

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ANDREW SNITZER and PAUL LIVANT, individually
and as representatives of a class of similarly situated
persons, on behalf of the American Federation of
Musicians and Employers' Pension Plan,

Plaintiffs,

v.

THE BOARD OF TRUSTEES OF THE AMERICAN
FEDERATION OF MUSICIANS AND EMPLOYERS'
PENSION FUND, THE INVESTMENT COMMITTEE
OF THE BOARD OF TRUSTEES OF THE
AMERICAN FEDERATION OF MUSICIANS AND
EMPLOYERS' PENSION FUND, RAYMOND M.
HAIR, JR., AUGUSTINO GAGLIARDI, GARY
MATTS, WILLIAM MORIARITY, BRIAN F. ROOD,
LAURA ROSS, VINCE TROMBETTA, PHILLIP E.
YAO, CHRISTOPHER J.G. BROCKMEYER,
MICHAEL DEMARTINI, ELLIOT H. GREENE,
ROBERT W. JOHNSON, ALAN H. RAPHAEL,
JEFFREY RUTHIZER, BILL THOMAS, JOANN
KESSLER, MARION PRESTON,

Defendants.

No. 1:17-cv-5361 (VEC)

**DEFENDANTS' ANSWER TO PLAINTIFFS'
AMENDED CLASS ACTION COMPLAINT**

Defendants the Board of Trustees of the American Federation of Musicians and
Employers' Pension Fund (the "Board of Trustees"), the Investment Committee of the Board of
Trustees (the "Investment Committee"), Raymond M. Hair, Jr., Augustino Gagliardi, Gary
Matts, William Moriarity, Brian F. Rood, Laura Ross, Vince Trombetta, Phillip E. Yao,
Christopher J.G. Brockmeyer, Michael DeMartini, Elliot H. Greene, Robert W. Johnson, Alan H.
Raphael, Jeffrey Ruthizer, Bill Thomas, JoAnn Kessler and Marion Preston (collectively,

“Defendants”), through their undersigned counsel, answer Plaintiffs’ Amended Class Action Complaint (“Complaint”) as follows:¹

I. NATURE OF ACTION²

1. Defendants deny the allegations contained in Paragraph 1 of the Complaint, except admit that Plaintiffs purport to bring this action under 29 U.S.C. § 1132 as a class action, and as an action on behalf of the American Federation of Musicians and Employers’ Pension Plan (the “Plan”),³ for breach of fiduciary duty under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1001, *et seq.*, against the individuals listed in Paragraph 1 of the Complaint.⁴

2. Defendants deny the allegations contained in paragraph 2 of the Complaint, except admit that the Board of Trustees is the designated Plan sponsor and Plan administrator and that the Plan is administered at 14 Penn Plaza, 12th Floor, New York, New York 10122.

3. Defendants deny the allegations contained in Paragraph 3 of the Complaint, except admit that, according to the Agreement and Declaration of Trust establishing the Fund, as amended from time to time (“Trust Agreement”), the Plan is funded by the American Federation

¹ In violation of Federal Rule 8(d) – which requires that each allegation in a complaint be “simple, concise, and direct[,]” – Plaintiffs’ pleading is convoluted and, in many instances, laced with argument and legal conclusions. Defendants have endeavored, where possible, to parse out and respond to those portions of Plaintiffs’ allegations that state facts, but have denied those factual allegations that are unduly intertwined with arguments and legal conclusions that are denied or as to which a responsive pleading is not warranted.

² Defendants have repeated the headings used by the Complaint for organizational purposes only, but deny the truth of any purported facts included in the headings.

³ In places in the Complaint, Plaintiffs have interchangeably used the terms “Fund” and “Plan”, often in ways that cause some allegations to be factually incorrect. So, for example, it is the Plan, not the Fund, that is certified to be in critical status under the Pension Protection Act. *See* Paragraph 49. For purposes of this Answer only, Defendants have not denied allegations solely based on a misuse of the proper terminology.

⁴ After the Complaint was filed, Plaintiffs voluntarily dismissed from the action Thomas F. Lee, William Foster, Melinda Wagner, Harold Bradley, and Lovie Smith-Wright.

of Musicians and Employers' Pension Fund ("Fund") and that the Board of Trustees has certain responsibilities allocated to it by the Trust Agreement, and respectfully refer the Court to the Trust Agreement for its complete terms.

4. Defendants deny the allegations contained in Paragraph 4 of the Complaint, except admit that the Plan Year of the Plan and Fund is April 1 through March 31, that the Plan has been in "critical" status and operating under a Rehabilitation Plan adopted in April 2010 where it was projected to emerge from "critical" status by no later than March 2047, and that Defendants knew that the Fund's investment returns were vital to the Fund's recovery.

5. The allegations contained in Paragraph 5 of the Complaint seek to state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 5 of the Complaint.

6. Defendants deny the allegations contained in Paragraph 6 of the Complaint, except admit that the Board of Trustees published a letter to Plan participants dated December 2016, which, among other things, notified them that the Plan could soon be in "critical and declining" status under the Multiemployer Pension Reform Act ("MPRA") and respectfully refer the Court to the December 2016 letter for its complete terms.

