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

FRANCES FISHER, ANNE
LOCKHART, DAVID ANDREWS,
TOBY STONE-MANDELBERG,
BELINDA BALASKI, STEPHEN
HART, RAYMOND HARRY
JOHNSON,

Plaintiffs, on behalf of themselves
and all other similarly situated
members of the SCREEN ACTORS
GUILD-AMERICAN
FEDERATION OF TELEVISION
AND RADIO ARTISTS,

v.

CASE NO. 2:21-cv-05215-CAS-JEM

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR RELIEF FOR**

**(1) BREACH OF FIDUCIARY DUTY
OF FAIR REPRESENTATION IN
VIOLATION OF 29 U.S.C. § 159(a)
(2) BREACH OF FIDUCIARY DUTIES
IN VIOLATION OF 29 U.S.C. § 501
(3) DEMAND FOR JURY TRIAL**

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

15 Defendants.

1 **SECOND AMENDED CLASS ACTION COMPLAINT**

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

11 2. On January 26, 2022, the Court granted Plaintiff Fisher’s application to
12 file a claim pursuant to 29 U.S.C. § 501 (“Section 501 Claim”), and granted
13 Defendants’ motions under Federal Rule of Civil Procedure 12(b)(6) to dismiss all
14 claims in the Proposed First Amended Complaint with leave to amend with respect to
15 all claims. ECF No. 38.

16 3. This is Plaintiffs’ Second Amended Class Action Complaint, which
17 amends and adds substantive allegations and claims, and adds David Andrews,
18 Belinda Balaski, Stephen Hart, Raymond Harry Johnson, Anne Lockhart and Toby
19 Stone-Mandelberg as additional parties plaintiff who were injured by the misconduct
20 of the defendant representatives of the Union and membership, alleged herein.

21 **I. NATURE OF ACTION**

22 4. This action asserts claims on behalf of the members of SAG-AFTRA
23 (excluding Defendants) (the “Members”) and on behalf of SAG-AFTRA, for injuries
24 to SAG-AFTRA and the SAG-AFTRA Members resulting from Defendants’
25 breaches of the Union’s duty of fair representation under the NLRA, 29 U.S.C. §
26 159(a), and breaches of the fiduciary duties of Union officials imposed by Section
27 501(a) of the LMRDA, 29 U.S.C. § 501(a).

1 5. Under Section 9(a) of the NLRA, the Union has a duty “to serve the
2 interests of all members without hostility or discrimination toward any, to exercise its
3 discretion with complete good faith and honesty, and to avoid arbitrary conduct.”
4 *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). This is the Union’s duty of fair representation
5 (“DFR”). The DFR requires the Union to make rational decisions on behalf of
6 members in collective action. Decisions by the Union through its designated agents
7 in collective bargaining are not rational and are arbitrary where, as here, Union agents
8 know but hide information material to rational decisions by the Union in the matters
9 at hand.

10 6. Section 501(a) of the LMRDA establishes that union “officers, agents,
11 shop stewards, and other representatives of [the Union] occupy positions of trust in
12 relation to [the Union] and its members as a group.” 29 U.S.C. § 501(a). The fiduciary
13 duties established by Section 501 apply to the Union representatives in any area of
14 their authority even when no monetary interest of the Union is involved. *Stelling v.*
15 *IBEW*, 587 F.2d 1379, 1386-87 (9th Cir. 1978). The Section 501 fiduciary duties hold
16 these representatives to “the highest standards of responsibility and ethical conduct in
17 administering the affairs of [the Union].” *SEIU v. Nat’l Union of Healthcare Workers*,
18 718 F.3d 1036, 1044 (9th Cir. 2013).

19 7. As alleged more particularly herein, Individual Defendants White,
20 Rodriguez, Pniewski, Hartley-Margolin, McGuire, Brown and Powell were at all
21 relevant times Union-appointed trustees of the SAG-AFTRA Health Plan (“Health
22 Plan”). These Individual Defendants also were Union-appointed representatives of
23 the Union and membership in determining the negotiation objectives and in the
24 negotiation and the approval of one or more of the three major collective bargaining
25 agreements (“CBAs”) in 2019 and 2020—Commercials, Netflix and TV/Theatrical.
26 Based on their service as Union-appointed Health Plan trustees, these Individual
27 Defendants, in acting as representatives of the Union and membership in connection
28 with the CBAs, knew information that was vitally material to the three CBA

1 negotiations and approvals regarding the Health Plan's acute and worsening financial
2 condition and the funding needed to sustain the health benefit structure. In
3 representing the Union and membership in the CBA processes, these Individual
4 Defendants betrayed their positions of trust by hiding this vital material information
5 from the other representatives and the membership and by misleadingly accepting and
6 approving the deficient objectives and terms of the CBAs, in breach of their Section
7 501 fiduciary duties. The Union and membership as a whole were injured by these
8 breaches. The Union and membership lost the ability to determine how and to what
9 extent to pursue and obtain additional desperately needed funding for the Health Plan
10 under the CBAs. As alleged herein, the hidden information would have been of
11 fundamental importance to the CBAs.

12 8. On August 12, 2020, just three weeks after the TV/Theatrical CBA was
13 approved by the betrayed National Board and ratified by the betrayed membership, in
14 the midst of the COVID-19 pandemic that had substantially limited members'
15 earnings and earning opportunities, the Health Plan announced draconian health
16 benefit cuts ("Benefit Cuts") targeting senior members for elimination from Union
17 health coverage while continuing to fund the Health Plan based on the employer
18 contributions under the CBAs.

19 9. The Benefit Cuts increased the Health Plan's eligibility requirements for
20 many Union members and disqualified residuals earnings toward earnings-based
21 eligibility for Union members age 65 and older taking a Union pension.¹

22 10. The Benefit Cuts also eliminated Senior Performer Coverage and Age
23 and Service Eligibility (for members 40 and older with 10 years vested and \$13,000

24 _____
25 ¹ "Residuals are compensation paid to [member] performers for use of a theatrical
26 motion picture or television program beyond the use covered by initial compensation.
27 For TV work, residuals begin once a show starts re-airing or is released to video/DVD,
28 pay television, broadcast TV, basic cable, or new media [such as Netflix or Hulu]. For
film work, residuals begin once the movie appears on 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://www.sagaftra.org/content/residuals-faq>.

1 in earnings) and negatively affected those members who previously earned coverage
2 under the lower Plan II \$18,040 earnings threshold.

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

8 12. The Benefit Cuts effectively eliminated the Union health benefits of
9 thousands of Union members and their families who would be unable to qualify based
10 on earnings where residual earnings are no longer credited toward Health Plan
11 eligibility, and many members face, and will continue each year to face, the
12 dramatically increased hurdles for eligibility under the Health Plan in the future. The
13 employer contributions to the Health Plan bargained for members under the 2019 and
14 2020 CBAs are based on a percentage of *all* earnings of each member and will
15 continue to fund the Health Plan. With the Benefit Cuts, the residuals earnings of
16 members age 65 and older receiving a Union pension will not have their residual
17 contributions count as earnings for eligibility under the Health Plan. These members
18 will continue to be assessed Union dues and pay taxes on their residuals. The Health
19 Plan is being funded by residual-based employer contributions, but they are worthless
20 to the member.

21 13. To attempt to justify the Benefit Cuts, the Individual Defendants finally
22 disclosed the financial information they had known but hidden from other Union
23 representatives and the membership for years. Had the hidden information regarding
24 the Health Plan funding needs and acute financial condition been disclosed by the
25 Individual Defendants to the other Union representatives, which far outnumbered the
26 Individual Defendants, the Union negotiators would have had to have made greater
27 urgently needed funding to the Health Plan an essential objective in the 2019 and 2020
28 CBAs by one or more of the available means.

1 14. Had the National Board learned the information hidden by the Individual
2 Defendants from the other representatives prior to voting on the CBAs, the National
3 Board would have known the Union health benefit was doomed under the CBAs,
4 which would have been a central issue for debate, and if the CBAs were nevertheless
5 approved, the dooming of the Union health benefit would have been by the hand of
6 the National Board. It is beyond doubt the National Board approval processes would
7 have been different had the National Board known the hidden information regarding
8 such a vitally important interest of members and their families' healthcare.

9 15. As with the National Board, had the membership known the CBAs
10 would doom the Union health coverage for thousands of members and their families
11 prior to the membership ratification voting, the ballot process and debate would
12 undoubtedly have been materially different. The importance and materiality of the
13 hidden information to the membership is starkly evidenced by the panic and outrage
14 of members immediately following the announcement of the Benefit Cuts, as alleged
15 herein.

16 16. The new Commercials CBA negotiation is currently underway.
17 Undoubtedly, the previously hidden financial information and condition of the Health
18 Plan, now known by all Union representatives, is driving the essential objectives and
19 process, as it would have done in 2019 and 2020.

20 17. On April 1, 2020, Individual Defendants Carteris and White,
21 representing the Union, announced certain payment suspensions to ease members'
22 stress and obligations in view of the earning and financial stress members were facing
23 due to the pandemic. The TV/Theatrical CBA had not yet been approved by the Union
24 National Board or ratified by the membership. At least Individual Defendant White
25 knew and had known for years from his service as a Health Plan trustee that draconian
26 coverage cuts were imminent and would include eligibility changes that would require
27 increased and, in some cases, accelerated earnings by members. White misleadingly
28 withheld this material information, which would have been a material caveat to the

1 announced suspensions, in breach of his Section 501 fiduciary duty. The Union and
2 the membership as a whole were injured by the membership's lost opportunity to
3 scramble for scarce earnings ahead of the imminent dramatic benefit changes, and by
4 the inability of the National Board and membership to make an informed vote on the
5 TV/Theatrical CBA.

6 18. Following the announcement of the Benefit Cuts in 2020, Individual
7 Defendant Carteris was Union President; Individual Defendant White was Union
8 Executive Director; and Individual Defendant Crabtree-Ireland was Union General
9 Counsel. In these positions, these Individual Defendants represented the Union and
10 membership and had the ability to control and deploy the resources and machinery of
11 the Union. Following the August 2020 sudden revelation of the dramatic changes to
12 Union health coverage and that certain Union representatives knew for years but hid
13 from the membership the dire and deteriorating funding condition of the Health Plan,
14 and the related immediate outrage by devastated members, Individual Defendants
15 Carteris, White and Crabtree-Ireland abused their positions of trust to deploy Union
16 machinery and resources to advance their personal interests by undermining
17 members' efforts to hold the Union representatives accountable for betraying the
18 membership with the health coverage ambush, in breach of their Section 501 fiduciary
19 duties. White and Crabtree-Ireland were and are defendants exposed to personal
20 liability in the ERISA suit filed by members in December 2020, *Asner et al v. The*
21 *SAG-AFTRA Health Fund et al*, No. 2:20-cv-10914 (C.D. Cal.), and represented the
22 Union and membership in connection with the CBAs while hiding material
23 information. Carteris and White touted the CBAs as personal grand achievements, as
24 alleged herein. Carteris, White and Crabtree-Ireland used Union resources to engage
25 Cohen Weiss & Simon ("CWS") to advise the National Board regarding Plaintiff
26 Fisher's Section 501 demand. At the time of the engagement, CWS was already
27 defending the Health Plan trustees, including Individual Defendants White and
28 Crabtree-Ireland, in *Asner*. The Union and membership as a whole were injured by

1 Individual Defendants Carteris, White and Crabtree-Ireland's diversion of Union
2 assets and resources to benefit these Individual Defendants personally.

