

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

<p>THE DURST ORGANIZATION L.P.; DOUGLAS DURST; and JONATHAN DURST,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>NO LABELS,</p> <p style="text-align: center;">Defendant.</p>

Index No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs The Durst Organization L.P., Douglas Durst and Jonathan Durst (collectively, “the Dursts”) allege as follows:

NATURE OF THE PROCEEDING

1. This is a case about a political advocacy group—No Labels—that has lost its way, abandoned its original mission, and fundamentally betrayed its donors’ trust in the process. At its inception, No Labels touted itself as “not a third party, but rather a third bloc,” that would promote bi-partisan compromise to achieve consensus. Today, it has become the opposite: a partisan political organization planning to run a third-party Presidential candidate, thereby skewing the electoral landscape in one party’s favor, and pursuing a divisive course that is the antithesis of its original mission to bridge the political divide. This case seeks to hold No Labels accountable for the consequences of its misguided actions that have left its original benefactors like the Dursts feeling bewildered, betrayed, and outraged.

2. When No Labels first solicited funds from the Dursts nearly a decade ago, it promised to engage in bipartisan activism aimed at achieving common-sense solutions that appeal to the average American. And the Dursts responded with enthusiastic support, donating \$145,000

in total over that period, \$10,000 of which was donated as recently as November 2020. But No Labels has since abandoned that promise in favor of a wholly partisan and damaging effort—promoting an independent third-party Presidential candidacy and obtaining ballot access across the United States so that a yet-to-be-named candidate can run against the Democrat and Republican nominees. Such a third-party candidacy is antithetical to No Labels’ original mission, which attracted donors like the Dursts to support the organization’s stated purpose of promoting compromise and consensus within our government. Instead, No Labels’ “third party” bid will plunge the organization into the very partisanship it supposedly abhors and obviously advantage the likely Republican candidate, whose core supporters never seem to waver, no matter the alternatives.

3. Since its formation in 2010, No Labels has repeatedly represented to contributors such as the Dursts that its “singular mission” was “[t]o build the *bipartisan* swing faction that can solve America’s toughest problems” in the United States House and Senate. (Emphasis added.) The pitch was appealing because, in Congress, where both houses are almost equally divided Republican and Democrat, a “swing faction” could make a huge difference in shaping moderate policy and finding sensible solutions to our nation’s most vexing problems, bridging the divide between the partisan left and partisan right. In other words, No Labels held out the promise of *bipartisan* governance. But now, No Labels has broken that promise and betrayed its supporters such as the Dursts by wading into partisan politics with a third-party Presidential bid.

4. Despite this promise to work within the two-party system to effect change, No Labels pulled a “bait and switch,” launching its “Insurance Policy 2024” initiative last year,

“preparing for the possibility” of nominating a third-party Presidential candidate.¹ Had No Labels ever given *any* indication that it might pursue such a gambit, the Dursts never would have funded the organization. That is because, in a Presidential election, anyone who votes for a third-party candidate votes on *neither* side. Indeed, no third-party candidate has ever won a Presidential election or even come close to doing so. Unlike a “swing” member of Congress, an inevitably unsuccessful third-party candidate has no power to shape the winner’s agenda. History tells us with certainty that the winner of the 2024 Presidential election will be a Republican or a Democrat, not a third-party candidate. Anyone near the middle of the political spectrum whom No Labels persuades to support a third-party candidate will essentially be on the sidelines during the most consequential election of our lifetime. As a result, an already-polarized two-party contest will become even more divisive, with more moderate voters drawn to this third-party candidate and effectively neutralized by No Labels.

5. No Labels’ own founders and board members are fleeing in protest over the organization’s misguided third-party initiative. For example, William Galston—a co-founder of the organization, former board member, and esteemed political scientist—recently broke with the group. Galston publicly resigned from No Labels and, in an op-ed in the *Wall Street Journal*, openly criticized the third-party bid: “I helped start No Labels to foster bipartisan solutions to our country’s most important problems. . . . [But] after more than a decade, I felt compelled to resign in disagreement over its decision to launch a bipartisan presidential campaign.” According to

¹ On or about October 23, 2023, No Labels rebranded its plan to run third-party candidates for President and Vice President as “Unity Ticket 2024.” This Complaint refers to No Labels’ planned 2024 election campaign as the “Insurance Policy,” consistent with No Labels’ original choice of nomenclature.

Galston, “if a No Labels ticket receives even a tiny share of the vote in key states, Mr. Trump could end up back in the Oval Office.”²

6. Galston’s sentiments are shared by other former No Labels supporters who are now dumbfounded by the organization’s change in direction. No Labels’ decision to launch a third-party Presidential candidacy is antithetical to the bipartisan ideals upon which it was founded. More than that, it is a reckless act, given what is at stake in this election.

7. No Labels’ early congressional supporters have also openly defected from the organization. Representative Mark Pocan’s (D-Wis.) recent opinion piece in *The Hill* stated: “When I first came to Congress, I was enamored with the alleged ideal behind No Labels and their mission to take partisanship out of politics. A world where people can work together on ideas that help the American people despite ideological differences. Boy was I wrong. Their non-partisan agenda is and always has been dishonest.” Representative Pocan went on to say that No Labels is “setting up this scheme to be a spoiler in the 2024 presidential election,” calling their Insurance Policy 2024 “*sabotage in the most anti-democratic way.*”³

8. No Labels has shifted seismically from its original mission, and its donors, like the Dursts, who believed in the mission and financially supported it, should not have to stand idly by while their dollars are used to threaten democracy.

