

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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CLAY HINE, DAVID CALLAND, KIRK YOUNG,  
and TIM REYNOLDS,

Plaintiffs,

-against-

IOWA STUBBORN LIMITED LIABILITY COMPANY,  
ALCHEMY PRODUCTION GROUP LIMITED LIABILITY  
COMPANY, MARSHALL B. PURDY, CARL PASBJERG,  
and KATE HORTON,

Defendants.

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**SUMMONS**

Index No. \_\_\_\_\_/22

Plaintiffs designate New  
York County as the place  
of trial

The basis of venue is:  
Defendants' place of  
business

**TO THE ABOVE NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to answer the Verified Complaint in this Action and to serve a copy of your Verified Answer or, if the Verified Complaint is not served with this Summons, to serve a Notice of Appearance upon Plaintiffs' attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

The nature of the action, the relief sought and the sum of the money for which judgment may be taken in case of the default are as follows: declaratory judgment, breach of contract, damages of \$586,240.64 plus interest.

Dated: New York, New York  
January 26, 2022

Yours, etc.

*Leslie H. Ben-Zvi*

\_\_\_\_\_  
**LESLIE H. BEN-ZVI, ESQ.**  
**Feldman Golinski Reedy + Ben-Zvi PLLC**  
*Attorney for Plaintiffs*  
1700 Broadway – 28<sup>th</sup> Floor  
New York, NY 10019  
(212) 666-6656 / (917) 836-9485  
*Leslie@BenZviLaw.com*

TO: Iowa Stubborn Limited Liability Company c/o  
Alchemy Production Group Limited Liability Company  
630 Ninth Avenue, Suite 610  
New York, NY 10036

Alchemy Production Group Limited Liability Company  
630 Ninth Avenue, Suite 610  
New York, NY 10036

Marshall B. Purdy c/o  
Alchemy Production Group Limited Liability Company  
630 Ninth Avenue, Suite 610  
New York, NY 10036

Carl Pasbjerg c/o  
Alchemy Production Group Limited Liability Company  
630 Ninth Avenue, Suite 610  
New York, NY 10036

Kate Horton c/o  
Alchemy Production Group Limited Liability Company  
630 Ninth Avenue, Suite 610  
New York, NY 10036

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

CLAY HINE, DAVID CALLAND, KIRK YOUNG,  
and TIM REYNOLDS,

**VERIFIED COMPLAINT**

Plaintiffs,

Index No. \_\_\_\_\_/22

-against-

IOWA STUBBORN LIMITED LIABILITY COMPANY,  
ALCHEMY PRODUCTION GROUP LIMITED LIABILITY  
COMPANY, MARSHALL B. PURDY, CARL PASBJERG,  
and KATE HORTON,

Defendants.

-----X

Plaintiffs CLAY HINE, DAVID CALLAND, KIRK YOUNG, and TIM REYNOLDS, by  
their attorney, Leslie H. Ben-Zvi, Esq., hereby allege the following against Defendants:

**INTRODUCTION**

**Music Men vs *The Music Man***

1. This is a lawsuit against the producing entities and producers of Broadway’s *The Music Man* commenced by the barbershop quartet that was originally cast to be in the musical. They were each signed to enforceable agreements (i) that specifically extended throughout the first year of performances, *i.e.*, December 19, 2022, (ii) that specified their weekly salaries, and (iii) that acknowledged their “special and unique value and character.”

2. The producing entities and producers willfully breached these agreements that they themselves had negotiated, drafted, and signed and then, in the utmost of bad faith, (i) terminated the barbershop quartet’s agreements without basis or justification, (ii) threatened to send them Actors’ Equity Production Contracts that they said they would immediately terminate, (iii) actually did send each Plaintiff an Actors’ Equity Production Contract that brazenly violated

each of their original agreements, and (iv) terminated the barbershop quartets’ agreements (for a second time) four days after sending them Actors’ Equity Production Contracts they knew were in violation of the original agreements.

**Trouble In River City**

3. Plaintiffs Clay Hine, David Calland, Kirk Young, and Tim Reynolds are award-winning barbershop quartet singers who were cast in the Broadway Production of *The Music Man* starring Hugh Jackman and Sutton Foster and scheduled to open on February 10, 2022.

4. The producers, producing entities, executive producers, general managers, casting director Telsey & Company, and director Jerry Zaks specifically sought them out via the Barbershop Harmony Society in Nashville TN (*barbershop.org*) because they were seeking an authentic barbershop quartet, not four singers who would simply be cast as a quartet. After seeing their YouTube videos and auditioning them, they were signed to individual contracts on November 23, 2019 and again on November 12, 2020.

5. The latter of the contracts expressly stated that Clay Hine, David Calland, Kirk Young and Tim Reynolds were each being hired by the producers for (i) two months of rehearsals beginning October 25, 2021 followed by (ii) one full year of performances beginning December 20, 2021 based upon their “special and unique value and character, the loss of which due to Actor’s absence could cause Producer irreparable injury and/or damage.”

6. Said individual contracts also expressly stated that they would “enter into a longer form production contract which shall be negotiated in good faith and shall incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes.”

7. Finally, the parties expressly agreed that “[u]ntil such time as the parties enter into the Production Contract, this Deal Memo shall be valid and binding between the parties hereto.”

8. Following the execution of the November 12, 2020 contract, Clay Hine, David Calland, Kirk Young and Tim Reynolds **(i)** either quit, modified, or took leave from their jobs; **(ii)** either sold their homes or did not renew their leases (with one exception); and, **(iii)** with the assistance/encouragement of Defendants fairly close to their June 2021 termination, looked for housing in New York for the 14 months they would be rehearsing and performing *The Music Man* on Broadway.