3 19. This action seeks to enforce the fundamental right of union members to
4 hold Union representatives to the legally imposed highest ethical standard of trust in
5 representing the Union and the membership. The claims here assert that Union
6 representatives betrayed the Union, other representatives and the membership by
7 hiding crucial information regarding the dire and worsening funding condition of the
8 Union Health Plan while they represented the Union and membership in the members'
9 collective action to secure and maintain sustainable benefits for members and their
10 families. The essence of a trust relationship fundamentally forbids a person in a
11 fiduciary position of trust from betraying the beneficiaries of the trust in matters to
12 which the fiduciary is entrusted. The sustained betrayal by the representatives alleged
13 herein is fundamentally inconsistent with the highest ethical standard of trust imposed
14 on the representatives by Section 501, and requires accountability to redress the injury
15 here and confirm the long-established and necessary nature of the position of trust in
16 the union structure. Accountability deters other similarly entrusted labor leaders from
17 feeling free to betray members.

18 II. JURISDICTION AND VENUE

19 20. This Court has jurisdiction over this action under the NLRA, 29 U.S.C.
20 § 159(a), 28 U.S.C. § 1337, and the LMRDA, 29 U.S.C. § 501(b), 28 U.S.C. § 1331.

21 21. This District is the proper venue for this action under 29 U.S.C. § 501(b)
22 and 28 U.S.C. § 1391 because Defendants transact substantial business in this District
23 including the administration of the SAG-AFTRA Health Plan, and because a
24 substantial part of the events or omissions giving rise to this action occurred in this
25 District, where the office of SAG-AFTRA is headquartered and the office of the SAG-
26 AFTRA Health Plan is located.

III. THE PARTIES

22. Plaintiff **FRANCES FISHER** is and has been at all times relevant hereto a member of SAG-AFTRA. Plaintiff has served as First Vice President of the SAG-AFTRA Los Angeles Local and as a member of the SAG-AFTRA National Board since the Union merger in 2012. Plaintiff was a member of both SAG and AFTRA from 1976 until the 2012 Union Merger. Plaintiff also served as a member of the SAG National Board beginning in 2000 and the AFTRA National Board from 2008 until the 2012 Union merger. At the time of the 2019 and 2020 Union collective bargaining activities for the Commercials, Netflix and TV/Theatrical collective bargaining agreements, Plaintiff Fisher was age 65 or older and receives her Union pension. Plaintiff Fisher is and has been a participant in the Health Plan. Under the Health Plan benefit structure changes announced in August 2020, Plaintiff Fisher's residuals earnings no longer credit toward her Union health benefit eligibility. Employer contributions to the Health Plan negotiated and approved under the Commercials, Netflix and TV/Theatrical CBAs are made on Plaintiff Fisher's behalf based on all earnings, including residuals. Each year for the rest of her life under the Benefit Cuts, Plaintiff Fisher must obtain \$25,950 in sessional earnings to qualify for Union health coverage. While her employer contributions from her residual earnings will continue to fund the Health Plan, Plaintiff Fisher herself will receive no credit toward Health Plan eligibility for these contributions. Plaintiff Fisher will continue to be assessed Union dues and pay taxes on her residuals. Plaintiff Fisher thus sustained a direct and substantial economic injury by the breaches alleged herein. Plaintiff Fisher filed the instant action to ensure that future union leaders and staff, their assistants and advisors, can never again breach the fiduciary duties owed to the Union and the membership.

23. Plaintiff **DAVID ANDREWS** is and has been at all times relevant hereto a member of SAG, and then SAG-AFTRA, for over twenty years. Plaintiff Andrews is age 65 or older and receives his Union pension. Despite total earnings that exceeded

1 the \$25,950 earnings threshold required to receive Health Plan coverage, Plaintiff
2 Andrews lost Health Plan coverage as a result of the Health Plan's decision to exclude
3 residual earnings for members age 65 or older and taking a pension. Employer
4 contributions to the Health Plan negotiated and approved under the 2019
5 Commercials, 2019 Netflix and 2020 TV/Theatrical are made on Plaintiff Andrews's
6 behalf based on all earnings, including residuals earnings. Each year for the rest of his
7 life under the Benefit Cuts, Plaintiff Andrews must obtain \$25,950 in sessional
8 earnings to qualify for Union health coverage. While his employer contributions from
9 his residual earnings will continue to fund the Health Plan, Plaintiff Andrews himself
10 will receive no credit toward Health Plan eligibility for these contributions. Plaintiff
11 Andrews will continue to be assessed Union dues and pay taxes on his residuals.
12 Plaintiff Andrews thus sustained a direct and substantial economic injury by the
13 breaches alleged herein.

14 24. Plaintiff **BELINDA BALASKI** is and has been at all times relevant
15 hereto a member of SAG, and then SAG-AFTRA, for over twenty years. Plaintiff
16 Balaski is age 65 or older and receives her Union pension. Prior to the Benefit Cuts,
17 Plaintiff Balaski had achieved Senior Performer lifetime secondary coverage under
18 the SAG-AFTRA Health Plan coverage as a result of 20 years of accrued pension
19 service. Plaintiff Balaski lost her Senior Performer lifetime secondary coverage under
20 the Health Plan as a result of the Benefit Cuts. Plaintiff Balaski thus sustained a direct
21 and substantial economic injury by the breaches alleged herein.

22 25. Plaintiff **ANNE LOCKHART** is and has been at all times relevant
23 hereto a member of SAG, and then SAG-AFTRA, for over twenty years. Plaintiff
24 Lockhart is age 65 or older and receives her Union pension. Despite total earnings
25 that exceeded the \$25,950 earnings threshold required to receive Health Plan
26 coverage, Plaintiff Lockhart lost Health Plan coverage as a result of the Health Plan's
27 decision to exclude residual earnings for members age 65 or older and taking a
28 pension. Employer contributions to the Health Plan negotiated and approved under

1 the Commercials, Netflix and TV/Theatrical CBAs are made on Plaintiff Lockhart's
2 behalf based on all earnings, including residuals earnings. Each year for the rest of
3 her life under the Benefit Cuts, Plaintiff Lockhart must obtain \$25,950 in sessional
4 earnings to qualify for Union health coverage. While her employer contributions from
5 her residual earnings will continue to fund the Health Plan, Plaintiff Lockhart herself
6 will receive no credit toward Health Plan eligibility for these contributions. Last year,
7 contributions in the amount of at least \$10,000 were made to the Health Plan on
8 Plaintiff Lockhart's residuals in excess of \$100,000; yet, she will not get credited
9 toward the Health Plan for these contributions. Plaintiff Lockhart will continue to be
10 assessed Union dues and pay taxes on her residuals. Plaintiff Lockhart thus sustained
11 a direct and substantial economic injury by the breaches alleged herein.

12 26. Plaintiff **STEPHEN HART** is and has been at all times relevant hereto
13 a member of SAG, and then SAG-AFTRA, for over twenty years. Plaintiff Hart is age
14 65 or older and receives his Union pension. Despite total earnings that exceeded the
15 \$25,950 earnings threshold required to receive Health Plan coverage, Plaintiff Hart
16 lost Health Plan coverage as a result of the Health Plan's decision to exclude residual
17 earnings for members age 65 or older receiving a Union pension. Employer
18 contributions to the Health Plan negotiated and approved under the 2019
19 Commercials, 2019 Netflix and 2020 TV/Theatrical CBAs are made on Plaintiff
20 Hart's behalf based on all earnings, including residuals earnings. Each year for the
21 rest of his life under the Benefit Cuts, Plaintiff Hart must obtain \$25,950 in sessional
22 earnings to qualify for Union health coverage. While his employer contributions from
23 his residual earnings will continue to fund the Health Plan, Plaintiff Hart himself will
24 receive no credit toward Health Plan eligibility for these contributions. Plaintiff Hart
25 will continue to be assessed Union dues and pay taxes on his residuals. Plaintiff Hart
26 thus sustained a direct and substantial economic injury by the breaches alleged herein.

27 27. Plaintiff **RAYMOND HARRY JOHNSON** is and has been at all times
28 relevant hereto a member of SAG, and then SAG-AFTRA, for over twenty years.

1 Plaintiff Johnson is age 65 or older and receives his Union pension. Despite total
2 earnings that exceeded the \$25,950 earnings threshold required to receive Health Plan
3 coverage, Plaintiff Johnson lost Health Plan coverage as a result of the Health Plan's
4 decision to exclude residual earnings for members age 65 or older and taking a
5 pension. Employer contributions to the Health Plan negotiated and approved under
6 the 2019 Commercials, 2019 Netflix and 2020 TV/Theatrical CBAs are made on
7 Plaintiff Johnson's behalf based on all earnings, including residuals earnings. Each
8 year for the rest of his life under the Benefit Cuts, Plaintiff Johnson must obtain
9 \$25,950 in sessional earnings to qualify for Union health coverage. While his
10 employer contributions from his residual earnings will continue to fund the Health
11 Plan, Plaintiff Johnson himself will receive no credit toward Health Plan eligibility
12 for these contributions. Plaintiff Johnson will continue to be assessed Union dues and
13 pay taxes on his residuals. Plaintiff Johnson thus sustained a direct and substantial
14 economic injury by the breaches alleged herein.

15 28. Plaintiff **TOBY STONE-MANDELBERG** is and has been at all times
16 relevant hereto a member of SAG, and then SAG-AFTRA, for over twenty years.
17 Plaintiff Stone is age 65 or older and receives his Union pension. Despite total
18 earnings that exceeded the \$25,950 earnings threshold required to receive Health Plan
19 coverage, Plaintiff Stone lost Health Plan coverage as a result of the Health Plan's
20 decision to exclude residual earnings for members age 65 or older and taking a
21 pension. Employer contributions to the Health Plan negotiated and approved under
22 the 2019 Commercials, 2019 Netflix and 2020 TV/Theatrical CBAs are made on
23 Plaintiff Stone's behalf based on all earnings, including residuals earnings. Each year
24 for the rest of her life under the Benefit Cuts, Plaintiff Stone must obtain \$25,950 in
25 sessional earnings to qualify for Union health coverage. While her employer
26 contributions from her residual earnings will continue to fund the Health Plan,
27 Plaintiff Stone herself will receive no credit toward Health Plan eligibility for these
28 contributions. Last year, contributions in the amount of at least \$10,000 were made to

1 the Health Plan on Plaintiff Stone's excess of \$100,000 in residuals; yet, she will not
2 get credited toward the Health Plan for these contributions. Plaintiff Stone will
3 continue to be assessed Union dues and pay taxes on her residuals. Plaintiff Stone
4 thus sustained a direct and substantial economic injury by the breaches alleged herein.

5 29. **SAG-AFTRA** is a labor organization as defined under 29 U.S.C. § 402.
6 Under the authority established in Article III of the Health Plan Trust Agreement,
7 SAG-AFTRA is authorized to appoint and at any time remove and replace the Union
8 trustees of the Health Plan. The SAG-AFTRA Constitution empowers the SAG-
9 AFTRA National Board to appoint and remove the trustees of the Union trustees of
10 the Health Plan.

11 30. Defendant **GABRIELLE CARTERIS** at all times relevant hereto
12 served as President of SAG-AFTRA, as a SAG-AFTRA National Board member and
13 as a SAG-AFTRA Executive Committee member. While SAG-AFTRA President,
14 Carteris served as the chair of the negotiating committees for each of the three CBAs
15 at issue herein. Carteris previously served as SAG-AFTRA's Executive Vice
16 President from 2013-2016. Carteris used her position as President of SAG-AFTRA to
17 support and defend the Benefit Cuts and to challenge claims by Union members
18 directed at the Benefit Cuts and misconduct of Union leaders, including Plaintiff
19 Fisher's Demand.

