

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

PHRAMUS, INC. and JAMES LEVINE,

Index No.

Plaintiff(s),

Summons

-against-

METROPOLITAN OPERA ASSOCIATION, INC. aka THE
METROPOLITAN OPERA, and PETER GELB, in his
professional and personal capacities,

Date Index No. Purchased:

Defendant(s).

To the above named Defendant(s)

METROPOLITAN OPERA ASSOCIATION, INC. aka THE METROPOLITAN OPERA
LINCOLN CENTER
NEW YORK, NY, 10023

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is plaintiff's place of residence
which is maintained in New York County.

Dated: New York, NY

March 15, 2018

by 

Elkan Abramowitz

Attorneys for Plaintiff

Phramus, Inc. and James Levine
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Defendant(s).

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Summons

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To the above named Defendant(s)

PETER GELB
LINCOLN CENTER
NEW YOR, NY 10023

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

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COMPLAINT

Plaintiffs Phramus, Inc. (“Phramus”) and James Levine (“Maestro Levine” or “Levine”), by their attorneys, Morvillo Abramowitz Grand Iason & Anello P.C. and Hughes Hubbard & Reed LLP, complaining of Defendants Metropolitan Opera Association, Inc. aka The Metropolitan Opera (the “Met”) and Peter Gelb (“Gelb”), allege as follows:

INTRODUCTION

1. On December 3, 2017, based solely on unsubstantiated decades-old allegations of sexual misconduct published in the *New York Post* (the “*Post*”) and the *New York Times* (the “*Times*”), the Met, lacking contractual authority, suspended Maestro Levine without even the courtesy of a conversation regarding the substance of the allegations or the basis of his suspension. After his suspension, Levine demonstrated to the Met that his contracts to serve as Emeritus Music Director and to conduct performances for the Met, entered into long after these allegations, had clearly been violated. Nonetheless, Levine entered into good-faith discussions with the Met to sit for an interview as part of the Met’s “investigation” into the accusations published in the *Post* and the *Times*, so that Levine would be given an opportunity to tell his side of the story – an opportunity he was not afforded prior to the Met’s unlawful suspension.

2. On December 7, 2017, Levine publicly confirmed what he would have told the Met had they taken the time to ask:

As understandably troubling as the accusations noted in recent press accounts are, they are unfounded. As anyone who truly knows me will attest, I have not lived my life as an oppressor or an aggressor. I have devoted my energies to the development, growth, and nurturing of music and musicians all over the world – particularly with the Metropolitan Opera where my work has been the lifeblood and passion of my artistic imagination. My fervent hope is that in time people will come to understand the truth, and I will be able to continue my work with full concentration and inspiration.

3. Unfortunately, it became clear during the course of Levine's discussions with the Met, that the Met's so-called investigation amounted to nothing more than a kangaroo court, where there was no intention on the part of the Met to be fair or impartial. Using McCarthyite tactics, the Met refused to provide Levine with any of the names of his accusers, before or during any proposed interview, and thereby denied Levine an ability to respond to the allegations against him, about which he had no prior indication. Remarkably, the Met claimed to have anonymous accusations of wrongdoing against Levine, but refused to provide Levine with the identity of his accusers so that he could confront and refute those allegations head on. Instead, the Met's "investigation" was structured simply to justify its unauthorized suspension of Levine, post-hoc, and ultimately fulfill Gelb's long-held plan to oust Levine from the Met and completely erase his legacy from the organization.

4. Notwithstanding that discussions about Levine appearing for an interview with the Met had not yet been concluded, the Met, in a disgraceful and deceptive manner, publicly terminated Levine on March 12, 2018 without the consideration of a phone call. Thus, despite a long and storied career with the Met, it decided abruptly to terminate both its discussions and its relationship with Levine merely by notifying his agents at the same time it issued a press release

announcing to the world its firing of Levine and the purported findings of its one-sided investigation.

5. The Met's action, based only on vague and unsubstantiated accusations in the press that allegedly occurred nearly a half-century ago, constitutes a clear breach of Levine's contracts. Indeed, had the Met actually spoken with Levine before it suspended and ultimately terminated him, the Met would have learned that accusations in the press articles were inaccurate. For example, as will be discussed in detail below, Levine received numerous personal letters over the course of many years from one of his accusers, James Lestock ("Lestock"), which establish that Lestock's accusations of sexual misconduct should not have been credited. *See infra* ¶¶ 107-112. Furthermore, the Met appears to have been aware of accusations of sexual misconduct by one of Levine's other accusers in the press, Ashok Pai, since at least October 2016, when the Met was contacted by a police detective regarding the matter. Yet, the Met took no disciplinary action against Levine after learning this information, apparently because it recognized that the accusations made against Levine were false; the Met continued to enter into new contracts with Levine to conduct performances and continued to allow him to serve as Emeritus Music Director. These contracts are devoid of any clause that would cover any kind of misconduct by Levine. Additionally, a year later prosecutors publicly announced that no criminal charges would be brought against Levine regarding the unsubstantiated allegations made by Mr. Pai. It was only upon learning that the allegations would be published in the press, that the Met and Gelb, cynically hijacking the good will of the #MeToo movement, brazenly seized on these allegations as a pretext to end a long-standing personal campaign to force Levine out of the Met and cease fulfilling its legally enforceable financial commitments to him. In the process, the Met

and Gelb have attempted to tarnish the legacy of one of the world's most renowned conductors, a man who devoted forty-six years of his life to the Met.

NATURE OF ACTION

6. In this civil action, Plaintiffs Maestro Levine and Phramus seek relief for the unauthorized and improper actions taken by the Met on December 3, 2017, a heedless reaction to unsubstantiated accounts of sexual misconduct made against Levine in press articles. Levine has led the Met for over forty-five years of his accomplished career, and during that time he has conducted more than 2,500 performances for the Met, and brought the Met worldwide recognition and success. Levine has served the Met with the utmost integrity throughout his career. Yet, in spite of Levine's illustrious history with the Met, the Met unilaterally breached its contracts with Phramus (Levine's operating company) based on old accusations of wrongdoing by individuals, allegedly occurring decades before the contracts at issue here were entered into, reported in three newspaper articles. Immediately after the publication of these pieces, the Met suspended Levine and canceled his upcoming conducting engagements. Then, in an attempt seemingly to justify its breach of contracts with Phramus, the Met and its General Manager, Gelb, issued public statements about Levine that were both defamatory and false since they treated these accusations against Levine as if they were true. In order to restore Levine's name, reputation and career, Levine and Phramus bring this suit against the Met to recover for its inexcusable and injurious breach of contracts and promises, and against both Gelb and the Met for defamation.

7. Unbeknownst to the general public, Gelb's decision to suspend Levine did not stem solely from the accusations of wrongdoing in the press. Rather, for years, Gelb sought to marginalize Levine's substantial influence at the Met and to dismantle the extraordinary team of unquestionable experience and talent, which under Levine's leadership, developed the Met into a

highly respected and artistically superior organization. Gelb did this in order to push forth his own personal priorities of production, without the benefit of musical or dramatic training, as well as knowledge or experience, and for Gelb's personal aggrandizement. Gelb's plan to push Levine out had been hatched many years earlier and already had led to Gelb's unilateral decision to have Levine retire and become Emeritus Music Director, notwithstanding assurances from Levine's doctor that this world-renowned conductor was capable of conducting for years to come.

8. In addition to the December 2, 2017 *New York Post* (the "Post") and *New York Times* (the "Times") articles mentioned above, on December 3, 2017, the *Times* published a second article regarding additional unsubstantiated accusations of sexual misconduct against Levine. On December 3, 2017, after the Met was notified that the *Times* would be publishing this second article, and without reaching any conclusions about the validity of the accusations in the articles, the Met unilaterally suspended him as Emeritus Music Director and proceeded to cancel his future conducting performances with the Met. The Met did so in flagrant violation of two of its contracts with Phramus, neither of which permit the Met to suspend Levine as Emeritus Music Director nor cancel Levine's conducting engagements.

9. *First*, Phramus and the Met have a contract, which provides that Levine will serve as Emeritus Music Director until in or around June 2026 – ten years after his appointment as Emeritus Music Director – or until such time as Levine is no longer able to render the Emeritus services required under that position. The contract is devoid of any provision providing the Met with the right to terminate or suspend Levine as Emeritus Music Director, or otherwise prevent him from performing any of his Emeritus services, let alone on the basis of allegations of any misconduct dating back five decades. However, the Met simply ignored its contractual obligations to Phramus, and instead deliberately breached this contract, both when it suspended and when it later terminated

Levine as Emeritus Music Director, in a transparent effort to appear responsive to the allegations in the *Post* and the *Times* articles. Such blatant disregard for the terms of Phramus' agreement with the Met simply cannot stand.