9. On June 17, 2021, despite the fact that Clay Hine, David Calland, Kirk Young and Tim Reynolds were all ready, willing and able to move to New York, begin rehearsals on October 25, 2021, and begin performances on December 20, 2021, Defendant Carl Pasbjerg, acting on behalf and at the direction of his co-Defendants, **(i)** unilaterally stated that “we will not be needing your services” without cause or provocation, **(ii)** threatened to send each of them an Actors’ Equity Production Contract that would thereafter be immediately terminated, and **(iii)** offered each of them \$10,000.00 even though they were each entitled to a 48 week notice of termination plus 48 weeks of salary worth \$118,131.84 as per Rule 12(D)(2) of the Equity Production Contract.

10. On September 10, 2021, although Clay Hine, David Calland, Kirk Young and Tim Reynolds were all still ready, willing and able to move to New York, begin rehearsals on October 25, 2021, and begin performances on December 20, 2021, Defendant Carl Pasbjerg, acting on behalf and at the direction of his co-Defendants, followed through on the above by sending Clay Hine, David Calland, Kirk Young and Tim Reynolds boilerplate Actors’ Equity Production Contracts that brazenly did not include the agreed-upon terms set forth in each of the 2019 and 2020 contracts, as expressly required in paragraph 12 thereof.

11. Clay Hine, David Calland, Kirk Young and Tim Reynolds advised Defendant Carl Pasbjerg that they were ready to sign each of the Actors’ Equity Production Contracts if

they were corrected to include the agreed-upon terms set forth in paragraph 12 of each of the 2019 and 2020 contracts. Said agreed-upon terms were specifically provided to Defendant Carl Pasbjerg in writing on September 13, 2021.

12. Defendants refused to include the agreed-upon language and thereafter unilaterally terminated the 2020 contract (for a second time) and hired four other actors to play the Barbershop Quartet in *The Music Man*.

**JURISDICTION AND PARTIES**

13. Plaintiff CLAY HINE is (i) an award-winning baritone barbershop quartet singer, (ii) a founding member of Category Four, a barbershop quartet that has won numerous awards and been a top-tier finalist in international competition, and (iii) a resident of Georgia.

14. Plaintiff DAVID CALLAND is (i) an award-winning lead-singer in barbershop quartets, (ii) a member of Category Four, a barbershop quartet that has won numerous awards and been a top-tier finalist in international competition, and (iii) a resident of Ohio.

15. Plaintiff KIRK YOUNG is (i) an award-winning bass barbershop quartet singer, (ii) a founding member of Category Four, a barbershop quartet that has won numerous awards and been a top-tier finalist in international competition, and (iii) a resident of New Hampshire.

16. Plaintiff TIM REYNOLDS is (i) an award-winning tenor barbershop quartet singer, (ii) a founding member of Category Four, a barbershop quartet that has won numerous awards and been a top-tier finalist in international competition, and (iii) a resident of Georgia.

17. Defendant IOWA STUBBORN LIMITED LIABILITY COMPANY is a business entity authorized to do business in the State of New York with offices located at c/o Alchemy Production Group Limited Liability Company, 630 Ninth Avenue, Suite 610, New York, NY 10036, and is a producing entity and Producer of the Broadway Musical *The Music Man*,

currently in previews and scheduled to open on Broadway at the Winter Garden Theatre on February 10, 2022.

18. Defendant ALCHEMY PRODUCTION GROUP LIMITED LIABILITY COMPANY is a business entity authorized to do business in the State of New York with offices located at 630 Ninth Avenue, Suite 610, New York, NY 10036, and is a producing entity, General Manager, and/or signatory of the Broadway Musical *The Music Man*, currently in previews and scheduled to open on Broadway at the Winter Garden Theatre on February 10, 2022.

19. Defendant MARSHALL B. PURDY is a principal of Defendant ALCHEMY PRODUCTION GROUP LIMITED LIABILITY COMPANY with offices located at 630 Ninth Avenue, Suite 610, New York, NY 10036, which is the General Manager and signatory of Defendant IOWA STUBBORN LIMITED LIABILITY COMPANY, a producing entity and Producer of the Broadway Musical *The Music Man*, currently in previews and scheduled to open on Broadway at the Winter Garden Theatre on February 10, 2022.

20. Defendant CARL PASBJERG is a principal of Defendant ALCHEMY PRODUCTION GROUP LIMITED LIABILITY COMPANY with offices located at 630 Ninth Avenue, Suite 610, New York, NY 10036, which is the General Manager and signatory of Defendant IOWA STUBBORN LIMITED LIABILITY COMPANY, a producing entity and Producer of the Broadway Musical *The Music Man*, currently in previews and scheduled to open on Broadway at the Winter Garden Theatre on February 10, 2022.

21. Defendant KATE HORTON is an individual with offices located at c/o Alchemy Production Group Limited Liability Company, 630 Ninth Avenue, Suite 610, New York, NY 10036 and is a Producer of the Broadway Musical *The Music Man*, currently in previews and scheduled to open on Broadway at the Winter Garden Theatre on February 10, 2022.

## FACTUAL BACKGROUND

22. Plaintiffs Clay Hine, David Calland, Kirk Young and Tim Reynolds (“Plaintiffs”) comprise an award-winning barbershop quartet who were cast in the Broadway Production of *The Music Man* starring Hugh Jackman and Sutton Foster and scheduled to open on February 10, 2022.

23. Defendant producers, producing entities, executive producers, and general managers, along with casting director Telsey & Company and director Jerry Zaks (“the Producers”) specifically sought them out via the Barbershop Harmony Society in Nashville TN (*barbershop.org*) because they were seeking an authentic barbershop quartet, not four singers who would simply be cast as a quartet. After seeing Plaintiffs’ *YouTube* videos and auditioning them, they were signed to individual contracts on November 23, 2019 and again on November 12, 2020.

