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UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ED ASNER, TOM BOWER, GREGG DANIEL, JOHN FLYNN, MARIA GOBETTI, GARY GROSSMAN, ED HARRIS, SALOME JENS, VERALYN JONES, KAREN KONDAZIAN, SIMON LEVY, AMY MADIGAN, TOM ORMENY, LAWRENCE PRESSMAN, MICHAEL A. SHEPPERD, JOSEPH STERN, FRENCH STEWART, VANESSA STEWART, individuals,

Plaintiffs,

v.

ACTORS' EQUITY ASSOCIATION, a labor organization, and MARY McCOLL, an individual,

Defendants.

Case No.: 2:15-CV-08169

COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF FOR:

- (1) BREACH OF CONTRACT;**
- (2) BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;**
- (3) BREACH OF FIDUCIARY DUTY;**
- (4) BREACH OF THE DUTY OF FAIR REPRESENTATION; and**
- (5) VIOLATION OF LMRDA'S EQUAL RIGHTS GUARANTEE**

Demand for Jury Trial

1 Plaintiffs Ed Asner, Tom Bower, Gregg Daniel, John Flynn, Maria Gobetti,
2 Gary Grossman, Ed Harris, Salome Jens, Veralyn Jones, Karen Kondazian, Simon
3 Levy, Amy Madigan, Tom Ormeny, Lawrence Pressman, Michael A. Shepperd,
4 Joseph Stern, French Stewart and Vanessa Stewart allege against Defendants Actors’
5 Equity Association (“Equity” or “Union”) and Mary McColl as follows:

6
7 **Introduction**

8 1. Equity Waiver. Los Angeles, uniquely in the United States, has a
9 thriving unionized non-profit theatre community that involves small, or “intimate”
10 theatres of 99 seats or fewer. Thousands of Los Angeles actors are able to perform
11 before live audiences in these small theatres, collaborate with other members of the
12 creative theatrical community, hone and display their artistic skills, and contribute to
13 an incubation process for new and experimental theatre. This vibrant theatre culture,
14 involving between 150-200 small theatres, is made possible because of an “Equity
15 Waiver” system that began in the early 1970s, and ultimately was formalized in 1989
16 pursuant to a litigation Settlement Agreement between Equity and certain Union
17 members involved in the small theatre world (“Settlement Agreement”). (A true and
18 correct copy of the Settlement Agreement is attached hereto as Exh. A.) Under the
19 Equity Waiver system, the Union maintains a “99-Seat Theatre Plan,” which is a
20 “Code” or rule imposed on Equity members. Under the 99-Seat Theatre Plan, the
21 Union withholds, or “waives,” its purported regulatory authority over its members, so
22 as to permit them to perform volunteer acting services in these intimate theatres, many
23 of which are owned or operated by actors themselves and maintained on shoestring
24 budgets.

25
26 2. Union’s Elimination of the Equity Waiver System. In early 2015, the
27 Union decided it wanted to end the Equity Waiver system and force intimate theatres
28 to pay minimum wages to volunteer actors. In seeking to accomplish this goal, Equity

1 violated the Settlement Agreement, and breached the covenant of good faith and fair
2 dealing, by promulgating new small theatre rules without first complying with
3 preliminary procedural protections built into the Settlement Agreement. These
4 procedural protections were designed to ensure that, before substantial changes were
5 made to the 99-Seat Theatre Plan, meaningful discussions would take place within the
6 small theatre community, including by a Review Committee (composed jointly of
7 Union delegates and small theatre actors and representatives) which was charged with
8 the responsibility of protecting the small theatre environment for all members of the
9 theatrical community, including actors, directors, stage managers, designers and
10 playwrights. Disdaining the principle of democracy on which it was founded, the
11 Union disregarded an advisory referendum in which members rejected Equity's plan
12 by a 2-1 margin in one of the highest membership turnouts in the organization's
13 history, and ruled that the new system would go into effect June 1, 2016.

14
15 3. Reasons for this Lawsuit. The substantial changes promulgated by
16 Equity fall generally into three categories. First, Equity imposed minimum wage
17 requirements for volunteers in the County's small theatre community. Second, Equity
18 carved out a small segment of the community ("Membership Companies") for
19 continued Waiver treatment, but for those Companies removed all health, safety and
20 other protections that existed under the 99-Seat Theatre Plan. Finally, Equity
21 preserved a version of the Equity Waiver system for theatres with 50 or fewer seats.
22 The "minimum wage" requirement is the most onerous of these changes. It threatens
23 to destroy the exciting and essential small theatre culture in Los Angeles by imposing
24 burdensome compensation costs that will make it impossible for many small theatres
25 to survive. Many will close altogether. All will have greater difficulty producing
26 original works. Some have already decided to present fewer productions with smaller
27 casts beginning in 2016, and many will turn to the world of non-union actors.
28 Thousands of actors and other creative artists will likely lose access to important

1 theatrical volunteer acting opportunities which contribute to their creative
2 development, enhance their professional careers, and often lead to recognition by
3 others in the theatrical, television and film industries and then to remunerative acting
4 employment. Those few actors who retain Waiver benefits through so-called
5 Membership Companies will lose the protections they had in the 99-Seat Theatre Plan,
6 including health and safety protections and the right to leave rehearsals in order to
7 audition or take remunerative employment.

8
9 4. State Law Claims. Equity’s actions constitute a breach of the Settlement
10 Agreement and the covenant of good faith and fair dealing. Equity Executive Director
11 Mary McColl breached her common law fiduciary duties by expending Union funds in
12 initiating and executing the scheme to breach the Settlement Agreement.

13
14 5. Federal Law Claims. Equity also violated two federal statutes. First, by
15 interfering with the ability of members to continue to volunteer their time to Equity
16 Waiver theatre and thereby develop their creative skills and be seen by audiences and
17 potential employers, Equity breached its duty of fair representation. Equity also
18 violated the equal rights guarantee in section 101(a) of the Labor Management
19 Reporting and Disclosure Act (“LMRDA”), 29 U.S.C. § 411(a): It deprived members
20 of the equal right to participate in the deliberative and voting processes that were to
21 precede any act by the Union to make substantial changes to the Equity Waiver
22 system, failed to post “Pro and Con” statements on its on-line ballot, as required by
23 the Settlement Agreement, for the first three days of balloting, thereby depriving some
24 Union members of equal access of information about the referendum, and directed
25 some members how to vote in the referendum. Plaintiffs intend to exhaust internal
26 remedies with Equity in connection with a separate potential claim against certain
27 Union officers and/or executives for breach of fiduciary duty under section 501 of the
28 LMRDA, 29 U.S.C. § 501(a), and if necessary seek leave from the Court under 29

1 U.S.C. § 501(b) to amend this lawsuit to add a claim for breach of fiduciary duty
2 under the federal statute. At this time the Complaint does not include a claim for
3 breach of fiduciary duty under the LMRDA.

4
5 **Jurisdiction**

6 6. Federal Question and Supplemental Jurisdiction. This Court has federal
7 question subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1337 because
8 Plaintiffs' claims are predicated in part on section 301(a) of the Labor Management
9 Relations Act (LMRA), 29 U.S.C. § 185(a), and section 101(a) of the LMRDA, 29
10 U.S.C. § 411(a). The Court has supplemental jurisdiction over Plaintiff's state law
11 claims. 28 U.S.C. § 1367(a).