7. Defendants deny the allegations contained in Paragraph 7 of the Complaint, except admit that Plan participants were notified, in a posting on the Fund website dated May 2017, that the Plan would not be in "critical and declining status" for the 2017 fiscal year and respectfully refer the Court to the posting for its complete terms.

8. Defendants deny the allegations contained in Paragraph 8 of the Complaint.

9. Defendants deny the allegations contained in Paragraph 9 of the Complaint.

10. Defendants deny the allegations contained in Paragraph 10 of the Complaint.

11. Defendants deny the allegations contained in Paragraph 11 of the Complaint.

12. Defendants deny the allegations contained in Paragraph 12 of the Complaint.

13. Defendants deny the allegations contained in Paragraph 13 of the Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of the Complaint,

except admit that Plaintiffs purport to bring this action under the ERISA provisions cited, for the relief stated in Paragraph 19.

20. Defendants deny the allegations in Paragraph 20 of the Complaint, except admit that Plaintiffs purport to bring this action under the ERISA provisions cited, on behalf of the Plan, for the relief stated in Paragraph 20.

II. JURISDICTION AND VENUE

21. Defendants deny the allegations contained in Paragraph 21 of the Complaint, except admit that Plaintiffs purport to invoke this Court's jurisdiction pursuant to 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331, and decline to plead insofar as the allegations in Paragraph 21 of the Complaint purport to state legal conclusions as to which no responsive pleading is required.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint, except admit that Plaintiffs purport to place venue in this District pursuant to 29 U.S.C. § 1132(e)(2), and decline to plead insofar as the allegations in Paragraph 22 of the Complaint purport to state legal conclusions as to which no responsive pleading is required.

III. PARTIES

A. Plaintiffs

23. Defendants admit that Plaintiff Snitzer and Plaintiff Livant are Plan participants with a vested benefit and were participants during the putative class period; admit, upon information and belief, that both are members of AFM Local 802 and citizens of the State of New York, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 regarding Snitzer and Livant's employment history.

B. Defendants

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint, except admit that the Board of Trustees is the Plan sponsor and identified as the "named fiduciary" under Article 1.6 of the Trust Agreement.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in Paragraph 26(d) of the Complaint and admit the allegations contained in Paragraphs 26(a)-(c) and (e)-(l) of the Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint, except admit that Plaintiffs purport to use the definitions contained in Paragraph 27 to refer to various Defendants.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint, except admit that Kilkelly is the Executive Director and that she was dismissed without prejudice from this action, that her compensation and responsibilities, and the responsibilities of the Board of Trustees with respect to oversight of her, are set out, respectively, in the Fund's Forms 5500 and the Trust Agreement, and respectfully refer the Court to those documents for their complete terms.

IV. CLASS ACTION ALLEGATIONS

29. Paragraph 29 of the Complaint purports to state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 29 of the Complaint.

30. Paragraph 30 of the Complaint purports to state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 30, except admit that Plaintiffs purport to bring this action on behalf of a class as described in Paragraph 30 of the Complaint.

31. Paragraphs 31(a) through (e) of the Complaint purports to state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraphs 31(a) through (e) of the Complaint.

32. Paragraph 32 of the Complaint purports to state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint, except admit that by Order dated September 18, 2017, the Court appointed Chimicles & Tikellis LLP as Interim Lead Class Counsel and Shepherd Finkelman Miller & Shah LLP as Interim Liaison Class Counsel.

V. SUBSTANTIVE ALLEGATIONS

A. The Defendants' Fiduciary Duties to the Plan

34. Defendants admit the allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint, except admit that the Plan sponsor is the Board of Trustees of the Fund.

36. Defendants deny the allegations contained in Paragraph 36, except admit that the Investment Committee is required to have Co-Chairs, including one Employer Trustee and one Union Trustee, the Investment Committee currently includes five Employer Trustees and five Union Trustees, and the Co-Chairs are Brockmeyer and Yao.

37. Defendants admit the allegations contained in Paragraph 37 of the Complaint.

38. Defendants admit the allegations contained in Paragraph 38 of the Complaint.

39. Paragraph 39 of the Complaint purports to state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants admit that Paragraph 39 accurately quotes from ERISA Section 404(a), 29 U.S.C. §1104(a).

40. Paragraph 40 of the Complaint purports to state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants admit that Paragraph 40 accurately quotes from ERISA Section 405(a), 29 U.S.C. §1105(a).

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint, except admit that Paragraph 41 accurately quotes from Sections 5.6 and 5.7 of the Trust Agreement and ERISA Section 405(c)(3) and respectfully refer the Court to the Trust Agreement and the statutory provision for their complete terms.

42. Paragraph 42 of the Complaint purports to state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 42, except admit that the Trust Agreement and ERISA impose certain fiduciary responsibilities on Defendants with respect to Fund investments and respectfully refer the Court to the Trust Agreement and ERISA for their complete terms.