20 31. Defendant **DAVID P. WHITE** served as SAG-AFTRA's National
21 Executive Director and Chief Negotiator and as a Union-appointed Health Plan trustee
22 until June 2021. White previously served as SAG's Executive Director from 2009
23 until the 2012 Union merger, as a Union-appointed trustee of the SAG Health Plan
24 from 2009 until the 2017 Health Plan Merger, and as a Union-appointed trustee of the
25 AFTRA Health Plan from 2013 until the 2017 Health Plan Merger. White was a
26 Health Plan trustee from the time of the Health Plan Merger until June 2021. White
27 is also a Union-appointed trustee of the SAG-Producers Pension Plan and the AFTRA
28 Retirement Fund. As SAG-AFTRA's National Executive Director and chief

1 negotiator, White participated in the process for each of the three collective bargaining
 2 agreements at issue herein. According to SAG-AFTRA's LM-2 Report, White's total
 3 compensation paid by the Union for the May 1, 2019-April 30, 2020 period was
 4 \$789,669. On May 14, 2021, SAG-AFTRA announced White's departure from his
 5 National Executive Director position to transition to a "strategic advisor" position, for
 6 which he is compensated by the Union in the amount of \$485,000 plus expenses, per
 7 year. White stepped down from his role as National Executive Director on June 21,
 8 2021.

9 32. Defendant **DUNCAN CRABTREE-IRELAND** at times relevant hereto
 10 served as Chief Operating Officer and General Counsel of SAG-AFTRA. Crabtree-
 11 Ireland served as a Union-appointed SAG Health Plan trustee from 2008 until the
 12 2017 Health Plan Merger, at which time he transitioned to a trustee of the Health Plan.
 13 He also serves as a trustee of the SAG-Producers Pension Plan. As General Counsel
 14 and Chief Operating Officer, Crabtree-Ireland was charged with overseeing the legal
 15 aspects of collective bargaining and contract enforcement for all SAG-AFTRA CBAs,
 16 as well as SAG-AFTRA's legal, government affairs, professional representatives,
 17 governance, diversity and information technology departments. According to SAG-
 18 AFTRA's LM-2 Report, Crabtree-Ireland's total compensation paid by the Union for
 19 the May 1, 2019 – April 30, 2020 period was \$435,835. On May 26, 2021, the
 20 National Board voted to approve Crabtree-Ireland (by a vote of nearly 65% to 35%)
 21 to succeed Individual Defendant White as SAG-AFTRA's National Executive
 22 Director. Crabtree-Ireland is also a defendant in *Risto v. Screen Actors Guild -*
 23 *American Federation of Television and Radio Artists et al*, No. 2:18-cv-07241 (C.D.
 24 Cal. Aug 17, 2018). As National Executive Director, Crabtree-Ireland is compensated
 25 by the Union in the amount of approximately \$770,000 per year.

26 33. Defendant **RAY RODRIGUEZ** at all times relevant hereto served as
 27 SAG-AFTRA's Chief Contracts Officer and Union-appointed Health Plan trustee.
 28 Rodriguez served as a trustee of the SAG Health Plan from 2014 until the 2017 Health

1 Plan Merger. Rodriguez is also a trustee of the SAG-Producers Pension Plan. Prior to
 2 his position as Chief Contracts Officer, Rodriguez served as Deputy National
 3 Executive Director of Contracts for SAG and, after the 2017 Health Plan Merger, for
 4 SAG-AFTRA. According to SAG-AFTRA's LM-2 Report, Rodriguez's total
 5 compensation paid by the Union for the May 1, 2019 – April 30, 2020 period was
 6 \$419,806. As Chief Contracts Officer, Rodriguez has served as either lead negotiator
 7 or second chair at all major negotiations (other than broadcast news), including those
 8 for the 2019 Commercials, 2019 Netflix and 2020 TV/Theatrical CBAs.

9 34. Defendant **JOHN T. MCGUIRE** at all times relevant hereto served as
 10 SAG-AFTRA's National Senior Advisor and a Union-appointed Health Plan trustee.
 11 McGuire began with the Union in 1969 and has served as a trustee of the SAG and/or
 12 the Health Plan for decades. He is also a trustee of the SAG-Producers Pension Plan.
 13 As National Senior Advisor, McGuire has been "instrumental" in negotiating SAG-
 14 AFTRA's CBAs, including each of the three collective bargaining agreements at issue
 15 herein. Prior to his role as SAG-AFTRA's National Senior Advisor, McGuire served
 16 from 2001-2012 as SAG's Senior Advisor, and from 1982 to 2001 as SAG's
 17 Associate National Executive Director. According to SAG-AFTRA's LM-2 Report,
 18 McGuire's total compensation paid by the Union for the May 1, 2019 – April 30, 2020
 19 period was \$240,726. McGuire announced his intent to retire as National Senior
 20 Advisor on February 6, 2021.

21 35. Defendant **DAVID HARTLEY-MARGOLIN** at all times relevant
 22 hereto served as a Union-appointed Health Plan trustee since the 2017 Health Plan
 23 Merger. Hartley-Margolin has served on local and/or national boards of both SAG
 24 and AFTRA since 1987. He also serves as a trustee of the AFTRA Retirement Fund.
 25 Hartley-Margolin was a member of the 2019 Commercials CBA Negotiating
 26 Committee.

27 36. Defendant **MICHAEL PNIEWSKI** at all times relevant hereto served
 28 as a Union-appointed Health Plan trustee. Pniewski previously served as a trustee of

1 the SAG Health Plan from 2014 until the 2017 Health Plan Merger. Pniewski is also
 2 a trustee of the SAG-Producers Pension Plan. Pniewski was a member of the 2020
 3 TV/Theatrical CBA Negotiating Committee, which was the same Negotiating
 4 Committee presented with the 2019 Netflix CBA.

5 37. Defendant **LINDA POWELL** at all times relevant hereto served as a
 6 member of the SAG-AFTRA National Board and as a Union-appointed Health Plan
 7 trustee. She is also a trustee of the SAG-Producers Pension Plan. Powell was a
 8 member of the 2020 TV/Theatrical CBA Negotiating Committee, which was the same
 9 Negotiating Committee presented with the 2019 Netflix CBA. Upon information and
 10 belief, Powell also voted as a member of the National Board to approve the 2019
 11 Commercials, 2019 Netflix and 2020 TV/Theatrical CBAs.

12 38. Defendant **JOHN CARTER BROWN** at all times relevant hereto
 13 served as a Union-appointed Health Plan trustee and as a member of the SAG-AFTRA
 14 National Board. Brown served as a trustee of the SAG Health Plan from 2006 until
 15 the 2017 Health Plan Merger, at which time he began his service as a Health Plan
 16 Trustee. Brown is also a trustee of the SAG-Producers Pension Plan. Upon
 17 information and belief, Brown voted as a member of the National Board to approve
 18 the 2019 Commercials, 2019 Netflix and 2020 TV/Theatrical CBAs.

19 39. Individual Defendants Carteris, White, Crabtree-Ireland, Rodriguez,
 20 McGuire, Hartley-Margolin, Pniewski, Powell and Brown at all times relevant hereto
 21 served as either officers, agents, shop stewards, or other representatives of SAG-
 22 AFTRA as defined under 29 U.S.C. § 402.

23 **IV. SUBSTANTIVE ALLEGATIONS**

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

25 40. The SAG and AFTRA governing boards agreed in January 2012 to
 26 merge the two unions. The merger proposal was ratified by SAG members and by
 27 AFTRA members. In January 2012, pension and health benefits were provided to the
 28 respective members of SAG and AFTRA by separate pension and welfare (health)

1 plans, which were collectively bargained, joint-trusted labor-management trusts
2 subject to ERISA.

3 41. In early June 2016, the respective trustees of the SAG and AFTRA health
4 plans agreed to merge the plans. A *Variety* report stated that the unified health plan
5 would “allow SAG-AFTRA members to combine covered earnings from all SAG-
6 AFTRA contracts toward eligibility for coverage in a single health plan.” *Id.*
7 Individual Defendant Carteris was quoted as saying: “Our members deserve one
8 outstanding health plan and this historic agreement ensures that all earnings under our
9 contracts now credit to a single health plan. . . . [W]e have positioned our health plan
10 to be financially sustainable for all members for years to come.”² Individual
11 Defendant White was quoted as follows: “The new health plan is both comprehensive
12 and 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 42. Similarly, in a letter distributed to Union members in the Summer of
17 2016, Individual 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 offers
automatic family coverage for all participants. The merger will
immediately help thousands of our members seeking eligibility next year
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

24 ² *Id.* Carteris ascended to SAG-AFTRA President on April 9, 2016 following the
25 passing of the Union’s former President, the late Ken Howard, and was elected to the
26 same position on August 14, 2017 and again on August 29, 2019. In July 2021,
27 Carteris announced she would not be seeking re-election as SAG-AFTRA President.
28 See *Gabrielle Carteris Not Seeking Re-Election As SAG-AFTRA President, Backs
Fran Drescher To Succeed Her*, DEADLINE (July 1, 2021), available at <https://deadline.com/2021/07/gabrielle-carteris-not-seeking-reelection-as-sag-aftra-president-is-backing-fran-drescher-to-succeed-her-1234785390/>. On September 2, 2021, Fran
Drescher was elected SAG-AFTRA President.

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

7 43. Effective January 1, 2017, the health plans were merged. The benefits
 8 provided under the merged plan continued Senior Performer Coverage for SAG and
 9 AFTRA members who qualified. Senior Performer Coverage provided the Union
 10 health benefit to all Union members (and their qualified dependents and surviving
 11 spouses) who were receiving a pension from either the SAG-Producers Pension Plan
 12 or the AFTRA Retirement Fund (if eligible for a pension from both, only needed
 13 pension from SAG to qualify), and had a certain number of Union “Retiree Health
 14 Credits” from years of qualifying for active coverage under the health plans.⁴

15 44. Senior Performer Coverage was secondary to Medicare unless the
 16 member regained primary coverage through “Earned Eligibility,” which could be
 17 achieved by meeting the “Covered Earnings” threshold based on the member’s total
 18 compensation for work covered by the operative CBAs, as long as the member’s
 19 earnings included at least \$1 in sessional earnings. This previous method of obtaining
 20 Earned Eligibility credited *both* sessional and residual earnings toward qualifying for
 21 Health Plan primary coverage, with Medicare as the secondary coverage provider.⁵

22
 23
 24 ³ Leading the Charge, SAG-AFTRA Magazine Vol. 5, No. 2 (Summer 2016) at 12,
 available at <http://digital.copcomm.com/i/716514-summer-2016/0?>

25 ⁴ Pursuant to the Health Plan in 2017, pensioners age 65 and older qualified for Senior
 26 Performer Coverage with 20 years of Retiree Health Credits. Pensioners with at least
 27 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.

28 ⁵ Although Plaintiffs are not challenging the aforementioned \$1 requirement
 previously in place, they do not concede it was legally permissible.

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

7 **B. Individual Defendants White, Rodriguez, Pniewski, Hartley-Margolin,**
 8 **McGuire, Brown and Powell Breached their Section 501 Fiduciary**
 9 **Duties In Representing the Union and Membership in Collective**
 Bargaining and Approval

10 46. The Union, by law, is the members' exclusive agent in collective
 11 bargaining. The Union's objectives, as set forth in Article II of the Union Constitution,
 12 includes, among other things, "[i]ncreasing the power and leverage of our members
 13 in their bargaining relationships with the employers in our industries," [o]rganizing
 14 workers in the entertainment and media industries in order to maximize our
 15 bargaining strength," and "[w]ithout limitation, *protecting*, the rights of entertainment
 16 and media artists in all other respects consistent with the overall objectives of the
 17 Union and doing all other things necessary and proper to advance and promote their
 18 welfare and interests." Art. II. §§ A-B, I (emphasis in original).

19 47. The Union Constitution requires the designation of individuals to
 20 represent the Union and membership in collective bargaining with employers. Under
 21 the Union Constitution, the SAG-AFTRA National Board (a) determines the Union's
 22 collective bargaining negotiation objectives and proposal packages, (b) appoints
 23 Wages & Working Conditions ("W&W") Committees to determine the Union's
 24 proposal package and Negotiating Committees to bargain with employers, and (c)
 25 votes whether to approve the CBAs.