### November 23, 2019 Deal Memo

24. On or about November 23, 2019, each Plaintiff entered into a written agreement with Defendant IOWA STUBBORN LIMITED LIABILITY COMPANY that expressly stated in paragraph 12 that it was “valid and binding between the parties,” and that provided, *inter alia*, as follows:

\* \* \*

#### **3. TERM:**

Actor agrees to the following term:

#### **WORK SESSION**

March 30, 2020 – April 25, 2020



BROADWAY

1st Rehearsal – on or about July 13, 2020  
**1st Preview – on or about September 9, 2020**  
Opening Night – on or about October 15, 2020  
**Final Performance: 1 year from first preview**

Schedule is subject to change

**4. COMPENSATION**

Contractor shall receive:

\* \* \*

BROADWAY REHEARSAL COMPENSATION –  
Scale - \$2,168.00

BROADWAY PERFORMANCE COMPENSATION –

Scale - \$2,168.00  
Media Fee - \$54.20  
**1 Year Rider - \$80.00**  
TOTAL: \$2,302.20

(emphasis added)

\* \* \*

**10. REPRESENTATION & WARRANTIES, EXCLUSIVITY OF SERVICES**

Actor represents and warrants that Actor has not limited, by agreement with others, Actor’s right to perform services hereunder. Actor further represents and warrants that Actor has not heretofore entered into any contract or undertaken any commitment in conflict with this agreement and that Actor shall not accept any engagement in the entertainment field or otherwise for the rendition of Actor’s services which may or shall interfere with the proper and timely rendition and performance of Actor’s services and obligations hereunder. Actor agrees that Actor’s primary obligation is to render Actor’s services in the Play, as required hereunder, to the best of Actor’s ability. Without limiting the foregoing, **it is acknowledged and agreed that the services to be rendered by Actor hereunder are of a special and unique value and character, the loss of which due to Actor’s absence could cause Producer irreparable injury and/or damage.** In the event of such loss, Producer shall be entitled to any and all rights or remedies available to it. Actor agrees to indemnify and hold harmless Producer and Producer’s principals and affiliates from and against any and all claims, liabilities, losses, damages, judgments, costs and expenses arising out of the breach of any warranty, representation or agreement made by Actor hereunder. (emphasis added)

\* \* \*

## 12. PRODUCTION CONTRACT

The parties agree that they intend to enter into a longer form production contract in connection with the Broadway production (the “Production Contract”), **which shall be negotiated in good faith and shall incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes.** The Production Contract shall also incorporate such additional provisions (to be negotiated in good faith, taking into account Actor's stature in the entertainment industry) customarily contained in the theatrical industry in such agreements. Until such time as the parties enter into the Production Contract, **this Deal Memo shall be valid and binding between the parties hereto.** (emphasis added)

25. Paragraph 3 of the aforesaid 2019 Deal Memo expressly provided, *inter alia*, that Plaintiffs were signed to eight weeks of rehearsals followed by a one-year Broadway performance contract as per (i) the Paragraph 3 language regarding “1st Preview – on or about September 9, 2020” and “Final Performance: 1 year from first preview” and (ii) the Paragraph 4 language regarding “1 Year Rider - \$80.00.”

26. Paragraph 10 of the aforesaid 2019 Deal Memo expressly provided, *inter alia*, that “it is acknowledged and agreed that the services to be rendered by Actor hereunder are of a special and unique value and character, the loss of which due to Actor’s absence could cause Producer irreparable injury and/or damage.”

27. Paragraph 12 of the aforesaid 2019 Deal Memo expressly provided, *inter alia*, that “the parties agree that they intend to enter into a longer form production contract in connection with the Broadway production (the “Production Contract”), which shall be negotiated in good faith and shall incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes.”

28. Paragraph 12 of the aforesaid 2019 Deal Memo also expressly provided, *inter alia*, that “this Deal Memo shall be valid and binding between the parties hereto.”

**November 12, 2020 Deal Memo**

29. On or about November 12, 2020, each Plaintiff entered into a second written agreement with Defendant IOWA STUBBORN LIMITED LIABILITY COMPANY and signed by Defendant Marshall B. Purdy, General Manager, that also expressly stated in paragraph 12 that it was “valid and binding between the parties,” and that provided, *inter alia*, as follows:

\* \* \*

**3. TERM:**

Actor agrees to the following term:

**BROADWAY**

- 1st Rehearsal – on or about October 25, 2021
- 1st Preview – on or about December 20, 2021**
- Opening Night – on or about February 10, 2022
- Final Performance: 1 year from first preview**

The foregoing schedule is subject to change in Producer’s discretion, including, without limitation, due to ongoing governmental or union restrictions preventing Broadway theatres from reopening with attendance at 100% of their respective pre-Covid capabilities.

**4. COMPENSATION**

- BROADWAY REHEASAL COMPENSATION
- Scale - \$2,323.00
- BROADWAY PERFORMANCE COMPENSATION
- Scale - \$2,323.00
- Media Fee - \$58.08
- 1 Year Rider - \$80.00**
- TOTAL: \$2,461.08

(emphasis added)

\* \* \*

## **10. REPRESENTATION & WARRANTIES, EXCLUSIVITY OF SERVICES**

Actor represents and warrants that Actor has not limited, by agreement with others, Actor's right to perform services hereunder. Actor further represents and warrants that Actor has not heretofore entered into any contract or undertaken any commitment in conflict with this agreement and that Actor shall not accept any engagement in the entertainment field or otherwise for the rendition of Actor's services which may or shall interfere with the proper and timely rendition and performance of Actor's services and obligations hereunder. Actor agrees that Actor's primary obligation is to render Actor's services in the Play, as required hereunder, to the best of Actor's ability. Without limiting the foregoing, **it is acknowledged and agreed that the services to be rendered by Actor hereunder are of a special and unique value and character, the loss of which due to Actor's absence could cause Producer irreparable injury and/or damage.** In the event of such loss, Producer shall be entitled to any and all rights or remedies available to it. Actor agrees to indemnify and hold harmless Producer and Producer's principals and affiliates from and against any and all claims, liabilities, losses, damages, judgments, costs and expenses arising out of the breach of any warranty, representation or agreement made by Actor hereunder. (emphasis added)

\*

\*

\*

## **12. PRODUCTION CONTRACT**

The parties agree that they intend to enter into a longer form production contract in connection with the Broadway production (the "Production Contract"), **which shall be negotiated in good faith and shall incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes.** The Production Contract shall also incorporate such additional provisions (to be negotiated in good faith, taking into account Actor's stature in the entertainment industry) customarily contained in the theatrical industry in such agreements. Until such time as the parties enter into the Production Contract, **this Deal Memo shall be valid and binding between the parties hereto.** (emphasis added)

30. Paragraph 3 of the aforesaid 2020 Deal Memo expressly provided, *inter alia*, that Plaintiffs were signed to eight weeks of rehearsals beginning October 25, 2021 followed by a one-year Broadway performance contract as per (i) the Paragraph 3 language regarding "1st Preview – on or about December 20, 2021" and "Final Performance: 1 year from first preview" and (ii) the Paragraph 4 language regarding "1 Year Rider - \$80.00."