43. Paragraph 43 of the Complaint purports to state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the

allegations contained in Paragraph 43, except admit that the Trust Agreement and ERISA impose certain fiduciary responsibilities on Defendants with respect to monitoring the Executive Director and respectfully refer the Court to the Trust Agreement and ERISA for their complete terms.

44. Paragraph 44 of the Complaint purports to state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants admit that Paragraph 44 accurately quotes from ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2).

45. Paragraph 45 of the Complaint purports to state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants admit that Paragraph 45 accurately quotes from ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3).

B. Vulnerable Financial Condition of the Fund

46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint, except admit that certain Defendants participated in presentations in early 2017 to local union members to discuss the financial status of the Fund; that Plaintiff Livant requested an explanation of the Fund's asset decline; and that Kilkelly responded with an explanation.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint, except admit that losses in the 2008-2009 fiscal years hurt the Fund's financial health.

49. Defendants admit the allegations contained in Paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint, except admit that the Board of Trustees adopted a Rehabilitation Plan consistent with the requirements of the Pension Protection Act of 2006 (the "PPA") following the Plan's "critical" certification and respectfully refer the Court to the Rehabilitation Plan and the PPA for their complete terms.

51. Defendants deny the allegations contained in Paragraph 51 of the Complaint, except admit that the Board of Trustees adopted a Rehabilitation Plan to improve the Plan's funding and respectfully refer the Court to the terms of the Rehabilitation Plan for measures taken thereunder.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint, except admit that the Board of Trustees considered various options to foster recovery of the Fund in adopting the Rehabilitation Plan and considered investment returns to be vital to the Fund's recovery and future viability.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

C. Defendants' Imprudent Investment of Plan Assets in High-Risk, Actively - Managed Emerging Markets Equities

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint, except admit that a 6% allocation to emerging markets equities was approved, which was later increased to 11% and then 15%, and that two managers were engaged for the investment.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Complaint, except admit that the Complaint selectively quotes from the Vanguard research paper cited in Paragraph 57.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint, except admit that Meketa was hired in October 2009 and that, in January 2010, Meketa advised

the Investment Committee that an allocation of 3-8% of the Fund's assets in emerging markets equities was appropriate for long-term investors as a tool for enhancing returns.⁵

60. Defendants deny the allegations contained in Paragraph 60 of the Complaint, except admit that in 2010, the Investment Committee recommended, and the Board of Trustees approved, an asset allocation policy that included a 6% allocation to emerging markets equities. The policy allocated: 27% to domestic equities; 16% to developed international equities; 6% to emerging markets equities; 3% to private equity; 4% to infrastructure; 14% to investment grade bonds; 7% to TIPS; 8% to high yield bonds; 10% to real estate and 5% to tactical asset hedging.

61. Defendants deny the allegations contained in Paragraph 61 of the Complaint, except admit that in May 2010, the Investment Committee approved Meketa's recommendation of investing with Dimensional Fund Advisors ("Dimensional") and Artisan Partners ("Artisan") with 2/3 of the emerging markets allocation being invested with Dimensional and 1/3 with Artisan, and that Meketa recommended the split based on, among other things, Dimensional's lower fee structure.

62. Defendants admit the allegations contained in Paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint, except admit that Meketa responded to a request for proposal from the Board seeking a private equity manager for the Fund in or about August 2012; Meketa developed asset allocation models

⁵ With respect to paragraphs that purport to allege facts regarding information conveyed to, or actions taken by, certain Committees (Investment, Strategic Planning, OCIO, Communications) and their members, Defendants' response should be construed as being on behalf of those defendants who were members of the Committees at the relevant time (and the term "Defendants" as used in the responses shall mean those individuals), while the other defendants are responding "on information and belief." *See, e.g.*, Answer ¶¶ 61, 64, 65, 76-78, 84, 87, 92, 94, 95, 97, 104, 105, 106.

that included 11% allocations to emerging markets equities and 15% to private equity; Meketa developed asset allocation models at the request of the Strategic Planning Committee and Investment Committee that might generate a long-term expected annualized return for the Fund that might exceed the 7.5% assumed actuarial return; and both the Investment Committee and Strategic Planning Committee are co-chaired by defendant Brockmeyer.

65. Defendants deny the allegations contained in Paragraph 65 of the Complaint, except admit that, at the February 2011 quarterly meeting, Meketa advised the Investment Committee that, for the fourth quarter of 2010, international equities trailed domestic equities due to concerns over sovereign debt issues in the Eurozone and inflationary pressures in China; by the August 2011 meeting of the Investment Committee, Meketa reported that the emerging markets investment had declined 3% year to date; for the second quarter of 2011, the Dimensional investment lost 2.6% net of fees, and the Artisan investment lost 4.2% net of fees.