12
13 7. Venue. The acts complained of here occurred in the City of Los Angeles,
14 County of Los Angeles, State of California, within the Central Judicial District of
15 California. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

16
17 8. Intradistrict Assignment. Pursuant to General Order 14-03,
18 § I.B.1.a.(1)(c), intradistrict assignment to the Western Division is proper.

19
20 **Parties**

21 9. Identification of Plaintiffs in Breach of Contract Action. The following
22 Plaintiffs bring this action for breach of contract and breach of the covenant of good
23 faith and fair dealing: Salome Jens, Gary Grossman, Maria Gobetti, Tom Ormeny,
24 Joseph Stern, Simon Levy and John Flynn. These Plaintiffs are now, and were at all
25 relevant times, residents of the County of Los Angeles, California, within this judicial
26 district. Salome Jens, Gary Grossman, Maria Gobetti, Tom Ormeny and Joseph Stern
27 were parties to the 1989 Settlement Agreement and some of them are members of the
28 Review Committee established by the Settlement Agreement (and described in ¶ 22

1 below). Simon Levy and John Flynn are members of the Review Committee and
2 participate in this lawsuit as designees of parties to the Settlement Agreement.
3 Plaintiffs Salome Jens, Gary Grossman, Maria Gobetti, Tom Ormeny and Joseph
4 Stern are also members of Equity.

5
6 10. Identification of Third Party Beneficiary Plaintiffs. The following
7 Plaintiffs bring this action for all of the legal claims asserted in this Complaint: Ed
8 Asner, Tom Bower, Gregg Daniel, Ed Harris, Veralyn Jones, Karen Kondazian, Amy
9 Madigan, Lawrence Pressman, Michael A. Shepperd, French Stewart and Vanessa
10 Stewart. These Plaintiffs are members of Equity. These Plaintiffs are actors who
11 have participated in and/or supported Equity Waiver theatre, are members in good
12 standing of Equity, and were not parties to the Settlement Agreement. Each of these
13 Plaintiffs is a third party beneficiary of the Settlement Agreement because the
14 Settlement Agreement was entered into by the parties to “further the best interests of
15 actors and actor-producers in Los Angeles who are members of Actors’ Equity
16 Association, to promote and advance the growth of theatre in the Southern California
17 area,” and to “expand and promote theatre and acting opportunities for AEA members
18 in Los Angeles.” (Exh. A, Preface and ¶ 7.)

19
20 11. Identification of Defendant Actors’ Equity Association. Defendant
21 Actors’ Equity Association is now, and was at all relevant times, a membership
22 association and a labor organization of the type defined in LMRDA § 3(i) and 3(j), 29
23 U.S.C. §§ 402(i) and (j), and section 2(5) of the Labor Management Relations Act
24 (“LMRA”), 29 U.S.C. § 152(5). Equity’s headquarters are in New York City. Equity
25 is a labor union representing actors in live theatre. It has approximately 50,000
26 members, of which approximately 7000 reside in the greater Los Angeles area.
27 Equity represents its members to advance their professional and artistic interests in a
28 variety of arenas, including collective bargaining, legislation and advocacy, and

1 promotion of the theatrical arts. Equity is governed by a Constitution and By-Laws.
2 The National Council is the organization’s chief governing body. The Constitution
3 and By-Laws establish subordinate geographically-based regional organizations called
4 Regional Boards. Los Angeles falls in the Union’s Western Region.

5
6 12. Identification of Defendant Mary McColl. Mary McColl is a resident of
7 the City and State of New York. At all relevant times she was the Executive Director
8 of Equity.

9
10 **FACTS**

11 **History of Equity Waiver**

12 13. Equity’s Rules Governing Acting. Equity prohibits its members from
13 working in non-union environments. Article X, Section 1 of Equity’s By-Laws
14 provides:

15 “Offenses. A member may be expelled, suspended, fined or otherwise
16 disciplined for any of the following offenses:

17 * * *

18 (d) engaging in any business, enterprise or activity which may directly or
19 indirectly conflict with the purposes or objects of the Association or any of its
20 members, including by way of example, *work as a performer or stage*
21 *manager in any form of theatre under the jurisdiction of the Association*
22 *without benefit of an Equity employment contract or code, unless prior written*
23 *consent by the Association has been granted [emphasis added] . . .”*

24
25 14. Equity Waiver Theatres in Los Angeles County. Beginning in about the
26 early 1970s, Equity informally “waived” its standard contract rules and codes,
27 including Article X, § 1 of its By-Laws, for small theatres with fewer than 100 seats
28 that did not have collective bargaining agreements with the Union. This permitted

1 members to do volunteer acting at those theatres without fear of discipline. As a result
2 of this waiver, the number of Equity Waiver Theatres in Los Angeles grew; today
3 there are between 150 – 200 such theatres operating in Los Angeles County.
4

5 15. Structure of Small Equity Waiver Theatres. Most small theatres
6 benefiting from the Equity Waiver system are tax exempt non-profit corporations
7 organized and operated as public benefit corporations for literary or educational
8 purposes. (26 U.S.C. § 501(c)(3).) The majority of Equity Waiver Theatres were
9 founded and are operated by teams of actors, playwrights, directors and stage
10 technicians. Their operating revenues usually come from a combination of grants and
11 ticket sales; most operate on shoestring budgets. For example, the Los Feliz Skylight
12 Theatre that Equity member and Plaintiff Gary Grossman operates had 2014 income
13 of \$293,000, 32% of which came from ticket sales. The Skylight Theater’s remaining
14 income came from foundations, grants, individual contributions and outside theatre
15 rental. The Theatre’s 2014 expenses were \$289,000, broken down as follows:
16 (i) creative staff, including actor stipends required by 99-Seat Theatre Plan: 25%;
17 (ii) administration salaries: 9%; (iii) facility costs (rent, utilities, insurance account):
18 38%; (iv) operating and production expenses: 25%, and (iv) fundraising
19 expenses: 3%. Plaintiffs are informed and believe, and based on such information and
20 belief allege, that the average annual budget for a small theatre in Los Angeles County
21 is less than \$157,000, and the median annual budget for a small theatre in Los Angeles
22 County is less than \$100,000.
23

24 16. Artistic Value of the Equity Waiver Model. Equity Waiver Theatres
25 enable unionized actors to develop their artistic and creative talents. The Equity
26 Waiver system also enables all those in the theatrical community to make important
27 contributions to the cultural life of Los Angeles and to the artistic growth of live
28 theatre.

