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8 *an individual*

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

11 JOHN P. CALLAS, an individual

12 PLAINTIFF

13 vs.

14 DIRECTORS GUILD OF AMERICA,  
15 INC., A CALIFORNIA  
16 CORPORATION ; DIRECTORS  
17 GUILD OF AMERICA-PRODUCERS  
18 PENSION AND HEALTH PLANS,  
19 INC., A CALIFORNIA  
20 CORPORATION ; TRUSTEES OF  
21 THE DIRECTORS GUILD OF  
22 AMERICA-PRODUCERS PENSION  
23 AND HEALTH PLANS, INC.

24 DEFENDANTS

) CASE NO.  
)  
) **COMPLAINT FOR:**  
) **(A) BENEFITS ,**  
) **ENFORCEMENT OF RIGHTS**  
) **UNDER ERISA;**  
) **(B) BREACHES OF**  
) **FIDUCIARY DUTY IMPOSED**  
) **UNDER ERISA [EMPLOYEE**  
) **RETIREMENT INCOME**  
) **SECURITY ACT (“ERISA”), 29**  
) **U.S.C. §1001 ET SEQ.]; (C)**  
) **PENALTIES FOR FAILURE TO**  
) **FULLY SUPPLY REQUIRED**  
) **AND REQUESTED FILES AND**  
) **DOCUMENTS AND OTHER**  
) **DISCLOSURES ; AND FOR**  
) **SUPPLEMENTAL STATE LAW**  
) **CLAIMS PURSUANT TO 28**  
) **U.S.C § 1367 (a) FOR**  
) **DECLARATORY RELIEF;**  
) **ACCOUNTING; AND BREACH**  
) **OF CONTRACT—JURY TRIAL**  
) **DEMANDED**

1 Plaintiff John Peter Callas (“Plaintiff”) states and alleges as follows:

2 **JURISDICTION AND VENUE**

3 1. This Court has jurisdiction under 29 U.S.C. Section 1132 (e).

4  
5 2. Plaintiff is informed and believes and on that basis alleges that the  
6 Directors Guild of America Producers Pension and Health Plans, Inc. (as described  
7 below) is administered, and/or the breaches alleged took place, within the Central  
8 District of California. Thus, venue is proper under 29 U.S.C. Section 1132(e) (2)  
9 and 28 U.S.C. Section 1391.  
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11

12 **THE PARTIES**

13 3. Plaintiff is an individual residing within the jurisdiction of this Court.  
14  
15 At all relevant times, Plaintiff has been a dues paying member in good standing of  
16 Defendant Directors Guild of America.  
17

18 4. Plaintiff is informed and believes and on that basis alleges that  
19 Defendant Directors Guild of America, Inc. (“DGA”) is a duly organized  
20 California corporation with its corporate headquarters in Los Angeles, California.  
21

22 5. Plaintiff is further informed and believes and on that basis alleges that  
23 Defendant DGA is the sponsor and Administrator of, and thus serves as fiduciary  
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1 for, Defendant Directors Guild of America Producers Pension and Health Plans,  
2 Inc. (the “Plans”).

3  
4 6. Plaintiff is further informed and believes and on that basis alleges that  
5 the Plans were established by Defendant DGA, and are administered by Defendant  
6 Trustees of the Plans, a board of trustees made up of DGA and Producer  
7  
8 representatives.

9 **FACTUAL BACKGROUND**

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11 7. Plaintiff is further informed and believes and on that basis alleges that  
12 the Plans, as amended and stated, are employee benefit plans which are, at all  
13 times relevant to the matters addressed in this litigation, subject to the provisions  
14 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq  
15 (“ERISA”).

16  
17  
18 8. Plaintiff, at all relevant times, was and is a participant and beneficiary  
19 of the Plans, and has thus accrued vested rights under the terms and conditions of  
20 the Plans. As participant and beneficiary of the Plans, Plaintiff and Plaintiff’s  
21 family members, including but not limited to his wife and minor child, were  
22 entitled to all health, welfare and pension benefits available to them under the  
23 terms and conditions of the Plans.  
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1           9. Plaintiff is the sole managing member an investor in a producing  
2 entity named “Death By Solicitation, LLC.” (“DBS”). The DGA contractually  
3 approved (aka “green lighted”) Plaintiff and DBS’s production of a film project  
4 entitled “No Solicitors” aka “Death by Solicitation”. This DGA approval allowed  
5 Plaintiff to commence production of the project, including hiring employees  
6 necessary for completion of the project, and established certain requirements and  
7 pre-requisites for Plaintiff to perform. Plaintiff in fact performed all said  
8 requirements and pre-requisites.  
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12           10. *Viz.*, Plaintiff, in accordance with the DGA requirements, agreed to  
13 and did pre-pay in full all salaries for below-the-line categories who were DGA  
14 members (“above-the-line” film participants are generally the actors, producers,  
15 directors and writers; “below-the-line film participants are all other persons who  
16 work on the project). All other employees were paid on a weekly basis.  
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19           11. Moreover, Plaintiff, in accordance with the DGA requirements, also  
20 agreed to and did make all appropriate contributions to the Plans for both above  
21 and below the line categories before filming commenced.  
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1           12. Further, Plaintiff and the DGA expressly agreed that Plaintiff, as the  
2 director of the film, could defer paying himself a salary unless and until the film  
3 became profitable.  
4