66. Defendants deny the allegations contained in Paragraph 66 of the Complaint, except admit that Plaintiffs selectively quote from the WEO publication cited in Paragraph 66.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint, except admit that, in November 2011, the Investment Committee voted to recommend to the Board of Trustees to increase the Fund's emerging markets equities allocation from 6% to 11% and increase the private equity allocation of the Fund from 3% to 15%; that as of September 30, 2011, Meketa reported that the market value of the Fund's emerging markets equities had declined 26.5% since June 2011, declined 28.7% in 2011 as of September 30, 2011, declined 13.3% since inception, and had a market value of \$76.5 million; and that the Board of Trustees approved a new investment policy statement index at its February 2012 meeting.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

69. Defendants deny the allegations contained in Paragraph 69 of the Complaint, except admit that as of March 31, 2012, Meketa reported that the total market value of the Fund's emerging markets equities was \$139.5 million, and that Meketa reported that the Fund's emerging markets equities investments declined 1,490 basis points for the fiscal year ending March 31, 2012, which was 6.1% below the "benchmark" identified in Meketa's report.

70. Defendants deny the allegations contained in Paragraph 70 of the Complaint, except admit that, according to the Plan's Forms 5500, for fiscal year 2012, the Fund received \$55.5 million in contributions and paid \$125.5 million in benefits, and that the Fund had net assets at the end of the fiscal year of \$1.717 billion compared with \$1.769 billion at the end of fiscal year 2011.

71. Defendants deny the allegations contained in Paragraph 71 of the Complaint, except admit that Meketa reported that, during the second quarter of 2012, U.S. equities markets declined 3.1%, international developed markets equities declined 7.1%, and emerging markets equities declined 8.9%.

72. Defendants deny the allegations contained in Paragraph 72 of the Complaint, except admit that, for the quarter ending March 31, 2013, Meketa reported that the value of the Fund's emerging markets equities investments declined 200 basis points, which was 40 basis points below the "benchmark" identified in Meketa's report. Defendants admit that for the fiscal year ending March 31, 2013, Meketa reported that the market value of the Fund's emerging markets equities investments increased by 50 basis points, which was 150 basis points below the "benchmark" identified in Meketa's report. Defendants admit that as of March 31, 2013, Meketa reported that the total market value of the Fund's emerging markets equities investments was \$193.6 million.

73. Defendants deny the allegations contained in paragraph 73 of the Complaint, except admit that, according to the Plan's Forms 5500, for fiscal year 2013, the Fund received \$55.9 million in contributions and paid \$131.4 million in benefits, and the Fund had net assets at the end of fiscal year 2013 of \$1.774 billion, compared with \$1.717 billion at the end of fiscal year 2012.

74. Defendants deny the allegations contained in Paragraph 74 of the Complaint, except admit that as of June 30, 2013, Meketa reported that the market value of the Fund's emerging markets equities investment, which constituted approximately 10% of the Fund's assets, was valued at \$174.4 million.

75. Defendants deny the allegations contained in Paragraph 75 of the Complaint, except admit that Meketa reported that, as of June 30, 2013, the Fund's emerging markets equities investments had lost 11.8% year to date and the Fund's U.S. equities gained 15.1% year to date.

76. Defendants deny the allegations contained in Paragraph 76 of the Complaint, except admit that, at an Investment Committee retreat in September 2013, Meketa reported on emerging markets and First Eagle reported that it was underweight in emerging markets equities due to its concerns over slowing growth and the inability to located additional stocks that provided an acceptable risk/reward tradeoff.

77. Defendants deny the allegations contained in Paragraph 77 of the Complaint, except admit that at the Investment Committee retreat, Frank Benham of Meketa presented on active and passive investing.

78. Defendants deny the allegations contained in Paragraph 78 of the Complaint, except admit that, in or about November 2013, the Strategic Planning Committee requested that

Meketa develop asset allocation models targeted at achieving a 9% long-term annualized expected return.

79. Defendants deny the allegations contained in Paragraph 79 of the Complaint, except admit that as of December 31, 2013, Meketa reported that the Fund's emerging markets equities investment constituted 12% of total assets, with a market value of \$206.6 million. Defendants admit that as of March 31, 2014, Meketa reported that the Fund's emerging markets equities investment had a total market value of \$204.7 million and that the market value of the investment declined 310 basis points for the fiscal year ending March 31, 2014, which was also 170 basis points below the "benchmark" identified in Meketa's report.

80. Defendants deny the allegations contained in Paragraph 80 of the Complaint, except admit that Plaintiffs selectively quote from a Meketa report for the period ending December 31, 2013 and respectfully refer the Court to the report for its full terms.

81. Defendants deny the allegations contained in Paragraph 81 of the Complaint, except admit that Plaintiffs selectively quote from a Meketa report for the period ending December 31, 2013 and respectfully refer the Court to the report for its full terms.

82. Defendants deny the allegations contained in Paragraph 82 of the Complaint, except admit, that according to the Plan's Forms 5500, for fiscal year 2014, the Fund received \$59.7 million in contributions and paid \$137.7 million in benefits and the Fund had \$1.823 billion in net assets, compared to \$1.774 billion at the end of fiscal year 2013.

83. Defendants deny the allegations contained in Paragraph 83 of the Complaint, except admit that in early 2014, Artisan was terminated and transferred approximately \$71 million of the proceeds to Dimensional.