1 (a) The Waiver system allows small theatres with limited or bare-bone
2 budgets to cast talented, professional unionized actors in productions. It gives
3 professional union actors an opportunity to perform and work collaboratively
4 on new projects, to develop their artistic talents and to volunteer for work they
5 are passionate about when remunerative work is not available. Equity members
6 devote their time and energy to these intimate theatres for the purpose of
7 advancing their artistic and creative talents, not to earn a living. In a published
8 exchange between Equity National Council member Larry Cahn and small
9 theatre producer Allie Mulholland, Mr. Mulholland stated that “Many older
10 Equity actors say the work they do [in small theatres] has been the most
11 rewarding work of their career[s].” ([http://losangeles.bitter-](http://losangeles.bitterlemons.com/2015/03/31/nyc-aea-member-allie-mulholland-debates-aea-presidential-candidate-larry-cahn-over-the-99-seat-proposals-and-more/#sthash.7ufwWDhf.dpbs)
12 [lemons.com/2015/03/31/nyc-aea-member-allie-mulholland-debates-aea-](http://losangeles.bitterlemons.com/2015/03/31/nyc-aea-member-allie-mulholland-debates-aea-presidential-candidate-larry-cahn-over-the-99-seat-proposals-and-more/#sthash.7ufwWDhf.dpbs)
13 [presidential-candidate-larry-cahn-over-the-99-seat-proposals-and-](http://losangeles.bitterlemons.com/2015/03/31/nyc-aea-member-allie-mulholland-debates-aea-presidential-candidate-larry-cahn-over-the-99-seat-proposals-and-more/#sthash.7ufwWDhf.dpbs)
14 [more/#sthash.7ufwWDhf.dpbs](http://losangeles.bitterlemons.com/2015/03/31/nyc-aea-member-allie-mulholland-debates-aea-presidential-candidate-larry-cahn-over-the-99-seat-proposals-and-more/#sthash.7ufwWDhf.dpbs))

15 (b) By promoting theatre in general, Equity Waiver also gives
16 playwrights an opportunity to test new and experimental projects without
17 needing the large investments required in larger theatres. It also gives young
18 directors and designers a place to develop their talents and work with
19 experienced union actors. Many plays that started out in Equity Waiver
20 intimate theatres gained notoriety and eventually became full-fledged
21 productions operated under Equity contract and furnishing employment to
22 actors at traditional union-scales at such theatres as Steppenwolf, The Geffen,
23 South Coast Repertory and the Old Globe Theatre (San Diego). Recent shows
24 that originated under the Equity Waiver system and moved to larger,
25 remunerative venues include Deaf West’s *Spring Awakening* (Broadway) and
26 the Fountain’s *Bakersfield Mist* (London’s West End), among others.

27 (c) Equity Waiver theatres also contribute to the growth and prosperity
28 of Los Angeles neighborhoods. For example, at least three small theatre

1 companies are an integral part of the rejuvenating Atwater Village
2 neighborhood in Los Angeles, and the City of Los Angeles formally designated
3 a portion of Hollywood as “Hollywood Theatre Row,” an area comprised
4 primarily if not exclusively of small 99-seat theatres.

6 **1988-89 Litigation Over Equity Waiver Theatre**

7 17. Equity’s First Attempt to Undermine Waiver Theatres. In August 1986,
8 Equity started a process designed to substantially alter the Waiver system that had
9 existed since the early 1970s. First, Equity’s National Council voted to endorse a
10 program that would have placed substantial limitations on the Waiver system that
11 existed at the time. Equity conducted a member referendum in 1988, and then
12 announced plans to implement its proposal. In September 1988, a group of Equity
13 members sued the Union, claiming that the Union had violated previously adopted
14 resolutions and the Union’s Constitution and By-Laws by conducting the referendum
15 without first engaging in meaningful discussions with other parties with interests in
16 small theatre, including theatre operators, publicizing opposing points of view, and
17 deliberately distorting facts concerning average gross box office receipts of Waiver
18 Theatres. Their lawsuit, *Salome Jens et al. v. Actors’ Equity Association*, Central
19 District of California, Case No. 88-05374-TJH (“*Jens Case*”), alleged violation of the
20 LMRDA, breach of fiduciary duty, and breach of the covenant of good faith and fair
21 dealing. Among the plaintiffs in the *Jens* case were the following persons who are
22 named Plaintiffs in this case: Salome Jens, Maria Gobetti, Gary Grossman, Tom
23 Ormeny and Joseph Stern.

24
25 18. Equity Negotiations with Theatre Association. After the *Jens* lawsuit
26 was filed, Equity engaged in negotiations with an association of small theatres known
27 as EWROC (Equity Waiver Theatre Operators Committee) and later as ATLAS
28 (Associated Theatres of Los Angeles) on the subject of an acceptable Waiver Plan, but

1 were unable to reach agreement. Many of the theatre operators were actors and
2 Equity members.

3
4 19. 99-Seat Theatre Plan Unilaterally Adopted in 1988. On November 29,
5 1988, while the *Jens* Case was pending, Equity unilaterally adopted the first written
6 99-Seat Theatre Plan. The Plan included proposals from ATLAS, but ATLAS did not
7 formally agree to the new Plan. The 99-Seat Theatre Plan operated as a Union rule or
8 Code, imposing obligations and limitations on members (as contrasted with a
9 collective bargaining agreement which imposes obligations and limitations on
10 employers). The 99-Seat Theatre Plan permitted members to provide volunteer acting
11 services for small theatres without fear of discipline, provided that the theatres, though
12 they had no collective bargaining agreements, nonetheless maintained certain
13 minimum working conditions for the actors. These minimum conditions included
14 health and safety rules, payment of a small stipend (intended to cover some travel
15 expenses), allowances for volunteers to be absent from rehearsals to take auditions or
16 remunerative work elsewhere, limitations on the number and length of rehearsals and
17 performances, and limits on ticket prices.

18
19 20. Equity Reaches Agreement with ATLAS. In about January 1989, while
20 the *Jens* Case was pending, Equity reached agreement with ATLAS over the terms of
21 an Equity Waiver program. This new program differed from the Equity Waiver Plan
22 adopted by Equity in 1988 (see ¶ 19 above). Equity then promulgated this new
23 program.

24
25 21. Settlement of *Jens* Case. The *Jens* Case was resolved in April 1989 with
26 the Settlement Agreement. (Exh. A.) The Settlement Agreement provided that the
27 Equity Waiver Plan to which ATLAS had agreed (¶ 19 above) would continue in
28 effect until at least 1991. The purpose of the Settlement Agreement was to effect the

1 parties’ “mutual objectives to expand and promote theatre and acting opportunities for
2 AEA members,” and to “further the best interests of actors and actor-producers in Los
3 Angeles who are members of Actors’ Equity Association, and to promote and advance
4 the growth of theatre in the Southern California area.” (Exh. A, Preface and ¶ 7.)
5

6 22. Establishment of Review Committee. The Settlement Agreement
7 established a “permanent Review Committee.” The permanent Review Committee is
8 composed of at least eight members; four of the plaintiffs in the *Jens* Case or their
9 designees, and four appointed by Equity. The purpose of the Review Committee is to
10 monitor and study the “impact, implementation, problems, and operations of the 99-
11 Seat Theatre Plan.” (Exh. A, ¶ 2.)
12

13 23. Modification of Waiver System under Settlement Agreement. The
14 Settlement Agreement provides a mechanism for potential future modifications of the
15 Equity Waiver system. “Minor changes” can be made by agreement between the
16 National Council and Review Committee. (Exh. A, ¶ 5.) “Substantial changes”
17 require exhaustion of a multi-tiered procedure under which different interested parties
18 within the Union have the power to initiate a process to change the Equity Waiver
19 system, and the Review Committee has an opportunity to make a meaningful
20 response. Substantial changes are defined as those affecting the length of a run, actor
21 reimbursement, and the availability of the Plan. (Exh. A, ¶ 4.) Under the Settlement
22 Agreement, when a proposal for a substantial change is made, the National Council is
23 to remain above the fray and is authorized to “act on the proposal” only after certain
24 procedural steps are completed, including, if requested, an advisory referendum. The
25 specifics for substantial changes to the 99-Seat Theatre Plan are as follows:

26 (a) After April 1, 1991, the Review Committee, the Union’s
27 Western Advisory Board (a subordinate body within Equity, now known as
28 the Western Regional Board), or any member or executive of the Union,

1 may propose to the National Council [the Union’s governing body], that
2 changes be made to the 99-Seat Theatre Plan. (Exh. A, ¶ 3.)

