 102. There exists common questions of law and fact affecting the members
17 of the putative Count II Class, of which the answers are prone to drive resolution of
18 this action, including:

- 19 a. Whether Defendants, in their capacity as fiduciaries of the Union,
20 violated the LMRDA and/or the Union Constitution in the Union’s
21 2019 Commercials, 2019 Netflix and 2020 TV/Theatricals collective
22 bargaining and approval processes established by the Union
23 Constitution;
- 24 b. Whether Defendants, in their capacity as fiduciaries of the Union,
25 violated the LMRDA and/or the Union Constitution in communicating
26 with Union members in April 2020 concerning the health plan
27 premiums suspension without disclosing the coming changes to Union
28 healthcare eligibility;

- 1 c. Whether Defendants violated the LMRDA by acting adversely to the
2 Union in defending the Benefit Cuts and SAG-AFTRA Health Plan
3 Trustees given the allegations by the Union members that the interest of
4 the Union its members was abandoned by the CB Defendants in the
5 Union's collective bargaining and approval processes.
- 6 d. Whether the Union, including Plaintiff and the Count II Class, has been
7 damaged by Defendants' actions or conduct; and
- 8 e. The proper measure of damages.

9 103. The material questions of law and fact arising from this action
10 predominate over any questions affecting only individual members of the Count II
11 Class.

12 104. Plaintiff's claims are typical of the claims of the Count II Class.
13 Defendants' common course of conduct in violation of law as alleged herein has
14 caused Plaintiff and Count II Class members to sustain the same or similar injuries
15 and damages. Plaintiff's claims are thereby representative of and coextensive with
16 the claims of the Count II Class.

17 105. Plaintiff is a member of the Count II Class, does not have any conflicts
18 of interest with other putative Count II Class members and will prosecute vigorously
19 the case on behalf of the Count II Class. Plaintiff has retained counsel experienced
20 in class action litigation to prosecute these claims. Plaintiff will fairly and
21 adequately represent and protect the interests of Count II Class members.

22 106. A class action is superior to all other available means for the fair and
23 efficient adjudication of this controversy. Individual joinder of all Count II Class
24 members is not practicable, and questions of law and fact common to the Class
25 predominate over any questions affecting only individual members of the Count II
26 Class. Each Count II Class member has been damaged and is entitled to recovery by
27 reason of Defendants' improper conduct. Class action treatment will allow those
28 similarly situated persons to litigate their claims in the manner that is most efficient

1 and economical for the parties and the judicial system. The injury suffered by each
2 Count II Class member, while meaningful on an individual basis, is not of such
3 magnitude as to make the prosecution of individual actions economically feasible.
4 Individualized litigation increases the delay and expense to all parties and the Court.
5 By contrast, class action treatment will allow those similarly situated persons to
6 litigate their claims in the manner that is the most efficient and economical for the
7 parties and the judicial system.

8 107. Defendants have acted and refused to act on grounds generally
9 applicable to the entire Count II Class, thereby making it appropriate to seek judicial
10 intervention for relief with respect to the Count II Class as a whole.

11 108. Plaintiff anticipates no unusual difficulties in the management of this
12 litigation as a class action.

13 109. The nature of notice to the putative Count II Class is contemplated to
14 be by direct postal mail or electronic means based upon Defendants' records or, if
15 such notice is not practicable, by the best notice practicable under the circumstance
16 including publication on the internet or in major newspapers.

17 110. This action merits class action treatment because the factors
18 enumerated herein satisfy the requirements of Rule 23(a) and Rule 23(b)(1)(A).

19 **VI. COUNTS**

20 **COUNT I**

21 **BREACH OF THE DUTY OF FAIR REPRESENTATION**
22 **IN VIOLATION OF 29 U.S.C. § 159(a)**

23 **(By CB Defendants White, Rodriguez, McGuire, Hartley-Margolin, Pniewski,**
24 **Brown and Powell)**

25 111. Plaintiff realleges and incorporates by reference allegations contained
26 in the preceding paragraphs, as though fully set forth herein.

27 112. SAG-AFTRA has exclusive statutory authority to represent its
28 members in collective bargaining with employers. As such, SAG-AFTRA has a

1 corresponding legal obligation to exercise its rational discretion with complete good
2 faith and honesty, and to avoid arbitrary or irrational conduct.

3 113. SAG-AFTRA had an affirmative duty to promote the welfare of its
4 members.

5 114. SAG-AFTRA had a duty to not mislead Union members or their
6 representatives to induce acceptance of a collective bargaining agreement.

7 115. SAG-AFTRA designated the CB Defendants as its agents and
8 representatives in the 2019 Commercials, 2019 Netflix and 2020 TV/Theatricals
9 CBAs, as alleged herein. The CB Defendants accepted and approved the Union
10 proposal packages and negotiated terms of these CBAs without disclosing critically
11 material information concerning health plan funding, as alleged herein. Numerous
12 Defendants voted as National Board members to approve the CBAs and to submit
13 the 2019 Commercials and 2020 TV/Theatrical CBAs to the membership for
14 ratification, without disclosing the known SAG-AFTRA Health Plan funding
15 information, as alleged herein. The Union breached its duty of fair representation to
16 Plaintiff and the Class under 29 U.S.C. § 159(a), in the Union's collective
17 bargaining processes provided by the Union Constitution.

18 116. Through the foregoing conduct, SAG-AFTRA deprived Plaintiff and
19 the Class from the benefits and rights of a fully informed effective collective
20 bargaining process in accordance with the Union Constitution.