84. Defendants deny the allegations contained in Paragraph 84 of the Complaint, except admit that Meketa and Milliman presented allocations to the Investment Committee in May 2014, noting that the expected returns were based on long-term (20-year) rates, and also addressed how the timing of returns affects the Plan's funding status; and that Meketa observed that the emerging markets equities investment was added based on the long-term (20-year) expected return even if they had detracted recently.

85. Defendants deny the allegations contained in Paragraph 85 of the Complaint, except admit that, in December 2014, the Fund hired Driehaus Capital Management ("Driehaus"), which managed the Driehaus Emerging Markets Growth Fund, and Dimensional transferred \$70 million of Fund assets to the new manager; and as of December 31, 2014, the total market value of the emerging markets equities investment was \$194.6 million.

86. Defendants deny the allegations contained in Paragraph 86 of the Complaint, except admit that the Investment Committee recommended increasing the emerging markets equities allocation from 11 to 15% and the private equity allocation from 15% to 18%, and that the Board of Trustees approved the new allocation policy in February 2015.

87. Defendants deny the allegations contained in Paragraph 87 of the Complaint, except admit that members of the Strategic Planning Committee disagreed over whether the Plan should proceed with a benefit change involving a cap for some participants to allow for a higher benefit multiplier for others.

88. Defendants deny the allegations contained in Paragraph 88 of the Complaint, except admit that, as of March 31, 2015, Meketa reported that the market value of the Fund's emerging markets equities investment was \$226.6 million, the market value of the investment with Dimensional was \$138.2 million, and the market value of the investment with Driehaus was

\$88.4 million, together constituting approximately 13% of the Fund's total assets; and Meketa reported that for fiscal year 2015, the market value of the Fund's emerging markets equities investment lost 3.8%, which was 4.2% below the "benchmark" identified in Meketa's report.

89. Defendants deny the allegations contained in Paragraph 89 of the Complaint, except admit that, according to the Plan's Forms 5500, for fiscal year 2015, the Fund received \$61.2 million in contributions and paid \$144.2 million in benefits; and the Fund had \$1.818 billion in net assets, compared to \$1.823 billion at the end of fiscal year 2014.

90. Defendants deny the allegations contained in Paragraph 90 of the Complaint.

91. Defendants deny the allegations contained in Paragraph 91 of the Complaint, except admit that in April 2015, \$2 million was contributed into each of the Dimensional and Driehaus investments.

92. Defendants deny the allegations contained in Paragraph 92 of the Complaint, except admit that at the May 2015 meeting of the Investment Committee, Meketa reported that the Fund's returns relative to its peers had been lagging due to its emerging market allocation and that Meketa noted that Dimensional had underperformed since inception and explained why the investment had underperformed.

93. Defendants deny the allegations contained in Paragraph 93 of the Complaint, except admit that Plaintiffs selectively quote from Meketa's report on the Fund's performance numbers through June 2015, addressing the Fund's performance compared to other Taft-Hartley plans, and respectfully refer the Court to that report for its complete terms.

94. Defendants deny the allegations contained in Paragraph 94 of the Complaint, except admit that Plaintiffs selectively quote from a Milliman report dated August 4, 2015 and respectfully refer the Court to that report for its complete terms.

95. Defendants deny the allegations contained in Paragraph 95 of the Complaint, except admit that at the October 2015 Investment Committee meeting, Meketa reported that slowed growth in China and the lack of an interest rate increase led to a decline in the markets; and Meketa's performance report for the third quarter of 2015 showed that the Fund's emerging markets equities investment had lost 17% in the third quarter of 2015, lost 15% year to date, lost 15.8% fiscal year to date, lost 20.7% over 1 year, lost 6.4% over 3 years and lost 6.2% over 5 years.

96. Defendants deny the allegations contained in Paragraph 96 of the Complaint, except admit that at a retreat in February 2016, Meketa reported that its discretionary portfolios were completely out of emerging markets equities unless constrained to maintain such an allocation, and that the Investment Committee ultimately determined not to de-risk the Fund.

97. Defendants deny the allegations contained in Paragraph 97 of the Complaint, except admit that in 2016, the Board of Trustees formed a subcommittee of the Investment Committee to consider engaging an Outsourced Chief Investment Officer ("OCIO"); that the subcommittee included Brockmeyer, Greene and Yao; and that the subcommittee hired an independent consultant, Gallagher Fiduciary Advisors, LLC, to assist the committee in conducting a request for proposals process and select finalists for the Defendants' consideration.

98. Defendants deny the allegations contained in Paragraph 98 of the Complaint, except admit that in early 2016, Milliman reported that the Fund was projected to be very close to critical and declining status for the 2016 PPA actuarial certification based on then-current assumptions and that based on Milliman's then-current assumptions, the Fund fell "just short of insolvency in 20 years"; in early 2016, Milliman suggested further discussions up through the May Board of Trustees' meeting regarding the then-current assumptions, including whether to

accelerate the new Milliman experience study to be completed “prior to [the] PPA actuarial certification due date” and whether to modify certain assumptions in conjunction with the PPA actuarial certification “(e.g., mortality assumption).”