26 48. The Union Constitution also requires the National Board submit CBAs
 27 to Union members for ratification that are national in scope with widespread or
 28 industry-wide application affecting a substantial portion of the membership and which

1 the National Board has approved. The Union Constitution also authorizes the National
 2 Board and, in some circumstances, the SAG-AFTRA Local Unions with National
 3 Board approval, to call a strike over collective bargaining.

4 49. Article V, Section A of the Union Constitution provides:

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

8 50. Article V, Section C of the Union Constitution provides:

9 General and Specific Authority

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

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

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

23 52. Article XI, Sections A and B of the Union Constitution provides:

24 A. Conduct of Bargaining

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

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 conducted by mail or electronic means under policies and procedures established by the National Board, or (b) by majority vote of the members voting in meetings held in accordance with policies and procedures established by the National Board.
2. Membership ratification shall not be required for any collective bargaining agreement that the National Board determines is not to be used in widespread or industry-wide application affecting a substantial portion of the membership and interim contracts that are of short duration or that reflect the Union's last, best and final offer to an existing employer or employer group. Such agreements shall require approval by either sixty percent (60%) of the votes of the National Board present and voting or sixty percent (60%) of the votes of the Executive Committee present and voting. This provision shall not affect Local collective bargaining agreements that are subject to ratification by the affected members of the Local pursuant to the Local Constitution.

53. Article XI(E) provides:

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

54. The CBAs between the Union and the employers determine the elements of compensation and value provided to Union members for their work as performers, including, among other things, the amount of new money, the amount of contributions by employers to the benefit plans (including the Health Plan) based on members'

1 earnings, and potential diversions of wage increases to other funding such as the
2 Health Plan.

3 55. Individual Defendants Crabtree-Ireland, White, Rodriguez, Pniewski,
4 Hartley-Margolin, McGuire, Brown and Powell were at all relevant times Union-
5 appointed trustees of the Health Plan. Article III of the Health Plan Trust Agreement
6 provides Union trustees shall be appointed by SAG-AFTRA and may remove and
7 replace Union trustees at any time in its discretion with or without cause. Article V
8 Section (C)(2)(m) of the Union Constitution vests the National Board with the specific
9 power to appoint and remove the Union trustees of the Health Plan.

10 56. Individual Defendants White, Rodriguez, Pniewski, Hartley-Margolin,
11 McGuire, Powell and Brown also accepted positions as representatives of and
12 represented the Union and membership in one or more of the 2019 Commercials, 2019
13 Netflix and 2020 TV/Theatrical collective bargaining and approval processes, and
14 thus were bound by Section 501 fiduciary duties and held to the highest ethical
15 standard in positions of trust to the Union and membership.

16 57. Individual Defendants White, Rodriguez, Pniewski, Hartley-Margolin,
17 McGuire, Brown and Powell knew when they accepted positions to act as
18 representatives of the Union and membership in the three 2019 and 2020 CBA
19 negotiations and approvals, through their service as Health Plan trustees, that the
20 Health Plan's funding condition was dire and worsening. They knew the plan's
21 income was insufficient to support the Union health benefit structure, the plan's
22 reserves were diminishing and the Health Plan trustees were planning massive cuts
23 targeting Senior members to balance plan income and costs. The Health Plan Trust
24 Agreement requires the Health Plan trustees to receive and evaluate projections
25 concerning the sustainability of the benefit structure at every trustee board meeting.
26 Article XIII of the SAG-AFTRA Health Plan Trust Agreement required the trustees
27 to engage a Benefit Consultant and to "at all times endeavor to maintain twelve (12)
28 months" of benefit and administrative expenses, as projected by the Benefit

1 Consultant, that the plan's reserves will fund the plan of benefits and its operations,
2 and to receive and evaluate projections at every trustee board meeting. Art. XIII § 1;
3 Art. I § 13.

4 58. Shortly after the announcement of the Benefit Cuts, Health Plan trustee
5 Richard Masur in fact revealed during a Health Plan webinar that the Health Plan
6 trustees had known of the dire and worsening condition of the Health Plan for two
7 years, and Health Plan trustee Barry Gordon stated that the Health Plan trustees had
8 worked nearly every day for those two years to figure out how they could preserve
9 the Health Plan's benefits. This stark admission naturally outraged the membership.
10 Apparently recognizing the gravity of the revelation, Estrada, Masur and Gordon
11 changed the narrative concerning the Health Plan trustees' knowledge in subsequent
12 webinars, incredibly implying the Health Plan trustees had only very recently known
13 the dire condition of the Health Plan funding and dramatic changes planned to address
14 funding by targeting seniors. Logic dictates that Gordon and Masur's original
15 revelation that the Health Plan trustees knew the previously hidden information for
16 two years is true.

17 59. Individual Defendants White, Rodriguez, McGuire, Hartley-Margolin,
18 Pniewski and Powell accepted the Union's proposal packages and bargained the
19 CBAs' terms. Defendants Powell and Brown accepted the CBAs' terms and voted to
20 approve the CBAs.

21 60. The 2019 Commercials and 2020 TV/Theatrical collective bargaining
22 processes were generally similar and followed past practice. The National Board
23 appointed a W&W Committee to formulate and value the Union's proposal package.
24 The W&W Committee formulated and valued the Union's proposal package for
25 members. The National Board appointed the Negotiating Committee, which
26 represented the Union and membership in presenting the proposal package to the
27 employers and bargaining the terms that determined Union members' wages, working
28 conditions and, most importantly, benefits and funding of the Health Plan. The

1 Negotiating Committee valued the negotiated terms for Union and membership. The
2 bargained terms were submitted to the National Board for approval. The CBAs were
3 approved by the National Board and were submitted to the Union members for
4 ratification.

5 61. The 2019 Netflix CBA proposal was negotiated entirely by Union staff
6 and was submitted to the 2020 TV/Theatrical Negotiating Committee as a take-it-or-
7 leave-it proposition. The 2019 Netflix CBA was submitted to and approved by the
8 National Board on July 20, 2019. The 2019 Netflix CBA was not submitted to the
9 membership for ratification.

10 62. The 2019 Commercials CBA was negotiated from February 20 to April
11 2, 2019, presented to the National Board for approval on April 13, 2019, and ratified
12 by members on May 8, 2019. The 2019 Commercials CBA is effective from April 1,
13 2019 to March 31, 2022. Individual Defendants White and Rodriguez, in their
14 respective Union representative roles as National Executive Director and Chief
15 Contracts Officer, participated in the 2019 Commercials W&W Committee's
16 determination of valuation of the Union's proposal package. Individual Defendant
17 Hartley-Margolin participated as a voting member on both the 2019 Commercials
18 W&W Committee and the 2019 Commercials Negotiating Committee. Individual
19 Defendants White and Rodriguez represented the Union and membership as lead
20 negotiators in bargaining the 2019 Commercials CBA with the employers. Individual
21 Defendants Powell and Brown represented the Union and membership in voting as
22 National Board members to approve the 2019 Commercials CBA.

23 63. The 2019 Netflix CBA, contrary to all past practice, was covertly
24 negotiated by SAG-AFTRA staff (unbeknownst to the negotiating teams), led by
25 Individual Defendants White and Rodriguez and presented to the full 2020
26 TV/Theatrical Negotiating Team as a take-it-or-leave-it proposition. The 2019 Netflix
27 CBA was approved by the National Board on July 20, 2019 and not put to a
28

1 membership ratification vote, despite the obviously national scope of the CBA. The
2 2019 Netflix CBA is effective from August 1, 2019 to June 30, 2022.

3 64. The 2020 TV/Theatrical CBA was negotiated from April 27 to June 11,
4 2020, during the COVID-19 pandemic. The 2020 TV/Theatrical proposal package
5 was approved by the National Board on July 21, 2019. The 2020 TV/Theatrical CBA
6 was approved by the National Board on June 29, 2020 and submitted it to the members
7 for ratification where it was approved on July 22, 2020. Three weeks after the 2020
8 TV/Theatrical CBA was ratified, on August 12, 2020, Union members learned the
9 Health Plan was and for years had been worsening to near financial collapse. The
10 2020 TV/Theatrical CBA is effective from July 1, 2020 to June 30, 2023.

11 65. Individual Defendants White, Rodriguez and McGuire represented the
12 Union and membership in the negotiations for all three CBAs, with White and
13 Rodriguez serving as lead negotiators. Individual Defendant Hartley-Margolin
14 represented the Union and membership in the negotiations concerning the 2019
15 Commercials CBA. Individual Defendants Powell and Pniewski represented the
16 Union and membership in the negotiation of the 2020 TV/Theatrical CBA. Individual
17 Defendants Powell and Brown represented the Union and membership in voting as
18 National Board members to approve the 2019 Commercials, 2019 Netflix and 2020
19 TV/Theatrical CBAs.

20 66. In representing the Union and membership, the Individual Defendants
21 knew but hid from the other representatives and the membership vitally material
22 information, including the funding needed to sustain the Health Plan's benefit
23 structure, the inadequacy of the proposal packages and the ultimately negotiated CBA
24 terms to sustain this benefit structure, and the fundamental drastic changes to the
25 benefit structure all Union members would soon face under the terms of the proposal
26 packages and ultimately negotiated terms, which would result in the discriminatory
27 elimination of the Health Plan's benefit for thousands of Union members and their
28 families. With their hidden knowledge of vitally material information, Individual

Defendants White, Rodriguez, McGuire, Hartley-Margolin, Pniewski, Powell and Brown also misleadingly accepted and approved the inadequate proposal packages and ultimately negotiated terms. Likewise, Individual Defendants Powell and Brown misleadingly voted as National Board members representing the Union and membership to approve the 2019 Commercials, 2019 Netflix and 2020 TV/Theatrical CBAs without disclosing the material information they knew.

67. Further, the Union sent postcards to its members urging Union members to “Vote Yes,” to approve the 2020 TV/Theatrical CBA. The post cards touted the 2020 TV/Theatrical CBA as providing “transformative gains,” increases of “up to \$54 million” to the Health Plan and “26% increase in fixed streaming residuals.” Individual Defendant Carteris reiterated these “transformative gains” in a video posted by the Union on July 18, 2020:⁶

I’m here to talk to you about our TV/Theatrical Contract and I want to encourage you to please be informed. Be informed, and then vote. You know, there’s a lot of false information out there about this new deal. As your union leader and a participant in the negotiations, I want you to know this deal is record-breaking. It is actually a bridge to the future. It’s a \$318 million overall deal with a 26% increase in fixed residuals for streaming, it has . . . a \$54 million increase in contributions to our health plan

You know, your SAG-AFTRA National Board – we went and we talked to them about it, they analyzed the agreement and they approved it by a super majority and they recommend it with a “yes” vote just like I do. So time is running out. Please vote Join me and your National Board and vote “yes.” Strength in unity, and to the future. Thank you.

68. The membership was not informed that the “up to \$54 million” was insufficient to sustain the SAG-AFTRA Health Plan’s benefits or that residual earnings would no longer count toward earnings eligibility for Union members age 65 and older after taking a Union pension. Nor were members told that in a mere three weeks after ratifying the TV/Theatrical CBA they would lose their Union healthcare funded by the CBA they ratified. Notably, the theme of the 2020 TV/Theatrical negotiations was “Do no harm.”

⁶ *SAG-AFTRA President Gabrielle Carteris Encourages Members to Vote*, YOUTUBE (July 18, 2020), available at <https://youtu.be/7Axi122Stkw>.