3 (b) If a proposal would make a substantial change to the 99-Seat
4 Theatre Plan, certain steps must be taken before the National Council can act
5 on the proposal. (Exh. A, ¶ 4.)

6 (i) The National Council will provide the Review
7 Committee and Equity membership with the details of the proposal 45
8 days before the National Council may act on the proposal. (Exh. A,
9 ¶ 4(a)(i).)

10 (ii) Before the National Council acts on the proposal, the
11 National Council will arrange for meetings between Equity
12 representatives and members of the Review Committee for the
13 purpose of hearing the opinions and recommendations of the Review
14 Committee about the proposed changes. (Exh. A, ¶ 4(a)(ii).)

15 (iii) The National Council will consider a request by any
16 Union member for an advisory referendum of the Los Angeles County
17 membership, and if it declines, it must hold such an advisory
18 referendum on the petition of 100 members. (Exh. A, ¶ 4(a)(iii).)

19 (iv) Any referendum must be fair and include an opportunity
20 for Review Committee members to publish an opposition position,
21 and a Los Angeles membership meeting must be held at least four
22 weeks before referendum ballots are mailed to members for the
23 purpose of explaining and debating the proposed changes. (Exh. A,
24 ¶ 4(a)(iv).)

25
26 24. Maintenance of Los Angeles 99-Seat Theatre Plan after Jens Settlement.

27 After the *Jens* settlement, minor modifications were made to the 99-Seat Theatre Plan
28 with agreement from the Review Committee established under the Settlement

1 Agreement. The most recent modification issued by Equity with Review Committee
2 approval was the “Los Angeles 99-Seat Theatre Plan,” effective August 15, 2006. (A
3 copy of that Plan is attached as Exhibit B.) The 2006 Los Angeles 99-Seat Theatre
4 Plan, which remains in effect as of the date of the filing of this Complaint, contains
5 the following key provisions:

6 (a) The Plan is a “Code,” not a contract between theatres and Equity.
7 (Exh. B, Forward, p. 1.)

8 (b) There will be a “permanent Review Committee, composed of at
9 least eight (8) members: four (4) theatre representatives, and four (4) appointed
10 by Equity.” (Exh. B, Forward, p. 1.)

11 (c) “[A]ll members rendering services under the auspices of the Plan
12 are volunteers who subsidize the Theatre.” (Exh. B, Forward, p. 1.)

13 (d) Union Members may only perform for theatres that agree to abide
14 by the conditions of the Plan. (Exh. B, § 1(A).)

15 (e) Actors are permitted to be absent from rehearsals in order to
16 audition for remunerative employment or perform acting work covered by
17 union collective bargaining agreements, such as Equity and Screen Actors
18 Guild contracts. (Exh. B, §§ 10(C).)

19 (f) Limitations are placed on the number (no more than 60) and length
20 of rehearsals that may be held. (Exh. B, §§ 10(D), (E), (H) and (I).)

21 (g) Limitations are placed on the number of performances that may be
22 held for each production (60). Excess performances may be presented only
23 under limited circumstances. (Exh. B, §§ 20(E), 24.)

24 (h) Small per-performance stipends are payable to actors. (Exh. B,
25 § 21.)

26 (i) Limitations are placed on the price of tickets. (Exh. B, § 21.)
27
28

1 had no intent to eliminate the 99-Seat Theatre Plan or make substantial changes to the
2 Plan.

3
4 27. Full Review Committee Meetings. A full joint Review Committee
5 meeting was finally held on May 31, 2013, over one year after Plaintiff-side Review
6 Committee members first requested it. Follow-up meetings were held on June 27,
7 July 19, September 27 and November 1, 2013. During those meetings, Equity
8 representatives on the Review Committee expressed frustration with alleged
9 difficulties in monitoring the existing Waiver protocols. At no time did any Equity-
10 side member of the Review Committee indicate a desire to make substantial changes
11 to or eliminate the 99-Seat Theatre Plan.

12
13 28. Continued Efforts to Convene Review Committee Meeting. Following
14 the November 1, 2013 joint Review Committee meeting (see ¶ 27 above), Plaintiff-
15 side members of the Review Committee requested an additional meeting, but Equity
16 resumed dragging its feet. It was not until June 13, 2014 that Van Duzer advised the
17 Plaintiff-side members that a joint Review Committee meeting would be held on July
18 18, 2014.

19
20 29. July 18, 2014 Meeting is Canceled and Van Duzer is Terminated. In July
21 2014, Equity Executive Director Mary McColl terminated Van Duzer's employment.
22 Equity canceled the July 18, 2014 full joint Review Committee meeting and never
23 rescheduled it.

24
25 **Equity Decides Unilaterally to Destroy the Equity Waiver System**

26 30. Equity Begins Process of Changing 99 Seat-Theatre Plan. In September
27 2014, at the initiative of Equity President Nick Wyman and Equity Executive Director
28 Mary McColl, the National Council commenced a process that would result in the

1 elimination of the volunteer nature of the 99-Seat Theatre Plan and escape the
2 restrictions of the Settlement Agreement. Instead of processing a proposal
3 contemplated to be submitted to the National Council under Paragraph 3 of the
4 Settlement Agreement, the National Council took the initiative and itself adopted a
5 plan (in excess of its authority under the Settlement Agreement) designed to destroy
6 the Equity Waiver system. On September 23, 2014, Equity announced that it would
7 be conducting a survey and convening focus groups purportedly to measure the
8 sentiment of membership on several matters of Union importance, including the 99-
9 Seat Theatre Plan. In fact, that was about the only subject that was ultimately
10 addressed by the survey and focus groups, as Plaintiffs explain in Paragraphs 32 and
11 33 below. The Union's September 23 announcement quoted Equity Executive
12 Director Mary McColl that "We have internal processes that we follow to ensure that
13 every voice is heard."

14
15 31. Equity Delays Meeting with Review Committee. After the National
16 Council adopted its September 2014 plan, and despite Executive Director McColl's
17 statement about hearing "every voice," the Union avoided altogether meeting with the
18 Plaintiff-side members of the Review Committee. In October 2014, Executive
19 Director McColl resisted an invitation from Plaintiff-side Review Committee
20 members to discuss the Equity Waiver Theatre situation saying that "because we have
21 not yet had the opportunity to hear back from our membership, and because we have
22 internal processes that we must follow, I am not in a position and cannot have any
23 substantive dialogue with you." Although McColl eventually met with Plaintiff-side
24 Review Committee members on October 8, 2014, she refused to discuss any
25 substantive issues, and told Committee members that Equity would determine its
26 course of action only after hearing from the membership.