99. Defendants deny the allegations contained in Paragraph 99 of the Complaint, except admit that, for the fiscal year ending March 31, 2016, Meketa reported that the Fund’s emerging markets equities investment lost 1,080 basis points and beat the “benchmark” identified in Meketa’s report by 1.2% or 120 basis points and that the total market value of the Fund’s emerging markets investment was \$205.7 million, and the Driehaus allocation had a market value of \$81.4 million.

100. Defendants deny the allegations contained in Paragraph 100 of the Complaint, except admit that the Fund was not in “critical and declining” status by April 2016.

101. Defendants deny the allegations contained in Paragraph 101 of the Complaint, except admit that for fiscal year 2016, the Fund received \$63 million in contributions and paid \$150 million in benefits.

102. Defendants deny the allegations contained in Paragraph 102 of the Complaint, except admit that in May 2016 the Trustees formed a Communication Committee to address communications with Plan participants concerning, among other things, the Fund’s financial condition and funding status and that the committee included Brockmeyer, Thomas, Ruthizer, Hair, Gagliardi and Matts.

103. Defendants deny the allegations contained in Paragraph 103 of the Complaint, except admit that in June 2016, the Rehabilitation Plan was amended and stated that Milliman did not project the Plan to emerge from critical status and that the objective of the Rehabilitation Plan is to take reasonable measures to forestall possible insolvency.

104. Defendants deny the allegations contained in Paragraph 104 of the Complaint, except admit that at the August 2016 Investment Committee meeting Meketa observed that global economies continued to slow and that the Fund's U.S. equities and TIPS holdings were below targets due to the liquidation of positions to pay benefits and fund private equity calls; that Meketa noted the underperformance of the Fund's U.S. equities managers; and that Meketa noted that of the eight active U.S. equity managers, five underperformed for the quarter and seven underperformed for the one-year period.

105. Defendants deny the allegations contained in Paragraph 105 of the Complaint, except admit that, at the October 2016 meeting of the OCIO Subcommittee, members of the OCIO Subcommittee agreed to have Meketa present as a finalist in the OCIO search.

106. Defendants deny the allegations contained in Paragraph 106 of the Complaint, except admit that, in November 2016, Cambridge was approved to act as the Fund's OCIO and scheduled to begin in September 2017.

107. Defendants deny the allegations contained in Paragraph 107 of the Complaint, except admit that Milliman presented on an experience study in November 2016 with updated mortality assumptions.

108. Defendants deny the allegations contained in Paragraph 108 of the Complaint, except admit that as of December 31, 2016, the Fund's emerging markets equities investment had a market value of approximately \$221.6 million, the Dimensional holding had a market value of \$136.7 million, and the Driehaus holding had a market value of \$84.9 million.

109. Defendants admit the allegations contained in Paragraph 109 of the Complaint, except deny that the Fund's Form 5500 reported that Artisan received direct compensation of \$372,622 in fiscal year 2012.

110. Defendants deny the allegations contained in Paragraph 110 of the Complaint.

111. Defendants deny the allegations contained in Paragraph 111 of the Complaint, except admit that in May 2017, Defendants reported to the Plan participants that the Fund would not be in critical and declining status for the 2017 actuarial certification, but indicated that the Fund's status likely would become critical and declining in the future.

112. Defendants deny the allegations contained in Paragraph 112 of the Complaint.

113. Defendants deny the allegations contained in Paragraph 113 of the Complaint, except admit that Meketa reported that the Fund's emerging markets equities investment had a substantial gain of almost 22% in fiscal year 2017.

114. Defendants deny the allegations contained in Paragraph 114 of the Complaint, except admit that Plaintiffs selectively quote from the IMF Discussion Note cited in Paragraph 114.

115. Defendants deny the allegations contained in Paragraph 115 of the Complaint,

116. Defendants deny the allegations contained in Paragraph 116 of the Complaint.

117. Defendants deny the allegations contained in Paragraph 117 of the Complaint.

D. Defendants' Imprudent Extensive Reliance on High-Cost Active Managers

118. Defendants deny the allegations contained in Paragraph 118 of the Complaint, except admit that in early 2017 roadshow presentations to union locals, participants were told that the Fund used index funds where it makes sense and used active managers where index funds are not available and where active managers are likely to outperform index funds.

119. Defendants deny the allegations contained in Paragraph 119 of the Complaint.

120. Defendants deny the allegations contained in Paragraph 120 of the Complaint, except admit that as of May 2014, Meketa reported that the Fund's concentrated small cap

portfolio had underperformed the Russell 2000 by an average of 2.8% per year and that as of June 30, 2016, the concentrated small cap portfolio had underperformed the “benchmark” identified in Meketa’s report by 2.2% per year since inception.

121. Defendants deny the allegations contained in Paragraph 121 of the Complaint, except admit that Plaintiffs quote selectively from an email from Plan counsel and respectfully refer the Court to the email for its complete terms.

122. Defendants deny the allegations contained in Paragraph 122 of the Complaint, except admit that Plaintiffs quote selectively from the Meketa report for the fourth quarter of 2013 and respectfully refer the Court to the report for its complete terms.