31. Paragraph 10 of the aforesaid 2019 Deal Memo expressly provided, *inter alia*, that "it is acknowledged and agreed that the services to be rendered by Actor hereunder are of a

special and unique value and character, the loss of which due to Actor’s absence could cause Producer irreparable injury and/or damage.”

32. Paragraph 12 of the aforesaid 2019 Deal Memo expressly provided, *inter alia*, that “the parties agree that they intend to enter into a longer form production contract in connection with the Broadway production (the “Production Contract”), which shall be negotiated in good faith and shall incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes.”

33. Paragraph 12 of the aforesaid 2019 Deal Memo also expressly provided, *inter alia*, that “this Deal Memo shall be valid and binding between the parties hereto.”

34. Following the execution of the November 12, 2020 contract, Plaintiffs (i) either quit, modified, or took leave from their jobs; (ii) either sold their homes or did not renew their leases (with one exception); and, (iii) with the assistance/encouragement of Defendants fairly close to their June 2021 termination, looked for housing in New York for the 14 months they would be rehearsing and performing *The Music Man* on Broadway.

35. On June 17, 2021, despite the fact that Plaintiffs were all ready, willing and able to move to New York, begin rehearsals on October 25, 2021, and begin one year of performances on December 20, 2021, Defendant Carl Pasbjerg, acting on behalf and at the direction of his co-Defendants, emailed each Plaintiff as follows:

As I discussed with you, we’re sorry that the artistic changes in the show are moving forward in a different direction and **we will not be needing your services.**

We want to do what we can to address any disruption that this has caused you and help you through this situation. As a good will accommodation to you, we can agree to pay you a one-time fee of \$10,000.

Note that under your Deal Memo, **we could require you to sign an Equity production contract and terminate your employment under that contract**, which would only give you the right to 2 weeks’ salary. However, we are trying to be fair and transparent with you, so we hope that you will agree to the terms that we are offering.

Please let us know if you agree to these terms. To that end, **we are attaching simple termination agreement** for your signature along with a W-9 to fill out. **If you do not agree to this termination and the \$10,000 fee, we will simply send you the customary long form Equity production contract, and proceed accordingly** (note that if you did not sign the Equity production contract, you would be in breach of your obligations under the Deal Memo and would be entitled to nothing).

Please let us know what you want to do.

Reserving all customary rights.

(emphasis added)

36. Attached to said June 17, 2021 emails were a W-9 Form and a proposed termination agreement that sought, *inter alia*, to unilaterally terminate each of the “valid and binding” Deal Memos signed by the parties as follows:

**As you know, Iowa Stubborn Limited Liability Company (“Producer”) engaged you (“Actor”) as a performer in connection with Producer’s upcoming Broadway production of the Play (the “Production”) pursuant to the deal terms memorandum dated November 12, 2020 (the “Deal Memo”).**

**You acknowledge and agree that this letter of agreement (this “Agreement”) will serve to terminate your engagement in connection with the Production and will constitute a full and complete statement of the rights and obligations of the parties to one another in connection with the Production. (emphasis added)**

\* \* \*

37. The \$10,000.00 that was offered to each Plaintiff by Defendants was in direct breach of each of the four November 12, 2020 Deal Memos insofar as the parties **(i)** had expressly agreed to “incorporate all of the provisions of this Deal Memo, without any changes except for grammatical purposes” [Para 12], **(ii)** had expressly agreed that “this Deal Memo shall be valid and binding between the parties hereto” [Para 12], **(iii)** had expressly agreed to an eight-week rehearsal period beginning on October 25, 2021 at \$2,323.00 per week, and **(iv)** had expressly agreed to a one-year performance term from December 20, 2021 through December 19, 2022 with weekly payments of \$2,461.08 [Para 3 and 4].

38. On or about July 6, 2021, Plaintiffs’ counsel wrote to Defendant Pasbjerg as follows:

\* \* \*

Each of my clients has also received correspondence from you, as General Manager of Iowa Stubborn LLC, purporting to terminate said employment in breach of the four executed agreements by which they were engaged.

Please be advised that each agreement is a fully enforceable document that reflects the parties’ contractual meeting of the minds. Moreover, each one of my clients is ready, willing, and able to perform his obligations thereunder for the entire rehearsal and performance term (through approximately December 20, 2022) in exchange for the stated compensation therein.

We are neither persuaded nor intimidated by your misguided belief that the aforementioned agreements require a further Production Contract in order to be enforceable. In addition to the above-referenced terms and conditions, (i) Paragraph 10 acknowledges the “special and unique value and character” of my clients’ services to the production; (ii) Paragraph 12 requires that the terms of the aforementioned agreement be fully incorporated by reference; and (iii) Paragraph 12 also specifies that until such time as the parties enter into a Production Contract [negotiated in good faith and not a mere subterfuge by which to fire my clients with two-weeks notice], the aforementioned agreement “shall be valid and binding between the parties hereto.” In short, *your* client drafted an unambiguous agreement that, *inter alia*, requires my clients to render their special, unique talents in *The Music Man*, requires Producer to pay them the entirety of their stated compensation, and does not permit the type of bad faith negotiation as has been suggested herein.