10. *Second*, Phramus and the Met have a contract regarding Levine's conducting performances, which provides that Levine will conduct a minimum of thirty-nine performances for the Met during twenty specific weeks in the 2017-2018 Met season. Again, this contract contains no provisions providing the Met with the unilateral right to cancel any of Levine's conducting engagements. Nonetheless, the Met yet again violated its contractual obligations to Phramus and breached this contract by canceling Levine's conducting performances, which were scheduled to begin on December 31, 2017, and replacing him with other conductors.

11. Additionally, the Met, acting through Gelb and another representative of the Met, had conversations with Levine directly and through his agents, and exchanged emails, in which they promised that Levine would conduct performances of *Tosca*, *Luisa Miller*, *Il Trovatore*, and the concert at Carnegie Hall. Gelb first promised Levine that he would conduct the performances of *Luisa Miller*, *Il Trovatore*, and a concert at Carnegie Hall at Levine's normal rate of compensation, which was later memorialized and executed in a contract dated January 19, 2017. Then, in or around June 2017, Gelb urgently requested Levine that he rehearse and conduct fourteen performances of *Tosca*, beginning on December 31, 2017, because the conductor the Met previously hired for those performances canceled his engagement. Gelb implored Levine to step in because the Met needed a conductor of his stature to take over on relatively short notice. Levine, as befitting his close association with the Met, agreed to conduct those performances of *Tosca* at his normal rate of compensation. That agreement was memorialized and executed in an amended contract dated October 27, 2017. Levine, relying on these agreements, rearranged his schedule

to accommodate the *Tosca* rehearsals and performances and began re-studying the score for *Tosca* in the Fall of 2017. Levine did not pursue other opportunities to conduct on the dates in which he was scheduled to rehearse and perform *Tosca*, *Luisa Miller*, *Il Trovatore*, and the concert at Carnegie Hall. Thus, on December 3, 2017, when the Met canceled all of these conducting performances with Levine, it was too late for Levine to secure alternate engagements. By unilaterally cancelling these performances, the Met plainly breached its promises to Levine on which he reasonably relied and which directly injured him.

12. Similarly, in numerous conversations and emails, the Met, acting through Gelb and another representative of the Met, unequivocally promised Levine that he would rehearse and conduct a total of thirty-one performances for the Met during specific dates in the 2018-2019 Met season. Here too, Levine relied on the Met's and Gelb's promises, and did not pursue other opportunities to conduct on the dates that he was promised performances or rehearsals with the Met during the 2018-2019 Met season. Accordingly, on December 3, 2017, when the Met also canceled these conducting performances with Levine, the Met again breached promises to Levine on which he reasonably relied and directly injured him.

13. Adding further injury to Levine, both Gelb and the Met made false and defamatory public statements to the press and the Met's supporters, in a shameless attempt to justify the Met's suspension of Levine and the cancelation of his conducting performances. On December 3 and 4, 2017, Gelb and the Met publicly asserted that the one-sided press accounts of sexual misconduct by Levine in the *Post* and the *Times* articles were in fact true when they stated – in one of the *Times* articles and in a letter to Met supporters – that Levine's alleged misconduct created a “tragedy” for the individuals whose lives have been affected by it. However, nothing

could be further from the truth. Levine has clearly and unequivocally denied any wrongdoing in connection with those allegations.

14. Moreover, Gelb and the Met knew that their defamatory statements about Levine were false or, at the least, made with reckless disregard of the truth or falsity of their statements. Gelb and the Met appear to have been aware of the accusations made by one of the individuals referenced in the *Post* and the *Times* articles since at least October 2016; yet they took no action against Levine. Rather, they engaged Levine for further performances and services because they rightly believed that those allegations were false. Furthermore, Gelb and the Met have acknowledged that there has not been a *single instance* of someone at the Met making a complaint against Levine for sexual misconduct during the over forty-five years that Levine has worked there. Indeed, the Met only commenced its investigation of Levine on or around December 2, 2017 and therefore it could not possibly have come to any conclusions regarding the truth of the accusations in the *Post* and the *Times* articles when Gelb and the Met published these defamatory statements. Gelb and the Met were not – and could not have been – aware of any sexual misconduct by Levine that created a “tragedy” and were not – and could not have been – aware of anyone whose life has “been affected” in connection with such misconduct. Rather, Gelb and the Met made these false and defamatory statements about Levine because they wanted to validate their decision to suspend Levine, pander to the press, cancel his conducting engagements in the face of public scrutiny, and cease paying him his remuneration under the contracts.

15. Had the Met and Gelb actually investigated the accusations alleged in the articles published in the *Post* and the *Times* before they breached Levine’s contract and publicly defamed him, they would have confirmed that accusations of wrongdoing against Levine should not in

fact be credited. For example, one of Levine's accusers in the press articles, Lestock, maintained a close and warm friendship with Levine that lasted decades after he alleges Levine sexually abused him in 1968. Indeed, Lestock sent Levine numerous personal communications in the 1980s and 1990s, which clearly reveal the close friendship shared between the two men and which make no mention whatsoever of abuse or any wrongdoing committed by Levine.

16. Gelb, acting in his personal capacity and his capacity as the Met's General Manager, made these defamatory statements out of ill will and spite against Levine, and as part of his continuing effort to marginalize, demean, and diminish Levine's image and reputation at the Met, in order publicly to embarrass Levine and permanently force him to leave the Met. In this respect, Gelb seeks to erase forty-six years of Levine's legendary achievements, directly damaging both Levine and the Met – the very company Gelb purports to protect. On March 12, 2018, the Met and Gelb carried out their unjustified termination of Levine and announced the Met's flawed results of its investigation into allegations of wrongdoing against Levine, all in an effort further to disparage Levine's legacy and reputation with the organization.

17. This action seeks to remedy the Met's conspicuous breach of its contracts with Phramus and its promises to Levine, expose Gelb's and the Met's false and defamatory statements about Levine, and restore Levine's name and reputation. Levine seeks to hold Gelb and the Met accountable for violations of his rights and publication of defamatory statements, which have caused extensive damage to Levine's career and life's work.

THE PARTIES

18. Plaintiff Levine is a citizen of the State of New York, residing in New York, New York. Levine is a professional music conductor who has conducted performances for the Met since 1971. Levine has been the Emeritus Music Director of the Met since in or around June 2016. On

December 3, 2017, the Met suspended Levine from that position; Levine was suspended from his position without pay until the Met terminated him on March 12, 2018.

19. Plaintiff Phramus is a domestic corporation duly organized and existing under the laws of New York, with its principal place of business located in New York, New York. Plaintiff Phramus is a personal services corporation that employed Levine to fulfill its contractual obligations to the Met.

20. Defendant Met is a domestic not-for-profit corporation duly organized and existing under the laws of New York, with its principal place of business located at Lincoln Center, New York, NY 10023.

21. Upon information and belief, Defendant Gelb is a citizen of the state of New York, residing in New York, New York. Gelb is the General Manager of the Met, a position he has held since August 2006.

JURISDICTION AND VENUE

22. This Court has personal jurisdiction over Defendants Met and Gelb pursuant to N.Y. C.P.L.R. § 301. The Met is incorporated under the laws of the State of New York, maintains its principal place of business in New York County, and regularly transacts business in New York County. Gelb is a natural person domiciled in the State of New York.

23. Venue is proper in this Court pursuant to N.Y. C.P.L.R. § 503, as at least one of the parties is a resident of New York County.

FACTUAL BACKGROUND

A. Levine's Background Performing and Working at the Met

24. Levine is a renowned and acclaimed conductor who has conducted orchestras around the world over the course of a fifty year professional career.

25. During his career, Levine has held leadership positions for many prestigious organizations, including the Met, the Boston Symphony Orchestra, the Ravinia Music Festival, and the Munich Philharmonic.

26. Levine has maintained a forty-six year relationship with the Met. This relationship began in June 1971 when he made his debut conducting *Tosca*. Following the success of that performance, the next season, Levine conducted *Tosca* and *Luisa Miller* for the Met; he was appointed as the Met's first-ever Principal Conductor in 1973.

27. In 1975, Levine was promoted to the position of Music Director of the Met. As Music Director, Levine was responsible for overseeing all aspects of and making all decisions with respect to music at the Met, including choosing repertoires, casting, coaching, rehearsal planning, recommending music staff personnel, building and maintaining the orchestra, consulting with the chorus master, and auditioning singers and musicians. In addition, as Music Director, Levine continued to conduct a large proportion of the performances at the Met in a broad range of repertoire. Levine served as Music Director of the Met from 1975 to 2016.

28. In 1986, following substantial critical acclaim and enormous success, Levine was appointed the dual title of Music Director and Artistic Director – becoming the first person to hold the title of Artistic Director in the Met's history. In this capacity, Levine continued his duties as Music Director and conductor, while he additionally was responsible for overseeing the production side of performances. Levine worked with production designers and directors to create cohesive performances where music and drama combined to produce the highest quality operas for the Met. Levine served as Artistic Director of the Met until 2004.