69. Similarly, an April 2, 2019 report by *SHOOTonline* quoted several of the Individual Defendants on the 2019 Commercials CBA as follows:

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

SAG-AFTRA national executive director and chief negotiator David White said, “President Carteris and this member negotiating committee worked diligently for more than two years to prepare and negotiate this transformative agreement. Representing members from across the country, they worked relentlessly to design real solutions to the challenges facing the advertising industry. I also want to recognize the extraordinary work of the negotiations staff, in particular chief contracts officer Ray Rodriguez, chief economist David Viviano, associate national executive director Mathis Dunn, sr. advisor John 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.”⁷

70. On July 24, 2019, Individual Defendant Carteris provided her 100-word statement soliciting membership votes to re-elect her to the position of Union President. In doing so, Carteris touted the Commercials and Netflix CBAs wins to her personal credit:

I’m asking for your vote because SAG-AFTRA has a huge impact on performers’ ability to make a living and I’m experienced in making positive changes for members. I led the groundbreaking Commercials negotiations, the NLRB victory during the BBH strike, and fought for industry respect for members working background. I’ve championed legislation to eliminate sexual harassment, ageism on IMDb, and to protect members’ digital image/voice rights. Negotiated a direct, comprehensive agreement with Netflix that eliminates free bargaining in low budget SVOD, improves protections against outrageous exclusivity terms/options, and for the first time covers performance capture.

71. The Union membership was notified of the Benefit Cuts on August 12, 2020. The National Board was informed on August 11, 2020. In Zoom webinars for Union members following the August 2020 announcement of the Benefit Cuts, Health

⁷ *SAG-AFTRA, JPC Reach Tentative Deal on Commercials Contracts*, SHOOTONLINE (Apr. 2, 2019), available at <https://www.shootonline.com/news/sag-aftra-jpc-reach-tentative-deal-commercials-contracts>

1 Plan CEO Michael Estrada, Individual Defendant White and Health Plan trustees
 2 Masur and Gordon confirmed the material importance of hidden information and
 3 resulting injury to the Union and membership. According to an August 18, 2020
 4 *Deadline* report, Estrada, White, Masur and Gordon told Union members that
 5 employer contributions set by SAG-AFTRA's CBAs had not kept up with the cost of
 6 health coverage to the 33,000 participants and their 32,000 family members.⁸

7 72. Had the hidden information regarding the Health Plan funding needs and
 8 acute financial condition been disclosed in the three CBA negotiations and approvals
 9 in 2019 and 2020 by the Individual Defendants to the other Union representatives,
 10 which far outnumbered the Individual Defendants, the Union negotiators would have
 11 had to make greater funding to the Health Plan an essential objective in the CBAs by
 12 one or more of the available means. Available means included greater employer
 13 contributions to the Health Plan based on members' earnings, increased contribution
 14 caps (that have not been raised in 40 years), a greater allocation to the Health Plan
 15 versus the pension plans, wage increase diversions to the Health Plan or a direct
 16 funding by employers to cover or reduce the Health Plan deficit.

17 73. David Jolliffe represented the Union and membership as a voting
 18 member of the Negotiating Committees and a member of the National Board in the
 19 2019 and 2020 CBA negotiations and approvals. Mr. Jolliffe is the longest-tenured
 20 member of the Union Negotiating Committees. Mr. Jolliffe is a named plaintiff in
 21 *Asner*, which alleges, among other things, the Health Plan trustees who represented
 22 the Union and membership in the CBA negotiations and approvals hid vitally material
 23 information from the other representatives regarding the funding condition of the
 24 Health Plan. Had Mr. Jolliffe known the hidden information, he would have had to
 25

26
 27 ⁸ *SAG-AFTRA Health Plan Trustees Say Employer Contributions Haven't Kept Up*
 28 *With Soaring Health Care Costs*, DEADLINE (Aug. 18, 2020),
<https://deadline.com/2020/08/sag-aftra-health-plan-trustees-say-employer-contributions-havent-kept-up-with-soaring-health-care-costs-1203016867/>.

1 make the Health Plan's dire funding crisis an essential objective to address in the
2 CBAs.

3 74. As of the date hereof, the Union process is underway for the new
4 Commercials CBA. Undoubtedly, the previously hidden financial information and
5 condition of the Health Plan is driving the essential objectives and process, as it would
6 have done in 2019 and 2020.

7 75. In mid-2021 bargaining, the Alliance of Motion Picture and Television
8 Producers (AMPTP) proposed changes to the International Alliance of Theatrical
9 Stage Employees (IATSE) bargainers that would make it more difficult for workers
10 to qualify for pensions. The IATSE health plan, like the Health plan here, faced a
11 deficit and diminishing reserve in the midst of the pandemic. The union came to the
12 bargaining table demanding sustainable benefits. The agreement reached between the
13 union and employers to avert a strike included, in addition to wage increases and other
14 benefits, the employers' agreement to fund a \$400 million deficit in the IATSE
15 pension and health plan without imposing premiums or increasing the cost of health
16 coverage.

17 76. Had the National Board learned the information hidden by the Individual
18 Defendants from the other representatives prior to voting on the CBAs, the National
19 Board would have known the Union health benefit was doomed under the CBAs,
20 which would have been a central issue for fiduciary consideration and debate, and if
21 the CBAs were nevertheless approved, the dooming of the Union health benefit would
22 have been by the hand of the National Board. It is beyond doubt the National Board
23 approval processes would have been different had the National Board known the
24 hidden information regarding such a vitally important interest of members and their
25 families' healthcare.

26 77. As with the National Board, had the membership known the CBAs
27 would doom the Union health coverage for thousands of members and their families
28 prior to the membership ratification voting, the ballot process and debate would

1 undoubtedly have been materially different. The importance and materiality of the
2 hidden information to the membership is starkly evidenced by the panic and outrage
3 of members immediately following the announcement of the Benefit Cuts, as alleged
4 below.

5 78. The materiality of the information hidden by the Fund Defendants is
6 further evinced by the outrage and panic of the membership immediately following
7 the announcement of the Benefit Cuts, as alleged below.

8 **C. Individual Defendant White Breached his Section 501 Fiduciary Duty by**
9 **Misleadingly Omitting Material Benefits Information in**
10 **Communicating With the Membership**

11 79. On April 1, 2020, Defendants Carteris and White, representing the
12 Union, announced to the membership a three-month reduction in SAG-AFTRA
13 Health Plan premiums and extension of the Union dues deadline, in response to the
14 COVID-19 pandemic, to ease members stressed earnings condition and limited
15 earnings opportunities. They did not disclose or imply that dramatic changes were
16 coming to the Health Plan benefit structure that would fundamentally change the
17 eligibility rules and effectively drop thousands of mostly older Union members from
18 the Health Plan. The TV/Theatrical CBA had not yet been approved by the Union
19 National Board or ratified by the membership.

20 80. At least Individual Defendant White knew from his service as a Health
21 Plan trustee that draconian coverage cuts were imminent and would include eligibility
22 changes that would require increased and, in some cases, accelerated earnings by
23 members. White misleadingly withheld this material information, which would have
24 been a material caveat to the announced suspensions, in breach of his Section 501
25 fiduciary duty.

26 81. The Union and the membership as a whole were injured by the
27 membership's lost opportunity to scramble for scarce earnings ahead of the imminent
28 dramatic benefit changes, and the inability of the National Board and membership to
make an informed vote on the TV/Theatrical CBA.

D. Individual Defendants Carteris, White and Crabtree-Ireland Breached their Section 501 Fiduciary Duties By Abusing their Leadership Positions and Union Assets and Machinery to Advance their and Personal Interests

82. Following the announcement of the Benefit Cuts in August 2020, Individual Defendant Carteris was Union President; Individual Defendant White was Union Executive Director; and Individual Defendant Crabtree-Ireland was Union General Counsel. In these positions, these Individual Defendants represented the Union and membership and had the ability to control and deploy the resources and machinery of the Union.

83. The revelation of the previously hidden vital information concerning the Union health coverage and the sudden dramatic benefit changes immediately sparked panic and outrage by members. Plaintiff Fisher and other Union members formed the SOS Health Plan team and launched SOSHealthPlan.com as a means of providing clarity to Union members affected by the Benefit Cuts by, among other things: offering comprehensive information on the Benefit Cuts, educating participants on secondary health insurance options apart from Via Benefits (Health Plan's promoted provider), providing Union members with periodic email updates, and fostering member communication by way of a platform for rank-and-file and high-profile Union members alike to speak out about the Benefit Cuts via videos and testimonials. Unlike Individual Defendants Carteris, White and Crabtree-Ireland, Plaintiff Fisher and the SOS Health Plan Team did not have control or access to the Union communication machinery to blast information to all members. The SOS Health Plan website and social media pages on Twitter, Instagram and Facebook allowed Union members to have their questions answered, interact socially and express their views on the Benefit Cuts. SOS Health Plan also partnered with social media powerhouse Eleven Films to make a social media video featuring over 20 high-profile and rank-

1 and-file Union members speaking out about the draconian changes to the SAG-
2 AFTRA Health Plan.⁹

3 84. SOS Health Plan also held two nationwide virtual “town hall” meetings
4 advertised via word-of-mouth that were open to all Union members and the public.
5 The virtual town halls were co-led by Plaintiff (First Vice President of the SAG-
6 AFTRA Los Angeles Local), Patricia Richardson (President of the Los Angeles
7 Local), and Mr. Jolliffe (Second Vice President of the Los Angeles Local) and run by
8 Shaan Sharma (Los Angeles Local Board Member), their purpose being to hear from
9 the Union members and listen to their concerns. The Los Angeles Local is the Union’s
10 largest local, representing approximately 80,000 members, or 50% of the Union.
11 Together, Plaintiff Fisher, Ms. Richardson and Mr. Jolliffe are the top three officers
12 of the Los Angeles Local. The first town hall took place on August 14, 2020 —just
13 two days after the Benefit Cuts were announced— garnered approximately 600
14 attendees and lasted eight hours. The second, held August 21, 2020, garnered
15 approximately 500 attendees and lasted seven hours. Each of the meetings continued
16 until every single question was asked and answered. After compiling the suggestions
17 from Union members and hearing their heartbreaking stories and feelings of betrayal
18 by their Union, the Los Angeles leadership undertook to explore potential legal
19 redress which ultimately led to the *Asner* action.

20 85. On December 1, 2020, participants in the Health Plan brought the *Asner*
21 action in this Court asserting breaches of fiduciary duty against the Health Plan
22 trustees relating to the 2017 Health Plan Merger that ultimately led to the August 12,
23

24 _____
25 ⁹ On December 1, 2020, SOS Health Plan, together with Eleven Films, released a
26 video featuring union members relating to the Benefit Cuts. Members in the video
27 include Clancy Brown, Elaine Hendrix, Lisa Ann Walker, Morgan Freeman, Vincent
28 D'Onofrio, Amy Schumer, Martin Sheen, Elliott Gould, Connie Stevens, Jack Kehler,
Mark Hamill, Ed Asner, Matthew Modine, Kirk Acevedo, Leslie Ann Warren, Jodi
Long, Lea Thompson, Frances Fisher, Shirley Jones, Whoopi Goldberg, Rick
Overton, Barbara Niven, and Carol Kane. See SOS Healthplan Eleven Films,
YOUTUBE (Dec. 1, 2020), available at <https://youtu.be/4LgRxJnxI8o>.

2020 Benefit Cuts. Individual Defendants White, Rodriguez, Pniewski, Hartley-Margolin, McGuire, Brown and Powell are defendants in *Asner*.