9. Making matters worse, No Labels, as a 501(c)(4) organization, is able to shield from public view any information about who is funding its latest initiative. In the face of intense

² William Galston, *No Labels May Re-Elect Donald Trump*, Wall St. J. (May 2, 2023), <https://www.wsj.com/articles/no-labels-may-re-elect-donald-trump-third-party-independent-galston-rematch-f2e7697d>.

³ Rep. Mark Pocan, *No Labels Duped Me. I Won’t Let Them Dupe America*, The Hill (Aug. 29, 2023), <https://thehill.com/opinion/congress-blog/4176973-no-labels-duped-me-i-wont-let-them-dupe-america/> (emphasis added).

scrutiny about what and who is behind this third-party bid, No Labels has remained a “dark money” group.

10. The promise of promoting bipartisan government that No Labels made to donors such as the Dursts has now been irretrievably broken, and the Dursts, for one, want their money back. They want no part of an organization that seems bent on pursuing a doomed third-party presidential bid outside the nation’s *de facto* two-party system. Whether it is a breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel, or unjust enrichment, it is wrong, and No Labels must now be held accountable for it.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this case because the amount in controversy exceeds the jurisdictional limits of all lower courts.

12. The Court has personal jurisdiction over No Labels, pursuant to CPLR §§ 301 and 302(a), because No Labels continuously and systematically does business in New York, routinely transacts business within New York (holding numerous events and fundraisers throughout the State of New York), has solicited and raised—and continues to solicit and raise—a significant sum of money through donations solicited in the State of New York, and committed tortious acts inside New York or outside New York that caused injury in New York. *See Rimylan Enterprises LLC, et al. v. No Labels, Inc., et al.*, Index No. 654512/2018 (finding No Labels subject to personal jurisdiction in New York). On information and belief, No Labels also engaged in—and continues to engage in—frequent, sustained communications and business dealings with donors and other businesses in New York for the purposes of soliciting donations.

13. Venue is proper, pursuant to CPLR § 503, because Plaintiffs reside in this county and because a substantial part of the events giving rise to the claim occurred in this county.

PARTIES

A. Plaintiffs

14. Plaintiff The Durst Organization L.P. is a New York limited partnership headquartered in Manhattan at One Bryant Park, New York, New York, 10036.

15. Plaintiff Douglas Durst is a resident of Manhattan and a citizen of New York, Chairman of The Durst Organization, former chairman of the Real Estate Board of New York, and one of the most respected leaders of New York's real estate community.

16. Plaintiff Jonathan ("Jody") Durst is a resident of Westchester County and citizen of New York and the President of The Durst Organization, and a respected leader of New York's real estate community.

B. Defendant

17. Defendant No Labels is a U.S. political organization that was founded in New York and today operates as an Internal Revenue Code section 501(c)(4) civic organization, headquartered in Washington, D.C. No Labels was founded by Nancy Jacobson, who currently serves as its President and CEO.

STATEMENT OF FACTS

18. In December 2010, Defendant No Labels was founded in New York.

19. The Dursts have paid \$145,000 to No Labels:

- a. \$10,000, in the name of Douglas Durst, by check dated August 10, 2016;
- b. \$125,000, in the name of Douglas Durst, by check dated May 31, 2017; and
- c. \$10,000, in the name of Jody Durst, by check dated November 18, 2020.

20. For most of its recent history, No Labels has touted its focus and ability to deliver on common-sense, bipartisan policy solutions through Congressional action.

21. For example, shortly after Douglas Durst made his first payment to No Labels and before his second payment, on August 17, 2016, in an email sent to Jody Durst with the subject line “No Labels Summer Report,” Jacobson emphasized the importance of “ensur[ing] a two-party governing system.”

22. And on May 25, 2017, shortly before Douglas Durst made his second payment to No Labels, in an outreach email to Jody Durst, Jacobson summarized a meeting between the Problem Solvers Caucus and Speaker Paul Ryan “to discuss areas of mutual cooperation in the coming months of 2017.” Jacobson expressed that Caucus members were conveying the simple message that “they are here to work together, not continue the mindless partisanship that is ruining our country.”

23. Later, on May 24, 2019, Jacobson touted a bipartisan effort, led by Congressman Max Rose of New York and endorsed by the Problem Solvers Caucus, to permanently renew and fund the 9/11 Victim Compensation Fund. Four days later, on May 28, 2019, Jacobson touted an effort by the Problem Solvers Caucus to craft bipartisan infrastructure legislation and, in the words of Problem Solvers Co-Chairs Josh Gottheimer and Tom Reed, “fix our crumbling roads, bridges, and tunnels.”

24. In the months before the 2020 election, and shortly before Plaintiff Jody Durst’s payment, No Labels ramped up its campaign of deception, sending repeated solicitations emphasizing No Labels’ purported focus on bipartisanship in Congress.

25. On July 8, 2020, in an outreach email to Plaintiff Douglas Durst, Jacobson stated that No Labels had “a singular goal: *To build a bipartisan governing coalition capable of solving America’s toughest problems.*” Jacobson emphasized that “No Labels’ signature achievement is

the creation of the House Problem Solvers Caucus, which counts 50 members evenly divided between the parties.”