It is our sincere hope that we can preserve the good relationships among the members of the artistic and production team, not to mention the unions, and that this matter can be resolved without litigation. If not, we will not hesitate to commence an action to enforce our contractual rights and to preserve and pursue whatever testimonial and documentary evidence is reasonably necessary to establish our claims.

\* \* \*

39. Throughout July, August, and early September 2021, Plaintiffs remained ready, willing and able to move to New York, begin rehearsals on October 25, 2021, and begin one year of performances on December 20, 2021, as per their respective Deal Memos and conveyed the same to Defendants through their legal counsel.

40. On or about September 10, 2021, although Plaintiffs were all still ready, willing and able to move to New York, begin rehearsals on October 25, 2021, and begin one year of performances on December 20, 2021, Defendant Carl Pasbjerg, acting on behalf and at the direction of his co-Defendants, followed through on the above by sending each Plaintiff the following email along with an Actors' Equity Production Contract that purported to comply with the express terms of the Deal Memos:

Pursuant to Section 12 of your November 12, 2020 Deal Memo, attached please find your Actors' Equity Association Production Contract for your signature. Please note that per clause 3c) of the Contract, and in accordance with the Actors' Equity Association collective bargaining agreement, you must sign and return this agreement within 72 hours or it will be deemed null and void.

Sincerely,  
IOWA STUBBORN LLC  
Carl Pasbjerg  
General Manager

41. Section 12 of the 2020 Deal Memorandum, to which Defendant Pasbjerg's emails refer, actually states the following:

12. PRODUCTION CONTRACT

The parties agree that they intend to enter into a longer form production contract in connection with the Broadway production (the "Production Contract"), which shall be negotiated in good faith and shall incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes. The Production Contract shall also incorporate such additional provisions (to be negotiated in good faith, taking into account Actor's stature in the entertainment industry) customarily contained in the theatrical industry in such agreements. Until such time as the parties enter into the Production Contract, this Deal Memo shall be valid and binding between the parties hereto. (emphasis added)



42. Said emails were patently a misrepresentation of what had transpired insofar as Defendants were the parties who failed to comply with all of the components of Section 12 of the Deal Memo as follows: (i) enter into a longer form production contract, (ii) negotiate said production contract in good faith, and (iii) incorporate into said production contract all of the provisions of the Deal Memo without any change.

43. Defendants failed to engage in good faith negotiations regarding the “longer form production contract” sent to Plaintiffs on September 10, 2021 by sending each Plaintiff an email, W-9, and termination agreement on June 17, 2021 that stated (i) “we will not be needing your services,” (ii) we could require you to sign an Equity production contract and terminate your employment under that contract which would only give you the right to 2 weeks’ salary,” (iii) “we are attaching simple termination agreement for your signature along with a W-9 to fill out,” (iv) “If you do not agree to this termination and the \$10,000 fee, we will simply send you the customary long form Equity production contract, and proceed accordingly (note that if you did not sign the Equity production contract, you would be in breach of your obligations under the Deal Memo and would be entitled to nothing),” (v) “as you know, Iowa Stubborn Limited Liability Company (“Producer”) engaged you (“Actor”) as a performer in connection with Producer’s upcoming Broadway production of the Play (the “Production”) pursuant to the deal terms memorandum dated November 12, 2020 (the “Deal Memo”),” and (vi) you acknowledge and agree that this letter of agreement (this “Agreement”) will serve to terminate your engagement in connection with the Production . . .”

44. Said emails, W-9, and termination agreement were also in direct contradiction of Deal Memo Section 12 by which (i) the parties agreed that “[u]ntil such time as the parties enter into the Production Contract, **this Deal Memo shall be valid and binding between the parties hereto**” and (ii) the parties agreed “to enter into a longer form production contract in connection

with the Broadway production (the “Production Contract”), which shall be negotiated in good faith **and shall incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes.**” (emphasis added)

45. The \$10,000.00 that was offered to each Plaintiff by Defendants was in express contradiction to Defendants’ contractual agreement **(i)** to “incorporate all of the provisions of this Deal Memo, without any changes except for grammatical purposes” [Para 12], **(ii)** that “this Deal Memo shall be valid and binding between the parties hereto” [Para 12], **(iii)** that each Plaintiff would be paid for an eight-week rehearsal period beginning on October 25, 2021 at \$2,323.00 per week, and **(iv)** that each Plaintiff would be signed to a one-year performance term from December 20, 2021 through December 19, 2022 with weekly payments of \$2,461.08 [Para 3 and 4].

46. On September 13, 2021, Plaintiffs’ counsel responded to the September 10, 2021 email and the September 10, 2021 Actors’ Equity Association Production Contract that purported yet clearly failed to comply with the November 12, 2020 Deal Memos as follows:

My clients are ready, willing, and able to perform all of their obligations pursuant to the fully enforceable November 12, 2020 Deal Memos that Producer entered into with each of them. (Exhibits A through D). Producer must, however, first revise the proposed Contract/Riders so that, pursuant to the express language in the same Paragraph 12 that you cite in your email, the Contract/Riders “shall be negotiated in good faith and shall incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes.”

Producer has already demonstrated an utter lack of good faith by **(i)** purporting to terminate each of my clients via your June 17, 2021 emails and **(ii)** threatening to brazenly misuse each Equity Production Contract/Rider as a sword rather than a shield by sending my clients Equity Contract/Riders and then terminating them with 2 weeks notice if they refuse to counter-sign termination agreements. (Exhibit E) You are now undeniably following through on that stated threat despite the well-settled Equity practice of standing by the *non*-breaching party, *i.e.*, my clients, not the Producer herein.

Contrary to your June 17, 2021 email, my clients will not be in breach of the Deal Memos for declining to sign Contract/Riders that conspicuously omit and contradict the terms of a Deal Memo that must be contractually incorporated by reference therein. That is what you sent to each of them on September 10, 2021. It is actually Producer who has already breached the Deal Memos by purporting to terminate my clients on June 17, 2021, by failing to include negotiated deal terms in your proposed Contract/Riders, and by acting in bad faith.