5           13. Plaintiff is informed and believes and on that basis alleges that  
6 pursuant to the terms of the Plans (as contained in the Plan's Summary Plan  
7 Description that the Plans are required to provide to all Plan participants, including  
8 Plaintiff), these deferred director's fees constitute "covered earnings" for which  
9 contribution to the Plans (specifically, the DGA Health Plan) were made in  
10 accordance with the applicable Collective Bargaining Agreement pursuant to a  
11 deferral procedure approved by the DGA. The DGA specifically required that all  
12 contributions to the Plans be made in advance when the directing services were  
13 rendered.  
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18           14. Plaintiff made all such contributions to the Plans in a timely manner  
19 over a two-plus year time period.  
20

21           15. Despite having approved Plaintiff's deferred compensation  
22 arrangement, and having received and accounted for said contributions for over  
23 two years, Defendants subsequently rejected Plaintiff's contributions to the Plans  
24 for himself and for his family members, contending that because Plaintiff had  
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1 deferred his compensation, and thus constituted unpaid earnings. Defendants  
2 contend that the Plans do not accept contributions on unpaid earnings.

3  
4 16. As the direct and proximate result of Defendants' rejection of  
5 Plaintiff's timely and appropriate contributions to the Plans, Plaintiff and his  
6 family have been wrongfully and retroactively denied health and other benefits,  
7  
8 to Plaintiff's and his family's significant financial detriment. Given the  
9 Defendants' failures to properly administer the Plans, Plaintiff was unaware of the  
10 need for him to secure health insurance separate and apart from that provided by  
11 the Plans.  
12

13 17. Accordingly, Plaintiff timely appealed Defendants' decision to deny  
14 said benefits. Defendants provided Plaintiff with varying and often contradictory  
15 bases and reasons for denying his appeal. Said appeal was denied effective March  
16 23, 2016.  
17  
18

19 18. Plaintiff has fully and completely satisfied all available and  
20 appropriate administrative remedies. Plaintiff files this litigation in support of his  
21 claims and to challenge said denial of his appeal.  
22

23 ///

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**CLAIMS FOR RELIEF**

**FIRST CAUSE OF ACTION**

**(AGAINST ALL DEFENDANTS FOR BENEFITS, OR FOR  
ENFORCMENT OF RIGHTS UNDER ERISA (Section 502(a)(1))**

19. Plaintiff re-alleges and incorporates by this reference paragraphs 1 through 18 of this Complaint.

20. Plaintiff accrued vested benefits under the terms of the Plans. At all times, Defendants generally, and the Plans specifically, had an obligation to provide Plaintiff with accurate accountings of his vested interest in the Plans, without limitation a full and accurate accounting of his rights and benefits under the Plans' Health Plan. Moreover, at all times, Defendants had an obligation to timely advise Plaintiff if his benefits were being challenged or otherwise restricted.

21. Defendants' (including but not limited to the Plans' fiduciaries, trustees, administrators and sponsors) actions and inactions, including but not limited to (a) failing to honor an agreement allowable under terms of the Plans pursuant to which Plaintiff was entitled to make and did make contributions to the Plans while deferring his director's salary, and (b) failing to timely advise Plaintiff that his timely and complete payments of contributions would in fact be rejected

1 and his health benefits denied both retroactively and prospectively, have in fact  
2 denied Plaintiff duly owed benefits and caused him and his family significant  
3 financial damages.  
4

5 22. Plaintiff is also entitled to receive a calculation, verification, and  
6 compensation for the actual amount of his vested benefits, including  
7 reimbursement for all sums paid by Plaintiff and his family for health-related  
8 procedures and services. In addition, Plaintiff is entitled to receive all disclosures  
9 required and requested from Defendants, including but not limited to annual  
10 reports, financial reports, and the methodology and formulations used in allocating  
11 contributions (by Plaintiff and other participants in the Plans).  
12  
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15 23. Additionally, it is necessary to determine whether the Plans'  
16 Administrator and other fiduciaries of the Plans, including Defendant DGA as  
17 sponsor of the Plans, complied with their fiduciary duties to act prudently.  
18