26. On August 11, 2020, in outreach emails to both Plaintiffs Douglas and Jody Durst that were intended to seek contributions, Jacobson stated that No Labels had “a singular mission: To build the bipartisan swing faction that can solve America’s toughest problems,” which meant specifically the “Problem Solvers Caucus in the House—which includes 50 Members evenly divided between the parties – and an emerging group of 8 Senators.”

27. In November 2020, at the time Plaintiffs were making their most recent payment to No Labels, the No Labels website expressly stated that No Labels was *not* a third party, and was *not* beholden to special interests:

WE ARE NOT A THIRD PARTY, BUT RATHER A THIRD BLOC.

No Labels brings leaders to the middle where problems get solved; work gets done for you; solutions are turned on. We are not a third party, but rather a third bloc – a coalition of real people from every neighborhood in America determined to forge solutions on the issues we are facing, from the economy to health care, jobs to climate change, gun safety to immigration, infrastructure, the national debt, and beyond.

We are not beholden to either party or any special interests. We are beholden to you, alone, and to ensuring practical solutions that have a lasting impact. We don’t care where the policy ideas come from, so long as they are good ones that make America stronger, more prosperous and more united.

28. Likewise, in a November 9, 2020 email to Douglas Durst, Jacobson stated that No Labels' main mission is to create a "third governing bloc," which she described as middle of the road Republicans and Democrats coming together to make common sense compromises to get important legislation passed. Jacobson's email went on to request that Plaintiff email her "to support us this year."

29. Continuing with this trend, on April 3, 2021, Jacobson sent Jody Durst an email promoting an upcoming retreat with the Problem Solvers Caucus wherein she stated, "No Labels believes bi-partisanship is the act of legislating with TWO party engagement/approval."

30. On May 14, 2021, Jacobson sent Douglas Durst an email regarding an upcoming event with Senator Joe Manchin of West Virginia. Jacobson stated that No Labels believed its "efforts to build a 'third force' in Congress, featuring Democrats and Republicans committed to solving America's biggest problems *together*," was "the only way to break the cycle of division and partisanship that is tearing this country apart."

31. But after the Dursts made their payments, No Labels changed course. Rather than continue to work *with* and within the two major parties on "solutions" that make America "stronger, more prosperous and more united," which is exactly what enticed donors like Plaintiffs to make donations, No Labels began to act as a third-party, beholden not to any voters but to their moneyed special interests, to tip the political scales in a manner plainly antithetical to its mission and purpose.

32. Indeed, No Labels' more recent activities have made clear that its promises have all been broken and its representations are and have always been false.

A. **No Labels Begins Intentionally Obstructing Bipartisan Policymaking**

33. In late 2021, No Labels took a turn toward explicitly and intentionally obstructing bipartisan policymaking when that policy was championed by Democrats, signaling the beginning of its new role doing the bidding of Republican-leaning donors.

34. During debates in Congress over an infrastructure bill and a larger package of social welfare legislation, No Labels worked aggressively to “delink” the two bills. No Labels’ goal was to ensure that President Biden’s more ambitious Build Back Better plan would not pass, because, while those policies were broadly popular with American voters, they would result in tax increases on the wealthy individuals to whom No Labels is beholden. An email from No Labels executive director Margaret White to contributors celebrated the fact that “the reconciliation package will be delinked in time from the infrastructure bill and will be less than \$3.5 trillion (if it passes at all).”⁴

35. Around the same time, No Labels was essentially offering kickbacks of \$200,000 apiece in fundraising to Democratic House members if they would cancel their appearances at fundraisers held by Speaker Nancy Pelosi, as part of No Labels’ effort to undermine Speaker Pelosi’s legislative agenda.⁵

36. Just a few months later, No Labels broadcast more publicly than ever the fact that it was taking a sharp turn away from true bipartisanship, and toward using that word as cover for a right-wing agenda, when the organization’s official Twitter account posted that “the January 6

⁴ Ryan Grim, *Dark Money Group to Donors: Reconciliation Bill Can Still Be Killed*, The Intercept (Sept. 22, 2021), <https://theintercept.com/2021/09/22/no-labels-reconciliation-infrastructure-sinema/>.

⁵ See Ryan Grim & Lee Fang, *No Labels Offered Conservative Democrats Hundreds of Thousands to Spurn Nancy Pelosi Fundraiser*, The Intercept (Aug. 26, 2021), <https://theintercept.com/2021/08/26/no-labels-billionaire-donors-josh-gottheimer/>.

Committee’s work,” to understand the truth of a violent insurrection aimed at overthrowing the government and even harming members of Congress, “has become a partisan exercise.”⁶

37. Not coincidentally, while this was happening, beginning in late 2021 and continuing throughout 2022, No Labels was initiating the public phase of a campaign to “lay[] the groundwork for a unity ticket presidential campaign in 2024.”⁷

B. No Labels Announces Divisive “Insurance Policy 2024”

38. Standing in direct contradiction to its prior statements about bipartisan reform, unity, and common-sense solutions, No Labels launched its “Insurance Policy” initiative on or about April 2, 2023.

39. No Labels’ website now explicitly announces an intention to run a third-party presidential campaign. And No Labels isn’t hiding the ball. Its own website describes its separate “presidential ticket,” to run again the Democrat and Republican nominees:

Insurance Policy 2024

No Labels is working to ensure Americans have the choice to vote for a presidential ticket that features strong, effective, and honest leaders who will commit to working closely with both parties to find commonsense solutions to America’s biggest problems.