\* \* \*

47. Plaintiffs' counsel's September 13, 2021 letter then went on to present Defendants with an itemization of how each of the four Actors' Equity Production Contracts needed to be modified so that each one complied with the express terms of the binding and enforceable November 12, 2020 Deal Memo:

Hence, we hope that Producer avails itself of this opportunity to remedy the aforesaid breaches by revising the Contract/Riders as follows so that they comply with the corresponding Deal Memos and can be counter-signed by each of my clients:

\* \* \*

**Revise References to "Principal and/or Cast"**: Both the 2020 and 2019 Deal Memos undeniably treat my clients as one-year term chorus members **(i)** by setting forth a contract term that begins at "1<sup>st</sup> Rehearsal" and ends "1 year from first preview" and **(ii)** by citing "1 Year Rider - \$80.00." If Producer had hired my clients as Principals, both Deal Memos would state \$212 instead of \$80. Moreover, if they were not signed to a one-year contract, there would be no reference to "1 year from first preview" and no reference to "1 Year Rider - \$80.00."

**Revise Rider Para. 3b**: Reference to Rule 12(D)(2) must be made herein. There is no language in the Deal Memos that invokes Rule 69(a)(1)(e). This is clearly a prelude to Producer's bad faith intention of giving each of my clients 2 weeks notice of termination immediately upon execution of the agreement. In fact, it is Rule 12(D)(2) of the Equity Production Contract that applies herein and requires 48 weeks notice of termination. This is based, *inter alia*, upon the fact that Producer **(i)** hired my clients for their "special and unique" talents (Deal Memo Para. 10) for a term that begins at "1<sup>st</sup> Rehearsal" and ends "1 year from first preview" and **(ii)** included a reference to the "1 Year Rider - \$80.00" in each Deal Memo. These terms were expressly incorporated by reference into any subsequent production contract. I might add that this was neither a typo nor grammatical error since the exact same language appears in the November 23, 2019 Deal Memos signed by all the parties herein. Moreover, the \$2,461.08 set forth in Para. 4 of the

proposed Contract/Rider is identical to the \$2,461.08 set forth in the Deal Memos which contemplate the inclusion of said \$80/week 1-year rider.

**Revise Rider Para. 3c:** Clarify that the Contract/Rider is to be signed and returned within 72 hours of a redraft that incorporates by reference the terms of the 2020 Deal Memos. Deal Memo Paragraph 12, as cited by you in your September 10, 2021 email, states that the Production Contract “shall be negotiated in good faith and shall incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes.” My clients will sign and return each Contract/Rider within 72 hours once Producer has provided us with a corrected draft that does not expressly breach the Deal Memos. I remind you that, pursuant to Paragraph 12 of the Deal Memo, “[u]ntil such time as the parties enter into the Production Contract, this Deal Memo shall be valid and binding between the parties hereto.” Hence, there is no validity to your unilateral pronouncement that the failure to sign within 72 hours means that “neither party shall have any further obligation to the other.” In such circumstance, the Deal Memo continues in full force and effect.

**Revise Rider Para. 4a:** My clients are being paid a yearly salary to be paid in weekly installments of \$2,461.08 as per Deal Memo Paragraphs 3 and 4. Moreover, the conspicuous attempt to subtract the \$80.00 1-year rider from the rehearsal period is a clear indication of Producer’s bad faith attempt to terminate my clients during the rehearsal period.

**Revise Rider Para. 5:** Add a reference to “1Year Rider” following reference to “Media fee.”

**New Rider Para. 31(c):** Notwithstanding anything to the contrary herein, the parties expressly incorporate by reference each and every term and condition set forth in the November 12, 2020 Deal Memo between the parties, a copy of which is attached hereto, and any conflicts between this Contract/Rider and said Deal Memo shall be resolved in favor of the Deal Memo.

Kindly incorporate the above in your revised draft of the Contract/Rider and my clients will counter-sign within 72 hours and be ready to begin rehearsals on October 28, 2021 with the rest of the Music Man company.

None of my clients’ rights and remedies are waived herein and all of said rights and remedies are expressly reserved.

\* \* \*

48. On September 14, 2021, Defendants' counsel responded to Plaintiffs' counsel's September 13, 2021 letter and exhibits as follows:

As you know, we represent Iowa Stubborn LLC (the "Producer"). I have received your September 13, 2021 letter to Carl Pasbjerg, pursuant to which each of your clients (Clay Hine, David Calland, Kirk Young and Tim Reynolds) has rejected and refused to sign the Actors' Equity Association Production Contracts sent to him by Carl Pasbjerg on September 10, 2021 (collectively, the "Contracts"). The Contracts are fully consistent and in compliance with the provisions of each of your client's respective Deal Terms Memorandum with Producer dated November 12, 2020 (collectively, the "Deal Memos"). While you state that your clients are willing to sign production contracts with the edits set forth in your letter, for the reasons stated in my July 16, 2021 letter to you (a copy of which is enclosed), such edits are inconsistent with the terms of the Deal Memos and your clients' insistence on such terms constitutes a material breach of their agreement in the Deal Memos to negotiate in good faith long form production contracts. Accordingly, based on your clients' material breaches of the Deal Memos, such Deal Memos are hereby terminated.

49. Following Defendants' unilateral termination of the Deal Memo and breach of the express terms of the November 12, 2020 Deal Memos, Defendants announced that they had hired the following four actors to replace Plaintiffs: Phillip Boykin, Eddie Korbich, Daniel Torres, and Nicholas Ward.

50. Said four actors thereafter took Plaintiffs' places in the production of *The Music Man*, rehearsed said musical in place of Plaintiffs, began performances in place of Plaintiffs, and have been paid in place of Plaintiffs.

51. Pursuant to the November 12, 2020 Deal Memo, Plaintiffs were each entitled to be paid \$2,323.00 per week by Defendants for eight (8) weeks of rehearsal beginning October 25, 2021, yet were not.