123. Defendants deny the allegations contained in Paragraph 123 of the Complaint.

124. Defendants deny the allegations contained in Paragraph 124 of the Complaint, except admit that Plaintiffs selectively quote from the article cited in Paragraph 124.

125. Defendants deny the allegations contained in Paragraph 125 of the Complaint, except admit that Plaintiffs selectively quote from a publication from Berkshire Hathaway cited in Paragraph 125.

126. Defendants deny the allegations contained in Paragraph 126 of the Complaint, except admit that Plaintiffs selectively quote from a report by Vanguard cited in Paragraph 126.

127. Defendants deny the allegations contained in Paragraph 127 of the Complaint, except admit that Plaintiffs selectively quote from an article from The Wall Street Journal cited in Paragraph 127.

128. Defendants deny the allegations contained in Paragraph 128 of the Complaint.

129. Defendants deny the allegations contained in Paragraph 129 of the Complaint, except admit that Plaintiffs selectively quote from the Allegro newsletter cited in Paragraph 129.

130. Defendants deny the allegations contained in Paragraph 130 of the Complaint.

131. Defendants deny the allegations contained in Paragraph 131 of the Complaint.

132. Defendants deny the allegations contained in Paragraph 132 of the Complaint, except admit that the Complaint selectively quotes from the “marketsmedia.com” interview cited in Paragraph 132.

133. Defendants deny the allegations contained in Paragraph 133 of the Complaint, except admit that Investment Committee members received quarterly reports from Meketa and respectfully refer the Court to those reports for their complete terms.

134. Defendants deny the allegations contained in Paragraph 134 of the Complaint, except admit that Meketa reported manager performance versus benchmarks and the fees and fee structures of the respective managers.

135. Defendants deny the allegations contained in Paragraph 135 of the Complaint, except admit that for fiscal years 2011 through 2017, the Fund’s aggregate investments failed to meet the custom “benchmark” identified in Meketa’s reports five of seven years, that the custom benchmark was based on indexes corresponding to the Fund’s asset classes and allocation, and that the numbers cited in the table in Paragraph 135 are accurate.

136. Defendants deny the allegations contained in Paragraph 136 of the Complaint, except admit that according to the Fund’s Form 5500s, for fiscal years 2010 through 2016, the Plan paid over \$73 million in investment expenses.

137. Defendants deny the allegations contained in Paragraph 137 of the Complaint, except admit that Plaintiffs selectively quote from a Meketa report for the quarter ending December 31, 2013 and respectfully refer the Court to the report for its full terms.

138. Defendants deny the allegations contained in Paragraph 138 of the Complaint, except admit that the Complaint selectively quotes from “*The Big Squeeze: How Many Managers’ Fees Crush State Budgets and Workers Retirement Hopes*, American Federation of Teachers (2017) cited in Paragraph 138.

139. Defendants deny the allegations contained in Paragraph 139 of the Complaint.

140. Defendants deny the allegations contained in Paragraph 140 of the Complaint, except admit that the Fund changed investment managers and legal advisors.

141. Defendants deny the allegations contained in Paragraph 141 of the Complaint.

142. Defendants deny the allegations contained in Paragraph 142 of the Complaint.

E. Defendants’ Disloyal Withholding of Information from Participants

143. Defendants deny the allegations contained in Paragraph 143 of the Complaint.

144. Defendants deny the allegations contained in Paragraph 144 of the Complaint, except admit that Plaintiffs selectively quote from the referenced December 2016 letter from the Board of Trustees and respectfully refer the Court to that letter for its complete terms.

145. Defendants deny the allegations contained in Paragraph 145 of the Complaint.

146. Defendants deny the allegations contained in Paragraph 146 of the Complaint, except admit that Milliman reported in February 2017 that the Fund was “more likely than not to be in C&D [critical and declining status] for 2017 certification,” and needed an overall return of 14.1% for the Plan year ending March 31, 2017 or a significant increase in contribution levels to avoid “critical and declining” status; and that on February 22, 2017, certain Defendants and representatives of Milliman, Meketa and Plan counsel participated in a presentation at a meeting of AFM Local 802 as part of a roadshow to union locals nationwide.

147. Defendants deny the allegations contained in Paragraph 147 of the Complaint, except admit that the presentation to the participants included the Fund's returns over the past five years as of December 31, 2016, versus benchmarks for the asset classes gross of fees.

148. Defendants deny the allegations contained in Paragraph 148 of Complaint, except admit that the presentation to the participants included "Positive Results" in returns for fiscal years 2010-2014 gross of fees as 32.0%, 12.8%, 2.2%, 8.8% and 8.3%, as in the December 2016 letter.

149. Defendants deny the allegations contained in Paragraph 149 of the Complaint.

150. Defendants deny the allegations contained in Paragraph 150 of the Complaint, except admit that on May 12, 2017, Plaintiff Snitzer requested that Kilkelly provide the names of the Trustees who populate the various Board of Trustees Committees, including the Investment Committee, that on May 18, 2017 Snitzer repeated the request, and that Kilkelly responded that it was the Trustees' practice not to release this information.