29. In 2004, after eighteen devoted years working as Artistic Director, during which time he was involved in every aspect of the Met's performances and oversaw unparalleled

artistic growth at the company, Levine stepped down as Artistic Director so he could accept an offer to serve as Music Director of the Boston Symphony, in addition to Levine continuing to serve as Music Director of the Met.

30. In or around June 2016, Gelb, acting on behalf of the Met, informed Levine that he would no longer be Music Director, but would become Emeritus Music Director of the Met. The decision was made unilaterally by the Met without consultation with Levine. Levine held the position of Emeritus Music Director until his suspension on December 3, 2017. As Emeritus Music Director, Levine continued to be available for artistic consultation with the Met, to oversee the Met's Lindemann Young Artists Development Program – a program Levine founded in 1980 – and to be available to conduct mutually agreed upon performances for the Met, but Levine was no longer responsible for the daily operations of the Met music program.

31. Levine was terminated from his position as Emeritus Music Director on March 12, 2018.

32. During Levine's storied career at the Met, he conducted more than 2,500 performances – more than twice the amount of any other conductor in the history of the Met – including approximately eighty-five different operas.

33. The Met received significant critical praise and public recognition for the artistic-standard achieved during Levine's tenure.

34. Under Levine's leadership, the Met expanded its activities to include a significant number of audio and video recordings, founded a concert series for both Met orchestra and chamber ensembles at Carnegie Hall, and toured extensively with the company both domestically and internationally.

35. In his over forty-five year career at the Met, Levine is not aware of any Met employee lodging a complaint about his behavior.

36. The Met itself has confirmed that no employee has ever complained about Levine. Indeed, Gelb, who was appointed to the position of General Manager of the Met in August 2006, told the *Times* in an article published on December 4, 2017, “[s]ince I’ve been at the Met there has not been a single instance of somebody coming forward to make a complaint, ever, about Levine in recent Met history.” Michael Cooper, *Met Opera Reels as Fourth Man Accuses James Levine of Sexual Abuse*, N.Y. TIMES (Dec. 4, 2017), <https://www.nytimes.com/2017/12/04/arts/music/james-levine-met-opera.html>. Gelb further stated to the *Times* in that article, “[t]here have been no complaints and no settlements, and this has been verified by the Met’s finance office, our development office.” *Id.*

B. Phramus’ 2007-2011 Music Director Agreement with the Met

37. After Levine stepped down as Artistic Director, on April 29, 2004, Phramus, acting by and on behalf of Levine, entered into a contract with the Met, which provided that Levine would serve as Music Director of the Met during each New York season at the Metropolitan Opera House, for the period of August 1, 2007 through July 31, 2011 (the “Initial Music Director Agreement”). A copy of the Initial Music Director Agreement is attached as Exhibit 1.

38. The Initial Music Director Agreement provided that Levine’s duties as Music Director included being in charge of all opera and concert activities carried on by the Met both within and outside the Metropolitan Opera House. The Initial Music Director Agreement also provided that Levine’s duties would “be performed on a full-time basis,” he was required to be physically present at the Metropolitan Opera House for no less than twenty-three weeks per

season, he would “devote his full time and attention to his obligations” to the Met, and he would be available for consultation by the Met when he was not physically present. Ex. 1, Initial Music Director Agreement, ¶ 3.

39. The Initial Music Director Agreement granted the Met the right to use and authorize others to use Levine’s name, likeness and biographical material, and to publicize and advertise the Met. Ex. 1, Initial Music Director Agreement, ¶ 11.

40. As long as Levine fulfilled his obligations under the Initial Music Director Agreement, the Met was required to fulfill its obligations under the Initial Music Director Agreement as well. The only exception under which the Met could unilaterally terminate the Initial Music Director Agreement was if a “condition of force majeure” occurred, which is defined in paragraph 10 of the agreement (the “Force Majeure Clause”). The Force Majeure Clause states, in relevant part:

In the event that said condition of “force majeure” continues for a period of six (6) months after notification to Phramus, then either party shall have the right to terminate this agreement at any time after such six (6) month period, and upon such termination neither party shall have any further rights or liability hereunder. As used in this paragraph 10, the term “condition of force majeure” shall mean a labor dispute, lockout, strike, fire, riot, act of God, terrorist act, epidemic, war, civil disturbance, or any other cause of the same general class which shall prevent Association from conducting, or shall require it to cancel, its scheduled rehearsals or performances. The provisions of this paragraph 10 shall not in any way be deemed applicable to Mr. Levine's engagement as Conductor and in the event of a “condition of force majeure,” the provisions of Mr. Levine's per performance Conductor's contract with Association shall govern our respective rights and obligations hereunder.

Ex. 1, Initial Music Director Agreement, ¶ 10.

41. The Force Majeure Clause does not address the concept of misconduct on the part of either party, and, therefore, does not provide a basis for the Met to terminate the Initial Music

Director Agreement due to alleged or actual misconduct or wrongdoing by Levine. Moreover, no other provisions in the agreement provide the Met with such a right.

42. Nor does the Initial Music Director Agreement contain any provision providing the Met with the right to suspend or terminate Levine from his position as Music Director due to his alleged or actual misconduct or wrongdoing.

C. Phramus' 2011-2014 Amended Music Director Agreement with the Met

43. On October 16, 2009, Phramus and the Met amended the Initial Music Director Agreement, extending its term through July 31, 2014 (the "Amended Music Director Agreement"). A copy of the Amended Music Director Agreement is attached as Exhibit 2.

44. The Amended Music Director Agreement continued in full force and effect the provisions of the Initial Music Director Agreement that were not specifically amended. Ex. 2, Amended Music Director Agreement, ¶ 12.

45. The only amendment dealing with the right to end the Met's relationship with Levine was the addition in the Amended Music Director Agreement of the right to terminate the agreement in the event of Levine's death or disability. See Ex. 2, Amended Music Director Agreement, ¶ 7(e).

46. Again, as with the Initial Music Director Agreement, there are no provisions contained in the Amended Music Director Agreement, which provide the Met with the right to terminate the Amended Music Director Agreement due to alleged or actual misconduct or wrongdoing by Levine.

47. Likewise, there are no provisions in the Amended Music Director Agreement, which provide the Met with the right to suspend or terminate Levine from his position as Music Director due to his alleged or actual misconduct or wrongdoing.

D. Phramus' 2014-2019 Second Amended Music Director Agreement with the Met and Appointment as Emeritus Music Director

48. On September 26, 2015, Phramus and the Met amended the Initial Music Director Agreement, which further extended the term of the Initial Music Director Agreement through August 1, 2019 (the "Second Amended Music Director Agreement" and, together with the Initial Music Director Agreement and the Amended Music Director Agreement, the "Music Director Agreements"). A copy of the Second Amended Music Director Agreement is attached as Exhibit 3.

49. The Second Amended Music Director Agreement continues in full force and effect the provisions of the Amended Music Director Agreement that were not specifically amended. Ex. 3, Second Amended Music Director Agreement, at 2.

50. Paragraph 2 of the Second Amended Music Director Agreement did change the Amended Music Director Agreement as follows:

If, during the term [of the agreement], [Levine] is not able to or did not wish to perform the conducting services and his other Music Director duties -- but he is able to perform the consulting services described in paragraph 3 -- then the terms of the "Emeritus" agreement described in paragraph 3 would begin immediately, and the term of [Levine's] Music Director services would end; . . .

Ex. 3, Second Amended Music Director Agreement, ¶ 2.

51. The "Emeritus" agreement in paragraph 3 of the Second Amended Music Director Agreement (hereinafter the "Emeritus Clause") provides:

Emeritus Music Director: at the end of the 5 year term of Music Director services, or at such earlier time as described in paragraph 2 in the event of a conversion to Emeritus before the end of a full season, an "Emeritus Music Director" part of the agreement will come into effect, and continue till the earlier of 10 years, or for as long as [Levine] is able to render the Emeritus services. The Emeritus services will include consulting with the Met's General Manager and artistic designees regarding artistic decisions; overseeing the Young Artists program; and guest conducting (for his normal fee) for mutually agreed performances.

Ex. 3, Second Amended Music Director Agreement, ¶ 3.

52. In or around June 2016, the Met appointed Levine to the position of Emeritus Music Director. At all times, Levine rendered and was able to render the Emeritus services detailed in the Emeritus Clause. Accordingly, unless and until Levine was unable to render the Emeritus services detailed in the Emeritus Clause, he was entitled to remain in the position of Emeritus Music Director for ten years, until in or around June 2026.

53. The Second Amended Music Director Agreement provides that the Met will pay Phramus an annual compensation of \$400,000 (prorated for less than a year) for each year that Levine serves as Emeritus Music Director. Ex. 3, Second Amended Music Director Agreement, ¶ 4(b).