40. In No Labels’ own words, their separate presidential ticket will be “independent,” *i.e.*, not associated with the Republican or Democratic parties. This is, by definition, *not* bipartisan.

⁶ @NoLabelsOrg, X (May 18, 2022, 2:54 PM), <https://t.co/inZygUpc0g>.

⁷ Daniel Lippman, *Inside the Turmoil Roiling No Labels’ Unity Ticket Presidential Campaign*, Politico (Dec. 8, 2022), <https://www.politico.com/news/2022/12/07/no-labels-unity-presidential-ticket-centrist-group-2024-00072712>.

A third ticket option is a clear break from No Labels' prior goal of uniting the two parties in Congress to pursue common sense solutions—instead, it incites division amongst Americans.

41. A third-party ticket option will only *discourage* bipartisan reform because it will take votes away from one of the major political candidates, giving an advantage to the other candidate.

42. As discussed further below, votes for a third-party presidential candidate will most likely help the Republican presidential nominee get reelected, and will hurt President Biden's chances at reelection. Consequently, running a third-party candidate has the potential only to increase the partisan divide in this country, which is expressly at odds with No Labels' stated mission of bringing the country together.

C. No Labels' Insurance Policy Is Based On Its Own Polling

43. No Labels' website proclaims that its Insurance Policy is based on more than a year of investigation into whether “an independent ticket” is possible:

The Washington establishment is often so certain – and so wrong – about the future. Remember when they **told** you a Republican “red wave” was coming in the 2022 midterms? Or that Hillary Clinton **had** a “100% chance of winning the election” in 2016 against Donald Trump?

Keep this in mind next time you hear that an independent ticket could never win the White House in 2024. No Labels has spent more than a year investigating whether it is possible. We:

- Surveyed more than 50,000 people across several different polls. Our most recent poll, conducted by HarrisX in December 2022, included responses from more than 26,000 registered voters, including representative samples in all 50 states. **We aren't aware of any other poll that's been conducted in the 2024 election cycle with a sample this large or this granular.**

44. In support of the Insurance Policy, No Labels relies heavily on its own polling. No Labels claims its polling “reveals a public that is tired, frustrated and pessimistic about the country's future and their own prospects. They have had it with political leaders who fixate on yesterday's hatreds and grievances instead of focusing on the future.”⁸

⁸ See *A Unity Ticket for 2024*, No Labels, <https://2024.nolabels.org/> (last visited Jan. 22, 2024).

45. Likewise, No Labels claims that “[i]n poll after poll, two-thirds of American voters are unhappy with the choices they are likely to have in the 2024 presidential election. No Labels is working to give the American voters a better choice should they want it.”⁹

D. No Labels’ Board Members Resign in the Wake of This Change in Course

46. William Galston helped found No Labels, alongside Nancy Jacobson, in 2010. But in 2023, after more than a decade, he “felt compelled to resign” from the organization and its board “in disagreement” over its decision to launch the Insurance Policy.¹⁰

47. Mr. Galston holds the Ezra K. Zilkha Chair in the Brookings Institution’s Governance Studies Program, where he serves as a Senior Fellow. Prior to January 2006, he was a Professor and Acting Dean at the School of Public Policy, University of Maryland, director of the Institute for Philosophy and Public Policy, founding director of the Center for Information and Research on Civic Learning and Engagement, and executive director of the National Commission on Civic Renewal, co-chaired by former Secretary of Education William Bennett and former Senator Sam Nunn. A participant in six presidential campaigns, he served from 1993 to 1995 as Deputy Assistant to President Clinton for Domestic Policy.¹¹

48. Shortly after resigning from No Labels, on May 2, 2023, Mr. Galston wrote an op-ed in *The Wall Street Journal* entitled “No Labels May Re-Elect Donald Trump.”¹² The op-ed explained his decision to resign from the group he helped found.

⁹ *No Labels 2024 Insurance Project FAQ*, No Labels (Oct. 5, 2023), <https://web.archive.org/web/20231014193458/https://www.action.nolabels.org/articles/9-labels-2024-insurance-project-faq> [hereinafter *Insurance Project FAQ*]; see also David Corn, *Top Democratic-Run Firms Won’t Discuss Their Work for No Labels*, Mother Jones (July 11, 2023), <https://www.motherjones.com/politics/2023/07/no-labels-firms-third-party-candidate/>.

¹⁰ Galston, *supra* note 2.

¹¹ *Id.*

¹² *Id.*

49. Mr. Galston believes that it is “unavoidable” that an additional presidential ticket option would negatively affect one of the major party candidates because, since 2000, “no winning candidate has received more than 53% of the popular vote. In both 2016 and 2020, a shift of less than 1% in key states would have changed the outcome, and nearly every survey suggests that the 2024 race will be equally competitive.” Thus, he concludes, “[e]ven a modest vote share for a third option could prove decisive.” “[I]f a No Labels ticket receives even a tiny share of the vote in key states, Mr. Trump could end up back in the Oval Office.”¹³

50. Mr. Galston determined that there is “asymmetry between the parties” because “Republicans are more enthusiastic about Donald Trump than Democrats are about Joe Biden. In a recent survey, only 53% of Democrats said they want Mr. Biden to run again, compared with 61% of Republicans who said the same about Mr. Trump. Democrats will overwhelmingly support the president if the only alternative is the former president, but unenthusiastic Democrats—who are more numerous than unenthusiastic Republicans—may seriously consider a third option.”¹⁴

51. Mr. Galston left No Labels, a group he helped found, loudly. His op-ed is a stark warning, based on his years of experience and expertise in political science, that the course No Labels is pursuing is dangerous and goes against everything that No Labels was supposed to stand for.