151. Defendants deny the allegations contained in Paragraph 151 of the Complaint.

152. Defendants deny the allegations contained in Paragraph 152 of the Complaint.

153. Defendants deny the allegations contained in Paragraph 153 of the Complaint, except admit that in May 2017, Defendants reported to the Plan participants that the Fund would not be in critical and declining status for the 2017 actuarial certification, but indicated that the Fund's status likely would become critical and declining in the future. Defendants admit that Meketa's report for fiscal year 2017 shows a total return net of fees of 11.5% for the fiscal year.

154. Defendants deny the allegations contained in Paragraph 154 of the Complaint.

F. Defendants Brockmeyer, Hair, Gagliardi and Yao Should Be Removed as Trustees

155. Defendants deny the allegations contained in Paragraph 155 of the Complaint, except admit that Defendants Hair and Brockmeyer are Co-Chairs of the Board of Trustees and that Defendants Hair, Gagliardi, Yao and Brockmeyer are members of the Investment Committee.

COUNT I

**Violations of ERISA § 404(a)(1)(A)-(D)
by the Investment Committee Defendants**

156. Defendants incorporate by reference their responses to Paragraphs 1 through 155 of the Complaint as if fully set forth herein.

157. The allegations contained in Paragraph 157 of the Complaint seek to state legal conclusions to which no responsive pleading is required.

158. The allegations contained in Paragraph 158 of the Complaint seek to state legal conclusions to which no responsive pleading is required.

159. Defendants deny the allegations contained in Paragraph 159 of the Complaint.

160. Defendants deny the allegations contained in Paragraph 160 of the Complaint.

161. Defendants deny the allegations contained in Paragraph 161 of the Complaint.

162. Defendants deny the allegations contained in Paragraph 162 of the Complaint.

163. Defendants deny the allegations contained in Paragraph 163 of the Complaint.

164. Defendants deny the allegations contained in Paragraph 164 of the Complaint.

165. Defendants deny the allegations contained in Paragraph 165 of the Complaint.

166. Defendants deny the allegations contained in Paragraph 166 of the Complaint.

COUNT II

**Violations of ERISA § 404(a)(1)(A)-(D)
by the Board of Trustees Defendants**

167. Defendants incorporate by reference their responses to Paragraphs 1 through 166 of the Complaint as if fully set forth herein.

168. The allegations contained in Paragraph 168 of the Complaint seek to state legal conclusions to which no responsive pleading is required.

169. The allegations contained in Paragraph 169 of the Complaint seek to state legal conclusions to which no responsive pleading is required.

170. Defendants deny the allegations contained in Paragraph 170 of the Complaint.

171. Defendants deny the allegations contained in Paragraph 171 of the Complaint.

172. Defendants deny the allegations contained in Paragraph 172 of the Complaint.

173. Defendants deny the allegations contained in Paragraph 173 of the Complaint.

174. Defendants deny the allegations contained in Paragraph 174 of the Complaint.

175. Defendants deny the allegations contained in Paragraph 175 of the Complaint.

176. Defendants deny the allegations contained in Paragraph 176 of the Complaint.

177. Defendants deny the allegations contained in Paragraph 177 of the Complaint.

178. Defendants deny the allegations contained in Paragraph 178 of the Complaint.

179. Defendants deny the allegations contained in Paragraph 179 of the Complaint.

180. Defendants deny the allegations contained in Paragraph 180 of the Complaint.

181. Defendants deny the allegations contained in Paragraph 181 of the Complaint.

COUNT III

**Co-fiduciary Liability under ERISA § 405
against All Defendants**

182. No response to Paragraphs 182 through 189 of the Complaint is required because the Court dismissed Count III of the Complaint. To the extent a response is required, Defendants deny the allegations contained in Paragraphs 182 through 189 of the Complaint.

PRAYER FOR RELIEF

190. Defendants deny the allegations contained in Paragraph 190 of the Complaint.

191. Defendants deny the allegations contained in Paragraph 191 of the Complaint.

192. Defendants deny the allegations contained in Paragraph 192 of the Complaint and further deny that Plaintiffs are entitled to the relief they seek in paragraphs 192(A) through 192(J), or any relief whatsoever.

JURY TRIAL DEMANDED

193. Defendants deny the allegations contained in Paragraph 193 of the Complaint because Plaintiffs are not entitled to a jury trial on any of their causes of action.

194. Defendants further aver that any allegation of the Complaint not specifically admitted is hereby denied.

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE

Plaintiffs lack Article III standing to assert all or some of their claims.

SECOND DEFENSE

The Complaint is barred, in whole or in part, by the applicable statute of limitations.

Defendants reserve the right to modify their Answer and/or assert additional affirmative and other defenses should they become aware of additional defenses during the course of discovery, as set forth in Rule 8 of the Federal Rules of Civil Procedure.

WHEREFORE, having fully answered, Defendants pray that (i) the Complaint be dismissed in its entirety, with prejudice; (ii) that judgment herein be rendered against Plaintiffs and in favor of Defendants; and (iii) that pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1), all costs be assessed against Plaintiffs and attorney's fees awarded to Defendants.

Dated: May 29, 2018
New York, NY

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