86. In response, Individual Defendants Carteris, White and Crabtree-Ireland deployed the Union's resources and machinery to attempt to stifle and intimidate the righteously panicked and outraged members. On December 4, 2020, the Union disseminated the following email to participants:

Dear [Member],

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

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

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

1. Without significant changes, the SAG-AFTRA Health Plan's reserves would have vanished for ALL participants by 2024. Ask yourself this: Why would the Health Plan want to reduce coverage for members if there was any other option?
2. Senior Performers are not losing their healthcare coverage; 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.
3. Spouses aren't getting "kicked off" the plan. If you meet eligibility requirements and your spouse DOES NOT have access to their own employer-sponsored health plan, your spouse can still be covered by the SAG-AFTRA Health Plan. If they are covered by their own employer-sponsored health plan, they will also be eligible for secondary coverage under the SAG-AFTRA Health Plan.
4. There's a new reduced cost COBRA safety net available specifically designed to help ease the transition for many participants. Those who qualify will be eligible to maintain

1 their SAG-AFTRA Health Plan coverage with significantly
 2 reduced COBRA premiums — at only 20% of the regular
 3 COBRA premium — for 12-18 months after their current
 4 eligibility expires. For detailed information, please visit
 sagafraplan.org/health.

- 5 5. The idea that premium increases or higher employer
 6 contributions alone could have fixed the Health Plan is simply
 7 wrong. The root of the problem is the exorbitant cost of
 8 healthcare — a problem made worse by our industry's
 9 production shutdown due to the pandemic crisis. The cost of
 10 healthcare remains a top issue for Americans, and the SAG-
 AFTRA Health Plan is not immune from this and other
 economic forces. Structural changes were required to put the
 Plan on a secure footing now and into the future.

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

15 In unity,

16 SAG-AFTRA

17 87. In response to Individual Defendants Carteris, White and Crabtree-
 18 Ireland's self-serving mass messaging, on December 6, 2020, SOS Health Plan
 19 released the following through its far more limited means:

20 **Dear Member Participant,**

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

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

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

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

27 **Let us guide you through the five misleading points put forth.**
 28

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

5 **We ask the same question.**

6 **There were options:**

- 7 • **Direct more money into the Health Plan through**
 8 **recent Contract Negotiations. (2019 Commercials,**
 9 **2019 Netflix and 2020 TV/Theatrical)**
- 10 • **Change the premium structure.**
- 11 • **Add a new option with a higher earnings threshold.**
- 12 • **Use our reserves for their intended purpose: To**
 13 **mitigate the consequences of an emergency, in this**
 14 **case, the Pandemic.**

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

18 **Seniors absolutely will be losing their SAG-AFTRA**
 19 **Healthcare coverage:**

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

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

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

1 Spouses are getting “kicked off” the plan.

- 2 • If a spouse's employer offers health insurance, that
- 3 spouse must take that plan as primary, even if it's
- 4 more expensive and has inferior benefits.
- 5 • Spouses of living participants over 65 with 20 or
- 6 more pension credits will be losing their SAG-
- 7 AFTRA secondary insurance, along with the actual
- 8 participant.
- 9 • Members with 20 or more pension credits were
- 10 promised their widowed spouses would have lifetime
- 11 SAG-AFTRA secondary health coverage at 65, until
- 12 remarriage or demise. That promise has been
- 13 broken.
- 14 • Spouses over 65 also are losing their SAG-AFTRA
- 15 primary coverage when their participant spouse
- 16 loses coverage because residuals are no longer
- 17 credited.

18 4. The Union says: *There's a new reduced cost COBRA safety net*

19 *available specifically designed to help ease the transition for*

20 *many participants.*

21 The referenced reduced COBRA rates are still more expensive

22 than the new ACTIVE or Plan 2 rates.

- 23 • The reduced cost COVID Relief COBRA coverage
- 24 costs between 54% (for an individual) and 213% (for
- 25 a family with 2 or more dependents) more than the
- 26 previous Plan II coverage.*
- 27 • The new Extended Benefits Cobra coverage for
- 28 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.

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

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

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

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

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

18 We agree.

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

21 We certainly agree that structural changes are required.

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

24 What has led to "anger and frustration" are the draconian
25 changes that harmed thousands of Participants. In 2017 SAG
26 and AFTRA Health Plan Participants were assured the new
27 SAG-AFTRA Health Plan would "be financially sustainable
28 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

88. Individual Defendants Carteris, White and Crabtree-Ireland continued to use their positions to deploy the Union machinery and resources in self-service to attempt to stifle and intimidate righteously outraged and panicked members. On December 14, 2020, at the direction of Individual 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 essential that SAG-AFTRA’s members are provided with accurate information about those changes, and

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

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

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

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

89. Individual Defendants Carteris and White further directed Union staff to disseminate a press release concerning the resolution. The resolution was included in the release, which stated in pertinent part:

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

SAG-AFTRA President Gabrielle Carteris said, “We have grown increasingly concerned about the flood of misleading information being spread by certain websites and social media accounts about our Health Plan,” said SAG-AFTRA President Gabrielle Carteris. “Like many

1 scams that target the elderly, the misinformation being spread is
 2 endangering our most vulnerable members. By directing Plan
 3 participants to unofficial websites rather than the Plan’s official, vetted
 4 and accurate website, they are confusing people who need to connect
 5 with the Plan to ensure they have appropriately transitioned to their new
 6 coverage. Further, efforts to minimize the importance of the 80%
 7 COBRA premium discount the Plan is offering for transitioning
 8 participants are preventing eligible participants from reaching out to
 9 benefit from this crucial transition program.”

10 Citing multiple instances in which members, many of them Senior
 11 Performers, reached out about misleading information and accusations
 12 regarding Health Plan changes, numerous board members from across
 13 the country expressed their disappointment with those individuals who
 14 are leading the misinformation campaign and outrage with their actions,
 15 and urged the board to direct the union to protect its membership by
 16 ensuring accuracy around the changes.¹⁰

17 90. Tellingly, no steps were ever taken pursuant to the intimidating, self-
 18 serving resolution “to ensure that members are not deceived,” since no such deception
 19 in fact was occurring. Also on December 14, 2020, the SAG-AFTRA
 20 Communications Department released a video of SAG-AFTRA member Adam Arkin
 21 “discussing Five Facts about the Health Plan change” with links to the aforementioned
 22 December 4, 2020 Union message and the Union’s December 14, 2020 press
 23 release.¹¹

24 91. Individual Defendants Carteris, White and Crabtree-Ireland had material
 25 special personal interests in defending the CBAs and actions of the Health Plan
 26 trustees in representing the Union and membership in the CBAs and having hidden
 27 vitally crucial information for years while plotting an ambush with the draconian
 28 Benefit Cuts. As alleged herein, White and Crabtree-Ireland were at all relevant times
 29 Health Plan trustees who represented the Union and membership in the CBAs, and

¹⁰ *SAG-AFTRA National Board Passes Resolutions to Ensure Accuracy of Information about Health Plan Changes and Institute New Membership Rule Regarding COVID-19 Safety Protocols*, SAG-AFTRA NEWS UPDATES (Dec. 14, 2020) (archived from Feb. 6, 2021), available at <https://web.archive.org/web/20210206034245/https://www.sagaftra.org/sag-aftra-national-board-passes-resolutions-ensure-accuracy-information-about-health-plan-changes>.

¹¹ *Five Facts You Should Know About the SAG-AFTRA Health Plan*, SAG-AFTRA (Dec. 14, 2020), <https://www.sagaftra.org/facts-matter-adam-arkin-sag-aftra-health-plan>.

1 are defendants in *Asner*. Carteris and White touted the CBAs as great personal
2 achievements and successes for the Union and membership, and announced the
3 payment suspensions in April 2020 to ease member burdens without the vital caveat
4 that major changes were imminent that would require members to scramble for
5 earnings. These interests directly conflicted with the interests of the Union and
6 membership in holding Union representatives accountable for betraying their
7 positions of trust at the expense of the Union and membership.

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

17 93. In response to the Demand, Individual Defendants Carteris, White and
18 Crabtree-Ireland further disloyally abused their fiduciary positions and the assets and
19 machinery of the Union to protect themselves and obstruct efforts to hold Union
20 representatives, including themselves, accountable. On December 28, 2020, Jeffrey
21 Bennett, SAG-AFTRA Chief Deputy General Counsel, who reports to Crabtree-
22 Ireland, wrote to Plaintiff:

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

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

27 All questions and communications regarding this matter should be
28 addressed to me.

94. On February 5, 2021, Susan Davis of CWS contacted Plaintiff Fisher to
discuss the February 6, 2021 meeting. CWS is representing Individual Defendants

1 Crabtree-Ireland, White, Rodriguez, Pniewski, Hartley-Margolin, McGuire, Brown
2 and Powell and others in the *Asner* action. Davis informed Plaintiff Fisher that
3 Plaintiff Fisher would be requested at the meeting to present the Demand and would
4 then be directed to recuse herself from the meeting during Davis’s “presentation” to
5 the National Board, of which Plaintiff Fisher is a member. Davis also informed
6 Plaintiff Fisher that the Health Plan trustees, too, would be recused, demonstrating
7 Davis knew CWS’s clients committed the misconduct alleged by Plaintiff Fisher.
8 Plaintiff Fisher requested Davis to provide the basis and authority supporting recusal.
9 Davis did not respond.

10 95. At the meeting, Plaintiff Fisher followed CWS’s instruction and
11 involuntarily recused herself from the discussion, reserving all rights. Not
12 surprisingly, CWS recommended the National Board vote against proceeding with the
13 claims against the members of Union leadership for the alleged misconduct.
14 Incredibly, the National Board did not receive any materials relating to the Demand,
15 or any materials or information relating to the roles of members of Union leadership
16 in the CBA negotiations or reflecting CWS’s pre-meeting work on the Demand
17 leading to its recommendation to reject the Demand. It is also reasonable to infer CWS
18 conducted no factual investigation or interviews with CWS’s clients, the Union-
19 appointed Health Plan trustees or Plaintiff Fisher’s allegations given CWS’s existing
20 attorney-client relationship with these same individuals in *Asner*.

21 96. The engagement of CWS to address the Demand and advise the National
22 Board and the use of Union assets to do so constituted a breach by Carteris, White
23 and Crabtree-Ireland of their Section 501 fiduciary duties. CWS at the time of the
24 engagement was actively defending Individual Defendants White, Rodriguez,
25 Pniewski, Hartley-Margolin, McGuire, Brown, Crabtree-Ireland and Powell in *Asner*
26 for conduct Plaintiff Fisher challenged by the Demand. Unlike circumstances in
27 which courts have permitted counsel to represent the union and representatives
28 simultaneously until the disposition motions to dismiss claims based on pleadings,

1 CWS was engaged to address the Demand and advise the National Board whether the
2 Union should proceed with claims against CWS's clients to hold them accountable to
3 the Union and membership. Under the circumstances, neither Carteris, White,
4 Crabtree-Ireland nor CWS could have reasonably concluded CWS's representation of
5 Individual Defendants in *Asner* and information acquired therein was not a material
6 conflict and limitation on CWS's capacity to independently investigate and advise the
7 National Board on the Demand.

8 97. At the February 6, 2021 SAG-AFTRA National Board meeting, Plaintiff
9 Fisher stated she believed the Demand did not impair her capacity or duty impartially
10 to evaluate and consider the Demand and related information as a SAG-AFTRA
11 National Board member and therefore she would comply with the recusal directive
12 but only on an involuntary basis reserving all rights. Following a presentation by CWS
13 and related discussions, during which Plaintiff Fisher was recused, the National Board
14 voted to reject the Demand. Neither the Demand, other materials relating to the
15 Demand, nor CWS's work related to the Demand was provided to the National Board
16 prior to or at the February 6 meeting.

17 98. Defendant Carteris was the Chair of all three CBA Negotiating
18 Committees. If she was aware of the withheld information at the time of her
19 negotiation and approval processes, she should have used her office and authority as
20 Union President to ensure the withheld information was conveyed to all Union
21 representatives and National Board members. If she was unaware of the withheld
22 information at the time of her negotiation and approval processes, she had a duty to
23 hold Individual Defendants accountable to the Union.