52. Pursuant to the November 12, 2020 Deal Memo, Plaintiffs were and continue to be entitled to be paid \$2,461.08 per week by Defendants for Fifty-Two (52) weeks of performances from December 20, 2021 through December 19, 2022, yet have not been paid and will continue to not be paid by Defendants.

**FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT**

53. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 52 as if fully set forth hereafter.

54. CPLR Section 3001 provides, *inter alia*, that the Supreme Court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed.

55. A bona fide justiciable and substantial controversy exists herein as to (i) whether the terms of each 2020 Deal Memo were required to be incorporated into each proposed Actors' Equity Production Contract and (ii) whether the rehearsal and performance payment obligations set forth in each 2020 Deal Memo are enforceable herein.

56. Plaintiffs and Defendants have adverse legal interests as to their present and prospective obligations herein regarding the following:

**November 23, 2019 Deal Memo**

- (a) the intended Broadway Performance Term of the November 23, 2019 Deal Memo (Para 3);
- (b) the intended Compensation of the November 23, 2019 Deal Memo (Para 4);
- (c) the designation and intention behind the description of Plaintiffs' services to be rendered as "of a special and unique value and character, the loss of which due to [Plaintiffs'] absence could cause [Defendants] irreparable injury and/or damage (Para 10);
- (d) the intention behind the parties' obligation to negotiate the production contract in good faith (Para 12);
- (e) the meaning and enforceability of the language that the production contract shall "incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes" (Para 12);

- (f) the meaning and enforceability of the language that “[u]ntil such time as the parties enter into the Production Contract, this Deal Memo shall be valid and binding between the parties hereto (Para 12).

**November 12, 2020 Deal Memo**

- (g) the intended Broadway Performance Term of the November 12, 2020 Deal Memo (Para 3);
- (h) the intended Compensation of the November 12, 2020 Deal Memo (Para 4);
- (i) the designation and intention behind the description of Plaintiffs’ services to be rendered as “of a special and unique value and character, the loss of which due to [Plaintiffs’] absence could cause [Defendants] irreparable injury and/or damage (Para 10);
- (j) the intention behind the parties’ obligation to negotiate the production contract in good faith (Para 12);
- (k) the meaning and enforceability of the language that the production contract shall “incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes” (Para 12);
- (l) the meaning and enforceability of the language that “[u]ntil such time as the parties enter into the Production Contract, this Deal Memo shall be valid and binding between the parties hereto (Para 12).

57. A declaratory judgment herein would serve a useful purpose in clarifying and settling the aforesaid legal issues presented herein.

58. A declaratory judgment would finalize the aforesaid controversy and offer relief from uncertainty.

59. Plaintiffs have each been damaged in the amounts of **(i)** \$18,584.00 in unpaid weekly rehearsal payments at the rate of \$2,323.00 per week for eight weeks beginning October 25, 2021; **(ii)** \$127,976.16 in unpaid weekly performance payments at the rate of \$2,461.08 per week for the 52 weeks of December 20, 2021 through December 19, 2022; and **(iii)** the interest thereupon for all sums not paid in timely fashion.

60. Plaintiffs are entitled to a declaratory judgment as follows:

(a) that the one year Broadway performance Terms of each 2020 Deal Memo were required to be incorporated into each proposed Actors' Equity Production Contract,

(b) that the rehearsal and performance payment obligations set forth in each 2020 Deal Memo are enforceable herein,

(c) that Defendants owe Plaintiff Clay Hine \$146,560.16 (\$18,584.00 for rehearsals and \$127,976.16 for performances) plus interest thereupon;

(d) that Defendants owe Plaintiff David Calland \$146,560.16 (\$18,584.00 for rehearsals and \$127,976.16 for performances) plus interest thereupon;

(e) that Defendants owe Plaintiff Kirk Young \$146,560.16 (\$18,584.00 for rehearsals and \$127,976.16 for performances) plus interest thereupon; and

(f) that Defendants owe Plaintiff Tim Reynolds \$146,560.16 (\$18,584.00 for rehearsals and \$127,976.16 for performances) plus interest thereupon.

**SECOND CAUSE OF ACTION: BREACH OF CONTRACT**

61. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 60 as if fully set forth hereafter.

62. Each Plaintiff and Defendants are parties to (i) the November 23, 2019 Deal Memo, and (ii) the November 12, 2020 Deal Memo.

63. Each Plaintiff has performed all of the terms and conditions required of him under each of the aforesaid Deal Memos.

64. None of the Plaintiffs is in breach of any terms or conditions set forth in the November 23, 2019 Deal Memo or the November 12, 2020 Deal Memo.



**November 23, 2019 Deal Memo**

65. Defendants are in breach of the November 23, 2019 Deal Memo as follows:
- (a) Defendants have denied each Plaintiff the contractual right to participate in eight weeks of rescheduled rehearsals plus receive payment therefor originally beginning on or about July 13, 2020 (para 3 and 4);
  - (b) Defendants have denied and continue to deny each Plaintiff the contractual right to participate in fifty-two weeks of rescheduled Broadway performances plus receive payment therefor originally beginning on or about October 15, 2020 (para 3 and 4);
  - (c) Defendants failed to negotiate in “good faith” with each Plaintiff regarding the execution of a long form production contract in connection with the rescheduled Broadway production (para 10);
  - (d) Defendants failed to “incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes” regarding the execution of a long form production contract in connection with the rescheduled Broadway production (para 12).