54. In addition, the Second Amended Music Director Agreement provides that Phramus will be compensated at Levine's "normal fee" for mutually agreed performances that he conducts for the Met as a guest conductor. Ex. 3, Second Amended Music Director Agreement, ¶ 3.

55. The Second Amended Music Director Agreement contains no provisions which provide the Met with the right to terminate the Second Amended Music Director Agreement or to remove Levine from his position as Emeritus Music Director due to alleged or actual misconduct or wrongdoing by Levine.

56. The Second Amended Music Director Agreement also contains no provisions which provide the Met with the right to suspend or terminate Levine from his position as Emeritus Music Director or prevent Levine from performing any of his Emeritus services, including but not limited to his guest conducting performances with the Met, due to Levine's alleged or actual misconduct or wrongdoing.

E. Phramus' 2017-2018 Conductor Agreements with the Met

57. Phramus and the Met entered into a contract on January 19, 2017 (the "Initial 2017-2018 Conductor Agreement") and a subsequent amendment to that contract on October 27, 2017 (the "Amendment to 2017-2018 Conductor Agreement," and both agreements, collectively, the "2017-2018 Conductor Agreements"), which together provide that the Met will engage Levine to conduct a minimum of thirty-nine performances during twenty performance weeks in the 2017-2018 Met season, and that Phramus will make Levine available for eleven rehearsal weeks in the 2017- 2018 Met season. A copy of the Initial 2017-2018 Conductor Agreement is attached as Exhibit 4; a copy of the Amendment to 2017-2018 Conductor Agreement is attached as Exhibit 5.

58. Prior to the execution of the 2017-2018 Conductor Agreements, the Met, acting through Gelb and another representative of the Met, had various conversations and emails with Levine and Levine's agents, in which the parties agreed to the specific rehearsal weeks, musical works to be performed, performance weeks enumerated in the 2017-2018 Conductor Agreements, and the amount that Phramus would be paid for each performance.

59. Specifically, the 2017-2018 Conductor Agreements provide that Levine will conduct the following: fourteen performances of *Tosca* from December 31, 2017 through January 20, 2018 and from April 22, 2018 through May 12, 2018, eight performances of *Il Trovatore* from January 21, 2018 through February 17, 2018, seven performances of *Luisa Miller* from March 25, 2018 through April 21, 2018, and one performance of a concert with the Met Orchestra at Carnegie Hall in between June 3 and June 9, 2018. Ex. 4, Initial 2017-2018 Conductor Agreement, at 1; Ex. 5, Amendment to 2017-2018 Conductor Agreement, at 1. In addition, Levine was required to rehearse for *Tosca* from December 3 through December 30, 2017, for *Il*

Trovatore from January 8 through January 21, 2018, for *Luisa Miller* from March 4 through March 24, 2018, and for the concert at Carnegie Hall from May 31 through June 2, 2018. Ex. 4, Initial 2017-2018 Conductor Agreement, at 1; Ex. 5, Amendment to 2017-2018 Conductor Agreement, at 1.

60. In light of the 2017-2018 Conductor Agreements, Levine did not pursue opportunities to conduct other performances on the dates in the 2017-2018 Met season when he was scheduled to rehearse and perform *Tosca*, *Il Trovatore*, *Luisa Miller*, and the concert at Carnegie Hall.

61. Phramus has performed its obligations under the 2017-2018 Conductor Agreements by making Levine available for the rehearsal weeks, and by engaging Levine to conduct the enumerated performances during the performance weeks provided for in the 2017-2018 Conductor Agreements.

62. Levine has conducted only nine performances under the 2017-2018 Conductor Agreements. Accordingly, Levine is still to conduct a remaining minimum thirty performances pursuant to the 2017-2018 Conductor Agreements.

63. Levine was ready, willing and able to conduct the remaining minimum of thirty performances required under the 2017-2018 Conductor Agreements, and Levine also was ready, willing and able to make himself available for the remaining rehearsals required under the 2017-2018 Conductor Agreements. Phramus also was ready, willing and able to provide Levine's services to the Met both for performances and rehearsals.

64. The 2017-2018 Conductor Agreements provide that the Met will pay Phramus a fee of \$17,000 and an additional compensation of \$10,000 for each performance that Levine

conducts pursuant to the 2017-2018 Conductor Agreements. Ex. 4, Initial 2017-2018 Conductor Agreement, at 1; Ex. 5, Amendment to 2017-2018 Conductor Agreement, at 1.

65. As long as Phramus, acting through Levine, fulfills its obligations under the 2017-2018 Conductor Agreements, the Met must fulfill its obligations under the 2017-2018 Conductor Agreements. The only exception under which the Met may unilaterally terminate the 2017-2018 Conductor Agreements is set forth on page 2 of the Initial 2017-2018 Conductor Agreement, which provides, in relevant part:

It is agreed that if because of hostilities by or against the United States, revolution, rebellion, terrorist acts, fire accident, labor disputes, strikes, lockouts, riot act of God, war, death of a President, the public enemy, power failure, flood, earthquake, or for any cause which could not be reasonably anticipated or prevented The Met cannot produce, or is compelled to cancel, its scheduled rehearsals or performances or any of them, then The Met must notify [Phramus] or [Levine] thereof, and thereafter [Phramus] shall not be entitled to any compensation for the time during the affected period. Should any of the foregoing conditions continue for a period of ten (10) days or more after such notice, The Met may terminate this contact and The Met will pay for all services previously rendered by [Levine] hereunder (and transportation back to New York City, in the event the Company is out of town at the time).

Ex. 4, Initial 2017-2018 Conductor Agreement, at 2.

66. The 2017-2018 Conductor Agreements contain no provisions which provide the Met with the right to terminate the agreement due to alleged or actual misconduct or wrongdoing by Levine.

67. The 2017-2018 Conductor Agreements also contain no provisions which provide the Met with the right to cancel conducting engagements with Levine for the performances enumerated in the 2017-2018 Conductor Agreements, or prevent him from conducting those performances, due to alleged or actual misconduct or wrongdoing.

F. The Met Engages Levine to Rehearse and Conduct Fourteen Performances of *Tosca* in the 2017-2018 Met Season

68. During a phone call on or around June 30, 2017, the Met, acting through Gelb, asked Levine to conduct fourteen performances of *Tosca* for the Met from December 31, 2017 through January 20, 2018 and from April 22, 2018 through May 12, 2018. Gelb told Levine that he would pay Levine \$27,000 in compensation for each of the fourteen performances of *Tosca*.

69. Gelb asked Levine to conduct the fourteen performances of *Tosca* because the previous conductor the Met hired for the performances canceled his engagement, and the Met desperately needed a conductor of stature, like Levine, to replace him.

70. In or around July 2017, Levine informed Gelb of his agreement to conduct the fourteen performances of *Tosca* on the dates requested by Gelb.

71. During additional phone calls in the Summer of 2017, Gelb confirmed with Levine that Levine would conduct fourteen performances of *Tosca* for the Met on the dates he previously specified, and that Levine would be compensated for those performances at his normal conductor rate. In addition, Gelb confirmed for Levine that Levine would rehearse for *Tosca* from December 3 through December 30, 2017.

72. The agreement between the Met and Levine to rehearse and conduct the fourteen performances of *Tosca* was specifically memorialized in the Amendment to 2017-2018 Conductor Agreement.

73. Levine rearranged his schedule to accommodate the *Tosca* rehearsals and performances and began re-studying the score for *Tosca*, in preparation for the performances, in the Fall of 2017.

74. In light of Gelb's and the Met's assurances that Levine would rehearse and conduct those fourteen performances of *Tosca* on the agreed upon 2017 and 2018 dates – later

memorialized in the Amendment to 2017-2018 Conductor Agreement – Levine did not pursue opportunities to conduct other performances on those dates.

G. The Met Engages Levine to Rehearse and Conduct Performances in the 2018-2019 Met Season

75. In various conversations and emails with Levine and Levine’s agents, the Met, acting through Gelb and another representative of the Met, asked Levine to conduct the following performances for the Met: five performances of *Pelléas et Mélisande* from January 13 through February 2, 2019, seven performances of *Falstaff* from February 17 through March 16, 2019, six performances of *La Clemenza di Tito* from March 24 through April 20, 2019, and one performance of a concert with the Met Orchestra at Carnegie Hall in between June 2 and June 8, 2019. Gelb and a representative of the Met agreed that Levine would be compensated at a rate of \$27,000 for each of those performances. In addition, Gelb and another representative of the Met informed Levine that he would rehearse for *Pelléas et Mélisande* from December 20, 2018 through January 12, 2019, for *Falstaff* from February 3 through February 16, 2019, for *La Clemenza di Tito* from March 17 through March 23, 2019, and for the concert at Carnegie Hall from May 30 through June 1, 2019.

76. Levine told Gelb that he agreed to conduct those performances.

77. The agreement between the Met and Levine to conduct those performances was memorialized in an unsigned contract dated August 14, 2017 between Phramus and the Met (the “Initial 2018-2019 Conductor Agreement”). A copy of the Initial 2018-2019 Conductor Agreement is attached as Exhibit 6.