52. At least two other members of the board have resigned since the Insurance Policy initiative was announced.

¹³ *Id.*

¹⁴ *Id.*

53. According to recent articles, campaign finance lawyer Kenneth A. Gross and marketing agency partner Margie Fox were removed by No Labels from its board webpage following the Insurance Policy announcement.¹⁵

54. Mr. Gross had been on the Board since 2011. Ms. Fox had been on the Board even longer—she was named on the group’s initial tax return covering the end of 2009 and the first half of 2010.¹⁶

55. These members of No Labels’ board members apparently left the organization because they are not supportive of the Insurance Policy initiative and believe it goes against No Labels’ stated goals and purposes.

56. Mark Halperin—No Labels’ senior communications advisor—also abruptly left the group in May 2023, just as No Labels began launching its third-party initiative.¹⁷ While he has not made any public comment, the timing of his departure raises significant questions.

57. The six remaining members of the Board include Nancy Jacobson and Charlie Black. Black is a longtime Republican lobbyist who co-founded the firm, Black, Manafort, Stone and Kelly, along with Paul Manafort and Roger Stone, and is now founding chairman of the lobbying firm, Prime Policy Group.¹⁸

E. Democratic Members Of The Problem Solvers Caucus Rebel

58. The Problem Solvers Caucus is a group in the United States House of Representatives that includes members equally divided between Democrats and Republicans, with

¹⁵ David Moore, *No Labels Appears to Be Losing Board Members*, Sludge (July 12, 2023), <https://www.readsludge.com/2023/07/12/no-labels-appears-to-be-losing-board-members/>.

¹⁶ *Id.*

¹⁷ See Daniel Lippman, *Mark Halperin Leaving No Labels*, Politico (May 7, 2023), <https://www.politico.com/news/2023/03/07/mark-halperin-leaving-no-labels-00085919>.

¹⁸ Moore, *supra* note 16.

the Caucus' stated goal of fostering bipartisan cooperation on key policy issues. The group was created in 2017 as an outgrowth of meetings held by No Labels as early as 2013.¹⁹

59. Shortly after the Insurance Policy was announced, however, centrists in the Problem Solvers Caucus expressed widespread opposition to the initiative. In response, No Labels has been on the attack.

60. Rep. Brad Schneider (D-Ill.), a founding member of the Caucus, publicly criticized the initiative. In response, No Labels sent a text message to people in Schneider's district, stating it was "alarmed to learn that your U.S. Rep. Brad Schneider recently attacked the notion that you should have more choices in the 2024 presidential election" and calling him "out of step" with his voters.²⁰

61. The attack did not go over well with Schneider or others in the Caucus. Schneider, who helped form the Caucus pursuant to his and No Labels' erstwhile goal of "reach[ing] across the aisle and find[ing] common ground," said in a statement that, "No Labels' attacks are the kind of division the country needs less of right now, and it's a betrayal of every moderate and every problem solver in Congress."²¹

62. Rep. Abigail Spanberger (D-Va.), another caucus member, came to Schneider's defense. In a statement, she said that "No Labels is wasting time, energy, and money on a bizarre effort that confuses and divides voters, and has one obvious outcome—reelecting Donald Trump

¹⁹ *About the Caucus*, Problem Solvers Caucus, <https://problemsolverscaucus.house.gov/about> (last visited Jan. 22, 2024); *No Labels Applauds Creation of Congressional "Problem Solvers Caucus"*, No Labels (July 16, 2014), <https://web.archive.org/web/20160328062208/http://www.nolabels.org/press-releases/no-labels-applauds-creation-of-congressional-problem-solvers-caucus/>.

²⁰ Daniel Lippman, *House Dems in No Labels-Allied Caucus Are Livid with No Labels*, Politico (May 26, 2023), <https://www.politico.com/news/2023/05/26/members-of-a-no-labels-allied-caucus-erupt-at-no-labels-00098913>.

²¹ *Id.*

as President Now, the organization has decided to go one step further and attack a decent, well-respected, and hardworking member of the bipartisan Problem Solvers Caucus for the apparent sin of calling them out on their bogus plan.”²²

63. Caucus member Rep. Dean Phillips (D-Minn.) stated that the move against Schneider “roiled the caucus,” and that it ran “counter to the very principles that certainly are worth pursuing, which is respectful disagreement.”²³

64. Caucus co-chair Rep. Josh Gottheimer (D-N.J.) likewise expressed in a statement that he is opposed to No Labels’ 2024 efforts.²⁴

65. Former Caucus member Representative Mark Pocan’s (D-Wis.) recent opinion piece in *The Hill* stated: “When I first came to Congress, I was enamored with the alleged ideal behind No Labels and their mission to take partisanship out of politics. A world where people can work together on ideas that help the American people despite ideological differences. Boy was I wrong. Their non-partisan agenda is and always has been dishonest.” Representative Pocan went on to say that No Labels is “setting up a scheme to be a spoiler in the 2024 presidential election,” calling their Insurance Policy 2024 “*sabotage in the most anti-democratic way.*”²⁵

F. No Labels Touts April Nominating Convention

66. No Labels originally intended to nominate its as-yet-unknown third-party candidates at a nominating convention “held in Dallas on April 14-15, 2024.”²⁶

67. No Labels claimed last year to be “currently consulting with voters across the country to create an open and transparent selection process” with the intent to “announce the details

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Pocan, *supra* note 3 (emphasis added).