21 117. As a direct, foreseeable and legal result of SAG-AFTRA's acts,
22 Plaintiff and the Class have suffered and continue to suffer substantial damages.

23
24 **COUNT II**

25 **BREACHES OF FIDUCIARY DUTY IN VIOLATION OF 29 U.S.C. § 501(a)**
26 **(By Defendants Carteris, White, Rodriguez, Crabtree-Ireland, McGuire,**
Brown and Powell)

27 118. Plaintiff realleges and incorporates by reference allegations contained
28 in the preceding paragraphs, as though fully set forth herein.

1 119. As officers, employees, agents and other representatives of SAG-
2 AFTRA, Defendants occupied positions of trust in relation to SAG-AFTRA and to
3 its members as a group so as to be fiduciaries of SAG-AFTRA, under the LMRDA.

4 120. As fiduciaries of SAG-AFTRA, Defendants owed SAG-AFTRA a legal
5 duty under the LMRDA to hold its money and property solely for the benefit of the
6 organization and its members and to manage, invest, and expend the same in
7 accordance with its constitution and bylaws and any resolutions of the governing
8 bodies adopted thereunder, and to refrain from dealing with such organization as an
9 adverse party or in behalf of an adverse party in any matter connected with their
10 duties. 29 U.S.C. 501(a).

11 121. Defendants violated their fiduciary duties under the LMRDA and in so
12 doing so injured SAG-AFTRA by:

- 13 a. Subverting the collective bargaining process provided under the
14 Union Constitution in undertaking to represent the Union and the
15 membership in the 2019 Commercials, 2019 Netflix and 2020
16 TV/Theatrical collective bargaining processes, and accepting and
17 approving the Union proposal packages and negotiated terms that
18 the CB Defendants knew were inadequate to meet the funding needs
19 of the SAG-AFTRA Health Plan and maintain the Union's health
20 benefits, and by failing to disclose vital funding information relating
21 to the SAG-AFTRA Health Plan to the Union, representatives of the
22 Union and the membership, as alleged herein; and
- 23 b. Using their fiduciary positions as Union officials and the assets and
24 machinery of the Union to defend and support the Benefit Cuts and
25 to act adversely toward the claims of the Union and its members
26 against the CB Defendants relating to fiduciary misconduct in the
27 collective bargaining processes under the Union Constitution, as
28 alleged herein.

1 122. As a direct and foreseeable result of Defendants’ acts, the Union,
2 Plaintiff and the Class have suffered and continue to suffer substantial injury
3 including exposure to substantial liability as a result of the breaches of the Union’s
4 duty of fair representation alleged herein, and the expense of liability for the
5 breaches by Defendants of their fiduciary duties as Union officials.

6 **VII. PRAYER FOR RELIEF**

7 123. By virtue of the violations set forth in the foregoing paragraphs,
8 Plaintiff is entitled pursuant to NLRA §§ 8(b) and 9(a), 29 U.S.C. §§ 158(b) and
9 159(a), for relief on behalf of the Union for breach of the duty of fair representation
10 to redress the wrongs described herein

11 124. By virtue of the violations set forth in the foregoing paragraphs,
12 Plaintiff and the members of the Class are entitled to sue each of the Defendants
13 pursuant to LMRDA § 501(b), 29 U.S.C. § 501(b), for appropriate relief on behalf
14 of the Plan as provided in LMRDA § 501, 29 U.S.C. § 501 to redress the wrongs
15 described herein.

16 125. WHEREFORE, Plaintiff, on behalf of themselves and the SAG-
17 AFTRA Health Plan, pray that judgment be entered against Defendants on all
18 claims, and request that the Court award the following relief:

- 19 A. An Order certifying the proposed Classes, designating Plaintiff as the
20 named representative of the Classes and designating the undersigned as
21 Class Counsel;
- 22 B. Declaratory relief in favor of Plaintiff on all counts;
- 23 C. An Order compelling each fiduciary found to have breached his/her/its
24 fiduciary duties to the plans jointly and severally to restore all losses to
25 the plans which resulted from the breaches of fiduciary duty or by virtue
26 of liability pursuant to NLRA and/or LMRDA;
- 27 D. An Order requiring (a) an accounting (b) the disgorgement of any profits
28 or other tangible benefits obtained by any Defendant, (c) a declaration of

1 a constructive trust over any assets received by any breaching fiduciary in
2 connection with their fiduciary violations of the NLRA and/or LMRDA,
3 (d) an Order requiring the plans to cure illegal and inequitable action, or
4 (e) any other appropriate equitable or monetary relief, whichever is in the
5 best interest of the plans and their participants;

6 E. Enjoining and declaring void one or more of the operative collective
7 bargaining agreements alleged herein;

8 F. Awarding Plaintiff and the Classes their attorneys’ fees and costs and
9 prejudgment interest, the common benefit doctrine and/or the common
10 fund doctrine;

11 G. Awarding pre-judgment and post-judgment interest; and

12 H. Awarding all such other remedial or equitable relief as the Court deems
13 appropriate, including an order requiring correction and reversal of the
14 wrongful benefit changes.

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16 DATED: June 25, 2021

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18 By: /s/ Neville L. Johnson

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DEMAND FOR JURY TRIAL

A jury trial is hereby demanded.

DATED: June 25, 2021

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [SAG-AFTRA, Officials Hit with Class Action Over Aug. 2020 Health Plan Benefits Cuts](#)