78. Furthermore, in various conversations and emails with Levine and Levine’s agents, Gelb and another representative of the Met asked Levine to conduct for the Met the following additional performances in 2018: seven performances of *Aida* from September 23

through October 20, 2018 and five performances of *Carmen* from October 28 through November 17, 2018. Gelb and another representative of the Met agreed that Levine would be compensated at a rate of \$27,000 for each of those performances. In addition, Gelb and another representative of the Met told Levine that he would rehearse for *Aida* from September 6 through September 22, 2018 and for *Carmen* from October 21 through October 27, 2018.

79. Levine, through his agents, told a representative of the Met that he agreed to conduct those performances of *Aida* and *Carmen*.

80. The agreement between the Met and Levine to conduct those performances of *Aida* and *Carmen* was memorialized in an unsigned Amendment to the 2018-2019 Initial Conductor Agreement, dated November 3, 2017 between Phramus and the Met (the “Amendment to 2018-2019 Conductor Agreement” and, together with the Initial 2018-2019 Conductor Agreement, the “2018-2019 Conductor Agreements”). A copy of the Amendment to 2018-2019 Conductor Agreement is attached as Exhibit 7.

81. In light of the Met’s, and Gelb’s and another representative of the Met’s assurances that Levine would rehearse and conduct these performances of *Pelléas et Mélisande*, *Falstaff*, *La Clemenza di Tito*, *Aida*, *Carmen*, and the concert at Carnegie Hall on the dates specified in the 2018-2019 Conductor Agreements, Levine did not pursue opportunities to conduct other performances on those dates.

82. It is common practice in the opera industry for conductors to schedule their performances years in advance of having to perform them. This lead time allows the conductor adequate time to study, prepare, cast singers, and rehearse. Also, opera houses, festivals, and other music organizations often seek to book high profile conductors such as Levine years in advance so that competing organizations do not book the conductor first for a desired date during

their opera seasons. As a result of the fact that conductors book performances years in advance, it is difficult, if not impossible, to mitigate the damage from cancelling a performance.

H. The *Post* and the *Times* Publish Unsubstantiated Accusations of Misconduct Against Levine

83. As noted, on December 2, 2017, two articles were published in the *Post* and the *Times*, which reported unsubstantiated accusations made by one unidentified man against Levine regarding alleged sexual misconduct that occurred in or around 1986 (the “December 2 Articles”). See Isabel Vincent and Melissa Klein, *Legendary opera conductor molested teen for years: police report*, N.Y. POST (Dec. 2, 2017), <https://nypost.com/2017/12/02/legendary-opera-conductor-molested-teen-for-years-police-report/>; Michael Cooper, *Met Opera to Investigate James Levine Over Sexual Abuse Accusation*, N.Y. Times (Dec. 2, 2017), <https://www.nytimes.com/2017/12/02/arts/music/james-levine-sexual-misconduct-met-opera.html>.

84. On December 3, 2017, an article was published in the *Times*, which reported further details on those same unsupported accusations from the December 2 Articles and also reported similarly unsubstantiated accusations made by two other men against Levine regarding two events of alleged sexual misconduct that occurred over half a century ago, in 1968 (the “December 3 Article” and, together with the December 2 Articles, the “Press Articles”). See Michael Cooper, *Met Opera Suspends James Levine After New Sexual Abuse Accusations*, N.Y. TIMES (Dec. 3, 2017), <https://www.nytimes.com/2017/12/03/arts/music/james-levine-met-opera.html>.

85. All of the accusations of sexual misconduct published in the Press Articles are alleged to have occurred decades before Levine entered into the Music Director Agreements and the 2017-2018 Conductor Agreements.

86. The accusations reported in the Press Articles have not resulted in any criminal charges being brought against Levine, and there have been no findings by law enforcement that Levine has engaged in any wrongdoing in connection with these allegations. Levine strenuously denies engaging in any such wrongdoing.

I. The Met Violates its Agreements with Levine by Suspending and Ultimately Terminating Him as Emeritus Music Director, and by Canceling His Future Conducting Engagements

87. On December 3, 2017, after the *Times* notified Gelb that it was going to publish the December 3 Article, Gelb called Levine to inform him that the Met was suspending Levine as Emeritus Music Director, effective immediately, based on the allegations of sexual misconduct against Levine published in the Press Articles. Gelb did not ask Levine any questions about the allegations in the Press Articles. At that time, Gelb also canceled all of Levine's future conducting performances with the Met enumerated in the 2017-2018 Conductor Agreements and 2018-2019 Conductor Agreements. Gelb told Levine that his suspension as Emeritus Music Director would remain in effect while the Met conducted an investigation of the allegations published in the Press Articles. Gelb further notified Levine that his suspension prohibited Levine from performing any Emeritus services. Gelb provided no time for when this investigation would be completed.

88. The Met does not have the right under the Music Director Agreements to terminate or suspend Levine as Emeritus Music Director or to prevent Levine from performing the Emeritus services, based on allegations of misconduct or wrongdoing by him. Thus, in suspending Levine, the Met has violated its obligations under the Emeritus Clause. Since the suspension, the Met has failed to pay the compensation due to Phramus for Levine's services.

89. In canceling Levine's future conducting performances with the Met, the Met also has violated its obligations under the 2017-2018 Conductor Agreements to engage Levine to conduct a minimum of thirty-nine performances during twenty performance weeks in the 2017-2018 Met season. *See* Ex. 4, Initial 2017-2018 Conductor Agreement, at 1; Ex. 5, Amendment to 2017-2018 Conductor Agreement, at 1. Specifically, the Met violated its obligations pursuant to the 2017-2018 Conductor Agreements to engage Levine to conduct thirty remaining performances of *Tosca*, *Il Trovatore*, *Luisa Miller*, and a concert at Carnegie Hall, for all of which the Met now has engaged other conductors to replace Levine. The 2017-2018 Conductor Agreements do not provide the Met with the right to cancel the conducting engagements enumerated in the 2017-2018 Conductor Agreements, nor prevent Levine from conducting those performances, based on allegations of misconduct or wrongdoing by him.

90. Furthermore, in canceling Levine's future conducting performances, the Met breached its promises to Levine that he would conduct performances on specific dates in the 2017-2018 and 2018-2019 Met seasons. Levine detrimentally relied on those promises by not pursuing other opportunities to conduct on those dates when the Met promised that he would be conducting performances or rehearsing for the Met.

91. The Met suspended Levine before conducting an investigation of any of the allegations reported in the Press Articles and without making any factual findings regarding the truth of those allegations.

92. Upon information and belief, the Met was aware of the accusation of sexual misconduct made by Ashok Pai in the Press Articles that allegedly occurred in or around 1986, since at least October 2016, when the Met was contacted by a detective with the Lake Forest Police Department regarding the matter. *See* Michael Cooper, *Met Opera Suspends James*

Levine After New Sexual Abuse Accusations, N.Y. TIMES (Dec. 3, 2017), <https://www.nytimes.com/2017/12/03/arts/music/james-levine-met-opera.html> (“[I]n October 2016 . . . Mr. Gelb said he was contacted by a detective with the Lake Forest Police asking questions about Mr. Pai’s [police] report,” which alleged that “he was sexually abused by Mr. Levine . . .”). However, no disciplinary action was taken by the Met against Levine after this contact, and no investigation was conducted by the Met regarding this matter. Instead, the Met entered into new agreements with Levine, engaging him to conduct performances and continuing to allow him to perform his Emeritus services under the existing Second Amended Music Director Agreement. These contracts contain no clause relevant to any type of misconduct that could invalidate the agreements. The Met decided to suspend Levine only upon learning that the December 3 Article would be published.

93. On December 7, 2017, Levine issued a public statement denying that he has committed any wrongdoing in connection with the accusations reported in the Press Articles.

94. On December 7, 2017, Levine’s counsel sent a letter to Ann Ziff, Chairman of the Board of the Met, again denying the allegations of wrongdoing reported in the December 3 Article and demanding that the Met immediately lift his suspension and reinstate him as Emeritus Music Director. The letter also demanded that the Met permit Levine to conduct the remaining performances specified in the 2017-2018 Conductor Agreements and all other performances that the Met agreed Levine would conduct, which have been canceled as a result of the accusations in the December 3 Article. The Met has not responded to that letter.

95. The next day, December 8, 2017, the Lake County, Illinois State’s Attorney’s Office issued a public statement announcing that it had decided “no criminal charges can be brought” against Levine with respect to the accusation against Levine for sexual misconduct

against Mr. Pai that allegedly occurred in or around 1986. *See* Associated Press, *Met Opera conductor James Levine won't face charges in Illinois, prosecutors say*, NBC NEWS (Dec. 9, 2017), <https://www.nbcnews.com/storyline/sexual-misconduct/met-opera-conductor-james-levine-won-t-face-charges-illinois-n828061>. In that same public statement, the Lake County, Illinois State's Attorney's Office disclosed that none of the statements by Levine's accuser "included any allegations of force." *Id.*

96. On March 12, 2018, the Met terminated Levine as Emeritus Music Director and sent a letter to Phramus asserting that the Met was abrogating the Music Director Agreements.