²⁶ *Insurance Project FAQ*, *supra* note 10.

of this process in the Fall of 2023,” but that has proven to be untrue.²⁷ Indeed, the fall of 2023 has come and gone without a shred of additional transparency as to how No Labels will select its third-party ticket, much less who its chosen candidates for President and Vice President will be.

68. Indeed, one of the only recent developments regarding No Labels’ candidate selection process was its cancelation of the previously announced in-person convention in favor of a purported virtual candidate selection process.²⁸ No Labels canceled the in-person convention after originally announcing that it would require a donation of at least \$100 for an in-person attendee to be eligible to cast a ballot.²⁹

69. No Labels has released an internet poll on its website, asking visitors to its website—indeed, anyone or who can enter an email address, whether an eligible voter or not—to weigh on whether the selection should be made by “[f]ive to 10 highly-respected national leaders,” “[a]bout 2,000 delegates who will gather at the No Labels convention in 2024,” “[t]ens of thousands of registered No Labels members,” or “[a] subset of the 77 million registered voters that No Labels research indicates would be open to voting for the Unity Ticket.”³⁰

70. But whatever the results of that non-transparent, unscientific clickbait poll turn out to be, it is clear that No Labels’ process will not be transparent, participatory, or democratic. Indeed, especially given its cancelation of the Dallas convention, No Labels is unlikely even to *decide* whether to nominate a third-party candidate until its virtual forum in April 2024, well after

²⁷ *Id.*

²⁸ Hans Nichols, *Scoop: No Labels Abandons Its In-Person Presidential Convention*, Axios (Nov. 29, 2023), <https://www.axios.com/2023/11/30/no-labels-presidential-convention-event-virtual>.

²⁹ *Id.*

³⁰ To access the poll, follow the link with the text “POLL: How would you like the Unity Ticket selected?,” on the web page that was archived on September 2, 2023, at the following location: <https://web.archive.org/web/20230902231758/https://www.action.nolabels.org/>.

March 5, 2024—when a number of states hold primary elections for the major political parties’ candidates on “Super Tuesday.”³¹ It thus will not be possible to run anything like a primary election for the No Labels candidate, so No Labels will inevitably make this decision in a proverbial smoke-filled room, populated by wealthy donors representing special interests, and largely favoring Republican political candidates. This is the opposite of giving voters a “choice,” as No Labels claims it wants to do.

G. No Labels Engages in Divisive Ballot Initiative

71. No Labels’ website claims that “[w]e have a strategy to get on 50 state ballots and the District of Columbia in time to potentially offer our ballot line to an independent Unity Ticket in 2024 if that’s what the American people want.”³²

72. In at least one key swing state, Colorado, No Labels has abandoned any pretense of bipartisanship and, instead, has two Republican co-chairs and is using a Republican-aligned canvassing firm to attempt to secure ballot access.³³

73. No Labels’ strategy, again, involves patently undemocratic tactics, including tricking prospective voters into unwittingly registering to vote as members of the No Labels party, rather than the party they actually support, according to the Maine Secretary of State.³⁴

74. As of mid-November 2023, No Labels has qualified for the ballot in 12 states, including key battleground states such as Arizona, Colorado, Florida, Nevada, and North

³¹ See Nichols, *supra* note 29; *Insurance Project FAQ*, *supra* note 10.

³² *Insurance Project FAQ*, *supra* note 10.

³³ See Erik Maulbetsch, *No Labels’ Dark Money Group Paid CO GOP’s Favorite Canvassing Firm To Get on ’24 Ballot*, Colo. Times Recorder (June 27, 2023), <https://coloradotimesrecorder.com/2023/06/no-labels-dark-money-group-paid-co-gops-favorite-canvassing-firm-to-get-on-24-ballot/54377/>.

³⁴ Letter from Secretary of State Shenna Bellows to Maine Voters, Me. Sec’y of State, <https://www.maine.gov/sos/news/2023/No%20Labels%20Party%20Letter.pdf> (last visited Jan. 22, 2024).

Carolina.³⁵ No Labels claimed that it was on track to be on the ballot or active in up to 27 states by the end of 2023.³⁶ As recently as January 5, 2024, No Labels qualified to appear on the ballot in Maine.³⁷

75. No Labels' ballot access strategy also takes advantage of another undemocratic and untransparent—although legal—tactic, by exploiting a loophole that allows certain organizations seeking to draft candidates for office *not* to act as political committees until they nominate a candidate, and thus not to disclose their donors like a traditional political party.³⁸ As recently reported in *The Wall Street Journal*, No Labels “isn't following the rules of a party, such as disclosing its donors,” even though “as it works to gain ballot access, it has to ask voters in some states to identify themselves as members of the No Label party.”³⁹ Indeed, Arizona election officials say candidates for state office can use the No Labels designation on the ballot.⁴⁰

76. No Labels even touts this on its website, boasting that “[t]he law and the courts have been clear that an entity like No Labels that is focused only on ballot access and not on advocating for any clearly identified candidate is not the equivalent of a national political party

³⁵ Julie Bykowicz, *What to Know About No Labels and Its Possible Presidential Ticket*, Wall St. J. (Nov. 14, 2023), <https://www.wsj.com/politics/elections/no-labels-party-third-presidential-ticket-04ee92f3>; April Rubin, *What to Know About No Labels and a Possible Third-Party Presidential Ticket*, Axios (Nov. 16, 2023), <https://www.axios.com/2023/11/16/no-labels-third-party-independent-candidate-2024>.