1 32. Hart Research Institute Survey. In October, without prior consultation
2 with or consent from the full joint Review Committee, the Hart Research Institute
3 conducted an on-line survey of the Los Angeles membership about the 99-Seat
4 Theatre Plan and other topics. The survey was fashioned to obtain responses that
5 validated Equity's goal of eliminating the Equity Waiver system. The
6 methodologically flawed survey asked leading or loaded questions designed to elicit
7 strong criticism of the Equity Waiver system and to furnish Equity with a later
8 justification for its eventual elimination of the 99-Seat Theatre Plan. Only 608 of
9 approximately 7000 Los Angeles Equity members participated in the on-line survey.
10 Predictably, survey participants voted that they would like to see more union contracts
11 with better compensation, and that they would prefer to act for wages under an Equity
12 contract than act as volunteers in the Equity Waiver program. A majority of survey
13 participants stated that they believed they would like to see changes in the 99-Seat
14 Theatre Plan, but the survey did not ask what types of changes they would like to see,
15 or at what cost. Nor did the survey ask whether participants would prefer retention of
16 the Waiver system to its total elimination. Despite the biased nature of the survey,
17 Hart concluded that 20% of participants were very satisfied with the 99-Seat Theatre
18 Plan, 40% were somewhat satisfied, 24% were somewhat dissatisfied (without any
19 guidance as to the difference between "somewhat satisfied" and "somewhat
20 dissatisfied") and 16% very dissatisfied. (A true and correct copy of the survey report
21 is attached hereto as Exh. C.)

22
23 33. Focus Group Meetings. As part of its plan to eliminate the Equity
24 Waiver program, the Union conducted two focus group meetings in November 2014.
25 Plaintiffs are informed and believe, and based on such information and belief allege,
26 that each focus group had about 25 participants who were hand-picked by Equity
27 leadership, and that these hand-selected individuals expressed views that largely
28 mirrored those of Executive Director McColl and National President Nick Wyman.

1 34. Equity Convenes Membership Meeting. Equity held a membership
2 meeting on January 13, 2015 at which it raised the question whether the Equity
3 Waiver program should continue. At this membership meeting, sentiment was
4 expressed by members that the Equity Waiver theatre system should be improved, but
5 the vast majority of participants urged Equity not to destroy the volunteer nature of the
6 Equity Waiver system.

7
8 **Equity Adopts New 99-Seat Plan That Eliminates Volunteer Acting System**
9 **and Imposes Minimum Wage Compensation on Small Theatres**

10 35. Equity Adopts New 99-Seat Theatre Plan Without Complying with
11 Settlement Agreement Procedures. On February 6, 2015, Executive Director McColl
12 announced to the Union's membership that the National Council had developed and
13 approved a proposal for a new 99-Seat Theatre Plan, endorsed the new Plan and urged
14 Equity members to support it. In adopting this new 99-Seat Theatre Plan, the National
15 Council failed to comply with the procedures established in the Settlement
16 Agreement. For one thing, the National Council itself was not authorized by the
17 Settlement Agreement to adopt a proposal. Rather, the National Council's role was
18 limited to processing proposals submitted by other interested parties through the
19 multi-tiered procedure set forth in Paragraph 4 of the Settlement Agreement, and was
20 required to wait until that process was exhausted before acting on any proposal.
21 Instead, the National Council acted immediately by approving the proposal and then
22 spending Union resources in an effort to obtain support from members at the
23 referendum stage.

24 (a) The Settlement Agreement contemplates that a proposal will be
25 made by the Review Committee, the Union's Western Advisory Board, or an
26 individual member or executive of the Union, for a change to the 99-Seat
27 Theatre Plan. Once a proposal is made, the Union must provide the
28

1 membership and Review Committee with details of the proposed change at least
2 45 days before the Union acts upon it. (Exh. A, ¶ 3.)

3 (b) The National Council did not provide the Review Committee and
4 Equity membership with the details of the proposal 45 days before it acted on
5 the proposal, as required by Paragraph ¶ 4(a)(i) of the Settlement Agreement.

6 (c) Instead, Equity immediately approved and endorsed the proposal
7 and made the proposal its own. No meetings were held with the Review
8 Committee before the National Council acted on the proposal by endorsing it.
9 (Exh. A, ¶ 4(a)(ii).)

10 (d) The National Council did not consider a request by any Union
11 member for an advisory referendum of the Los Angeles County membership,
12 but rather decided that an advisory referendum should be held without any
13 request.

14 (e) The Union deprived members of a fair referendum because, instead
15 of remaining neutral until the process was exhausted, it actively supported and
16 promoted the proposal, expending Union funds in the process.

17
18 36. Contents of Proposed New Plan. The Plan adopted and endorsed by
19 Equity on February 6, 2015 abolishes the Equity Waiver system that was in effect
20 since the early 1970s on an informal basis and since 1988-1989 on a formal basis. (A
21 true and correct copy of the Union’s proposal to eliminate Equity Waiver is attached
22 hereto as Exh. D.) Equity’s proposed Plan, scheduled to go into effect July 1, 2016,
23 included the following key provisions:

24 (a) Promulgated Bargaining Agreement Replaces Waiver Code.
25 Equity promulgated a purported “collective bargaining agreement” with
26 producers requiring actors be paid a “legally mandated minimum wage and
27 ensure members are paid for rehearsals as well as performance hours.” The
28 new Plan eliminated any reference to volunteer work by actors, and refers to

1 actors as employees, even though there will be no change in the nature of the
2 acting performed by actors beginning July 1, 2016.

3 (b) Retain Waiver Code for Membership Companies, but Without
4 Protections. “Membership Companies” under Equity’s new system are non-
5 profit small theatres that operate primarily for the mutual benefit of actors and
6 other theatre artists that were in existence and produced small theatrical
7 productions before February 6, 2015. The new small theatre system adopted on
8 February 6, 2015 allowed existing Membership Companies to continue to
9 operate 99-seat theatres, on a volunteer basis, except that new members joining
10 after April 1, 2015 would not be able to perform “without the benefit of an
11 Equity contract.” Unlike the 99-Seat Theatre Plan, under the new program
12 actors at Membership Companies would have no protection whatsoever,
13 including health and safety protections, allowances for taking auditions and
14 remunerative work, all of which were abandoned by the Union.

15
16 37. Equity President Urges Yes Vote. On February 10, 2015, Equity
17 President and Defendant Nick Wyman posted a Facebook message promoting the
18 proposed Plan and praising the National Council for adopting it. In his Facebook
19 post, Wyman admitted that the proposal was the result of National Council action, and
20 that the Union endorsed the proposal. Wyman also announced that an “Advisory
21 Referendum” of the Los Angeles AEA membership would go out on March 25, 2015.
22 (A true and correct copy of this Facebook message is attached hereto as Exh. E.)

23
24 38. National Council Officers and Equity Executives Spend Equity Funds to
25 Support the Referendum. National Council Officers and Equity Executives spent
26 considerable amounts of the Union’s money in an effort to obtain majority support for
27 the new Plan in the referendum. Union funds were spent advertising the proposal and
28 urging members to vote “yes” for the proposal. Among other things, Equity spent

1 money for telephone banks used to call members and urge them to vote in favor of the
2 proposal. Union staff were also directed to spend their working time promoting the
3 new Plan.