24 99. The Union and membership as a whole were injured by the use of Union
25 assets and machinery by Individual Defendants Carteris, White and Crabtree-Ireland
26 of the machinery and assets of the Union to protect and advance their personal
27 interests adverse to the interests of the Union and membership to hold them
28 accountable.

1 **E. The Union Breached its Duty of Fair Representation**

2 100. The Union, by the actions and omissions of the Individual Defendants as
3 its designated agents and representatives, breached the DFR in the Union CBA
4 processes and deprived Plaintiffs and the membership of the benefits and rights of a
5 fully informed collective bargaining process in accordance with the Constitution.

6 101. The DFR requires rational action by the Union in collective
7 representation. Individual Defendants White, Rodriguez, McGuire, Hartley-
8 Margolin, Pniewski, Brown and Powell accepted appointments by the National Board
9 to represent the Union and membership in the 2019 and 2020 CBA processes,
10 accepted and approved Union proposal packages and negotiated terms and/or voted
11 as National Board members to approve the CBAs and to submit the CBAs to the
12 membership for ratification, without disclosing vitally material information
13 concerning health plan funding and the sustainability of the benefit structure to the
14 other representatives and membership, knowing the hidden information was vitally
15 material to members rights and the terms were insufficient to sustain the health benefit
16 structure. Individual Defendant Crabtree-Ireland oversaw the CBA processes.

17 102. The Union's actions were arbitrary or in bad faith. The CBA processes
18 mandated by the Constitution to determine members rights is not discretionary and
19 vitally requires rational determinations relating to the fundamental rights of Members
20 at stake. It is not rational for the Union to negotiate and approve members' rights
21 under the CBAs without an informed understanding of the rights and value to
22 members at stake and the known consequences. The health benefit funding
23 information known but withheld from the CBA processes by the Union was vitally
24 material to this, and the actions by the Individual Defendants as agents of the Union
25 to accept and approve terms they knew were insufficient to sustain the benefit
26 structure were materially misleading. That none of the Individual Defendants
27 disclosed this information to the other Union negotiators or National Board members
28

1 or members supports an inference of bad faith in a conspiracy of silence and
2 acceptance.

3 103. Plaintiffs had no indication the CBA processes had not provided needed
4 funding for the health benefit structure prior to the August 2020 Benefit Cuts
5 announcement. Individual Defendant White told members in June 2016 that the
6 merger of the SAG and AFTRA health plans would strengthen the financial condition
7 of the combined Health Plan and ensure comprehensive benefits for all participants.
8 The Union and Individual Defendants Carteris and White boasted about the CBA
9 achievements and in 2016 Carteris boasted that the health plans merger had
10 “positioned our health plan to be financially sustainable for all members for years to
11 come.” The Benefit Cuts were announced without prior warning, although the Health
12 Plan trustees knew for at least two-years, but hid that the benefit structure was not
13 sustainable due to a fatal funding gap. This case was filed only ten months later.

14 104. The allegations herein support a plausible claim that although the Benefit
15 Cuts were announced in August 2020, the limitations period was tolled by the Union’s
16 affirmative denial and obfuscation of misconduct and injury and the conflicted sham
17 review of Plaintiff Fisher’s Demand for the National Board to address the misconduct,
18 until February 5, 2021, when Plaintiff Fisher discovered that her good-faith effort to
19 address the misconduct and injury through the National Board mechanism was futile.
20 Immediately after members filed in *Asner* on December 1, 2020 asserting misconduct
21 by Health Plan trustees in the CBA processes, Union officials including Individual
22 Defendants Carteris, White and Crabtree-Ireland caused the Union to engage in a
23 sustained effort to deny and obfuscate the allegations by members, to protect and
24 advance their personal interests. In response, Plaintiff Fisher promptly made her
25 December 18, 2020 Demand for the Union and National Board to address the
26 misconduct on which the DFR claim is based, by bringing claims under Section 501
27 to hold Union representatives accountable. Plaintiff Fisher’s presentation of the
28 alleged misconduct to the National Board was not required by the NLRA but, under

1 the Union Constitution, the National Board is vested with authority to “determin[e] .
2 . . the relations and obligations of the members, the Union and the locals, and the
3 carrying out of the objectives of the Union, . . .”

4 105. As alleged herein, Individual Defendants Carteris, White and Crabtree-
5 Ireland disloyally misused their positions and Union resources to engage CWS to
6 address the Demand, and to advise the National Board and provide a recommendation
7 at the February 6 meeting despite the obviously fundamental conflict and limitations
8 on CWS in doing so. Plaintiff Fisher did not discover this conflicted sham until
9 February 5, 2021. Incredibly, CWS provided no information to the National Board
10 prior to the meeting, including the Demand itself, and recommended the National
11 Board reject the Demand. Plaintiff Fisher filed the DFR claim and Section 501 Claim
12 on June 25, 2021, less than five months later.

13 106. The members were injured by the DFR breaches.

14 **V. CLASS ALLEGATIONS**

15 **A. Count I Class**

16 107. Plaintiffs brings Count I, pursuant to Rule 23 of the Federal Rules of
17 Civil Procedure, on behalf of themselves as members of SAG-AFTRA and all other
18 similarly situated Union members of SAG-AFTRA, and on behalf of SAG-AFTRA.

19 108. The Class is defined as all Union members of SAG-AFTRA excluding
20 Defendants and their affiliates (“Count I Class”).

21 109. Plaintiffs reserve the right to redefine the Count I Class as the facts
22 and/or evidence may warrant.

23 110. This action is properly maintainable as a class action.

24 111. The standing of the named Plaintiffs to enjoy and protect their collective
25 bargaining rights established by 29 U.S.C. § 159(a) arises from their status as SAG-
26 AFTRA members and is, therefore, the same as that for any other SAG-AFTRA
27 member.
28

1 112. The Count I Class is so numerous that joinder of all such persons is
2 impracticable because the Count I Class has over 160,000 members.

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

- 6 a. Whether the Union's actions in representing the members in the 2019
7 and 2020 CBAs was irrational, arbitrary or in bad faith because it failed
8 to act on or disclose known material information to members, in breach
9 of the Union's DFR;
- 10 b. Whether Plaintiffs and the Count I Class have been damaged by the
11 actions or conduct of the Union;
- 12 c. The proper measure of damages; and
- 13 d. Whether SAG-AFTRA members are entitled to injunctive relief to
14 prevent further harm to the Union in contravention of the Union
15 Constitution.

16 114. The material questions of law and fact arising from this action
17 predominate over any questions affecting only individual members of the Count I
18 Class.

19 115. Plaintiffs' claims are typical of the claims of the Count I Class.
20 Defendant's common course of conduct in violation of law as alleged herein has
21 caused Plaintiffs and Count I Class members to sustain the same or similar injuries
22 and damages. Plaintiffs' claims are thereby representative of and coextensive with the
23 claims of the Count I Class.

24 116. Plaintiffs are members of the Count I Class, do not have any conflicts of
25 interest with other putative Count I Class members and will prosecute vigorously the
26 case on behalf of the Count I Class. Plaintiffs have retained counsel experienced in
27 class action litigation to prosecute these claims. Plaintiffs will fairly and adequately
28 represent and protect the interests of Count I Class members.

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

15 118. Defendant has acted and refused to act on grounds generally applicable
16 to the entire Count I Class, thereby making it appropriate to seek judicial intervention
17 for relief with respect to the Count I Class as a whole.

18 119. Plaintiffs anticipate no unusual difficulties in the management of this
19 litigation as a class action.

20 120. The nature of notice to the putative Count I Class is contemplated to be
21 by direct postal mail or electronic means based upon Defendant's records or, if such
22 notice is not practicable, by the best notice practicable under the circumstance
23 including publication on the internet or in major newspapers.

24 121. This action merits class action treatment because the factors enumerated
25 herein satisfy the requirements of Rule 23(a) and Rule 23(b)(1)(A).

26 **B. Count II Class**
27
28

1 122. Plaintiffs bring Count II, pursuant to Rule 23 of the Federal Rules of
2 Civil Procedure, on behalf of themselves as members of SAG-AFTRA and all other
3 similarly situated members of SAG-AFTRA, and on behalf of SAG-AFTRA.

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

6 124. Plaintiffs reserve the right to redefine the Count II Class as the facts
7 and/or evidence may warrant.

8 125. This action is properly maintainable as a class action.

9 126. The standing of the named Plaintiffs to sue on behalf of the Union for
10 Union officials’ breach of their fiduciary duties as set forth under 29 U.S.C. § 501
11 arises from her status as a SAG-AFTRA member and is, therefore, the same as that
12 for any other SAG-AFTRA member. On January 26, 2022, the Court granted Plaintiff
13 Fisher’s application to proceed with Count II and granted leave to amend on all
14 claims. The additional Plaintiffs named herein are class members who also sustained
15 injury to sustain standing in this Court.

16 127. The Count II Class is so numerous that joinder of all such persons is
17 impracticable because the Count II Class has over 160,000 members.

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

21 a. Whether Individual Defendants White, Rodriguez, Pniewski, Hartley-
22 Margolin, McGuire, Brown and Powell, as alleged herein, breached their
23 Section 501 fiduciary duties in representing the Union and membership
24 in the Union’s 2019 Commercials, 2019 Netflix and 2020
25 TV/Theatricals collective bargaining and approval processes established
26 by the Union Constitution;

27 b. Whether Individual Defendant White, as alleged herein, breached his
28 Section 501 fiduciary duty by misleadingly omitting material

1 information in April 2020 in communicating with the membership
2 regarding benefit information;

- 3 c. Whether Individual Defendants Carteris, White and Crabtree-Ireland, as
4 alleged herein, breached their Section 501 fiduciary duties by using their
5 positions and machinery and assets of the Union to advance and protect
6 their personal interests adverse to the interests of the Union and
7 membership in holding Union representatives accountable for injury to
8 the Union and membership;
- 9 d. Whether the Union and membership, including Plaintiffs and the Count
10 II Class, have been damaged by Defendants' actions or conduct; and
- 11 e. The proper measure of damages.

12 129. The material questions of law and fact arising from this action
13 predominate over any questions affecting only individual members of the Count II
14 Class.

15 130. Plaintiffs' claims are typical of the claims of the Count II Class. The
16 Individual Defendants' common course of conduct in violation of law as alleged
17 herein has caused Plaintiffs and Count II Class members to sustain the same or similar
18 injuries and damages. Plaintiffs' claims are thereby representative of and coextensive
19 with the claims of the Count II Class.

20 131. Plaintiffs are members of the Count II Class, do not have any conflicts
21 of interest with other putative Count II Class members and will prosecute vigorously
22 the case on behalf of the Count II Class. Plaintiffs have retained counsel experienced
23 in class action litigation to prosecute these claims. Plaintiffs will fairly and adequately
24 represent and protect the interests of Count II Class members.

25 132. A class action is superior to all other available means for the fair and
26 efficient adjudication of this controversy. Individual joinder of all Count II Class
27 members is not practicable, and questions of law and fact common to the Class
28

1 predominate over any questions affecting only individual members of the Count II
 2 Class. Each Count II Class member has been damaged and is entitled to recovery by
 3 reason of Defendants' improper conduct. Class action treatment will allow those
 4 similarly situated persons to litigate their claims in the manner that is most efficient
 5 and economical for the parties and the judicial system. The injury suffered by each
 6 Count II Class member, while meaningful on an individual basis, is not of such
 7 magnitude as to make the prosecution of individual actions economically feasible.
 8 Individualized litigation increases the delay and expense to all parties and the Court.
 9 By contrast, class action treatment will allow those similarly situated persons to
 10 litigate their claims in the manner that is the most efficient and economical for the
 11 parties and the judicial system.

12 133. The Individual Defendants have acted and refused to act on grounds
 13 generally applicable to the entire Count II Class, thereby making it appropriate to seek
 14 judicial intervention for relief with respect to the Count II Class as a whole.