97. The Met does not have the right under the Music Director Agreements to terminate Levine as Emeritus Music Director based on allegations of misconduct or wrongdoing by him, least of all for conduct that predates the agreements, and by terminating him the Met violated its obligations under the Emeritus Clause. *See supra* ¶ 88.

J. Gelb and the Met Publicize Defamatory Statements About Levine

98. On December 3, 2017, in response to the unsubstantiated accusations of sexual abuse made against Levine in the Press Articles, Gelb and the Met made a public statement to the *Times* that was published in the December 3 Article, stating "[t]his is a tragedy for anyone whose life has been affected." Michael Cooper, *Met Opera Suspends James Levine After New Sexual Abuse Accusations*, N.Y. TIMES (Dec. 3, 2017), <https://www.nytimes.com/2017/12/03/arts/music/james-levine-met-opera.html>.

99. On December 4, 2017, Gelb and the Met also wrote a letter to supporters of the Met, in response to the accusations in the Press Articles, stating, "[t]his is a sad moment in the company's history and a tragedy for anyone whose life may have been affected." E-Mail from

Peter Gelb, General Manager of the Met, to Supporters of the Met (Dec. 4, 2017, 19:05 EST), attached as Exhibit 8.

100. These statements are false and misleading because they assume that the unsubstantiated allegations in the Press Articles are in fact true, that Levine's alleged misconduct created a "tragedy" in the accusers' lives, and that the accusers had somehow been "affected" by Levine's conduct. Levine did not sexually abuse those individuals or commit any wrongdoing in connection with the accusations reported in the Press Articles and, therefore, no "tragedy" has occurred and no one's "life has been affected"; these allegations are false.

101. Upon information and belief, Gelb and the Met have been aware since at least as early as October 2016 of the accusations made by one of the individuals cited in the Press Articles when a detective from the Lake Forest Police Department contacted the Met regarding the allegations against Levine. *See supra* ¶ 92. However, the Met continued to engage Levine for performances and utilize his Emeritus services, obviously because it recognized that the accusations lodged against Levine were false.

102. Furthermore, Gelb has publicly acknowledged that during Levine's over forty-five year career working for the Met, "[t]here have been no complaints" against Levine and "no settlements" for sexual misconduct. Michael Cooper, *Met Opera Reels as Fourth Man Accuses James Levine of Sexual Abuse*, N.Y. TIMES (Dec. 4, 2017), <https://www.nytimes.com/2017/12/04/arts/music/james-levine-met-opera.html>. Gelb has also publicly acknowledged:

Since I've been at the Met there has not been a single instance of somebody coming forward to make a complaint, ever, about Levine in recent Met history. And if you talk to the previous general managers about their watches, they say the same.

Id. Gelb's and the Met's statements, which assume that Levine sexually abused the men referenced in the Press Articles and created a tragedy in their lives, are in direct contradiction to their previous findings and to the Met's over four decades of experience with Levine.

103. Upon information and belief, in or around December 4, 2017, the Met commenced an investigation into the accusations alleged in the Press Articles.

104. At the time Gelb and the Met made these defamatory statements about Levine, on December 3 and 4, 2017, no conclusions had been or could have been reached as a result of the Met's investigation into the accusations alleged in the Press Articles.

105. Gelb and the Met were not aware of any "tragedy" and could not have concluded that anyone's life has "been affected" in connection with the unsubstantiated accusations alleged in the Press Articles.

106. Accordingly, Gelb and the Met made these defamatory statements about Levine with knowledge of their falsity or with reckless disregard of the truth or falsity of the statements.

107. Had the Met and Gelb actually taken the reasonable step of speaking to Levine before suspending him, they would have learned that allegations in the Press Articles were simply not accurate. Indeed, Levine could have provided the Met with numerous letters from 1980s and 1990s – documentary evidence – that Lestock, one of the accusers in the Press Articles, did not believe Levine had abused him, but instead recognized Levine as a close and trusted friend. These letters were written sixteen to twenty-eight years after Lestock now alleges that Levine abused him, yet significantly they make no mention of abuse and instead indicate that Lestock wished to remain in contact with Levine and to spend time with him in person whenever possible.

108. For instance, Lestock wrote Levine a letter in 1984 to tell him about the birth of his first child and how happy he was, as well as to fill Levine in on his life since moving to Florida and getting married. Lestock then expressed a desire to see Levine and wrote, “I will call if I get to NY in [the opera] season, or Salzburg in the summer.” Lestock then included with the letter two pictures of himself with his wife and one picture of himself with his newborn son. It is hard to imagine a parent sending a picture of his or her baby to a person they believe had sexually abused them.

109. In another letter Lestock sent Levine in 1988, he informed Levine that his family had moved to a new house and provided his new address and phone number so that Levine could reach him. Lestock wrote, “I’m always glad when you call.” Lestock again updated Levine on his wife and son, and concluded the letter by writing, “Carolyn is back to working part time now that David is in a preschool three days a week. He is four. Got him (and me) a train last Christmas. I don’t remember the last gift that I received that I enjoyed so much I jumped up and down for joy. Best wishes, Jim Lestock.” These letters make clear that Lestock considered Levine a friend for decades and wanted to remain in close contact with him – not that Lestock believed that Levine abused and victimized him.

110. In 1990, Lestock wrote Levine a letter telling him that he “[j]ust had to write,” after promoting a cookbook at a fundraiser that had a recipe of Levine’s in it. Lestock also stated that he regularly listens to the Met broadcasts on the radio, and asked Levine about his future recording plans. Lestock again updated Levine on his life and his family, and then asked Levine what was new in his life. Lestock wrote, “[c]all when the spirit moves you.” Lestock then joyously reminisced about a past vacation he had with Levine and wrote, “[r]emember the day you, I, Lynn, and Larry went with Stuart to his second home up the valley?” Lestock concluded

this letter by writing, “[c]all when you can. Or let me know how & when I can call. I know we don’t have much of a relationship now, but would still like to say hello. Best wishes, Jim Lestock.” Below his name, Lestock provided his new address and new phone number where Levine could reach him.

111. In or around 1994, Lestock wrote Levine another friendly letter, wishing him a happy New Year, belated Merry Christmas, and an early happy birthday. Lestock enclosed a book with the letter that he thought Levine would enjoy, as well as a Christmas and birthday card. On the Christmas card, Lestock asked Levine, “[w]ould you be interested in getting together in ’95?” In the letter itself, Lestock again happily reminisced about his time working with Levine and wrote, “[t]hinking back on our common times, I’m glad for playing at Aspen and the Met (even though both were very brief)” Lestock then suggested music that Levine could purchase for him if he was thinking of a last minute Christmas present to give Lestock. Lestock concluded this letter by expressing his heartfelt condolences to Levine after hearing that Levine’s father had passed away and recounting memories of Levine’s father. Lestock further wrote, “I also enjoyed talking with your mother, now about two years ago.” The contents of this letter were deeply personal and friendly, and contrary to any notion that Lestock was a victim of Levine’s sexual misconduct or that he suffered a “tragedy” at the hands of Levine, as Gelb stated to the public when he defamed Levine.

112. In or around 1996, Lestock wrote another deeply personal letter to Levine, informing Levine that his wife was diagnosed with cancer and was going to undergo surgery for it the next day. Lestock then told Levine he would be too busy to answer the phone, but that Levine “can write or visit if [he’s] interested.” Again, this letter demonstrates that Lestock did not view Levine as someone who had hurt him in anyway. Indeed, it is unthinkable that an

individual would write his abuser the day before his wife was to undergo cancer surgery and seek comfort from that person. This letter was entirely inconsistent with a letter that would be written by someone who suffered a “tragedy” at the hands of Levine. Had the Met and Gelb actually taken the time to ask Levine about Lestock’s accusations or, for that matter, the accusations made by the other individuals in the Press Articles, Levine would have confirmed what they already had reason to believe: that Levine did not create a “tragedy” for his accusers in the Press Articles and their allegations against him should not be credited.