4
5 39. Equity Directs WAB Members to Vote Yes on Referendum. The
6 Western Regional Board (“WGB”) (formerly known as the Western Advisory Board)
7 maintains a sub-committee known as the 99-Seat Committee. Members of the 99-Seat
8 Committee are the persons designated by Equity to serve as Equity-side members of
9 the Review Committee. On or about February 11, 2015, Equity staff member Gail
10 Gabler met with the 99-Seat Committee. Plaintiffs are informed and believe, and
11 based on such information and belief allege, that Gabler advised 99-Seat Committee
12 members that Equity had, without consulting either the 99-Seat Committee or the
13 entire Review Committee, adopted a new 99-seat theatre plan that would end the
14 volunteer nature of Equity Waiver theatre and require the payment of minimum wages
15 to small theatre actors. She also advised them that Equity would be conducting a
16 referendum on the newly endorsed 99-Seat Theatre Plan, and directed members of the
17 99-Seat Committee to vote “yes” on the referendum.

18
19 40. Review Committee Meeting. After refusing to participate in a joint
20 Review Committee meeting since November 1, 2013, Equity finally agreed to full
21 joint Review Committee meetings on February 18, 20, and 21, 2015. At those
22 meetings Equity-side members refused to consider proposals and modifications
23 offered by Plaintiff-side Review Committee members. Equity Executive Director
24 McColl also attended the Review Committee meetings. She essentially ran the
25 meetings and announced that only she would speak on behalf of the Equity-side
26 members of the joint Review Committee. McColl told Plaintiff-side Review
27 Committee members that the only reason Equity was even participating in these
28 meetings was to strictly adhere to the Settlement Agreement, but that Equity-side

1 members had no obligation to consider or make any changes to Equity’s proposal.
2 When pressed about following the conditions in the Settlement Agreement, McColl
3 said “we are fully aware of the Settlement Agreement and make no mistake, the
4 Settlement Agreement was a mistake and Equity would not make the same mistake
5 again.”

6
7 41. Opposition Statement. Because Equity distributed and promoted its
8 proposed Plan without advance notice to the Review Committee, the Review
9 Committee did not have an opportunity to prepare an opposition statement until after
10 Equity began campaigning in favor of its promulgated Plan. The Plaintiff-side
11 Review Committee prepared an opposition statement and submitted it to Equity on
12 March 13, 2015.

13
14 42. Referendum Distributed to Membership. On March 25, 2015, the
15 advisory referendum was distributed by mail to the Los Angeles membership. The
16 referendum was also posted on-line and members had the option of voting on-line or
17 by mail. From March 25 to March 28, 2015, the Union’s electronic ballot omitted the
18 Council’s endorsement and the Review Committee’s opposition statement. Equity
19 undertook an active and aggressive campaign to urge the Los Angeles membership to
20 approve the referendum, which it had already misleadingly advertised as reflecting the
21 desires of the membership expressed through the survey, Town Hall meetings and
22 focus groups.

23
24 43. Membership Resoundingly Rejects Equity’s Proposed Plan to End Equity
25 Waiver System. A record turnout of about 44.6% of the Los Angeles Equity
26 membership voted in the referendum, compared with an average 10%-15% turnout for
27 Equity elections of officers. Equity’s promulgated plan was overwhelming rejected
28

1 by a near 2-1 margin; 2,046 members voted against and only 1,075 voted in favor of
2 the Equity-endorsed plan to eliminate volunteer Equity Waiver theatre.

3
4 44. Equity Refuses to Discuss or Consider the Advisory Referendum. After
5 the lopsided referendum votes were tallied on April 18, 2015 and it became clear that
6 the Los Angeles membership strongly rejected Equity’s plan to eliminate Equity
7 Waiver theatre, Plaintiff Grossman sent Executive Director McColl a written request
8 that Equity postpone the formal implementation of its proposal, and first convene a
9 joint Review Committee meeting for the purpose of discussing the ramifications of the
10 referendum vote and “strategizing, studying and crafting a workable plan that will
11 take into account where we are presently and where we want to be five and ten years
12 from now.” McColl refused to convene a joint Review Committee meeting and
13 answered “Once Council has reached a determination I will be able to respond.” No
14 response was ever forthcoming.

15
16 45. Equity Adopts Plan Over Objections of Membership. Ignoring the
17 overwhelming opposition of the membership to the new Plan, on April 21, 2015,
18 Equity’s National Council formally adopted the Plan of its own making, which it had
19 previously proposed, endorsed and supported, including its minimum wage
20 requirements. The Union announced that the new program would go into effect June
21 1, 2016. Because the National Council acted on the proposal at the inception of this
22 process, rather than at the end as required by the Settlement Agreement, there was
23 never any doubt that the Equity Waiver system would be destroyed; the die was cast
24 six months earlier. (See ¶ 35 above.) Equity’s plan was simple: Eliminate the
25 Settlement Agreement, the Review Committee, and the existing 99-Seat Plan that had
26 been in existence for 26 years.

1 46. Equity Claims the Settlement Agreement is Void. On June 13, 2015, at a
2 meeting with certain Plaintiff-side Review Committee members, Mary McColl stated
3 that based on the Union’s action, there was no longer a Review Committee, saying
4 something to the effect that “There is no need for the Review Committee since there is
5 no longer a 99-Seat Plan.” Larry Cahn, a long-time member of the Equity National
6 Council and a member of the WGB, acknowledged the purpose of the Union’s
7 machinations not only to eliminate volunteer Equity Waiver theatre but to destroy the
8 Settlement Agreement: “We came up with a plan that does what Equity needed, which
9 was to get rid of the Settlement Agreement.” (A true and correct copy of the email
10 where Mr. Cahn’s statement is found is attached as Exh. F.) Since the April 21
11 implementation (see ¶ 45 above), Equity refuses to participate in any joint Review
12 Committee meeting, despite several requests, presumably on the basis of its current
13 position that the Settlement Agreement is void and there is no longer a Review
14 Committee.

15
16 47. Equity’s New 99-Seat Theatre Plan. The new Plan adopted by Equity on
17 April 21, 2015 (see ¶ 45 above) contains the following key changes from the existing
18 Equity Waiver system. Some of these provisions deviated somewhat from the
19 proposal placed before Union members in the referendum:

20 (a) Equity now forbids members to volunteer as actors in small
21 theatres which agreed to satisfy threshold health and safety requirements, abide
22 by time and production limitations, and comply with other restrictions.

23 (b) In lieu of the former Code, Equity promulgated a purported
24 collective bargaining agreement for 99-seat theatres that requires the payment
25 of applicable minimum wages for actors for both rehearsals and performances.

26 (c) The promulgated collective bargaining agreement includes other
27 new limitations on producers, including a requirement that absences for
28 rehearsals and performances shall be allowed for “industry auditions and other

1 union work.” (In the 99-Seat Theatre Plan, absences were permitted for
2 rehearsals only.) Under this provision, a paid actor working at one small theatre
3 could be excused to take an audition or rehearse or act at another small theatre.

4 (d) The Los Angeles Membership Company Rule was changed. The
5 Rule as proposed to members in the referendum required new members to
6 perform under a collective bargaining agreement. The April 21 Plan eliminated
7 this limitation, thereby permitting Membership Companies to admit new
8 members and continue performing Equity Waiver theatre on a volunteer basis.