15 134. Plaintiffs anticipate no unusual difficulties in the management of this
 16 litigation as a class action.

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

21 136. This action merits class action treatment because the factors enumerated
 22 herein satisfy the requirements of Rule 23(a) and Rule 23(b)(1)(A).

23 VI. COUNTS

24 COUNT I

25 BREACH OF THE DUTY OF FAIR REPRESENTATION 26 IN VIOLATION OF 29 U.S.C. § 159(a)

(By SAG-AFTRA)

27 137. Plaintiffs reallege and incorporate by reference allegations contained in
 28 the preceding paragraphs, as though fully set forth herein.

1 138. Under Section 9(a) of the NLRA, the Union has a duty “to serve the
2 interests of all members without hostility or discrimination toward any, to exercise its
3 discretion with complete good faith and honesty, and to avoid arbitrary conduct.”
4 *Vaca v. Sipes*, 386 U.S. 171, 177 (1967).

5 139. SAG-AFTRA has exclusive statutory authority to represent its members
6 in collective bargaining with employers. As such, SAG-AFTRA has a corresponding
7 legal obligation to exercise its rational discretion with complete good faith and
8 honesty, and to avoid arbitrary or irrational conduct.

9 140. SAG-AFTRA had an affirmative duty to promote the welfare of its
10 members.

11 141. SAG-AFTRA had a duty to not mislead Union members or their
12 representatives to induce acceptance of a collective bargaining agreement.

13 142. As alleged herein, SAG-AFTRA designated Individual Defendants
14 White, Rodriguez, Pniewski, Hartley-Margolin, McGuire, Brown and Powell as its
15 agents and representatives in the 2019 Commercials, 2019 Netflix and 2020
16 TV/Theatricals CBAs. These individuals had, but hid, information vital to rational
17 action by the Union. The Union breached its DFR to Plaintiffs and the Class under 29
18 U.S.C. § 159(a), in the Union’s collective bargaining processes provided by the Union
19 Constitution.

20 143. Through the foregoing conduct, SAG-AFTRA deprived Plaintiffs and
21 the Class from the benefits and rights of a fully informed effective and rational
22 collective bargaining process in accordance with the Union Constitution.

23 144. As a direct, foreseeable and legal result of SAG-AFTRA’s acts, Plaintiffs
24 and the Class have suffered and continue to suffer substantial damages.

COUNT II

**BREACHES OF FIDUCIARY DUTY
IN VIOLATION OF 29 U.S.C. § 501(a)**

**(By Individual Defendants Carteris, White, Rodriguez, Crabtree-Ireland,
McGuire, Brown, Powell, Pniewski and Hartley-Margolin)**

145. Plaintiffs reallege and incorporate by reference allegations contained in the preceding paragraphs, as though fully set forth herein.

146. Section 501(a) of the LMRDA establishes that union “officers, agents, shop stewards, and other representatives of [the Union] occupy positions of trust in relation to [the Union] and its members as a group.” 29 U.S.C. § 501(a). The fiduciary duties established by Section 501 apply to the Union representatives in any area of their authority even when no monetary interest of the Union is involved. *Stelling v. IBEW*, 587 F.2d 1379, 1386-87 (9th Cir. 1978). The Section 501 fiduciary duties hold these representatives to “the highest standards of responsibility and ethical conduct in administering the affairs of [the Union].” *SEIU v. Nat’l Union of Healthcare workers*, 718 F.3d 1036, 1044 (9th Cir. 2013).

147. As alleged more particularly herein, Individual Defendants White, Rodriguez, Pniewski, Hartley-Margolin, McGuire, Brown and Powell were at all relevant Union-appointed trustees of the Health Plan. These Individual Defendants also were Union-appointed representatives of the Union and membership in determining the negotiation objectives and in the negotiation and the approval of one or more of the three major CBAs in 2019 and 2020. Based on their service as Union-appointed Health Plan trustees, these Individual Defendants, in acting as representatives of the Union and membership in connection with the CBAs, knew information that was vitally material to the CBA negotiations and approvals regarding the Health Plan’s acute and worsening financial condition and the funding needed to sustain the health benefit structure. In representing the Union and membership in the CBA processes, these Individual Defendants betrayed their positions of trust by hiding this material information from the other representatives and the membership

1 and by misleadingly accepting and approving the deficient objectives and terms of the
2 CBAs, in breach of their Section 501 fiduciary duties. As alleged herein, the Union
3 and membership as a whole were injured by the breaches. The Union and membership
4 lost the ability to determine how and to what extent to pursue and obtain additional
5 desperately needed funding for the Health Plan under the CBAs. Had the hidden
6 information been disclosed to the other representatives and the membership,
7 additional Health Plan funding would have been an essential objective through many
8 means available, and the National Board and membership approval processes would
9 have been different materially.

10 148. As alleged herein, on August 12, 2020, just weeks after the
11 TV/Theatrical CBA was approved by the betrayed National Board and ratified by the
12 betrayed membership, in the midst of the COVID-19 pandemic that had substantially
13 limited members' earnings and earning opportunities, the Health Plan announced the
14 draconian Benefit Cuts.

15 149. To attempt to justify the Benefit Cuts, the Individual Defendants finally
16 disclosed the financial information they had known but hidden from other Union
17 representatives and the membership for years. The hidden information, if known by
18 the other representatives, would have made urgently needed additional Health Plan
19 funding an essential objective in the CBAs negotiated and approved in 2019 and 2020.
20 Had the hidden information regarding the Health Plan funding needs and acute
21 financial condition been disclosed by the Individual Defendants to the other Union
22 representatives, which far outnumbered the Individual Defendants, the Union
23 negotiators would have made greater funding to the Health Plan an essential objective
24 in the CBAs by one or more of the available means. As alleged herein, had the
25 National Board learned the information hidden from Union negotiators prior to voting
26 on the CBAs, the National Board debate and approval would have been materially
27 different. Likewise, had the membership learned the information hidden from Union
28 negotiators and the National Board prior to the ratification votes, the membership

1 balloting process would have differed materially if members knew the CBAs doomed
2 Union health coverage. The importance of the information is evidenced by the
3 immediate panic and outrage by members following the August 2020 revelation. As
4 of the date hereof, the Union process is underway for the new Commercials CBA.
5 Undoubtedly, the now-known previously hidden financial information and condition
6 of the Health Plan is driving the essential objectives and process, as it would have
7 done in 2019 and 2020.

8 150. On April 1, 2020, Individual Defendants Carteris and White,
9 representing the Union, announced certain payment suspensions to ease members'
10 stress and obligations in view of the earning and financial stress members were facing
11 due to the pandemic. The 2020 TV/Theatrical CBA had not yet been approved by the
12 Union National Board or ratified by the membership. At least Individual Defendant
13 White knew from his service as a Health Plan trustee that draconian coverage cuts
14 were imminent and would include eligibility changes that would require increased
15 and, in some cases, accelerated earnings by members. White misleadingly withheld
16 this material information, which would have been a material caveat to the announced
17 suspensions, in breach of his Section 501 fiduciary duty. The Union and the
18 membership as a whole were injured by the membership's lost opportunity to
19 scramble for scarce earnings ahead of the imminent dramatic benefit changes, and the
20 inability of the National Board and membership to make an informed vote on the
21 TV/Theatrical CBA.

22 151. As alleged herein, following the announcement of the Benefit Cuts in
23 2020, Individual Defendants Carteris, White and Crabtree-Ireland represented the
24 Union and membership and had the ability to control and deploy the resources and
25 machinery of the Union. Following the August 2020 sudden revelation of the dramatic
26 changes to Union health coverage and that certain Union representatives knew for
27 years but hid from the membership the dire and deteriorating funding condition of the
28 Health Plan, and the related outrage by devastated members, Individual Defendants

1 Carteris, White and Crabtree-Ireland abused their positions of trust to deploy Union
 2 machinery and resources to advance their personal interests by undermining members
 3 efforts to hold the Union representatives accountable for betraying the membership
 4 with the health coverage ambush, in breach of their Section 501 fiduciary duties.
 5 White and Crabtree-Ireland were and are defendants exposed to personal liability in
 6 the ERISA suit filed by members in December 2020, *Asner et al v. The SAG-AFTRA*
 7 *Health Fund et al*, No. 2:20-cv-10914 (C.D. Cal.), and represented the Union and
 8 membership in connection with the CBAs while hiding material information. Carteris
 9 and White touted the CBAs as personal grand achievements. Carteris, White and
 10 Crabtree-Ireland used Union resources to engage CWS to advise the National Board
 11 to blindly follow Davis's advice regarding Plaintiff Fisher's Section 501 demand. At
 12 the time of the engagement, CWS was already defending the Health Plan trustees
 13 including White and Crabtree-Ireland in *Asner*. The Union and membership as a
 14 whole were injured by Individual Defendants Carteris, White and Crabtree-Ireland's
 15 diversion of Union assets and resources to benefit these Individual Defendants
 16 personally.

17 152. As a direct and foreseeable result of Individual Defendants' acts, the
 18 Union, Plaintiffs and the Class have suffered and continue to suffer substantial injury.

19 **VII. PRAYER FOR RELIEF**

20 153. By virtue of the violations set forth in the foregoing paragraphs,
 21 Plaintiffs are entitled pursuant to NLRA §§ 8(b) and 9(a), 29 U.S.C. §§ 158(b) and
 22 159(a), for relief on behalf of the Union for breach of the duty of fair representation
 23 to redress the wrongs described herein

24 154. By virtue of the violations set forth in the foregoing paragraphs,
 25 Plaintiffs and the members of the Class are entitled to sue each of the Individual
 26 Defendants pursuant to LMRDA § 501(b), 29 U.S.C. § 501(b), for appropriate relief
 27 on behalf of the Plan as provided in LMRDA § 501, 29 U.S.C. § 501 to redress the
 28 wrongs described herein.

1 155. WHEREFORE, Plaintiffs, on behalf of themselves and the Health Plan,
2 pray that judgment be entered against Defendants on all claims, and request that the
3 Court award the following relief:

- 4 A. An Order certifying the proposed Classes, designating Plaintiffs as the
5 named representatives of the Classes and designating the undersigned as
6 Class Counsel;
- 7 B. Declaratory relief in favor of Plaintiffs on all counts;
- 8 C. An Order compelling each fiduciary found to have breached his/her/its
9 fiduciary duties to the plans jointly and severally to restore all losses to the
10 plans which resulted from the breaches of fiduciary duty or by virtue of
11 liability pursuant to the NLRA and/or LMRDA;
- 12 D. An Order requiring (i) an accounting (ii) the disgorgement of any profits or
13 other tangible benefits obtained by any Defendant, (iii) a declaration of a
14 constructive trust over any assets received by any breaching fiduciary in
15 connection with their fiduciary violations of the NLRA and/or LMRDA,
16 (iv) an Order requiring the plans to cure illegal and inequitable action, or
17 (v) any other appropriate equitable or monetary relief, whichever is in the
18 best interest of the plans and their participants;
- 19 E. Awarding Plaintiffs and the Classes their attorneys' fees and costs and
20 prejudgment interest, the common benefit doctrine and/or the common
21 fund doctrine;
- 22 F. Awarding pre-judgment and post-judgment interest; and
- 23 G. Awarding all such other remedial or equitable relief as the Court deems
24 appropriate, including but not limited to enjoining the Union and National
25 Board to replace the Health Plan trustees who betrayed the Union and
26 membership, pursuant to the National Board's authority under the Union
27 Constitution.
- 28

1 Dated: February 23, 2022

**CHIMICLES SCHWARTZ KRINER
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2
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25
26
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28

DEMAND FOR JURY TRIAL

A jury trial is hereby demanded.

Dated: February 23, 2022

**CHIMICLES SCHWARTZ KRINER
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