³⁶ Brett Samuels, *Manchin 2024 Chatter Puts Spotlight on No Labels*, The Hill (Nov. 26, 2023), <https://thehill.com/homenews/4323744-manchin-2024-chatter-spotlight-no-labels/>; Rubin, *supra* note 36.

³⁷ No Labels Staff, *No Labels Wins Ballot Access in Maine for 2024 Election*, No Labels (Jan. 5, 2024), <https://www.nolabels.org/no-labels-wins-ballot-access-in-maine-for-2024-election>.

³⁸ Andrew Perez, *The Dark Money-Backed Front Group No Labels Is Buying Its Own Ballot Line*, Jacobin (April 10, 2023), <https://jacobin.com/2023/04/no-labels-ballot-line-dark-money-corporate-billionaires-centrism-third-party-2024>.

³⁹ Bykowicz, *supra* note 36.

⁴⁰ *Id.*

and therefore cannot be compelled to disclose its donors.”⁴¹ Of course, one reason not to disclose contributors is to deny voters full information when deciding who to vote for.

77. In further support of its divisive initiative, *The New York Times* reported earlier this month that a Super PAC “intending to support a presidential candidate run by the group No Labels” registered with the Federal Election Commission.⁴² Representative Nancy Pelosi was quoted in the article as saying “I think that our democracy is at risk, and I think that No Labels is perilous to our democracy” and “I say that without any hesitation.”⁴³

78. When former Utah governor Jon Huntsman Jr., whom No Labels has suggested might be on its third-party presidential ticket, was asked about No Labels’ refusal to be transparent about its dark money financing, he said, “I don’t think it’s right or good. I think there should be transparency and accountability But that’s not the way you play the game.”⁴⁴

CAUSES OF ACTION

COUNT I

BREACH OF CONTRACT

79. Plaintiffs hereby repeat and reallege the allegations contained in the foregoing paragraphs as if fully set forth herein.

80. No Labels and Plaintiffs are parties to an enforceable contract. No Labels’ email solicitations to Plaintiffs constituted an offer, which Plaintiffs accepted by providing donations. No Labels elicited Plaintiffs’ donations by committing to pursue its “singular mission” of

⁴¹ *Insurance Project FAQ*, *supra* note 10.

⁴² Maggie Haberman, *A Super PAC Forms to Support No Labels*, N.Y. Times (Jan. 10, 2024), <https://www.nytimes.com/2024/01/10/us/politics/super-pac-no-labels.html>.

⁴³ *Id.*

⁴⁴ Jonathan Weisman, *A Third Party Soft Launches, but Its Politicians Disagree on Details*, N.Y. Times (July 17, 2023), <https://www.nytimes.com/2023/07/17/us/politics/no-labels-manchin-huntsman-event.html>.

“build[ing] the bipartisan swing faction that can solve America’s toughest problems.” Plaintiffs’ payments to No Labels were restricted and conditioned upon No Labels’ continued pursuit of this mission it had always advertised. The parties thus had a meeting of the minds at relevant times in August 2016, May 2017, and November 2020 that No Labels would use the funds that Plaintiffs donated to advance its mission of achieving bipartisan legislative progress.

81. Based upon Plaintiffs’ restricted, conditional funding, Plaintiffs had a reasonable contractual expectation that No Labels would spend their money in support of its mission of creating “not a third party, but rather a third bloc” in Congress that could work toward creating common-sense, bipartisan policy solutions.

82. It was a material term of the parties’ contract that No Labels would use Plaintiffs’ funding in furtherance of its stated mission to build a bipartisan legislative bloc. Absent this express commitment in No Labels’ solicitations, Plaintiffs would never have made their restricted, conditional contributions to No Labels.

83. Plaintiffs fully performed under the contract. All conditions required for No Labels’ performance had occurred at the time of Plaintiffs’ payments, totaling a combined \$145,000, on August 10, 2016, May 31, 2017, and November 18, 2020.

84. No Labels breached its contractual duty to pursue the mission of creating a bipartisan third bloc in Congress by redirecting funds to its divisive “Insurance Policy,” which has *no* chance of moving the country toward common-sense bipartisan governance, since any third-party candidacy is doomed to fail. Those funds either include funds directly contributed by Plaintiffs or funds that are fungible with the funds contributed by Plaintiffs.

85. Plaintiffs have been damaged by No Labels’ breach because Plaintiffs contributed based on the reasonable contractual expectation that No Labels would use these funds to advance

a cause that Plaintiffs support, only to find out that Plaintiffs' contributions have been put toward a cause that is antithetical to everything Plaintiffs believe and stand for.

COUNT II

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

86. Plaintiffs hereby repeat and reallege the allegations contained in the foregoing paragraphs as if fully set forth herein.

87. Under New York law, the enforceable contract between No Labels and Plaintiffs contains an implied covenant of good faith and fair dealing.