9 (e) The April 21 Plan made a substantial change to the existing 99-
10 Seat Theatre Plan by establishing an entirely new category of waiver theatre
11 called the 50-Seat Showcase Code. This Code allows members to perform
12 volunteer acting services for theatres with 50 or fewer seats where the
13 production budget does not exceed \$20,000 for a maximum of 16 performances.
14 Although this change qualified as a “substantial change” under the Settlement
15 Agreement, it was never the subject of a proposal to Equity’s Council and
16 Equity never processed it under Paragraph 4 of the Settlement Agreement. This
17 50-Seat Showcase Code was not disclosed to the Union membership prior to
18 April 21, 2015, and was not made part of the March-April 2015 referendum.
19 (http://www.actorsequity.org/docs/codes/LA_Showcase_Code_2015.pdf.)
20

21 48. Damages. The new minimum wage proposal is unsustainable, and will
22 severely damage the small theatre community in Los Angeles.

23 (a) Actors will lose valuable and irreplaceable volunteer opportunities
24 to develop their artistic and creative talents, perform and work collaboratively
25 on new projects, develop their artistic talents and act in a theatre environment
26 about which they are passionate. In addition, union actors will lose
27 opportunities for exposure to potential employers hiring for remunerative work,
28 and to volunteer on artistic projects that have the potential to become large scale

1 productions operating under union contract. The loss of these opportunities will
2 irreparably harm those Plaintiffs who are actors as well as other Equity
3 members who perform in the intimate theatre world.

4 (b) Because of their tight budgets, small theatres will be unable to
5 sustain the new expense of paying the minimum wage to actors. Small theatres
6 with current annual budgets of \$200,000 to \$300,000 are likely to have
7 \$100,000 or more of expenses added to their overhead. Small theatres
8 operating on tight budgets likely will be forced to close, resort to one-person
9 shows, reduce the number of productions they present each season or cease
10 using Equity actors and instead recruit from the non-union, and less
11 professional, pool of actors in the Los Angeles area. Because theatrical
12 planning is done many months if not a year or so in advance, some small
13 theatres have already announced publicly that they will reduce their schedules
14 and thereby utilize fewer actors in theatrical endeavors.

15
16 **FIRST CLAIM FOR RELIEF**

17 **Breach of Contract**

18 **(By All Plaintiffs Against Equity)**

19
20 49. Plaintiffs repeat and re-allege each and every averment contained in
21 Paragraphs 1 through 48 above as if set forth here in full.

22
23 50. The Settlement Agreement is a contract between Equity on the one hand,
24 and Plaintiffs Salome Jens, Gary Grossman, Maria Gobetti, Tom Ormeny, and Joseph
25 Stern, on the other. Plaintiffs Simon Levy and John Flynn, as members of the Review
26 Committee, are designees of parties to the Settlement Agreement.

1 51. Plaintiffs Ed Asner, Tom Bower, Gregg Daniel, Ed Harris, Veralyn
2 Jones, Karen Kondazian, Amy Madigan, Lawrence Pressman, Michael A. Sheppard,
3 French Stewart and Vanessa Stewart are third party beneficiaries of the Settlement
4 Agreement.

5
6 52. Plaintiffs did all, or substantially all of the things required of them under
7 the Settlement Agreement.

8
9 53. Defendant Equity's elimination of the Equity Waiver system and the 99-
10 Seat Theatre Plan, and Equity's prohibition on the performance of volunteer acting at
11 small theatres, without complying with Paragraph 4 of the Settlement Agreement, as
12 described in Paragraph 35 above, constitute breaches of the Settlement Agreement.

13
14 54. Plaintiffs were damaged by these breaches of contract as set forth in
15 Paragraph 48 above. Plaintiffs seek compensatory damages in an amount to be proven
16 at trial, including but not limited to expectation damages.

17
18 55. To remedy this breach of contract, Plaintiffs also seek equitable relief as
19 follows:

20 (a) An injunction setting aside actions taken by Equity on February 6,
21 2015 and April 21, 2015, and restoring the 99-Seat Theatre Plan, and
22 prohibiting Equity from making future substantial changes to the 99-Seat
23 Theatre Plan without complying in full with the Settlement Agreement;

24 (b) Appointment of an independent observer to monitor any future
25 proposal to make substantial changes to the 99-Seat Theatre Plan and to report
26 to the Court on compliance with the Settlement Agreement.

27 (c) Declaratory judgment that Equity violated the Settlement
28 Agreement by eliminating the 99-Seat Theatre Plan without first complying

1 with the procedural steps required under Paragraph 4 of the Settlement
2 Agreement; and

3 (d) An Order that the injunction and declaratory judgment be mailed to
4 all Equity members in Los Angeles County, all small theatres, and that Equity
5 publish the Order in prominent publications of the theatrical business and
6 entertainment industry.

7
8 **SECOND CLAIM FOR RELIEF**

9 **Breach of Covenant of Good Faith and Fair Dealing**

10 **(By All Plaintiffs Against Equity)**

11
12 56. Plaintiffs repeat and re-allege each and every averment contained in
13 Paragraphs 1 through 55 above as if set forth here in full.

14
15 57. Defendant unfairly interfered with Plaintiffs' rights to receive the
16 benefits of the contract by repeatedly refusing in bad faith to convene joint Review
17 Committee meetings, adopting a proposal to eliminate the Equity Waiver system and
18 taking action on that proposal before following the procedures outlined in Paragraph 4
19 of the Settlement Agreement, attempting to sway the Union membership by
20 conducting biased surveys and focus groups, pressuring 99-Seat Committee members
21 to vote in favor of the resolution, organizing and paying for telephone banks intended
22 to prevail on Union members to vote for the referendum, refusing to confer with the
23 Plaintiff-side members of the Review Committee or any other person to consider the
24 advice of the 2-1 majority of Union members who voted to reject the proposal, and
25 resolving to implement the proposal before the Paragraph 4 process was followed.

26
27 58. In addition to the remedies sought in the First Claim for Relief, Plaintiffs
28 seek additional equitable relief as follows:

1 (a) An injunction ordering Equity to convene Review Committee
2 meetings at regular intervals, and to consult in good faith with the Review
3 Committee about any proposals for substantial changes to the 99-Seat Theatre
4 Plan;

5 (b) An injunction that Equity consult in good faith with the Review
6 Committee following any referendum conducted under the terms of the
7 Settlement Agreement;

8 (c) Declaratory judgment that Equity violated the covenant of good
9 faith and fair dealing by interfering unfairly with Plaintiffs' rights to receive the
10 benefits of the contract by repeatedly refusing in bad faith to convene joint
11 Review Committee meetings, adopting a proposal to eliminate the Equity
12 Waiver system and taking action on that proposal before following the
13 procedures outlined in Paragraph 4 of the Settlement Agreement, attempting to
14 sway the Union membership by conducting biased surveys and focus groups,
15 pressuring 99-Seat Committee members to vote in favor of the resolution,
16 organizing and paying for telephone banks intended to prevail on Union
17 members to vote for the referendum, refusing to confer with the Plaintiff-side
18 members of the Review Committee or any other person to consider the advice
19 of the 2-1 majority of Union members who voted to reject the proposal, and
20 resolving to implement the proposal before the Paragraph 4 process was
21 followed; and

22 (d) An Order that the injunction and declaratory judgment be mailed to
23 all Equity members in Los Angeles County, all small theatres, and that Equity
24 publish the Order in prominent publications of the theatrical business and
25 entertainment industry.