113. Furthermore, after Gelb and the Met made their defamatory statements against Levine, the Met proceeded to try to justify their defamatory statements and wrongful suspension by supposedly conducting an investigation into the accusations of wrongdoing against Levine. This supposed investigation, however, has proven to be unfair and imbalanced, and has failed to afford Levine a reasonable opportunity to respond to the accusations against him. In this connection, in December 2017, the Met asked Levine if he would be willing to be interviewed in connection with this investigation. Levine’s counsel informed the Met that he would consider being interviewed but did not understand the basis for conducting an interview on alleged wrongdoing that predated his time at the Met. The Met informed Levine that individuals beyond the ones identified in the Press Articles had made accusations of wrongdoing against Levine, and that it would ask Levine about those additional accusations, some of which allegedly took place while Levine was associated with the Met. Levine’s counsel responded that he was willing to be interviewed, but asked that the Met provide him with the names of those individuals purportedly making accusations against him, so that he could adequately prepare for the interview and be able to respond accurately to any accusations being levied against him. The Met unequivocally refused to provide Levine with the names and said that it would not even tell Levine the names

of his accusers during the interview itself. In a letter sent on March 5, 2018, Levine's counsel again asked the Met for the names of his accusers and reiterated his willingness to sit for an interview in connection with those accusations, but again the Met refused to do so in a letter sent on March 12, 2018 when, contemporaneously, it concluded its investigation without giving Levine an opportunity to confront the anonymous accusations against him. Levine categorically denied having ever been engaged in an abusive sexual relationship, but could not understand how he could be expected to respond to allegations without being able to be confronted with the identity of his accusers.

114. Levine has worked at the Met for over forty-five years and has worked with thousands of different performers and employees during that time. Accordingly, the potential accusations against Levine could be from decades ago, but, as publicly stated by Gelb, Levine has never been the subject of any complaints of wrongdoing at the Met. Therefore, Levine requested the names of his accusers so that he could have had an opportunity to explain fully and completely any alleged incidents of wrongdoing. However, instead of providing transparency and welcoming the opportunity for Levine to respond accurately to any allegations against him – as one would do if he or she were looking to determine the truth – the Met has conducted an investigation of Levine, which relies on one-sided evidence of wrongdoing and unidentified accusers, all in a post-hoc effort to justify the Met's and Gelb's breach of contract and defamation of Levine.

115. Additionally, Gelb and the Met made these defamatory statements out of ill will and spite against Levine. These defamatory statements followed years of statements and conduct by Gelb, both in his professional and personal capacities, which publicly embarrassed and demeaned Levine, and which had the purpose of diminishing Levine's role and stature at the

Met. Gelb sought to remove Levine as Music Director and ultimately from the Met entirely. Rather than supporting Levine and rewarding him for his years of service to the Met, by providing Levine with a comfortable and supportive environment in which to work, Gelb undermined Levine by questioning his competency and health.

116. Most notably, Gelb regularly called into question Levine's ability to continue conducting as a result of his Parkinson's disease and senior age. Instead of supporting Levine, Gelb used Levine's physical condition and age to intimidate Levine and pressure him to step down as Music Director and ultimately retire from the Met.

117. For example, in or around October 2015, after Levine conducted a dress rehearsal of *Tännhauser*, Gelb called Levine's personal internist, Dr. Len Horovitz, to question Levine's mental fitness because Levine had stopped a portion of the dress rehearsal, instead of playing through and finishing, as is the usual practice. Dr. Horovitz, who had been a guest at the dress rehearsal and witnessed Levine's actions and speech during the rehearsal, confirmed that Levine was fine and that, in his expert medical opinion, there was no question that Levine did not stop the dress rehearsal due to an issue with his mental fitness; instead, Levine stopped the performance to correct the chorus's obvious confusion about one portion of the piece. Gelb who, on information and belief, has no medical training, however, indicated that he disagreed with Dr. Horovitz's expert opinion. Even after this phone call, Gelb continued to intimidate Levine and ask him pressing questions about whether he could still adequately conduct performances at the Met. Additionally, although Levine assured Gelb that his Parkinson's was not preventing him from conducting, Gelb insisted that he be allowed to speak to Levine's personal neurologist directly to confirm what Levine had told him. Levine gave Gelb permission to speak to his neurologist, who confirmed that Levine was both physically and mentally capable of conducting.

118. Gelb's question as to whether Levine still was able adequately to conduct was proven unwarranted by the fact that just two days later Levine conducted a highly acclaimed performance of *Tännhauser*, which was broadcast in high definition around the world. In addition, since October 2015, Levine has continued to conduct performances for the Met which have been praised by critics and audiences alike.

119. Despite Levine's repeated high quality work, in the Fall of 2015 through the Spring of 2016, Gelb continued to make a series of insulting and disparaging remarks about Levine and his conducting. On at least two occasions, Gelb stated to Levine that he believed Levine was "going to have a heart attack" and die on the spot while conducting. Gelb made these statements even though Levine's internist had assured Gelb directly that Levine was physically fit to conduct. Indeed, given the aerobic nature of the work he has performed for fifty years, Levine's resting heart rate is equivalent to a much younger man who does not suffer from Parkinson's.

120. Notwithstanding the doctor's assurances, Gelb continued to try and pressure Levine to step down as Music Director and retire from the Met by engaging in demeaning name calling more usually associated with a childhood bully than a professional music administrator. Particularly disturbing was Gelb's comment on one occasion that Levine was the "2000 pound elephant in the room," a blatant reference to Levine's physical appearance, and on another occasion questioning "why are you even conducting anymore?," a reference to Levine's age. Levine understood that Gelb made these derogatory and demoralizing statements in order to undermine Levine's confidence and force Levine to resign as Music Director. Gelb's comments and actions were part and parcel of his larger plan to replace Levine with a younger conductor

whom Gelb had for some time wanted to hire, allowing Gelb to get one step closer to his ultimate goal of erasing Levine's legacy at the Met.

121. In or around January 2015, Gelb continued his efforts to pressure Levine to step down as Music Director of the Met. Gelb demanded that Levine allow him to actually meet with Levine's neurologist, Dr. Fahn, in person to discuss Levine's medical condition. Astoundingly, Gelb also demanded that Levine allow Michael Cooper, a reporter for the *Times*, to attend the meeting. During this meeting, Levine's neurologist was placed in the unprecedented position of actually discussing with a journalist personal medical issues that normally are only disclosed to patients themselves or their immediate family members.

122. Gelb brought Mr. Cooper to that meeting because Gelb intended to publicize information that Levine was no longer physically able to serve as Music Director and adequately conduct performances at the Met. Indeed, there was no other reason for Mr. Cooper to have to attend that meeting in person. To Gelb's disappointment, however, Dr. Fahn did not succumb to his pressure and did not agree that Parkinson's was the cause of Levine's recent control issues or that those issues were permanent, such that Levine would be unable to conduct for the Met. As Mr. Cooper wrote in his article published about the meeting on February 1, 2016 in the *Times*, the explanation by Dr. Fahn "surprised Mr. Gelb, who said in an interview that he had been in talks with Mr. Levine about announcing the conductor's retirement after this season and making him the Met's music director emeritus." Michael Cooper, *Adjusting Medication May Prolong Levine's Tenure at the Met*, N.Y. TIMES (Feb. 1, 2016), <https://www.nytimes.com/2016/02/03/arts/music/adjusting-medication-may-prolong-levines-tenure-at-the-met.html>. Indeed, rather than confirm that Levine had permanent control issues arising from Parkinson's, Dr. Fahn explained that any involuntary movements Levine was

experiencing were because Levine had a reaction to medication and that the problem could be resolved by adjusting the dosage.

123. Nonetheless, Gelb continued to pressure Levine to step down as Music Director and sought to, often through public statements, diminish Levine's role in the organization. This pressure and effort on the part of Gelb came to a head only a few months later on April 14, 2016 when, after Levine conducted a highly praised performance of *Simon Boccanegra* for the Met, Gelb unilaterally forced Levine to step down as Music Director and instead assume the role of Emeritus Music Director. This decision was made by Gelb without discussion or consultation with Levine and with no explanation as to what prompted Gelb's decision to remove Levine as Music Director. Instead, Gelb only told Levine that a press release would be issued that same day announcing the demotion, and he pressured Levine to agree to a public statement. The public statement, which had been written by someone other than Levine, suggested that Levine agreed with the decision to stop serving as Music Director, even though Levine emphatically disagreed with the decision. Levine rejected the pre-written public statement and said that he did not feel he needed to make a public statement at this time. Shockingly, Gelb apparently ignored Levine's refusal and sent the written statement as it was to the *Times*, attributing it to Levine. See Michael Cooper, *James Levine, Transformative at the Met Opera, Is Stepping Down*, N.Y. TIMES (Apr. 14, 2016), <https://www.nytimes.com/2016/04/15/arts/music/james-levine-transformative-at-the-met-opera-is-stepping-down.html>; see also Press Release, The Metropolitan Opera, *Legendary Maestro James Levine to Retire as Music Director of the Metropolitan Opera at the End of the Current Season; Will Become The Company's First Music Director Emeritus* (Apr. 14, 2016), <https://www.metopera.org/About/Press-Releases/JamesLevine>.

124. Apparently unable to find support from Levine's doctors on which he could base Levine's removal, Gelb took matters into his own hands.

