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 CALLARD, STEVEN BARR, RUSSELL
 GANNON, STEPHEN WASTELL, JAMES A.
 OSBURN, and ERIC HUGHES aka JON
 WHITELEY, collectively known as the United
 Screen Actors Committee (USAC), Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ED ASNER, CLANCY BROWN, GEORGE
 COE, TOM BOWER, DENNIS HAYDEN,
 WILLIAM RICHERT, LOUIS REEKO
 MESEROLE, TERRENCE BEASOR,
 ALEX MCARTHUR, ED O'ROSS, ROGER
 CALLARD, STEVEN BARR, RUSSELL
 GANNON, STEPHEN WASTELL, JAMES
 A. OSBURN, and ERIC HUGHES aka JON
 WHITELEY, collectively known as the
 United Screen Actors Committee (USAC),
 Plaintiffs,

v.

SCREEN ACTORS GUILD – AMERICAN
 FEDERATION OF TELEVISION AND
 RADIO ARTISTS, a labor organization
 commonly known as SAG-AFTRA and its
 GUILD INTELLECTUAL PROPERTY
 REALIZATION, LLC,
 Defendants.

Case No.: 13 CV-3741 R (FFMx)

PLAINTIFFS OPPOSITION TO MOTION TO STRIKE

Hearing: October 7, 2013
 Courtroom: 8
 Time: 10:00 a.m.

Action Filed: May 28, 2013
 Trial Date: None

I) INTRODUCTION

Although Rule 12(f) motions are generally disfavored in the law,

1 Defendants seek to strike certain paragraphs because they challenge the
2 relevancy of purportedly superfluous statements in the Complaint concerning
3 1) Escheat laws and SAG-AFTRA's recent incorporation in Delaware; 2)
4 Entertainment Strategies Group (ESG) where SAG's former General Counsel,
5 David White, and now SAG-AFTRA's National Executive Director, was
6 employed contemporaneous with the criminal escapades of ESG's Mark Dreier
7 which landed him in federal prison for investment fraud, at a time when issues
8 about SAG's handling and wrongful conversion of multi-millions of dollars of
9 Residuals as well as Foreign/Royalties/Foreign Levies were unfolding; and 3)
10 historical and current references to Jay Roth, the head of the Directors Guild of
11 America (DGA), and Robert Hadl, a former executive of Universal City Studios
12 (MCA) who now serves as a Labor Consultant to Producers and Labor
13 Organizations, including the DGA, the Writers Guild of America (WGA), and
14 SAG.
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20 Because this case involves issues about financial transgressions and
21 the failure to pay monies owing to performers, it should be noted that all three
22 labor organizations on whose behalf Jay Roth and Robert Hadl testified before
23 Congress in 1993, were sued by the same Class Action Counsel, Neville
24 Johnson and Paul Kiesel, for unlawfully converting Foreign Royalties/Foreign
25 Levies which Union members, as well as non-members claimed were due and
26 owing directly to them, pursuant to the laws of foreign countries. (See Remand
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1 Order of the Honorable Margaret Morrow, USAC Request for Judicial Notice
2 [USAC Req.Jud.Not.] at Exhibit “2”, at page 3, and 13 and footnote 24.)The
3 failure to escheat same, let alone to provide an bonafide accounting relative to
4 SAG and now SAG-AFTRA receipts and disbursements in these regards,
5 prompts pursuit of the instant action.
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8 Defendants say each of the paragraphs it seeks to strike in the
9 Complaint are “immaterial” or “impertinent”. However, just because
10 Defendants Motion says so, does not mean the Motion to Strike is worthy of
11 granting, particularly since Defendants also argue that the Complaint is devoid
12 of particularity to support claims for punitive damages in its Motion to Dismiss.
13 Ironically, the very statements which Defendants want to strike portray a Union
14 and its leadership, as well as Labor Consultants, clearly indifferent to federally
15 mandated LMRDA requirements requiring transparency and accountability in
16 Union finances, as well as access to Union contracts, not to mention the right to
17 timely learn about and to vote upon whether to ratify or reject such contracts.
18 These requirements have been ignored deliberately, placing the pecuniary
19 interests of the Union above those of its members, notwithstanding 29 U.S.C.
20 Section 501.
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22 **II) FACTUAL STATEMENT**

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24 As the Opposition to the Motion to Dismiss reflects, this case is
25 about a blatant refusal of SAG-AFTRA and their predecessors to account for
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1 and distribute Residuals as well as Foreign Royalties/Foreign Levies to their
2 rightful owners, for what has now turned out to be more than a decade.