88. The implied covenant is a pledge that neither party to the contract will do anything that will have the effect of destroying or injuring the right of the other person to receive the fruits of the contract, even if the terms of the contract do not explicitly prohibit such conduct.

89. To the extent that the parties' enforceable contract did not expressly preclude No Labels from using Plaintiffs' contributions to fund a doomed third-party presidential ticket—which is anathema to No Labels' stated commitment to work to achieve a bipartisan legislative bloc—the implied covenant of good faith and fair dealing prohibited No Labels from doing so.

90. A reasonable person in Plaintiffs' position would have understood that a promise not to do so was included in the parties' contract. Such a promise is not inconsistent with the terms of that agreement.

91. No Labels' use of Plaintiffs' payments to underwrite its doomed third-party 2024 presidential bid has not been undertaken fairly or in good faith, unreasonably violates any contractual discretion enjoyed by No Labels, and has the effect of destroying or injuring Plaintiffs' right to receive the fruits of the contract.

92. Plaintiffs have been damaged by No Labels' breach because Plaintiffs provided funding based on the reasonable contractual expectation that No Labels would use these funds to

advance a cause that Plaintiffs support, only to find out that Plaintiffs' contributions have been put toward a cause that is antithetical to everything Plaintiffs believe and stand for.

COUNT III

BREACH OF IMPLIED CONTRACT

93. Plaintiffs hereby repeat and reallege the allegations contained in the foregoing paragraphs as if fully set forth herein.

94. Plaintiffs' contributions to No Labels were restricted and conditioned upon No Labels' continued pursuit of the mission it had always advertised as its "singular mission," which was to "build the bipartisan swing faction that can solve America's toughest problems."

95. An implied-in-fact contract was created by the parties' conduct which manifests a meeting of the minds over No Labels' obligations to contributors such as Plaintiffs. Plaintiffs repeatedly contributed to No Labels while it repeatedly represented that it would use contributions to pursue its "singular mission," and No Labels conducted itself during that period based on the understanding that it was bound to pursue the mission that was the condition of Plaintiffs' contributions, by building "not a third party, but rather a third bloc" in Congress to work toward creating common-sense, bipartisan policy solutions.

96. Based upon Plaintiffs' restricted, conditional contribution, Plaintiffs had a reasonable contractual expectation that No Labels would spend its money in support of its mission of creating "not a third party, but rather a third bloc" in Congress that could work toward creating common-sense, bipartisan policy solutions.

97. No Labels breached its implied contractual duty to pursue that mission by redirecting funds to its divisive "Insurance Policy," which has *no* chance of moving the country toward common-sense bipartisan governance, since any third-party candidacy is doomed to failure.

Those funds either include funds directly contributed by Plaintiffs or funds that are fungible with the funds contributed by Plaintiffs.

98. Plaintiffs have been damaged by No Labels' breach because Plaintiffs provided this funding based on the reasonable contractual expectation that No Labels would use these funds to advance a cause that Plaintiffs support, only to find out that Plaintiffs' contributions have been put toward a cause that is antithetical to everything Plaintiffs believe and stand for.

COUNT IV

PROMISSORY ESTOPPEL

99. Plaintiffs hereby repeat and reallege the allegations contained in the foregoing paragraphs as if fully set forth herein.

100. No Labels made clear and unambiguous promises to use any contributions they received to pursue their "singular mission," which was to "build the bipartisan swing faction that can solve America's toughest problems," and to create "not a third party, but rather a third bloc."

101. Plaintiffs reasonably and foreseeably relied on No Labels' promise, to Plaintiffs' detriment, by donating \$145,000 to No Labels, which is now being used instead to create a third-party, not a third bloc, and not to build a bipartisan swing faction in Congress, but to create a tri-partisan race for the presidency that will only foment division.

102. Plaintiffs have been damaged by No Labels' breach because Plaintiffs have contributed \$145,000 in reasonable and foreseeable reliance on No Labels' promises that it would use these funds to advance a cause that Plaintiffs support, only to find out that Plaintiffs' contributions have been put toward a cause that is antithetical to everything Plaintiffs believe and stand for.

COUNT V**UNJUST ENRICHMENT**

103. Plaintiffs hereby repeat and reallege the allegations contained in the foregoing paragraphs as if fully set forth herein.

104. No Labels was enriched at Plaintiffs' expense by Plaintiffs' \$145,000 in contributions to No Labels.

105. It is against equity and good conscience to permit No Labels to retain Plaintiffs' \$145,000 in contributions that were obtained under false pretenses, including but not limited to No Labels' representations that its "singular mission" was to "build the bipartisan swing faction that can solve America's toughest problems." No Labels is now pursuing a new "singular mission" that is utterly irreconcilable with the mission that Plaintiffs supported and in fact runs directly counter to the goals and principles that Plaintiffs sought to advance by contributing to No Labels.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment against Defendant as follows:

- a) Awarding Plaintiffs direct, compensatory, and consequential damages in the amount of \$145,000 to compensate Plaintiffs for the losses suffered as a result of No Labels' breaches, together with prejudgment interest;
- b) In the alternative, rescinding Plaintiffs restricted, conditional payments to No Labels and ordering No Labels to return Plaintiffs' payments;
- c) Awarding Plaintiffs attorneys' fees and costs; and
- d) Awarding Plaintiffs such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs demand a trial by jury on all claims and issues so triable.

Dated: January 23, 2024
New York, New York

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