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THIRD CLAIM FOR RELIEF

Breach of Fiduciary Duty

(By Equity Members Against McColl)

59. Plaintiffs repeat and re-allege each and every averment contained in Paragraphs 1 through 48 above as if set forth here in full.

60. Executive Director McColl owes fiduciary duties to Union members. As a fiduciary with responsibility and discretionary authority over the use of Union funds, she has at all relevant times had a duty to act with the utmost good faith in the best interests of Equity members.

61. Executive Director McColl failed to act as a reasonably careful fiduciary with respect to Union funds by violating the Settlement Agreement as described in Paragraphs 30 through 47 of this Complaint.

62. Plaintiffs seek damages on behalf of Equity in the amount of money spent by Equity, at Director McColl’s initiative and direction, in violating the Settlement Agreement.

FOURTH CLAIM FOR RELIEF

Violation of Duty of Fair Representation

(By Third Party Beneficiary Plaintiffs Against Equity)

63. Plaintiffs repeat and re-allege each and every averment contained in Paragraphs 1 through 58 above as if set forth here in full.

1 64. The Third Party Beneficiaries are members of Equity. They are also
2 represented by Equity with respect to collective bargaining with employers in the
3 business of live theatre in the United States.

4
5 65. Equity owes employees whom it represents for collective bargaining
6 purposes a duty of fair representation. This duty of fair representation requires Equity
7 to serve the interests of its members without hostility or discrimination, to exercise its
8 discretion with complete good faith and honesty and to avoid arbitrary conduct.

9
10 66. By eliminating the Equity Waiver system in violation of the Settlement
11 Agreement and over the unambiguous objections of two-thirds of its Los Angeles
12 members who voted in the March-April 2015 referendum, and by doing so arbitrarily
13 and in bad faith, Equity deprived members of opportunities to develop their artistic
14 and creative talents. It also deprived members of opportunities to perform and work
15 collaboratively on new projects, to develop their artistic talents and to volunteer for
16 work they are passionate about when remunerative work is not available. In so doing,
17 Equity undermined the ability of members to improve their skills through volunteer
18 activities, obtain exposure to potential employers hiring for remunerative work, and to
19 volunteer on artistic projects that have the potential to become successful productions
20 operated under union contract.

21
22 67. Plaintiffs have been damaged as set forth in Paragraph 48 above, and for
23 the violation of the duty of fair representation, also seek equitable relief as set forth in
24 Paragraphs 55 and 58 above.

1 **FIFTH CLAIM FOR RELIEF**

2 **Violation of LMRDA § 101(a)(1)**

3 **(By Third Party Beneficiary Plaintiffs Against Equity and McColl)**

4
5 68. Plaintiffs repeat and re-allege each and every averment contained in
6 Paragraphs 1 through 48 above as if set forth here in full.

7
8 69. LMRDA § 101(a)(1), 29 U.S.C. § 411(a)(1), provides that “Every
9 member of a labor organization shall have equal rights and privileges within such
10 organization to vote in elections or referendums of the labor organization, to attend
11 membership meetings, and to participate in the deliberations and voting upon the
12 business of such meetings, subject to reasonable rules and regulations in such
13 organization’s constitution and bylaws.”

14
15 70. The equal rights of union members under LMRDA § 101(a)(1) are
16 violated when a labor organization manipulates voting procedures or union rules so as
17 unfairly deprive some members of the equal right to participate in union deliberations,
18 or engages in other conduct that deprives members of their right equally to participate
19 in the deliberations and referenda of the organization.

20
21 71. Equity deprived Los Angeles members of their right equally to deliberate
22 over a proposal to make a substantial change to the Equity Waiver system, and to
23 participate in the deliberations and referenda of the organization, when it adopted and
24 endorsed the plan to eliminate the Equity Waiver system without remaining neutral, as
25 required by the Settlement Agreement, until after it followed the process established
26 in Paragraph 4 of the Settlement Agreement.

1 72. Equity violated the equal rights of Los Angeles members by omitting
2 from the electronic ballot the opposition statement submitted by the Plaintiff-side
3 members of the Review Committee, so that for the first three days of voting, union
4 members who voted electronically during the first three days were not afforded the
5 same opportunity as others to read the opposition to Equity’s proposal to terminate the
6 Equity Waiver system.

7
8 73. Equity violated the equal rights of Los Angeles members when it
9 endorsed the plan to eliminate the 99-Seat Theatre Plan without first giving all Union
10 members an equal opportunity to hear contending positions within the Union before
11 the National Council itself adopted and promoted its position.

12
13 74. Equity violated the equal rights of Los Angeles members when it directed
14 members of the 99-Seat Committee to vote in favor of the referendum, as described in
15 Paragraph 39 above.

16
17 75. LMRDA § 102, 29 U.S.C. § 412, provides, in material part: “Any person
18 whose rights secured by the provisions of this title have been infringed by any
19 violation of this title may bring a civil action in a district court of the United States for
20 such relief (including injunctions) as may be appropriate.”

21
22 76. Executive Director McColl acted in bad faith in aiding, abetting and
23 engineering this violation of LMRDA § 102, 29 U.S.C. § 411(a)(1), and is therefore
24 liable to the same extent as Equity.

25
26 77. For their violations of § 101(a)(1), 29 U.S.C. § 411(a)(1), Plaintiffs seek
27 equitable relief as follows:
28

1 (a) An injunction ordering that Equity afford all members equal rights
2 to participate in any future process responding to a proposal to make substantial
3 changes to the 99-Seat Theatre Plan, including Union neutrality on such a
4 proposal until the processes set forth in Paragraph 4 of the Settlement
5 Agreement are exhausted, and uniform and equal communication with members
6 at all phases of these processes, including but not limited to any referendum.

7 (b) Declaratory judgment that Equity violated § 101(a)(1) of the
8 LMRDA by failing to afford all members equal rights to participate in the
9 deliberations and referendum concerning the elimination of the 99-Seat Theatre
10 Plan; and

11 (d) An Order that the injunction and declaratory judgment be mailed to
12 all Equity members in Los Angeles County, all small theatres, and that Equity
13 publish the Order in prominent publications of the theatrical business and
14 entertainment industry.

15
16 78. Equity deprived members of equal rights in bad faith and with the
17 malicious intent to terminate the Equity Waiver system and avoid, circumvent and/or
18 vitiate the Settlement Agreement. By reason of such malice, Plaintiffs are entitled to
19 recover punitive damages against Defendant, to punish it and to make an example of it
20 to deter such violations in the future. Plaintiffs also seek costs and attorneys' fees
21 incurred in this matter because of the common benefit conferred on union members by
22 this action.

23
24

PRAYER

25 WHEREFORE, Plaintiffs pray for relief against Defendants as follows:

- 26 1. Monetary damages in accordance with proof;
27 2. Equitable relief as described hereinabove, including both injunctive relief
28 and a declaratory judgment;