125. However, even though Levine was removed as Music Director, that action apparently was not enough to satisfy Gelb in his effort to diminish Levine's role with the organization. In or around June 2016, Gelb unilaterally decided to replace Levine with another conductor for the three concert performances with the Met Orchestra at Carnegie Hall scheduled for the following year, in June 2017, in spite of the fact that Levine was the founder and creator of this concert series at Carnegie Hall. Gelb did not discuss this matter with Levine nor notify him of this decision to replace him, but instead shockingly first announced it in the program given to audience members at Levine's conducting performance at Carnegie Hall in or around June 2016. Levine was publicly humiliated, in front of his own audience no less, by Gelb's actions.

126. Gelb, acting in both his personal and professional capacities, pursued an agenda for multiple years of demeaning and degrading Levine, all in an effort to push Levine out of his role as Music Director and eventually out of the Met altogether. Gelb pursued this agenda for his personal gain to advance his own career and step out of the long shadow cast by Levine's incredible talent. Gelb also pursued this agenda to create a Met in his own image, even though he had no artistic qualifications to do so, rather than continue to manage the Met as a place of great artistic achievement.

127. Gelb's and the Met's defamatory statements on December 3 and December 4, 2017 were part of that agenda to ensure that Levine was removed from the Met and unable to return due to public contempt and disgrace from the harm the "tragedy" that the Met and Gelb allege Levine caused in his accusers' lives. Accordingly, Gelb's and the Met's conduct in

making these statements was malicious, wanton, morally culpable, and in willful disregard of Levine's rights.

128. Upon information and belief, on December 4, 2017, in reaction to Gelb's and the Met's defamatory statements about Levine, the Cincinnati Symphony Orchestra, Ravinia Music Festival ("Ravinia"), and Philadelphia Orchestra terminated their commitments with Levine to conduct upcoming performances and, in the case of Ravinia, to also serve as Conductor Laureate. Also, upon information and belief, on December 4, 2017, in reaction to Gelb's and the Met's defamatory statements about Levine, the Knopf Doubleday Publishing Group canceled its book project with Levine.

FIRST CAUSE OF ACTION
(Breach of Contract: Music Director Agreements)
Plaintiff Phramus Against Defendant Met

129. Plaintiff Phramus repeats and realleges paragraphs 1 through 128 of its Complaint, as if fully set forth herein.

130. The Music Director Agreements are binding agreements between Phramus and the Met.

131. The Met first breached the Music Director Agreements on December 3, 2017 by suspending Levine as Emeritus Music Director, preventing him from performing the Emeritus services pursuant to the Emeritus Clause, and ceasing to pay Phramus an annual salary of \$400,000 for Levine's services as Emeritus Music Director. The Met again breached the Music Director Agreements on March 12, 2018 by terminating Levine as Emeritus Music Director and by abrogating those agreements.

132. As a direct and proximate result of the Met's breach of the Music Director Agreements, Phramus suffered damages.

SECOND CAUSE OF ACTION
(Breach of Contract: 2017-2018 Conductor Agreements)
Plaintiff Phramus Against Defendant Met

133. Plaintiff Phramus repeats and realleges paragraphs 1 through 128 of its Complaint, as if fully set forth herein.

134. The 2017-2018 Conductor Agreements are binding agreements between Phramus and the Met.

135. The Met breached the 2017-2018 Conductor Agreements on December 3, 2017 by canceling Levine's remaining thirty performances that he is entitled to conduct under the 2017-2018 Conductor Agreements, and by refusing to pay Phramus \$27,000 in compensation for each of those performances.

136. As a direct and proximate result of the Met's breach of the 2017-2018 Conductor Agreements, Phramus suffered damages.

THIRD CAUSE OF ACTION
(Promissory Estoppel: Rehearsals and Performances in the 2017-2018 Met Season)
Plaintiff Levine Against Defendant Met

137. Plaintiff Levine repeats and realleges paragraphs 1 through 128 of his Complaint, as if fully set forth herein.

138. In the alternative to the Second Cause of Action, to the extent that it is determined the 2017-2018 Conductor Agreements are not enforceable contracts between Phramus and the Met, the Met is still liable for the breach of promises that it made to Levine regarding the performances and rehearsals enumerated in the 2017-2018 Conductor Agreements.

139. The Met made clear and unambiguous promises to Levine, directly and through his agents, that Levine would conduct those performances for the Met during the 2017-2018 Met

season, and that Levine would be compensated at a rate of \$27,000 for each of those performances.

140. Levine reasonably and foreseeably relied on those promises from the Met, and did not pursue opportunities to conduct other performances on the dates that he was promised performances or rehearsals with the Met during the 2017-2018 Met season.

141. On December 3, 2017, the Met breached its promises by canceling its engagement with Levine to conduct his remaining thirty performances in the 2017-2018 Met season, and by refusing to pay Levine \$27,000 in compensation for each of those performances.

142. Levine detrimentally relied on the Met's promises, as described above, and as a direct and proximate result of the Met's breach of those promises, Levine suffered unconscionable injury and damages.

FOURTH CAUSE OF ACTION

(Promissory Estoppel: Rehearsals and Performances in 2018-2019 Met Season)

Plaintiff Levine Against Defendant Met

143. Plaintiff Levine repeats and realleges paragraphs 1 through 128 of his Complaint, as if fully set forth herein.

144. The Met made clear and unambiguous promises to Levine, directly and through his agents, that Levine would conduct performances for the Met during the 2018-2019 Met season, and that Levine would be compensated at a rate of \$27,000 for each of those performances.

145. Levine reasonably and foreseeably relied on those promises from the Met, and did not pursue opportunities to conduct other performances on the dates that he was promised performances or rehearsals with the Met during the 2018-2019 Met season.

146. On December 3, 2017, the Met breached its promises by canceling its engagement with Levine to conduct the performances in the 2018-2019 Met season, and by refusing to pay Levine \$27,000 in compensation for each of those performances.

147. Levine detrimentally relied on the Met's promises, as described above, and as a direct and proximate result of the Met's breach of those promises, Levine suffered unconscionable injury and damages.

FIFTH CAUSE OF ACTION
(Defamation)
Plaintiff Levine Against All Defendants

148. Plaintiff Levine repeats and realleges paragraphs 1 through 128 of his Complaint, as if fully set forth herein.

149. Gelb and the Met made public statements to the *Times* on December 3, 2017 and to supporters of the Met, on December 4, 2017, which are defamatory *per se* because they exposed Levine to, among other things, public hatred, contempt, ridicule and disgrace, and damaged Levine's professional reputation.

150. Those public statements clearly refer to Levine, and are false and misleading.

151. Gelb and the Met acted with actual malice because they made these defamatory statements about Levine with knowledge of their falsity or with reckless disregard of the truth or falsity of the statements.

152. As a direct and proximate result of Gelb's and the Met's publication of these defamatory statements, Levine has suffered and continues to suffer monetary, reputational and emotional damages.

153. In addition, as a direct and proximate result of Gelb's and the Met's publication of these defamatory statements, the Cincinnati Symphony Orchestra, Ravinia, Philadelphia

Orchestra, and Knopf Doubleday Publishing Group terminated their agreements with Levine, which caused Levine to suffer further monetary, reputational and emotional damages.

154. Gelb and the Met made these defamatory statements out of ill will and spite against Levine because, through such statements, they sought to publicly embarrass and demean Levine, and ultimately force Levine out of his role at the Met. Accordingly, Gelb and the Met's conduct was malicious, wanton, morally culpable, and in willful disregard of Levine's rights.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief from the Court:

- (a) On Plaintiff Phramus' First Cause of Action for Breach of Contract: an award of monetary damages in an amount to be determined at trial, but no less than \$3,400,000, together with pre-judgment and post-judgment interest and all costs;
- (b) On Plaintiff Phramus' Second Cause of Action for Breach of Contract: an award of monetary damages in an amount to be determined at trial, but no less than \$810,000;
- (c) On Plaintiff Levine's Third Cause of Action for Promissory Estoppel: an award of monetary damages in an amount to be determined at trial, but no less than \$810,000;
- (d) On Plaintiff Levine's Fourth Cause of Action for Promissory Estoppel: an award of monetary damages in an amount to be determined at trial, but no less than \$837,000;
- (e) On Plaintiff Levine's Fifth Cause of Action for Defamation: an award of monetary damages in an amount to be determined at trial, including but not limited to damages for reputational injury, emotional distress, humiliation, and pain and suffering;
- (f) an award of additional amounts as punitive damages;
- (g) an award of such interest as is allowed by law (including pre-judgment and post-judgment interest);

- (h) an award of reasonable attorneys' fees and costs; and
- (i) such other relief as the Court deems just and proper.

Dated: March 15, 2018
New York, NY

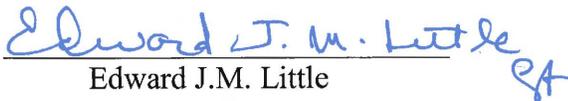
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