19 **SECOND CAUSE OF ACTION**

20 **[AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY**

21 **DUTIES IMPOSED UNDER ERISA]**

22  
23 24. Plaintiff re-alleges and incorporates by this reference paragraphs 1  
24 through 23 of this Complaint.  
25  
26



1           25. As fiduciaries, the Plan Administrator and others holding fiduciary  
2 roles with the Plans, had a duty to accurately account for Plaintiff's contributions  
3 and assure a proper distribution of benefits in a timely manner to Plaintiff and his  
4 beneficiaries.  
5

6           26. ERISA imposes a prudent person standard upon fiduciaries in their  
7 operation and administration of a qualified retirement Plan. ERISA imposes  
8 certain remedies for any failure to comply with these fiduciary duties, including  
9 relief under 29 U.S.C. §1132(a)(2): (a) Any person who is a fiduciary with respect  
10 to a plan who breaches any of the responsibilities, obligations, or duties imposed  
11 upon fiduciaries by this subchapter shall be personally liable to make good to such  
12 plan any losses to the plan resulting from each such breach, and to restore to such  
13 plan any profits of such fiduciary which have been made through use of assets of  
14 the plan by the fiduciary, and shall be subject to such other equitable or remedial  
15 relief as the court may deem appropriate, including removal of such fiduciary.  
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19

20           27. As a direct and proximate result of Defendants' above-described  
21 breaches of fiduciary duties and other misconduct, in particular by failing to  
22 recognize that Plaintiff had timely and properly made contributions to the Plans  
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1 that were not properly honored, Plaintiff has incurred damages in as-yet  
2 unascertained amounts, to be proven at trial.

3  
4 **THIRD CAUSE OF ACTION**  
5 **[AGAINST ALL DEFENDANTS FOR FAILURE TO SUPPLY**  
6 **REQUIRED AND REQUESTED DOCUMENTS AND OTHER**  
7 **DISCLOSURES]**  
8

9 28. Plaintiff re-alleges and incorporates by this reference paragraphs 1  
10 through 27 of this Complaint.  
11

12 29. The Defendant Plans had duties to automatically provide benefit  
13 statements and annual reports. Insofar as Plaintiff made contributions in a timely  
14 manner to the Plans for at least two years which Defendants accepted without  
15 contending that Plaintiff's agreed-to deferred income invalidated said  
16 contributions, Defendants failed to properly maintain and provide appropriate  
17 records to Plaintiff. Had he been advised at an earlier date, he could have  
18 considered obtaining replacement health insurance coverage.  
19  
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21

22 30. Defendants failed to properly advise Plaintiff and provide sufficient  
23 disclosures as required by ERISA Sections 502(a)(1)(A) and 502 (c)(1), and are  
24 thus subject to appropriate penalty assessments.  
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26

**FOURTH CAUSE OF ACTION**

**[AGAINST DEFENDANTS FOR BREACH OF CONTRACT]**

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3  
4 31. Plaintiffs hereby incorporate the allegations included in paragraphs 1  
5 through 30 of this Complaint.

6 32. As alleged, *supra*, Plaintiff and the DGA entered into a written  
7 contract pursuant to which Defendant DGA approved Plaintiff and DBS's  
8 production of a film project entitled "No Solicitors" aka "Death by Solicitation".  
9 This DGA approval allowed Plaintiff to commence production of the project,  
10 including hiring employees necessary for completion of the project, and  
11 established certain requirements and pre-requisites for Plaintiff to perform.  
12 Plaintiff in fact performed all said requirements and pre-requisites.

13 33. As alleged, *supra*, Plaintiff, in accordance with the DGA  
14 requirements, agreed to and did pre-pay in full all salaries for below-the-line  
15 categories who were DGA members ("above-the-line" film participants are  
16 generally the actors, producers, directors and writers; "below-the-line film  
17 participants are all other persons who work on the project). All other employees  
18 were paid on a weekly basis.

19 34. Moreover, Plaintiff, in accordance with the DGA requirements, also  
20 agreed to and did make all appropriate contributions to the Plans for both above  
21 and below the line categories before filming commenced.

22 35. Further, the agreement between Plaintiff and the DGA expressly  
23 provided that Plaintiff, as the director of the film, could defer paying himself a  
24 salary unless and until the film became profitable.  
25  
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1           36. Plaintiff is informed and believes and on that basis alleges that  
2 pursuant to the terms of the Plans (as contained in the Plan’s Summary Plan  
3 Description that the Plans are required to provide to all Plan participants, including  
4 Plaintiff), these deferred director’s fees constitute “covered earnings” for which  
5 contribution to the Plans (specifically, the DGA Health Plan) were made in  
6 accordance with the applicable Collective Bargaining Agreement pursuant to a  
7 deferral procedure approved by the DGA. The DGA specifically required that all  
8 contributions to the Plans we made in advance when the directing services were  
9 rendered.