3 4 A) ESCHEAT LAWS

5 Defendants object to references about SAG-AFTRA incorporating in
6 Delaware upon merger, even though SAG, who possessed the lionshare of
7 monies in trust abandoned California as its domicile for incorporation purposes
8 where tough Escheat laws otherwise exist to protect owners of unclaimed
9 property. (Motion to Strike at page 2/lines 16-page 3, line 12, seeking to strike
10 Paragraph 22: page 18, lines 12 – 22 of the Complaint). Although Defendants
11 may claim they did not engage in forum shopping to find more lenient escheat
12 laws, the failure of SAG and AFTRA to comply with Escheat laws, in lieu of
13 amassing a sizeable fortune in an unregulated, non-ERISA trust, is precisely
14 why the motivations of Defendants are at issue herein. In fact, as the
15 Declaration of undersigned counsel reflects, even the *Hollywood Reporter* has
16 sought to sanitize the failure to escheat Residuals claiming there was an
17 Agreement with the State Controller's office dated March 30, 2005 authorizing
18 SAG to hold onto its monies, on the guise the Union is operating an "employee
19 benefit" fund. (Wise Decl., ¶ 14 and Exhibits "L" and "M"). However, upon
20 inquiry, defense counsel at the Early Meeting of Counsel indicated a letter from
21 the State Controller's Office does not exist in these regards. (Wise Decl., ¶ 14.)
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28 Thus, it will be most interesting to see what evidence is hereinafter

1 offered to excuse SAG's lengthy retention of monies, let alone to justify why
2 SAG-AFTRA has now incorporated in Delaware, a far more lenient State
3 relative to Unclaimed Property Law (UPL).
4

5 According to the labor organization's federally mandated LM-2s
6 and 990 filings which this Court is requested to take judicial notice of, USAC
7 Req.Jud.Not., Exhibit 28, SAG and now SAG-AFTRA over the course of the
8 past ten years, has amassed more than One Hundred and Thirty Million
9 (\$130,000,000.00) in a non-ERISA "trust", originally designated as "held in
10 trust for members", and now simply labeled as "held in trust for others"
11 notwithstanding California's Unclaimed Property Law, California Code of Civil
12 Procedure Sections 1500—1582, which would have required escheating of
13 certain of these monies to the State of California, long before now.
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16 Manipulation of who monies are owing to, while also claiming it
17 has been unable to pay out Residuals as well as Foreign Royalties/Foreign
18 Levies because of an antiquated computer system, are suspect and provide a
19 motivation to want to escape California's UPL in favor of Delaware. See
20 Newspaper Articles decrying stockpiling of Unclaimed Residuals and excuses
21 for inability to distribute same which surfaced in the early 2000's and persists to
22 this day, USAC Req.Jud.Not., at Exhibit 30.
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1 **B) ROLES OF PRIMARY PLAYERS AND MISHANDLING OF**
2 **UNION FUNDS, COUPLED BY REFUSAL TO PERMIT**
3 **INSPECTION OF UNION RECORDS**
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5 The Union's federal filings show the expenditure of millions of
6 dollars on computer purchases of hardware and software, as well as IT
7 maintenance, during the same period of time the deposits in the "trust" have
8 grown, and the number of Unclaimed Residuals has skyrocketed as well. (USAC
9 Req.Jud.Not., Exh. 28.) Increased expenses for companies that disburse monies
10 to members, and for consultants affiliated with ESG, including Sallie Weaver, as
11 well as Producers, including Robert Hadl, and substantial payments to the DGA
12 where Jay Roth is the Executive Director, are worthy of review by this Court
13 and certainly justify the references to which Defendants now take exception.
14
15 The computer expenditures alone warrant special attention since the Union has
16 its own Technology and Residual and Foreign Royalties Departments, with
17 SAG-AFTRA refusing to permit inspection of financial records of receipts and
18 disbursements and has thwarted all attempts for auditing of records of Residuals
19 as well as Foreign Royalties/Foreign Levies received. See Declaration of
20 Clancy Brown, ¶¶ 3-9 and Exhibits "A"- "D" as well as the Declarations of
21 Helena S. Wise, ¶¶ 2-5 and Exhibits "E"- "I" regarding notice and demands for
22 transparency and accountability; also see glaring discrepancies in financial
23 records produced in Osmond with those submitted in federal filings. USAC
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1 Req.Jud.Not., Exhibits 28 and 29. Also see Declaration of Eric Hughes.

2 The fact that Jay Roth and Robert Hadl told Congress in 1993 that
 3 they were seeking to obtain the broadest implementation of national treatment in
 4 intellectual property for all US performers, writers, directors, and producers in
 5 the field of international copyright and trade, particularly since millions of
 6 dollars were being taken by foreign countries, cannot be overlooked. (USAC
 7 Req.Jud.Not., Exh. 1, Congressional Testimony.) The fact these two individuals
 8 have now permitted the Labor Unions to claim superior entitlements to said
 9 monies, which foreign countries agreed to pay to US performers, writers,
 10 directors and producers, forcing the bringing of three Class Actions, not to
 11 mention the instant lawsuit, not only offers a historical perspective, but
 12 demonstrates the extreme web these parties have woven to steal money that
 13 rightfully belongs to US performers, if not others as well.