**November 12, 2020 Deal Memo**

66. Defendants are in breach of the November 12, 2020 Deal Memo as follows:
- (a) Defendants have denied each Plaintiff the contractual right to participate in eight weeks of rehearsals plus receive payment therefor beginning on or about October 25, 2021 (para 3 and 4);
  - (b) Defendants have denied and continue to deny each Plaintiff the contractual right to participate in fifty-two weeks of Broadway performances plus payment therefor beginning on or about December 20, 2021 (para 3 and 4);
  - (c) Defendants failed to negotiate in “good faith” with each Plaintiff regarding the execution of a long form production contract in connection with the current Broadway production (para 10);
  - (d) Defendants failed to “incorporate all of the provisions of this Deal Memo, without any change except for grammatical purposes” regarding the execution of a long form production contract in connection with the current Broadway production (para 12);

- (e) Defendants breached their obligation to negotiate the production contract in good faith by unilaterally terminating the Deal Memo on June 17, 2021 (Para 12);
- (f) Defendants breached their obligation to “incorporate all of the provisions of the Deal Memo, without any change except for grammatical purposes” into the production contract by unilaterally terminating the Deal Memo on June 17, 2021 (Para 12);
- (g) Defendants, by unilaterally terminating the Deal Memo on June 17, 2021, breached the obligation that “[u]ntil such time as the parties enter into the Production Contract, this Deal Memo shall be valid and binding between the parties hereto (Para 12)
- (h) Defendants breached their obligation to negotiate the production contract in good faith by unilaterally terminating the Deal Memo for a second time on September 13, 2021 (Para 12);
- (i) Defendants breached their obligation to “incorporate all of the provisions of the Deal Memo, without any change except for grammatical purposes” into the production contract by unilaterally terminating the Deal Memo for a second time on September 13, 2021 (Para 12);
- (j) Defendants, by unilaterally terminating the Deal Memo for a second time on September 13, 2021, breached the obligation that “[u]ntil such time as the parties enter into the Production Contract, this Deal Memo shall be valid and binding between the parties hereto (Para 12)
- (k) Defendants breached their obligation to “incorporate all of the provisions of the Deal Memo, without any change except for grammatical purposes” into the production contract by failing to revise the September 7, 2021 production contract as requested by Plaintiffs;
- (l) Defendants breached their obligation to “incorporate all of the provisions of the Deal Memo, without any change except for grammatical purposes” into the production contract by failing to pay each Plaintiff \$18,584.00 for eight weeks of rehearsals plus interest thereupon;
- (m) Defendants breached their obligation to “incorporate all of the provisions of the Deal Memo, without any change except for grammatical purposes” into the production contract by failing to pay each Plaintiff \$127,976.16 for fifty two weeks of performances plus interest thereupon.

67. As a direct result of Defendants' breach of contract, Plaintiffs have each been damaged in the following amounts and are entitled to judgment therefor: **(i)** \$18,584.00 in unpaid weekly rehearsal payments at the rate of \$2,323.00 per week for eight weeks beginning October 25, 2021; **(ii)** \$127,976.16 in unpaid weekly performance payments at the rate of \$2,461.08 per week for the fifty two weeks of December 20, 2021 through December 19, 2022; and **(iii)** the interest thereupon for all sums not paid in timely fashion.

**WHEREFORE**, Plaintiffs respectfully pray that Judgment be entered against Defendants as follows:

**1<sup>st</sup> Cause of Action:** Declaratory Judgment that the one year Broadway performance terms of each 2020 Deal Memo were required to be incorporated into each proposed Actors' Equity Production Contract; Declaratory Judgment that the rehearsal and performance payment obligations set forth in each 2020 Deal Memo are enforceable herein; and the following monetary damages: **(i)** for each Plaintiff, \$18,584.00 in unpaid weekly rehearsal payments at the rate of \$2,323.00 per week for eight weeks beginning October 25, 2021; **(ii)** for each Plaintiff, \$127,976.16 in unpaid weekly performance payments at the rate of \$2,461.08 per week for the fifty two weeks of December 20, 2021 through December 19, 2022; and **(iii)** for each Plaintiff, the interest thereupon for all sums not paid in timely fashion;

**2<sup>nd</sup> Cause of Action:** Breach of Contract and damages as follows: **(i)** for each Plaintiff, \$18,584.00 in unpaid weekly rehearsal payments at the rate of \$2,323.00 per week for eight weeks beginning October 25, 2021; **(ii)** for each Plaintiff, \$127,976.16 in unpaid weekly performance payments at the rate of \$2,461.08 per week for the fifty two weeks of December 20, 2021 through December 19, 2022; and **(iii)** for each Plaintiff, the interest thereupon for all sums not paid in timely fashion;

Plus such other, further and different relief as this Court shall deem just and proper including the costs, fees, disbursements and attorney's fees incurred herein.

Dated: New York, New York  
January 26, 2021

Yours, etc.,

*Leslie H. Ben-Zvi*

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**LESLIE H. BEN-ZVI, ESQ.**  
**Feldman Golinski Reedy + Ben-Zvi PLLC**  
*Attorney for Plaintiff*  
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**Certification Pursuant to 22 NYCRR Section 130-1.1A**

LESLIE H. BEN-ZVI, ESQ, an attorney duly licensed to practice law in the State of New York, upon the penalties of perjury, hereby certifies as follows:

Pursuant to Section 130-1.1a of the Rules of the Chief Administrator, the undersigned certifies that to the best of his knowledge, information and belief, the instant action is not frivolous as defined by 22 NYCRR Section 130-1.1c.

Dated: New York, New York  
January 26, 2022

*Leslie H. Ben-Zvi*

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Leslie H. Ben-Zvi, Esq.

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**VERIFICATION**

**LESLIE H. BEN-ZVI**, an attorney duly licensed to practice before the Courts of the State of New York, upon the penalties of perjury, hereby affirms as follows:

1. I am counsel to Plaintiffs in the above-captioned matter.
2. I have read the foregoing Verified Complaint and know the contents thereof. The same is true to my own knowledge except as to those matters stated to be alleged upon information and belief and as to those matters, I believe them to be true.
3. The source of my knowledge and my information and belief is derived from my conversations with Plaintiffs, who have personal knowledge of the facts and circumstances hereof, plus from the books and records maintained by Plaintiffs.
4. The reason that I am signing this Verification is that my clients are presently in Georgia, Ohio, and New Hampshire and are not located in New York County where I maintain my offices.

Dated: New York, New York  
January 26, 2022

*Leslie H. Ben-Zvi*

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LESLIE H, BEN-ZVI, ESQ.