10           37. Plaintiff made all such contributions to the Plans in a timely manner  
11 over a two-plus year time period. All contributions (pension, health and welfare)  
12 for all DGA members, including Plaintiff, were pre-paid as part of the agreement  
13 allowing the film to proceed.

14           38. Despite having approved Plaintiff’s deferred compensation  
15 arrangement, and having received and accounted for said contributions for over  
16 two years, Defendants subsequently rejected Plaintiff’s contributions to the Plans  
17 for himself and for his family members, contending that because Plaintiff had  
18 deferred his compensation, and thus constituted unpaid earnings. Defendants  
19 contend that the Plans do not accept contributions on unpaid earnings.

20           39. As the direct and proximate result of Defendants’ rejection of  
21 Plaintiff’s timely and appropriate contributions to the Plans, Plaintiff and his  
22 family have been wrongfully and retroactively denied health and other benefits,  
23 to Plaintiff’s and his family’s significant financial detriment. Given the  
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1 Defendants' failures to properly administer the Plans, Plaintiff was unaware of the  
2 need for him to secure health insurance separate and apart from that provided by  
3 the Plans.

4 40. Defendants breached their obligations under said contractual  
5 agreement with Plaintiff by, *inter alia*, wrongfully denying Plaintiff his health  
6 insurance benefits despite the fact that Plaintiff had met all of his contractual  
7 obligations.

8 41. At all relevant times, Plaintiff performed all obligations required of  
9 him under said contractual agreement, unless said performance was waived or  
10 otherwise impossible to perform.

11 42. As a direct result and proximate result of Defendants' breaches of  
12 their contractual obligations, Plaintiff has suffered damages in an amount to be  
13 proven at trial, plus interest on those damages at the maximum legal rate.  
14

15  
16 **FIFTH CAUSE OF ACTION**

17  
18 **[AGAINST ALL DEFENDANTS**

19 **FOR DECLARATORY RELIEF]**  
20

21 43. Plaintiff incorporates by this reference the allegations contained in  
22 paragraphs 1 through 42 of this Complaint.  
23

24 44. Plaintiff alleges and states that actual controversies have arisen and  
25 now exist among the parties regarding Plaintiff's entitlement to make  
26

1 contributions to the Plans. Despite having approved Plaintiff's deferred  
2 compensation arrangement, and having received and accounted for said  
3 contributions for over two years, Defendants subsequently rejected Plaintiff's  
4 contributions to the Plans for himself and for his family members, contending that  
5 because Plaintiff had deferred his compensation, and thus constituted unpaid  
6 earnings. Defendants contend that the Plans do not accept contributions on  
7 unpaid earnings.  
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10  
11 45. A judicial declaration of the rights and obligations of the parties is  
12 necessary and appropriate at the present time so that the parties can ascertain their  
13 rights.  
14

15 **SIXTH CAUSE OF ACTION**

16 **[PLAINTIFF AGAINST DEFENDANTS FOR AN ACCOUNTING]**  
17

18 46. Plaintiffs incorporate by this reference the allegations contained in  
19 paragraphs 1 through 45 of this Complaint.  
20

21 47. As a result of Defendants' actions, it is extremely difficult to  
22 determine the amount that Plaintiff is entitled to under the terms and governing  
23 provisions of the Plans without an accounting.  
24  
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1 48. Defendants should be ordered to render an accounting to the Plans at  
2 Defendants' cost.  
3

4 **REQUEST FOR RELIEF**

5  
6 Plaintiff hereby prays for judgment as follows:  
7

- 8 1. For an accurate calculation, verification and provision of all benefits  
9 due under the Plans, and more precisely according to proof;
- 10 2. For damages according to proof plus interest at the legal rate;
- 11 3. For any penalties for failure and refusal to provide required  
12 information, with each penalty item separately calculated;
- 13 4. For interest according to law;
- 14 5. For costs of suit incurred, including attorneys' fees, according to  
15 proof; and
- 16 6. For such other and further relief that this Court may deem just and  
17 proper.

18  
19 Respectfully submitted,

20 September 21, 2016

21 REBECCA MOCCIARO  
22 LAW OFFICE OF REBECCA MOCCIARO

23  
24 By: Rebecca Mocciano  
25 Rebecca Mocciano  
26

**DEMAND FOR TRIAL BY JURY**

Plaintiffs, by and through their respective counsel of record, and pursuant to the Federal Rules of Civil Procedure, demand a trial by jury of all jury-applicable claims.

September 21, 2016

REBECCA MOCCIARO  
LAW OFFICE OF REBECCA MOCCIARO

By: *Rebecca Mocciano*

\_\_\_\_\_  
Rebecca Mocciano