14 **III) ARGUMENT**

15 **A) STRIKING ESCHEAT ALLEGATIONS ARE WRONG**

16 Accordingly, references to SAG-AFTRA suddenly incorporating in
 17 Delaware upon merger, with SAG, who possessed the lionshare of monies in trust
 18 abandoning California as its domicile for incorporation purposes where tough Escheat
 19 laws exist to protect owners of unclaimed property must not be stricken. (Motion to
 20 Strike at page 2/lines 16-page 3, line 12, seeking to strike Paragraph 22: page 18, lines
 21 12 – 22 of the Complaint). Although Defendants may claim they did not engage in

1 forum shopping to find more lenient escheat laws, the failure of SAG and AFTRA to
2 comply with Escheat laws, in lieu of amassing a sizeable fortune in an unregulated,
3 non-ERISA trust, is precisely why the motivations of Defendants are at issue herein.
4 In fact, as the Declaration of undersigned counsel reflects, even the *Hollywood*
5 *Reporter* has sought to sanitize the failure to escheat Residuals as well as Foreign
6 Royalties/Foreign Levies claiming there was an Agreement with the State Controller's
7 office dated March 30, 2005 authorizing SAG to hold onto its monies, which defense
8 counsel has now denied the existence of. (Wise Decl., ¶ 14 and Exh. "L" and "M").
9

10
11 According to the labor organization's federally mandated LM-2s
12 and 990 filings which this Court is requested to take judicial notice of, USAC
13 Req.Jud.Not., Exhibits 28 and 29, SAG and now SAG-AFTRA over the course
14 of the past ten years, has amassed more than One Hundred and Thirty Million
15 (\$130,000,000.00) in a non-ERISA "trust", originally designated as "held in
16 trust for members", and now simply labeled as "held in trust for others"
17 notwithstanding California's Unclaimed Property Law, California Code of Civil
18 Procedure Sections 1500—1582, which would have required escheating of
19 certain of these monies to the State of California, long before now. Also see
20 *Screen Actors Guild vs. Cory* (1979), 91 Cal.App.3d 111.
21

22 Manipulation of who monies are owing to, while also claiming it
23 has been unable to pay out Residuals as well as Foreign Royalties/Foreign
24 Levies because of an antiquated computer system, are suspect and provide a
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1 motivation to want to escape California's UPL in favor of Delaware.

2 **B) STRIKING REFERENCES TO THE PIVOTAL PLAYERS IN**
 3 **THESE FINANCIAL DEALINGS ARE INAPPROPRIATE**
 4

5 In light of these facts, a trier of fact could draw inferences as to
 6 why this labor organization has refused to comply with its obligations under the
 7 Labor-Management Reporting and Disclosure Act of 1959 ("*LMRDA*"), 29 USC
 8 §§ 401, et seq.. Maintenance of an unregulated "slush" fund, with the capability
 9 of generating millions in interest, while Mark Dreier, now incarcerated for
 10 investment fraud, was closely affiliated with top executives of SAG who have
 11 resisted disclosures, while Robert Hadl and Jay Roth have fought to make
 12 certain that the rightful owners of Foreign Levies did not receive same, is
 13 precisely what Congress intended to avoid when reinforcing reporting and
 14 disclosure requirements. 29 USC Section 431. Also see written decision of
 15 Seventh Circuit in which Chief Judge Posner and Circuit Judges Manion and
 16 Kanne found that a refusal to permit review and access to Union records was
 17 because of a desire to hide corrupt practices within the Postal Workers Union
 18 which cannot be condoned by the courts. *Kinslow vs. American Postal Workers*,
 19 223 F 3d 269 (7th Cir., 2000).

20 Dated: September 16, 2013

LAW OFFICES OF HELENA S. WISE

21 By: 
 22 Helena S. Wise, Esq.
 23 Attorneys for Plaintiffs USAC

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing

and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner ☐ a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on at California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT
(other than summons and complaint)

Received copy of document described as

on

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of Los Angeles State of California.

I am over the age of 18 and not a party to the within action; my business address is: 1907 W. Burbank Boulevard, Suite A, Burbank, California 91506

On September 16, 2013 served the foregoing document described as PLAINTIFF'S OPPOSITION TO MOTION TO STRIKE

on

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Robert Bush, Esq.
Ira Gottlieb, Esq.
BUSH GOTTLIEB SINGER LOPEZ
KOHANSKI ADELSTEIN & DICKINSON
500 North Central Avenue, Suite 800
Glendale, California 91203-3345

BY EMAIL 9/16/13

AND BY PERSONAL SERVICE 9/17/13

☐ (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at California.

Executed on at California.

☒ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on September 17, 2013 at Burbank California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

PATTY VILLASENOR

Type or Print Name

Signature